

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF APRIL 10, 2013
CASE OF VÉLIZ FRANCO *ET AL.* v. GUATEMALA**

HAVING SEEN:

1. The brief submitting the case of May 3, 2012, presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") against the Republic of Guatemala (hereinafter "Guatemala" or "the State"), in which it offered three expert opinions, but only named two of the three expert witnesses proposed.
2. The notes of May 7 and June 1, 2012, in which the Secretariat of the Court (hereinafter the "Secretariat") informed the Inter-American Commission that it would await the corresponding attachments to its brief, and clarification as to whether it was offering the two experts indicated, or if there was a third expert, in which case it should submit the name of that expert, together with the object of the expert opinion and the curriculum vitae of the unnamed expert (*supra* Having Seen 1).
3. The briefs of June 8 and 15, 2012, in which the Commission forwarded and completed the aforementioned attachments, without making any mention of a third expert witness.
4. The brief of pleadings, motions and evidence (hereinafter "brief of pleadings and motions") of September 4, 2012 and its attachments, received on September 13, 2012 and completed on September 27 of that year, submitted by the representatives of the alleged victims¹ (hereinafter "the representatives"), in which they offered the testimonies of three alleged victims, one witness and four expert opinions. They also presented a request on behalf of the alleged victims to have access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Assistance Fund of the Court" or "the Fund") to cover some costs related to the production of evidence during the proceeding before the Court.
5. The brief filing a preliminary objection, the answer to the brief submitting the case before the Court and observations to the pleadings and motions brief (hereinafter the "answer brief") presented by the State on December 18, 2012, and its attachments, received by the Secretariat on January 8 and 9, 2013. The State did not offer testimonial or expert evidence.
6. The Order of the President of the Court (hereinafter "the President") of January 8, 2013 (hereinafter "Order of the President") concerning the Victims' Assistance Fund.

¹ At the time, the representatives of the alleged victims were the *Red de No Violencia Contra las Mujeres* (REDNOVI) and the Center for Justice and International Law (CEJIL). Subsequently, on March 8, 2013 the Court was informed that only REDNOVI would act as representative of the alleged victims.

7. The communication of January 21, 2013 and its attachments, in which the State submitted its clarifications to the observations of the Secretariat regarding the documentary evidence attached to its answer to the brief submitting the case.
8. The notes of February 26, 2013, in which the Secretariat, following the instructions of the President, and in accordance with Article 46(1) of the Court's Rules of Procedure (hereinafter "the Rules")², called on the representatives and the Commission to submit, no later than March 8, 2013, their respective definitive lists of deponents (hereinafter "definitive lists") and, for reasons of procedural economy, to indicate which deponents could render their statements by affidavit and which should be summoned to testify at a public hearing.
9. The brief of March 8, 2013, in which the Commission submitted its definitive list of deponents, confirmed the two expert opinions previously offered (*supra* Having Seen 1 and 3) and asked that one expert witness testify at the public hearing and the other render her statement by affidavit.
10. The brief of March 8, 2013, in which the representatives forwarded their definitive list, indicating that the statements of three alleged victims, one witness and one expert witness could be rendered by affidavit and those of three expert witnesses could be rendered at the public hearing.
11. The notes of March 14, 2013, in which the Secretariat transmitted the definitive lists of deponents to the parties and to the Commission under the terms of Article 46 of the Rules, and granted them a period of ten days as from receiving these lists to submit any observations considered pertinent.
12. The communication of March 21, 2013, in which the representatives stated that they had made "a material error upon presenting their definitive list of witnesses and expert witnesses" and indicated a change in the way in which two of the deponents offered in the brief of March 8, 2013, would render their statements. In that regard, they submitted a correction indicating that the statement of one alleged victim should be received at the public hearing and not by affidavit, as proposed in said communication. Also, they requested that the statement of an expert witness be received by affidavit, instead of at the public hearing as originally proposed.
13. The communication of March 22, 2013, in which the Secretariat, following the instructions of the President, for the reasons stated in the preceding paragraph, officially extended the deadline for the State to submit its observations to the definitive lists to March 26, 2013.
14. The brief of March 22, 2013, in which the representatives forwarded their observations to the definitive list of expert witnesses offered by the Inter-American Commission.
15. The brief of March 25, 2013, in which the Inter-American Commission stated that it had no observations to make to the definitive list of deponents of the representatives and requested an opportunity to formulate verbal or written questions to the expert witnesses

² Rules of Procedure approved by the Court at its Eighty-fifth Regular Period of Sessions held on November 16- 28, 2009.

Ana Carcedo Cabañas and María Eugenia Solís García, offered by the representatives (*supra* Having Seen 4).

16. The brief of March 26, 2013, in which the State submitted its observations to the definitive lists of deponents proposed by the representatives and the Commission and requested that “the [...] Court take note of the similarity between the expert opinions proposed by the Illustrious Commission and the petitioners [,] so that not all these are accepted, but only those that the High Court considers pertinent and necessary to facilitate adjudication.”. It added that it wished to “express the fact that the State considers that [...] it is not necessary for Dr. Kepfer to testify at the public hearing,” and also “to express its objection to the testimony of the lawyer of REDNOVI, María Luisa de León Santizo.” It further asked the Court “to note its objection to the expert opinion of Dr. Nájera.” Finally, the State requested that “the observations, challenges and objections expressed in [its] brief be taken into account.”

17. The communication of April 4, 2013, in which the Secretariat, following the instructions of the President, indicated that, regarding the alleged objections to the expert witnesses Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa, the term established in Article 48(3) would not be granted, because the State’s argument is not based on any of the grounds for disqualification. Thus, the Secretariat indicated that the observations raised by the State regarding those expert witnesses would be addressed by the President of the Court, in due course. It also advised that the observations and objections raised by the State regarding the witness Luisa de León Santizo and the expert witnesses proposed by the Commission and the representatives would be considered by the President at the proper procedural moment.

CONSIDERING THAT:

1. The offer and admission of evidence, as well as the formal summons of the alleged victims, witnesses and expert witnesses, are regulated under Articles 35(1)(f), 40(2)(c), 41(1) (c), 46(1), 50 and 57 of the Court’s Rules of Procedure.

2. The Commission offered as evidence two expert opinions and the representatives offered the statements of three alleged victims, one witness and four expert witnesses (*supra* Having Seen 1, 3, 4, 9, 10 and 12). For its part, the State did not offer any testimonial or expert evidence (*supra* Having Seen 5).

3. The Court guaranteed the parties the right to defense in respect of the offers of evidence contained in their briefs submitting the case and in the brief of pleadings and motions, as well as in the definitive lists of deponents (*supra* Having Seen 11).

4. The Commission stated that it had no observations to make to the definitive list of deponents of the representatives (*supra* Having Seen 15). For their part, the representatives did not raise any objections to the definitive list of expert witnesses presented by the Commission, but noted that the statements proposed by the Commission are related to the inter-American public order (*supra* Having Seen 14). The State submitted observations regarding the two expert witnesses and one witness proposed by the representatives (*supra* Having Seen 16).

5. With regard to the statements and expert opinions offered by the representatives and the Commission, as the case may be, which have not been objected to³, the President considers it appropriate to obtain this evidence, so that the Court may assess its value at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. Consequently, the President requires that the following statements be received: of the three alleged victims proposed by the representatives, namely, Rosa Elvira Franco Sandoval, Leonel Enrique Véliz Franco and José Roberto Franco; of the witness María Luisa de León Santizo, proposed by the representatives; and of five expert witnesses, namely, Ana Carcedo Cabañas, María Eugenia Solís García, Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa, proposed by the representatives, and Elizabeth Salmón, proposed by the Commission, as set forth below (*infra* Considering paragraphs 7 to 17). The object of these statements and the manner in which they are to be rendered shall be decided by the President in the operative section of this Order (*infra* Operative paras. 1 and 5).

6. In this Order, the following aspects in particular will be examined: A) Expert evidence offered by the Inter-American Commission; B) Expert and witness statements offered by the representatives; C) Manner in which the statements and expert opinions shall be rendered; D) Application of the Victims' Legal Assistance Fund; and E) Final arguments and observations.

A. Expert evidence offered by the Inter-American Commission

7. The Inter-American Commission offered as evidence the expert opinions of a) Elizabeth Salmón, to discuss "international standards on the duty of States to conduct thorough, diligent and effective investigations into acts of violence against women, with special emphasis on the special diligence required when the victims are girls," and, in particular, the expert witness will refer to "the importance of the investigation as a crucial stage in cases of violence against women and girls " and b) Elisa Portillo Nájera who will describe "the context of violence against women and girls in Guatemala, the general context of impunity in such cases and the systemic shortcomings in that country's judicial response to crimes and violations against women" (*supra* Having Seen 1, 2 and 9, and Considering paras. 2 and 5).

8. The President recalls that Article 35(1) (f) of the Rules provides for the "possible appointment of expert witnesses" by the Inter-American Commission, with due justification of the grounds and object of such appointment "when the Inter-American public order of human rights is affected in a significant manner." The implication of this provision is that the appointment of expert witnesses by the Commission is an exceptional circumstance, subject to that requirement, which is not satisfied by the mere fact that the evidence to be produced is related to an alleged human rights violation. The "Inter-American public order of human rights" must be "affected in a significant manner," and it is up to the Commission to justify that situation."⁴

³ As is evident (*supra* Having Seen 17) the observations expressed by the State in relation to certain deponents do not constitute objections based on the ground for disqualification contemplated in Article 48 of the Court's Rules of Procedure. The observations of the State are examined in this Order (*infra* Considering paras. 10, 12, 13, 16, 17, 19, 20 to 23, and 25 to 27).

⁴ Cf. *Case of Vera Vera et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering para. 9, and *Case of Camba Campos et al. v. Ecuador*, Order of the President of the Inter-American Court of February 15, 2013, Considering para. 11.

9. The Commission understood that these expert opinions would refer to aspects of the inter-American public order, while the expert opinion of Elizabeth Salmón would address “issues related to standards of due process applicable in cases of violence against women, and those related to the obligation of States to investigate cases wherein the victim is a child, based on the principle of the best interests of the child and on international standards related to the rights of women and girls,” and the expert opinion of Elisa Portillo Nájera would address “the relationship between this specific case and the context of violence against women in that country (Guatemala); between violence and discrimination based on gender; and between a context of violence and discrimination, and the structural failings reflected in the lack of an effective judicial response.” The Commission considered that “it would be important to present information on the relationship between those factors and the obstacles faced by family members in this and other cases in their efforts to obtain justice and the continuing situation of impunity.”

10. The representatives did not raise any objections to the two expert opinions offered by the Commission (*supra* Having Seen 4). For its part, the State affirmed that it “understands that the expert witnesses [proposed by the Commission] have extensive experience and knowledge of the issues on which their expert opinions [are] sought.” However, “the topics [on which] they will provide their expert opinions are the same as those proposed by the [representatives]; thus, the expert evidence becomes abundant and excessive, affecting the principle of *procedural economy*” (cursive in the original text). Also, in relation to the proposed expert opinion of Elizabeth Salmón, it noted that “this would address the same [issues] as the [expert opinions of] María Eugenia Solís García and Ana Carcedo Cabañas”, proposed by the representatives (*infra* Considering paras 15 to 17), and added that “the State [and the Court are perfectly aware of the obligations and duties assumed by the States. There is no need for an expert witness to discuss this in relation to a particular case.” It also pointed out that the “importance of the investigation”, a topic that would be covered by the expert opinion proposed, “is not a disputed fact [...] and therefore the expert opinion in question is not necessary.” As to the expert opinion of Elisa Portillo Nájera, the State asserted that it is “not necessary” since “it will consider the context the instant case” and “the C[ommission] and the [representatives ...] in their Report on the Merits and brief of [p]leadings [and m]otions [...] have already provided a comprehensive presentation of [this]”.

11. With regard to the expert opinion offered by Elisa Portillo Nájera, the President notes that, despite the observations made by the Commission concerning its possible links with the inter-American public order, its object is substantially and specifically limited to the particular situation of Guatemala, since it refers, among other points, to the relationship between “this specific case and the context of violence against women [and impunity] in that country.” Therefore, it is not appropriate to admit the expert opinion of Elisa Portillo Nájera.

12. With regard to the expert opinion of Elizabeth Salmón, the President considers that her expert opinion may contribute to strengthen the capacity of the Inter-American System of Human Rights to provide protection on matters of international standards on the duty to investigate cases of violence against women and girls. This transcends the specific interests of the parties in the case and may have an impact on situations that arise in other States Parties to the Convention⁵, thereby generating interest relevant to the inter-American public

⁵ Cf. *Case of Pacheco Teruel et al. v. Honduras*. Order of the President of the Inter-American Court of January 27, 2012, Considering para. 9, and *Case of Camba Campos et al. v. Ecuador*, *supra*, Considering para. 22.

order of human rights. The President also takes note of the State's observations, but in this case, the reasons of "procedural economy" stated are not sufficient reason to reject the expert opinion.⁶ The latter may be useful and necessary to ensure the most complete presentation of evidence by the parties, insofar as these are pertinent⁷.

13. In this case, the State has also had an opportunity to offer any evidence it considers pertinent before the Court. Consequently, the number of witnesses or expert witnesses offered by the representatives, or their similarity with the deponents offered by the Commission, cannot be interpreted as an action that impairs the adversarial process and the principle of procedural equality, and therefore it does not affect *per se* the admissibility of the evidence offered.⁸

14. For the foregoing reasons, the President considers it pertinent that the Court receive the expert opinion of Elizabeth Salmón. The value of said opinion shall be assessed at the proper procedural moment, within the context of the existing body of evidence and according to the rules of sound judgment. The object of this expert opinion and the manner in which it will be rendered shall be determined in the operative part of this Order (*infra* Operative para. 5).

B. Expert and testimonial statements offered by the representatives

1. Expert opinions of Ana Carcedo Cabañas and María Eugenia Solís García

15. The representatives offered as evidence (*supra* Having Seen 4, 10 and 12) the expert opinions of a) Ana Carcedo Cabañas, who will discuss

femicide in Central America, and specifically in Guatemala, its causes and characteristics, the steps that States have taken so far to address this phenomenon, and the measures which, according to her experience, should be adopted to prevent the repetition of the facts referred to in this case, and

b) María Eugenia Solís García, who will render an expert opinion on "the investigation of cases of violence against women in Guatemala." In this regard, she will refer "specifically [to the investigation of] murders of women for gender reasons, at the time of the events in this case and at present," together with "the main obstacles encountered in efforts to obtain justice in [such] cases" and "the measures which, according to her experience, should be adopted to prevent the repetition of the facts referred to in this case."

16. The Inter-American Commission made no observations regarding the expert opinions offered by the representatives (*supra* Having Seen 15). The State, for its part, indicated that a) the expert opinions of Ana Carcedo Cabañas and María Eugenia Solís García would be similar to the expert opinion of Elizabeth Salmón, proposed by the Commission (*supra* Considering paras. 7, 12 and 14). Therefore, it understood that these would not be necessary, and considered inappropriate the use of the Assistance Fund to cover the costs

⁶ Cf. *Case of Gutiérrez and Family v. Argentina*. Order of the President of the Inter-American Court of December 20, 2012, Considering para. 13.

⁷ Cf. *mutatis mutandi*, *Case of the Massacre of Santo Domingo v. Colombia*, Order of the President of the Inter-American Court of June 5, 2012, Considering para. 30, and *Case of García Lucero et al. v. Chile*. Order of the President of the Inter-American Court of February 14, 2013, Considering para. 12.

⁸ Cf. *mutatis mutandi*, *Case of Néstor José and Luis Uzcátegui et al. v. Venezuela*. Order of the President of the Inter-American Court of November 3, 2011, Considering para. 6.

that might be incurred. Moreover, it pointed out that these expert opinions focus on a “context of violence against women” and that “it has not even been established that [the death of María Isabel Véliz Franco] occurred for reasons of gender.” Therefore, these expert opinions would not “constitute evidence regarding the human rights violations alleged in this case.”

17. As to the proposed expert opinions of Ana Carcedo Cabañas and María Eugenia Solís García, the President considers these useful in relation to this proceeding. However, with regard to the expert opinion of Ana Carcedo Cabañas, bearing in mind the nature of this case, he requires that its object be limited to the situation in Guatemala. In relation to the State’s observations, the President reiterates his previous considerations regarding the similarity of the expert opinions proposed (*supra* Considering paras. 12 and 13). As to the State’s observation that there is no evidence that the facts of this case fall within a specific context, the President advises that this is, precisely, a matter that must be clarified within the context of this proceeding, based on the evidence produced. As to the State’s observations concerning the application of the Victims’ Assistance Fund, the President refers to the decision already issued in the respective Order (*supra* Having Seen 6) and to the subsequent instructions on its use (*infra* Considering paras. 38 to 40). Furthermore, he considers that the State’s arguments regarding the costs of the process are not sufficient to reject the expert opinions in question.⁹ Accordingly, the President deems it appropriate to admit the expert opinions indicated.

2. Expert opinions of Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa

18. The representatives also offered as evidence the expert opinions of a) Rodolfo Kepfer Rodríguez, to describe “the personal and family impact and the physical and psychological effects suffered by the family of María Isabel Véliz Franco as a consequences of the facts of this case and [its] impunity”, as well as “the measures necessary to repair the damage caused”, and b) José Mario Nájera Ochoa, to describe “the way in which forensic procedures were carried out in cases involving the violent death of women in Guatemala and their main failings and limitations”, and also “the main omissions in the way these procedures were carried out in the case of María Isabel Véliz Franco and the measures that the State should adopt to prevent a repetition of events such as those that occurred in this case”.

19. Regarding Mr. Kepfer Rodríguez, the State indicated that “it is not necessary to incur travel expenses for the professional [...] specialized in psychiatry to discuss the damage suffered by the family members of alleged victims of alleged human rights violations.” It added that in “this case there is no record that [the physician] has assisted or provided treatment to family members of the victim, but rather that he intends to reiterate aspects that the [...] Court has already taken into account in previous judgments.” Therefore, his expert opinion “is not essential to facilitate adjudication by the Court and his attendance at the hearing would undermine procedural economy.” As to Mr. Nájera Ochoa, the State gave a positive assessment of his work at the National Institute of Forensic Sciences (INACIF), even though he has not worked there for some time. However, given that his expert opinion is intended to describe the way in which forensic procedures are carried out and their failings and limitations, the State reiterated that the protocols for carrying out such procedures are different to when he worked there. Consequently, it considered this sufficient reason to assert that “the expert opinion lacks competence [,] since he is not familiar with the procedures on which he is being summoned to testify,” for which reason it challenged his participation.

⁹ Cf. *Case of Gutiérrez and Family v. Argentina*, *supra*, Considering para. 13.

20. As to the expert opinion of Mr. Kepfer Rodríguez, the President considers that the State's argument that he has not provided assistance or treatment to the victim's family, is a hypothesis that could affect the evidentiary value or weight of the proposed opinion, but not its admissibility and subsequent assessment by the Court. Consequently, the President admits the aforesaid expert opinion, in accordance with the object and manner specified in the operative section of this Order.

21. Regarding the State's alleged objection to Mr. Nájera Ochoa's expert opinion, the President considers that for this to be admissible it must be based on one of the grounds established in Article 48(1) of the Rules of Procedure, which state the following:

1. An expert witness may be disqualified based on the following grounds:
 - a. he or she is a relative by blood, affinity or adoption, up to the fourth degree, of one of the alleged victims;
 - b. he or she is or has been a representative of an alleged victim in proceedings regarding the facts before the Court, either at the domestic level or before the Inter-American System for the promotion and protection of human rights;
 - c. he or she currently has, or has had, close ties with the proposing party, and the Court considers that his or her impartiality may be affected;
 - d. he or she is, or has been, an officer of the Inter-American Commission on Human Rights with knowledge of the contentious case in which his or her expert opinion is required;
 - e. he or she is or has been an Agent of the respondent State in the contentious case in which his or her expert opinion is required;
 - f. he or she has previously intervened, in any capacity and before any organ, whether national or international, in relation to the same case.

22. In this regard, the President notes that the State did not base its challenge on any of the grounds established in the aforementioned article, and thus it is not considered as such, but rather as an observation on Mr. Nájera's possible lack of expertise, since according to the State he would not be familiar with the procedures on which he is being summoned to testify, given that there are now new protocols and procedures in place, different to those that existed when he worked at the National Institute of Forensic Sciences.

23. Pursuant to Article 50(1)¹⁰ of the Rules of the Court, the President notes that the State's objections refer to matters of evidentiary value and not of admissibility of the evidence.¹¹ Thus, as he has done previously¹², the President considers that at the present procedural moment it is not appropriate to rule on the validity of the content of an expert opinion as it relates to the facts of this case. Therefore, to ensure the proper conduct of this

¹⁰ Article 50(1) of the Court's Rules of Procedure states: "The Court or its Presidency shall issue an order deciding on the observations, objections and challenges presented, as applicable, defining the object of the statement of each of the declarants; requiring the submission of the affidavits deemed appropriate; and summoning all those that the Court deems appropriate to a hearing, if necessary."

¹¹ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 43, and *Case of Díaz Peña v. Venezuela*. Order of the President of the Inter-American Court of November 2, 2011, Considering para. 13.

¹² Cf. *Case of Abrill Alosilla et al. v. Peru*. Order of the acting President of the Inter-American Court of September 28, 2010, Considering para. 14, and *Case of Díaz Peña v. Venezuela, supra*, Considering para. 13.

proceeding, the President shall receive any evidence that in principle could be pertinent, having regard to what the parties have alleged and seek to prove, without this implying a decision or prejudgment of its evidentiary value.¹³ Accordingly, the President deems it appropriate to admit the statements of the expert witnesses Rodolfo Kepfer Rodríguez and José Nájera Ochoa. The value of these expert opinions shall be assessed in due course, within the context of the body of evidence and according to the rules of sound judgment. The object and manner in which these expert opinions shall be rendered are specified in the operative section of this Order (*infra* Operational para. 1).

3. Regarding the testimony of María Luisa de León Santizo

24. The representatives of the alleged victim offered as testimonial evidence the statement of María Luisa de León Santizo on “the different efforts made by Mrs. Rosa Franco to obtain justice and the response of the authorities, as well as the different obstacles encountered in this case and in other similar cases, among other aspects of importance for this process.”

25. The State expressed its “wish to challenge the witness María Luisa de León Santizo,” given that “the [representatives] themselves, in their description of her statement, establish that, ‘...she has accompanied the process to obtain justice in cases of violence against women, including those of María Isabel Véliz Franco. She will testify on the efforts made by Mrs. Rosa Franco’...” Also, the State indicated that it “understands that she was proposed as a witness and not as an expert witness so that she would not be disqualified based on Article 48(1), subparagraphs b and/or f. However, in this case, because she belongs to the very organization that represents the relatives of the victim (REDNOVI), her objectivity is compromised due to a possible conflict of interests.” Consequently, the State requested that her statement be rejected.

26. In this regard, the President notes that the State has not filed a formal objection to the proposed witness, since it does not question the assumption of her participation in efforts to obtain justice in the instant case, but merely makes an observation “so that the statement of the witness in question is not admitted, by virtue of her possible conflict of interests and lack of objectivity.”

27. Based on the provisions of Article 50(1)¹⁴ of the Court’s Rules of Procedure, the President finds that the deponent has been proposed as a witness and has a duty under Article 51(3) of the Rules to tell the truth regarding the facts and circumstances known to her.¹⁵ For that reason, the President shall not assess the arguments regarding her alleged lack of impartiality and the possible conflict of interests, bearing in mind that this duty cannot be required of witnesses.¹⁶ Likewise, he considers that the object of Mrs. María Luisa de León Santizo’s statements may contribute to elucidate the facts of this case. Once this evidence has been received, the State will have an opportunity to present any observations

¹³ Cf. *Similarly, Case of González Medina and Family v. Dominican Republic*. Order of the President of the Inter-American Court of June 3, 2011, Considering para. 17.

¹⁴ Article 50(1) of the Court’s Rules of Procedure, *supra*.

¹⁵ Cf. *Case of Reverón Trujillo v. Venezuela*. Order of the President of the Inter-American Court of September 24, 2008, Considering para. 18, and *Case of Díaz Peña v. Venezuela, supra*, Considering para. 11.

¹⁶ Cf. *Case of López Mendoza v. Venezuela*. Order of the President of the Inter-American Court of December 23, 2010, Considering para. 16, and *Case of Díaz Peña v. Venezuela, supra*, Considering para. 11.

it deems necessary regarding the reliability of said testimony, and its value shall be assessed in due course, within the context of the body of evidence and according to the rules of sound judgment. Therefore, the statement of the witness shall be admitted, according to the object and modality established in the operative part of this Order (*infra* Operative para. 1).

C. Manner in which the statements and expert opinions shall be rendered

28. It is necessary to ensure the most complete presentation of the facts and arguments by the parties, insofar as these are pertinent to resolving the matters in dispute, guaranteeing both the right of the parties to defend their respective positions and the Court's possibility of adequately examining the cases submitted to its consideration, bearing in mind that their number has grown considerably and is increasing constantly. It is also necessary to guarantee a reasonable term in the length of the proceeding, as required for effective access to justice. Accordingly, it is essential to receive the greatest possible number of testimonies and expert opinions through affidavits, and that the Court hear those alleged victims, witnesses and expert witnesses whose direct testimony is truly indispensable at a public hearing, taking into account the circumstances of the case and the object of the testimonies and expert opinions.

1. Statements to be rendered by affidavit

29. Bearing in mind the provisions of Article 50(1) of the Rules and the indications of the representatives and the Commission in their definitive lists, the object of the statements offered, as well as the principle of procedural economy, the President deems it appropriate to receive, through affidavits rendered before a notary public (affidavit), the statements of Leonel Enrique Véliz Franco, José Roberto Franco, María Luisa de León Santizo, Ana Carcedo Cabañas, Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa, proposed by the representatives.

30. In application of Article 50(5) of the Court's Rules of Procedure, the President proceeds to grant the State an opportunity to submit, if it so wishes, any questions considered pertinent to the alleged victims, the witness and the expert witnesses named in the preceding paragraph. Upon rendering their statements before a notary public, the deponents must respond to those questions, unless the President decides otherwise. The corresponding time limits shall be specified in Operative paragraph 2 of this Order. The aforementioned statements shall be transmitted to the Inter-American Commission, the State and the representatives. The State may then present any observations deemed pertinent with its final written arguments, as indicated in the operative section of this Order (*infra* Operative paragraph 4). The Court shall assess the evidentiary value of these statements in due course, taking into account the points of view, if any, expressed by the parties in exercise of their right to defense.

2. Request by the Commission to formulate questions to the expert witnesses offered by the representatives

31. The Commission requested an opportunity to formulate questions to the expert witnesses Ana Carcedo Cabañas and María Eugenia Solís García (*supra* Having Seen 15), proposed by the representatives (*supra* Having Seen 4 and 10, and Considering paras. 15 to 17) because "they are related to the two expert opinions offered by the Commission, to be rendered by Elizabeth Salmón and by Elisa Portillo Nájera," and "would allow for the specific

application of the standards that will be discussed by Elizabeth Salmón." Moreover, these expert opinions offered by the representatives "are directly related to that of Mrs. Portillo, inasmuch as they furnish the Court with background information on the problem and structural characteristics of impunity in Guatemala."

32. With regard to the Commission's request, the President recalls the Court's Rules of Procedure concerning the reception of statements proposed by the Commission, as well as its authority to question deponents offered by the other parties.¹⁷ In particular, it is pertinent to recall that Article 50(5) of the Rules of the Court, applicable to this case, establishes that "[...]alleged victims or their representatives, the respondent State and, if applicable, the petitioning State, may formulate questions in writing for the deponents offered by the opposing party and, if applicable, by the Commission, who have been summoned by the Court to render their statements through affidavits." This provision should be read in conjunction with Article 52(3) of the Rules, which makes provision for the Commission to question expert witnesses presented by the parties, "if authorized by the Court upon receiving a well-founded request therefor, when the inter-American public order of human rights is affected in a significant manner and the statement in question concerns a topic included in the statement of an expert witness offered by the Commission." Thus, it is up to the Commission to demonstrate, in each case, the connection both with the inter-American public order and with the subject matter of the expert opinion it has offered, so that the Court or its President may consider the request in due course, and, if appropriate, authorize the Commission to ask its questions.

33. The object of the expert opinion of Ana Carcedo Cabañas, under the terms defined previously (*supra* Considering para. 17), is to discuss the causes and characteristics of femicide in Guatemala, as well as the State's response to that phenomenon and pertinent measures to prevent its repetition. For its part, the expert opinion of María Eugenia Solís García, as proposed by the representatives, will focus on aspects related to "the investigation of cases of violence against women in Guatemala" (*supra* Considering para. 15). The expert opinion of Elizabeth Salmón, as proposed by the Commission, will refer to standards of due process and investigations into issues of violence against women, and cases where the victim is a child (*supra* Considering paras. 7, 9 and 12).

34. Based on the foregoing, it is clear that the objects of the expert opinions of María Eugenia Solís García and Ana Carcedo Cabañas refer to circumstances specific to Guatemala and, as such, are not related to the inter-American public order, according to the previous considerations in this regard (*supra* Considering para. 12). Moreover, the Rules of Procedure establish that the "inter-American public order of human rights" must be "affected in a significant manner" for the Commission to be allowed to submit questions to expert witnesses offered by the parties (*supra* Considering para. 32). Therefore, having regard to Article 52(3) of the Rules, the President does not consider it appropriate to authorize the Inter-American Commission to submit questions to the expert witnesses María Eugenia Solís García and Ana Carcedo Cabañas.

3. *Statements and expert opinions to be received at a public hearing*

35. The Court records in the instant case are now ready for the opening of oral proceedings regarding the preliminary objection and possible merits, reparations and costs, and therefore the President deems it appropriate to convene a public hearing to receive the

¹⁷ Cf. *Case of Luna López v. Honduras*. Order of the President of the Inter-American Court of December 20, 2012, Considering para. 20, and *Case of Camba Campos et al. v. Ecuador*, *supra*, Considering para. 36.

statements of the alleged victim Rosa Elvira Franco Sandoval and of the expert witness María Eugenia Solís García, proposed by the representatives, and of Elizabeth Salmón, proposed by the Commission.

D. Application of the Victims' Legal Assistance Fund

36. In the Order issued on January 8, 2013 (*supra* Having Seen 6), this Presidency decided to admit the request submitted by the alleged victims, through their representatives, to have access to the Assistance Fund of the Court, and to grant the financial assistance necessary to present a maximum of four statements, either by means of affidavits or at a public hearing.

37. Having determined that the statements offered by the representatives shall be received by the Court, and the means by which these shall be rendered, it is now appropriate to determine the specific recipients and purpose of said assistance.

38. Accordingly, the President decides that financial assistance shall be provided to cover the travel and accommodation expenses necessary to enable the alleged victim Mrs. Rosa Elvira Franco Sandoval and the expert witness María Eugenia Solís García to appear before the Court and render their statements during the public hearing to be held at the seat of the Court. Financial assistance shall also be provided to cover the expenses of formalizing and sending two statements rendered by affidavit, as decided by the alleged victims or their representatives, in accordance with Operative para. 1 of this Order. The representatives shall provide the Court with the names of the two deponents whose affidavits shall be covered by the Assistance Fund, as well as an estimate of the cost of formalizing each sworn statement in Guatemala and sending it, within the period established in the operative part of this Order (*infra* Operative para. 8). As to the two deponents summoned to appear at the public hearing, the Court shall make the pertinent and necessary arrangements to cover the costs of their travel, accommodation and per diems with resources from the Victims' Assistance Fund.

39. As required by Article 4 of the Rules for the Operation of the Assistance Fund of the Court (hereinafter the "Rules of the Assistance Fund"), the Secretariat of the Court shall open a file on the costs of the case, in order to keep accounts and record all expenditures made with resources from said Fund.

40. Finally, the President recalls that, pursuant to Article 5 of the Rules of the Fund, the respondent State shall be informed in due course of the expenditures made from the Assistance Fund so that it may submit any observations, if it so wishes, within the period established for that purpose.

E. Final oral and written arguments and observations

41. The representatives and the State may present to the Court their final oral arguments regarding the preliminary objection and possible merits, reparations and costs in this case, respectively, once the statements of the alleged victim and the expert witnesses have been rendered. As established in Article 51(8) of the Rules, once these arguments have concluded, the Inter-American Commission shall present its final oral observations. (*infra* Operative para. 10).

42. According to Article 56 of the Rules of Procedure, the representatives and the State may submit their final written arguments, and the Commission its final written observations,

regarding the preliminary objection and possible merits, reparations and costs, within the period established in this Order (*infra* Operative paragraph 12).

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to Articles 24(1) and 25(2) of the Statute of the Court and Articles 4, 15(1), 26, 31(2), 35(1), 40(2), 41(1), 45, 46, 50 to 55, 56 and 60 of its Rules of Procedure, and in exercise of its authority in relation to the Victims' Legal Assistance Fund of the Court,

DECIDES:

1. To require, for the reasons stated in this Order, in accordance with the principle of procedural economy and in exercise of the authority granted under Article 50(1) of the Court's Rules of Procedure, the following persons to render their statements by affidavit:

A) Alleged victims proposed by the representatives

1) **Leonel Enrique Véliz Franco**, brother of María Isabel Véliz Franco, who will testify on:

- i) the efforts made by his mother to obtain justice and the response of the authorities;
- ii) the alleged acts of intimidation and threats suffered by his family during this process;
- iii) the way in which all these actions supposedly affected him and his family, and
- iv) the measures that the State should adopt to repair the damage caused.

2) **José Roberto Franco**, brother of María Isabel Véliz Franco, who will testify on:

- i) the efforts made by his mother to obtain justice and the response of the authorities;
- ii) the alleged acts of intimidation and threats suffered by his family during this process;
- iii) the way in which all these actions supposedly affected him and his family, and
- iv) the measures that the State should adopt to repair the damage caused.

B) Witness proposed by the representatives

1) **María Luisa de León Santizo**, lawyer of the Guatemalan Women's Group, and member of the *Red de No Violencia Contra las Mujeres*, who will testify on:

- i) the different efforts made by Mrs. Rosa Franco to obtain justice and the response of the authorities, and

- ii) the alleged obstacles encountered in this case and in other similar cases.

C) Expert witnesses proposed by the representatives

1) Ana Carcedo Cabañas, President of the *Asociación Centro Feminista de Información y Acción* (CEFEMINA) and expert on women's rights, who will render an expert opinion on:

- i) femicide in Guatemala, its causes and characteristics, and
- ii) the steps taken by the State so far to address this phenomenon, and the measures, that in her experience, should be adopted to prevent a repetition of the events of this case.

2) Rodolfo Kepfer Rodríguez, physician and surgeon, specialist in psychiatry, who will render an expert opinion on:

- i) The personal and family impact and the physical and psychological effects suffered by family members of María Isabel Véliz Franco as a consequence of the facts of this case and their alleged impunity, and
- ii) the measures necessary to repair the damage caused.

3) José Mario Nájera Ochoa, physician and surgeon with extensive experience in forensic medicine, who will render an expert opinion on:

- i) the way in which forensic procedures are carried out in cases of violent deaths of women in Guatemala and their main failings and limitations;
- ii) the main alleged omissions in carrying out these procedures in the case of María Isabel Véliz Franco, and
- iii) the measures that the State should adopt to prevent the repetition of events such as those that occurred in this case.

2. To require the State to submit, if it so wishes, within the non-renewable term that expires on April 16, 2013, any questions deemed pertinent through the Inter-American Court to the alleged victims, the witness and the expert witnesses named in Operative paragraph 1. The statements and expert opinions shall be submitted no later than April 29, 2013.

3. To require the representatives to coordinate and make the necessary arrangements so that, once the questions of the State have been received, the deponents proposed may include the respective answers in their statements rendered by affidavit, under the terms of Considering paragraphs 1 and 2 of this Order.

4. To require the Secretariat of the Court, once the statements and expert opinions required in Operative paragraph 1 have been received, to transmit them to the parties and to the Commission so that, if the State deems it necessary, it may submit its observations to those statements and expert opinions with its final written arguments.

5. To summon the representatives, the State and the Inter-American Commission to a public hearing to be held during the Court's 99th Regular Period of Sessions, at its seat in San Jose, Costa Rica, on May 15, 2013, from 9:00 hours, to receive their final oral arguments and final oral observations, respectively, regarding the preliminary objection and possible merits, reparations and costs, as well as to receive the statements of the following persons:

A) Alleged victim proposed by the representatives

1) ***Rosa Elvira Franco Sandoval***, mother of María Isabel Véliz Franco, who will testify on:

- i) her efforts to denounce the disappearance of her daughter and to obtain justice and the response of the authorities;
- ii) the alleged acts of intimidation and threats that she and her family suffered during this process,
- iii) the way in which all these events supposedly affected her and her family, and
- iv) the measures that the State should adopt to repair the damage caused.

B) Expert witness proposed by the Commission

2) ***Elizabeth Salmón***, Doctor of international law, who will render an expert opinion on:

- i) international standards on the duty of States to carry out thorough, diligent and effective investigations into acts of violence committed against women – with an emphasis on the special diligence required when the victims are girls, and
- ii) the importance of the investigation as a crucial stage in cases of violence against women and girls.

C) Expert witness proposed by the representatives

3) ***María Eugenia Solís García***, a lawyer and expert on human rights and gender, currently Adviser at the Office of the Human Rights Ombudsman, who will render an expert opinion on:

- i) the investigation of cases of violence against women in Guatemala, particularly murders of women related to gender at the time of the events and at present;
- ii) the main obstacles to obtaining justice in such cases, and
- iii) the measures, which according to her experience, should be adopted to prevent a repetition of events such as those that occurred in this case.

6. To require the State to facilitate the exit from and entrance into its territory of the alleged victim and the expert witnesses, if they reside or are present therein, and who have been summoned by this Order to render their statements at the public hearing regarding

the preliminary objection and possible merits, reparations and costs in this case, under the terms of Article 26(1) of the Court's Rules of Procedure.

7. To require the representatives and the Inter-American Commission to serve notice of this Order to the persons they have proposed and who have been summoned to render a statement, in accordance with Article 50(2) and 50(4) of the Rules of Procedure.

8. To inform the representatives and the Inter-American Commission that they must cover the costs incurred in providing or rendering the evidence proposed by them, pursuant to Article 60 of the Rules, without prejudice to the provisions of Considering paragraph 38 of this Order. Also, to require the representatives to submit to the Court the names of the two deponents whose affidavits shall be covered by the Assistance Fund, together with an estimate of the cost of formalizing each sworn statement in Guatemala and sending these, no later than April 16, 2013.

9. To require the representatives and the Inter-American Commission to inform the persons summoned to testify by the Court that, pursuant to Article 54 of the Rules, the Court shall bring to the State's attention the cases in which the persons summoned to appear or testify before this Court fail to do so, or refuse to testify without legitimate cause or who, in the opinion of the Court, have violated their oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.

10. To inform the representatives, the State and the Inter-American Commission that, once the statements have been rendered at the public hearing, they may present before the Court their final oral arguments and final oral observations, respectively, regarding the preliminary objection and possible merits, reparations and costs in this case.

11. To require the Secretariat of the Court, in accordance with Article 55(3) of the Rules of Procedure, to provide the representatives, the State and the Inter-American Commission with a copy of the recording made of the public hearing on the preliminary objection and potential merits, reparations and costs in this case, as soon as possible.

12. To inform the representatives, the State and the Inter-American Commission that the time limit established for submitting their final written arguments and final written observations, respectively, regarding the preliminary objection and possible merits, reparations and costs expires on June 15, 2013. This term is non-renewable and is separate from the submission of the copy of the recording of the public hearing.

13. To order the Secretariat of the Court, pursuant to Article 4 of the Rules for the Operation of the Assistance Fund of the Court, to open a file on the costs, recording each of the expenditures made from the Victims' Legal Assistance Fund.

14. To require the Secretariat of the Court to serve notice of this Order to the representatives of the alleged victims, the State and the Inter-American Commission.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary