

**ORDER OF THE ACTING PRESIDENT OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\***

**APRIL 16, 2013**

**CASE OF J. v. PERU\*\***

**HAVING SEEN:**

1. The brief of January 4, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), a case against the Republic of Peru (hereinafter "Peru" or "the State") and offered two expert opinions.
2. The communication of January 19, 2012, in which the Commission requested the substitution of one of the expert witnesses offered in its brief submitting the case, given that the expert witness originally offered "would not be available to render [her] expert opinion."
3. The brief of May 15, 2012, in which the representative of the alleged victim (hereinafter "the representative") submitted her brief of pleadings, motions and evidence

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\* According to Article 19(1) of the Rules of Procedure of the Inter-American Court of Human Rights, "[i]n the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case." In accordance with this provision, and pursuant to Articles 19 of the Court's Statute and 21 of its Rules of Procedure, Judge Diego García-Sayán, a Peruvian national, did not participate in the processing of this case. Therefore, in accordance with Articles 4(2) and 5 of the Rules of the Court, Judge Manuel E. Ventura Robles, Vice President of the Court, assumed the acting Presidency in this case.

\*\* At the request of the alleged victim, the full Court, during its 96<sup>th</sup> Regular Period of Sessions, ruled that the identity of the alleged victim be kept confidential. Therefore, the Court and its President shall identify the victim as "J". The Court also decided to extend this confidentiality to the statements or information that any of the parties might make public on the case. Also, the Court ordered that, "in view of the facts alleged in this case, the confidentiality of the identity of the alleged victim not only implies the confidentiality of his or her name, but also of any sensitive information contained in the file on the alleged sexual violence, whose publication could affect the right to privacy and personal integrity of the alleged victim." This decision was notified to the parties and to the Commission through the notes of the Secretariat of the Court of September 10, 2012.

(hereinafter "brief of pleadings and motions"). In said brief, the representative offered four witness statements and requested the transfer of an expert opinion rendered in the case of the *Miguel Castro Castro Prison v. Peru*. She also requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Assistance Fund" or "the Fund")<sup>1</sup>.

4. The brief of September 26, 2012, in which the State submitted its brief filing a preliminary objection, its answer to the brief submitting the case and its observations to the brief of pleadings and motions (hereinafter the "answer brief"). In said brief the State offered ten witness statements and four expert opinions.

5. The Order of October 24, 2012, in which the acting President of the Court (hereinafter "the acting President" or "the acting Presidency") declared admissible the request of the alleged victim to have access to the Assistance Fund (*supra* Having Seen 3).

6. The briefs of November 24 and 25, 2012, in which the Inter-American Commission and the representative submitted, respectively, their observations to the preliminary objection filed by the State.

7. The notes of November 27, 2012, in which the Secretariat of the Court (hereinafter "the Secretariat ") following the instructions of the acting President, and in accordance with Article 46(1) of the Court's Rules of Procedure, called on the State, the representative and the Commission to submit their definitive lists of proposed deponents, and, for reasons of procedural economy, and pursuant to the abovementioned article, to indicate which deponents could render their statements by affidavit and which should be summoned to testify at a public hearing, in order of priority.

8. The briefs of December 5, 2012, in which the State, the representative and the Commission presented their definitive lists of deponents, indicating those who could render their statements by affidavit and those who should render their statements at a public hearing.

9. The notes of December 10, 2012, in which the Secretariat of the Court, following the instructions of the acting President, transmitted the definitive lists of deponents to the parties and to the Inter-American Commission, and granted them a period until December 20, 2012 to submit any observations considered pertinent.

10. The brief of December 20, 2012, in which the State presented its observations to the expert witnesses proposed by the Commission, objections to the witnesses proposed by the representative and objections to the inclusion in the case file of evidence rendered in the case of the *Miguel Castro Castro Prison v. Peru*.

11. The brief of December 20, 2012, in which the representative presented her objections to three witnesses offered by the State, challenged the expert witness proposed by the State, Federico Javier Llaque Moya, and made observations on the relevance of the expert opinions offered by the Commission to the inter-American public order.

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<sup>1</sup> In the instant case, the representative submitted "arguments related to the legal analysis of this case" and "claims regarding the reparations" on May 18, 2012, in other words, three days after the non-renewable term for presenting these had expired. In this regard, the full Court, gathered at its 95<sup>th</sup> Regular Period of Sessions, decided that it was not appropriate to admit said arguments because they were time-barred. The parties and the Commission were notified of this decision through the notes of the Secretariat of the Court of July 11 and 24, 2012.

12. The brief of December 20, 2012, in which the Commission stated that it “ha[d] no observations to make to the definitive list of deponents of the representative”, made certain observations regarding two witnesses proposed by the State and requested an opportunity to submit questions to the four expert witnesses offered by Peru.

13. The note of January 11, 2013, in which the Secretariat, in accordance with Article 48(3) of the Rules and following instructions of the acting President, granted Mr. Federico Javier Llaque Moya, proposed as an expert witness by the State, a period to submit any observations deemed pertinent regarding the challenge made against him by the representative (*supra* Having Seen 11).

14. The brief of January 21, 2013, in which Mr. Federico Javier Llaque Moya submitted his observations to the challenge filed against him.

### **CONSIDERING THAT:**

1. The offer and admission of evidence, together with the summons of witnesses and expert witnesses, are regulated in Articles 35(1)(f), 40(2)(c), 41(1) (c), 42(2), 46, 47, 48, 50, 57 and 58 of the Rules of the Court.

2. The Commission offered as evidence two expert opinions and the representative offered four testimonies, while the State offered ten witness statements and four expert opinions, all at the appropriate procedural stage. However, in its definitive list of deponents, the State only confirmed the statements of four witnesses and four expert witnesses, and in addition proposed the statement of Oscar Manuel Arriola Delgado, who had not been included in its answer brief (*supra* Having Seen 1, 3, 4 and 8).

3. The Court guaranteed the parties the right of defense in respect of the offers of evidence contained in their briefs submitting the case, of pleadings and motions and the answer brief, as well as in their definitive lists (*supra* Having Seen 9).

4. The State objected to the expert opinions offered by the Inter-American Commission, the witness statements offered by the representative and the inclusion of two statements rendered in the case of the *Miguel Castro Castro Prison v. Peru*. The representative challenged one of the expert witnesses proposed by the State and presented objections to three witnesses offered by the State; and the Inter-American Commission pointed out a change in the object of a testimony offered by the State, as well as the allegedly time-barred offer of one of the witnesses proposed by the State and reported that it had no observations to make to the definitive list of deponents submitted by the representative.

5. With regard to the observations presented by the Commission, the acting President emphasizes that the admissibility of a witness statement is a procedural matter that essentially concerns the State and the representative as opposing parties. Consequently, in this case it is not necessary to rule on the Commission’s observations regarding the two testimonies offered by the State.

6. As to those statements offered by Peru that have not been objected to, the acting 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. Therefore, the acting President admits the witness statements of Magda Victoria Atto Mendives and Pablo Talavera Elguera, and the expert opinions of José María Asencio Mellado, Miguel Ángel Soria Fuerte and Eduardo

Alcocer Povis, all proposed by the State. The object of these statements and the manner in which they will be received shall be decided the operative section of this Order (*infra* Operative paras. 1 and 5).

7. The acting President shall examine the following aspects in particular: a) the request to substitute an expert opinion offered by the Commission ; b) the tacit withdrawal of six witness statements offered by the State in its answer brief ; c) the admissibility of a witness statement offered by the State in its definitive list of deponents; d) objections by the State to the witness statements offered by the representative ; e) objections by the representative to the witness statements offered by the State; f) the challenge made by the representative to an expert witness offered by the State; g) the admissibility of the expert evidence offered by the Inter-American Commission; h) the request by the Commission to submit questions to the four expert witnesses offered by the State; i) the admissibility of transferring an expert opinion rendered in the context of the case of the *Miguel Castro Castro Prison v. Peru* and the witness statements submitted as attachments to the brief of pleadings and motions ; j) the manner in which the statements and expert opinions shall be received; k) the application of the Victims' Assistance Fund; and l) the final oral and written arguments and observations.

#### ***A. Request for substitution of an expert opinion offered by the Commission***

8. In a letter dated January 19, 2013, the Commission requested the substitution of the expert opinion of Mrs. Sofía Macher Batanero, initially offered in its brief submitting the case, for that of Mrs. Patricia Viseur Sellers, under the terms of Article 49 of the Rules of Procedure. In this regard, the Commission stated that Mrs. Macher Batanero had indicated that she "would not be available to render the expert opinion [offered]" (*supra* Having Seen 1). Neither the State nor the representative presented observations regarding this request.

9. As to the request to substitute a deponent, according to Article 49 of the Rules the Court may "exceptionally, upon receiving a well-founded request" and "after hearing the opinion of the opposing party" accept the replacement of a deponent, provided that "his or her replacement is identified and always "respecting the object of the testimony or expert opinion originally offered." Such requirements were observed in this case. Furthermore, the acting President notes that the Commission requested the substitution within the 21-day period established in Article 28 of the Rules to submit the corresponding attachments<sup>2</sup>, before notifying the case to the parties. The parties did not raise any objections or make observations in this regard.

10. The acting President considers that in this case Mrs. Macher Batanero's inability to appear before the Court, as indicated by the Commission as grounds for its request, is sufficient under the terms of Article 49 of the Rules, bearing in mind the moment when the request was made and the fact that the parties did not object to this request. Therefore, the President admits the substitution requested by the Commission. The admissibility of said statement, given its relevance to the inter-American public order, shall be determined below (*infra* Considering para. 36).

#### ***B. Tacit withdrawal by the State of six witness statements offered in its answer brief***

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<sup>2</sup> Cf. *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 27, and *Case of Suárez Peralta v. Ecuador*. Order of the President of December 20, 2012, Considering para. 8.

11. The acting President notes that, in its answer brief, the State offered as testimonial evidence the statements of Julia Eguía Dávalos, Joe Modica Boada, Luis Castro Sánchez, Eduardo Solís, Víctor Manuel Rodríguez Pérez and Hugo Rivera Roque. However, the State did not confirm this offer in its definitive list of deponents. In this regard, the acting President notes that, according to Article 46(1) of the Rules, the proper procedural moment for the State to confirm or withdraw the offer of statements made in its answer brief is in the definitive list requested by the Court.<sup>3</sup> Therefore, the acting President considers that by not confirming said statements in its definitive list, Peru withdrew them, at the proper procedural stage. Based on the foregoing, the acting President takes cognizance of this withdrawal.

**C. Admissibility of a witness statement offered by the State in its definitive list of deponents**

12. In its definitive list of deponents, the State offered, for the first time, the witness statement of Oscar Manuel Arriola Delgado. In this regard, the representative noted that said offer was time-barred and, furthermore, that its object concerns "matters that are not the object under consideration in this case."

13. The acting President recalls that the proper procedural moment for the State to offer testimonial evidence is in its answer brief.<sup>4</sup> The request to the parties to submit a definitive list of deponents to be summoned to testify, does not represent a new procedural opportunity to offer evidence<sup>5</sup>, except in the cases specified in Article 57(2) of the Rules, namely: *force majeure*, serious impediment or supervening events.<sup>6</sup> In this case, the acting President finds that the State provided no justification in relation to the aforementioned time-barred offer.

14. Furthermore, the acting President notes that the proposed object of Mr. Arriola Delgado's statement is related to the object of the joint testimony of three witnesses offered by the State in its answer brief, whose statements were withdrawn by Peru upon not confirming these in its definitive list (*supra* Considering para. 11). However, the acting President advises that the inclusion of Mr. Oscar Manuel Arriola Delgado in the State's definitive list does not meet the requirements established for replacing one of the deponents originally offered, under Article 49 of the Rules (*supra* Considering para. 9). Therefore, in the absence of a valid argument by the State that would justify the extemporaneous presentation of this witness, this acting Presidency considers that the statement of Oscar Manuel Arriola Delgado is inadmissible.

**D. Objections by the State to the witness statements offered by the representative**

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<sup>3</sup> Cf., *Mutatis mutandis*, *Case of Vera Vera et al. v. Ecuador*. Order of President of the Inter-American Court of Human Rights of December 23, 2010, Considering para. 8, and *Case of Camba Campos et al. v. Ecuador*. Order of February 15, 2013, Considering para. 6.

<sup>4</sup> Cf., *Mutatis mutandis*, *Case of Quintana Coello et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012. Considering para. 12.

<sup>5</sup> Cf. *Case of Anzualdo Castro v. Peru*. Order of the President of the Court of February 26, 2009, Considering para. 14, and *Case of Quintana Coello et al. v. Ecuador*. Order of the President of the Court of December 20, 2012. Considering para. 12.

<sup>6</sup> Cf. *Case of the "Massacre of La Rochela" v. Colombia*. Order of the President of the Court of December 22, 2006, Considering paras. 20-24, and *Case of Quintana Coello et al. v. Ecuador*. Order of the President of the Court of December 20, 2012, Considering para. 12.

15. The representative offered the testimony of J's sister, who would testify on "the impact that the facts that are the subject matter of these proceedings have had on [J's] family"; the testimony of J's partner, who would testify on "how the actions of the Peruvian State in this case have affected [J] and their life project together"; the testimony of Susan Pitt, who would discuss "[J's] situation as an asylum seeker in the United Kingdom, uprooted from her family, how the actions of the Peruvian State affected her with her renewed arrest in Germany and the way in which the actions of the Peruvian State have affected her life project", and the testimony of Martin Rademacher, who would testify on "the situation [J] faced in Germany in the context of her extradition, and [would] discuss aspects of the request for extradition by the Peruvian State relevant to this case, and [would] describe the impact of [J's] detention on [her] family, resident in Germany."

16. The State objected to the four testimonies proposed by the representative for several reasons. First, it indicated that the "Report on Merits No. 76/11 [...] only identified Mrs. J as the alleged victim in this case", and that therefore Mrs. J's family and partner cannot be considered "as parties whose rights are presumably affected"<sup>7</sup>. Secondly, regarding the effects on Mrs. J's life project, the State held that "chronologically, this is subsequent to the facts of this case", and, despite this "the petitioner herself was the one who changed or frustrated her life plan by taking the decision to join a terrorist organization, as postulated by the Public Prosecutor's Office of the Peruvian State."<sup>8</sup> The State also indicated that the "legal definition of refuge – or of asylum– of [Mrs. J] in the United Kingdom" does not form part of the dispute in this case, nor does "Mrs. J's extradition process"<sup>9</sup>. Finally, regarding the specific object of Mrs. Pitt's statement, the State noted that "there is a vagueness in the legal status granted Mrs. [J] by the United Kingdom [...]. As Mrs. J has stated in her previous briefs, and as the Inter-American Commission has also indicated, the United Kingdom granted Mrs. [J] the status of a refugee, not an asylum seeker, for which reason this witness statement is not pertinent."

17. With respect to the State's observations, in the first place the acting President points out that the deponents whose statements were proposed by the representative were offered as witnesses and not as alleged victims. In the second place, the acting President recalls that it is up to the Court to examine the facts of the case at the proper procedural stage, and to determine the legal consequences arising from these, after hearing the arguments of the parties and based on an assessment of the evidence presented, according to the rules of sound judgment.<sup>10</sup> Therefore, when the Court requires evidence to be received this does not imply a decision or a prejudgment on the merits of the case. The acting President considers that the State's observations regarding the determination of the alleged victims, the limits of the object and factual framework of the case or the specification of Mrs. J's migratory status in the United Kingdom, are all matters on which the acting President does not need to decide at the present procedural stage. These objections concern matters that the parties seek to prove in the present dispute and whose potential value shall be decided in the possible stages of merits and reparations, if applicable. Once this evidence has been examined, Peru will have an opportunity to present any observations it deems necessary regarding its content. Consequently, the acting President considers that the State's objections to the witness statements offered by the representative are not admissible.

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<sup>7</sup> The State presented this argument in relation to the testimonies of J's sister, J's partner, Susan Pitt and Martin Rademacher.

<sup>8</sup> The State presented this argument in relation to the testimonies of J's partner and Susan Pitt.

<sup>9</sup> The State presented this argument in relation to the testimonies of Susan Pitt and Martin Rademacher.

<sup>10</sup> Cf. *Case of Cepeda Vargas v. Colombia*. Order of the President of the Court of December 22, 2009, Considering para. 14, and *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 25.

18. Based on the foregoing and bearing in mind that the statements of J's sister, J's partner, Susan Pitt and Martin Rademacher are useful for the analysis of the possible merits of this case, the acting President admits the aforementioned statements, proposed by the representative at the proper procedural moment. The value of such statements 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 these statements and the manner in which they shall be received will be decided in the operative section of this Order (*infra* Operative paras. 1 and 5).

***E. Objections by the representative to the witness statements offered by the State***

19. In addition to the testimonies that were not objected to (*supra* Considering para. 6), the State offered the testimony of Ana María Mendieta "[i]n her capacity as Director of the National Program Against Domestic and Sexual Violence of the Ministry for Women and Vulnerable Populations [who would testify] on standards for the investigation of violence against women and the implementation of training programs for public officials." The representative objected to this testimony, pointing out that Mrs. Mendieta "is not [being] summoned to testify on any factual aspect of this case [,] but on the general topic of 'standards for the investigation of violence against women and the implementation of training programs for public officials.'"

20. In this regard, the acting President recalls that when a witness is summoned to testify before the Court, he or she may refer to facts and circumstances known to him or her, in relation to the object of his or her statement and should limit himself or herself to answering clearly and precisely the questions asked, and avoid giving personal opinions.<sup>11</sup> Such facts and circumstances may include the standards for the investigation of violence against women and the implementation of training programs for public officials, provided that the proposed witness is familiar with these.

21. The State also offered the testimony of Nancy de la Cruz Chamilco. In its answer brief the State had indicated that "in her capacity as the medical [...] examiner [...] who signed [...] the Medical Legal Certificate [No.] 15339-L dated April 18, 1992, [she would] testify on its results, the extent of [J's] injuries and their location". However, in the definitive list the State specified that this witness would testify, "[i]n her capacity as the medical examiner who supervised the examination carried out on Mrs. J, regarding the results of the examination, the extent of her injuries and their location." The representative objected to this testimony pointing out that "the State referred to her position ('Director General of the General Directorate of Legal Medicine of Lima' [...]), and a supervisory role in the medical examination, but without this being confirmed in the document itself [attached as evidence by the State in its answer brief]."

22. The acting President notes that, although the State modified the role played by Mrs. Nancy de la Cruz Chamilco in the medical examination, its object was not changed substantially or significantly. The acting President considers that the representative's observations regarding Mrs. Nancy de la Cruz Chamilco's effective participation in the medical examination are arguments related to the facts which the parties seek to demonstrate in this dispute. Therefore, taking into account the points made in Considering

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<sup>11</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico*. Order of the President of the Court of July 2, 2010, Considering para. 21, and *Case of Gudiel Álvarez et al. v. Guatemala*. Order of the President of the Court of March 20, 2012, Considering para. 20.

para. 17 *supra*, the acting President finds that these objections are not admissible at this procedural stage.

23. Based on the foregoing considerations, the acting President admits the witness statements of Ana María Mendieta and Nancy de la Cruz Chamilco, proposed by the State. The value of these statements 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 testimonies shall be rendered shall be specified in the operative section of this Order (*infra* Operational para. 1).

***F. Challenge by the representative regarding an expert witness offered by the State***

24. The State offered the expert opinion of Federico Javier Llaque Moya, who “[i]n his capacity as a lawyer specializing in criminal trials for terrorism [would render] his expert opinion on the criminal proceedings applicable to crimes of terrorism, their amendments, flagrancy in such crimes, as well as their definition as permanent or continuous crimes.” The representative presented a challenge against this expert witness, based on Article 48(1)(c) of the Court’s Rules of Procedure, arguing that as a lawyer of the Office of the Special Prosecutor for Crimes of Terrorism he “[i]s [...] or has been, a subordinate of the proposing party.”

25. In accordance with Article 48(3) of the Rules, Mr. Llaque Moya was informed of the challenge filed against him by the representative. In his observations, Mr. Llaque Moya confirmed that he is an attorney at the Office of the Special Prosecutor for Crimes of Terrorism and explained that “Public Prosecutors conduct the legal defense of the State.” However, he argued that “the Prosecutors and their attorneys exercise their functions freely and autonomously, within the framework of the legal [d]efense of the State.” He also indicated that the Special Public Prosecutor for Crimes of Terrorism “is administratively under the authority of the Ministry of the Interior, and not of the Ministry of Justice, to which the Office of the Supranational Public Prosecutor is subordinate, and which proposed that [he] participate as an expert witness.” Therefore, he stated that he is not in “a subordinate position to the Office of the Supranational Public Prosecutor.” Mr. Llaque Mora also indicated that both ministries form part of the Executive branch.

26. The acting President recalls that, under Article 48(1) (c) of the Court’s Rules of Procedure, an expert witness may be disqualified on the basis of the following two assumptions: that he or she has close ties with the proposing party and, in addition, when the Court considers that this relationship affects his or her impartiality.<sup>12</sup> Moreover, on previous occasions this Court has pointed out that the exercise of public office should not automatically be considered as an impediment to participate as an expert witness in an international proceeding before this Court,<sup>13</sup> since it is necessary to determine whether the position held by the expert witness offered could affect his or her impartiality in rendering the expert opinion for which he or she was proposed.<sup>14</sup>

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<sup>12</sup> Cf. *Case of Forneron and Daughter v. Argentina*. Order of the President of the Court of September 13, 2011, Considering para. 14, and *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20.

<sup>13</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*. Order of the President of the Court of March 18, 2009, Considering para. 88 and *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20.

<sup>14</sup> Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 24, and *Case of Vélez Restrepo and Family v. Colombia*. Order of the President of the Court of January 25, 2012, Considering para. 20.



27. The acting President notes that Mr. Llaque Mora himself confirmed that he is currently associated with the Office of the Special Prosecutor for Crimes of Terrorism, which is responsible for the “legal defense of the State.” In this regard, the acting President considers that the task of defending the State conducted by Mr. Llaque Mora at the domestic level shows a relationship of subordination with Peru which could affect his impartiality in rendering an expert opinion in this case. Moreover, for the purposes of the proceedings before this Court, it is irrelevant that the Office of the Special Prosecutor for Crimes of Terrorism is under the authority of the Ministry of the Interior, while the Supranational Prosecutor, in charge of defending the State before the Inter-American Court, is attached to the Ministry of Justice. Both are organs of the State, which is the defendant in this case. The Court recalls that, before the international jurisdiction, it is only the State as such, and not its respective powers, which appears before the oversight organs of the American Convention on Human Rights.<sup>15</sup> Consequently, the acting President considers that the grounds for disqualification established in Article 48(1)(c) of the Rules apply to Mr. Llaque Mora’s situation.

28. Nevertheless, the acting President considers it pertinent to receive his statement for information purposes, given Mr. Llaque Mora’s experience in this sphere. The object of his statement as a deponent for information purposes shall be decided in the operative section of this Order (*infra* Operative para. 5), 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.

#### ***G. Admissibility of the expert evidence offered by the Inter-American Commission***

29. 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.”<sup>16</sup> 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.<sup>17</sup>

30. In this case, the Commission offered two expert witnesses, pointing out that this “case includes matters related to the inter-American public order.” It considered that, “given that the victim was raped by state agents at the time of her detention, with no steps having been taken to investigate the matter, this case represents an opportunity for the Inter-American Court to deepen its analysis of different forms of sexual violence as acts of torture and the obligations [that this generates].” Also, according to the Commission, “the Court will be able to consolidate its jurisprudence on the incompatibility of proceedings for

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<sup>15</sup> Cf. *Case of Barrios Altos v. Peru. Monitoring Compliance with Judgment*. Order of the Court of September 7, 2012, Considering para. 12.

<sup>16</sup> Cf. *Case Pedro Miguel Vera Vera et al. v. Ecuador*. Order of the President of the Court of December 23, 2010, Considering para. 9, and *Case of the Pacheco Tineo Family v. Bolivia*. Order of the President of the Court of February 19, 2013, Considering para. 34.

<sup>17</sup> Cf. *Case of Pedro Miguel Vera Vera et al. v. Ecuador*. Order of the President of the Court of December 23, 2010, Considering para. 9, and *Case of Camba Campos et al. v. Ecuador*. Order of the President of the Court of February 15, 2013, Considering para. 11.

crimes of terrorism under Decree Law 25475, [and specify] the violations of due process.”

31. Bearing in mind the foregoing, the Commission offered the expert opinion of Patricia Viseur Sellers on “the different forms of sexual violence and their characterization in light of international human rights law. The expert witness [would] also refer to elements that are relevant to characterize different forms of sexual violence as acts of torture, as well as international obligations to investigate and punish the perpetrators in such cases. Finally, the expert witness [would] testify on the international standards to be considered when deciding on reparations in cases of sexual violence.” In this regard, the Commission noted that “[t]he type of sexual violation that occurred to the detriment of the victim in this case has not been examined by the Court, nor has it been legally defined as such. Therefore, the Commission considers that it would be useful for the Court to have conceptual elements and as well as a study of the relevant case-law in international criminal law, in international human rights law and in comparative law on this matter.” It added that “the expert opinion [would] also contribute to the Court’s evidentiary analysis of such facts.” The Commission concluded that “the Court’s decisions on these matters would necessarily influence the development of inter-American case law and, in that regard, the proposed expert opinion is related to the inter-American public order.”

32. The Commission also offered the expert opinion of Stefan Trechsel on “international standards on matters of criminal due process that are relevant to the analysis of restrictions to due process, for example, to the possibilities of exercising the right of defense, in the context of the legal frameworks designed to prosecute and punish terrorism. The expert witness [would] provide elements to analyze the compatibility of these restrictions with the American Convention.” The Commission noted that, with regard to trials for terrorism-related cases in Peru, the Court has not yet examined in detail the “various restrictions on the right to defense, the violation of the presumption of innocence and the retroactive application of substantive points of Decree Law 25475”, including in this case. The Commission further noted that “this case has the peculiarity that, in determining the measures of reparation relative to the victim’s procedural situation and the measures of non-repetition, the Inter-American Court must take into account the amendments introduced at the domestic level as a consequence of the actions taken by the Constitutional Court in 2003 and on which the Court did not comment in detail in the case of *Lori Berenson Mejía*. The Commission added that “the Court’s decisions on this matter will contribute to the design of legal frameworks in other States of the region in relation to terrorism-related crimes, this being an issue [of] particular relevance in the hemisphere, especially as regards the restriction of procedural guarantees as a consequence of the nature of the crime.”

33. The representative considered “important the aspects of public order emphasized in the expert opinions offered by the Commission.”

34. For its part, the State noted that there is “a clear and obvious discrepancy in the object of the proposed expert opinion of [Mrs.] Viseur,” given that “the object of the expert opinion mentions sexual violence as its frame of reference, whereas the justification for the expert opinion mentions rape as a frame of reference”, and requested clarification. In that regard, Peru emphasized that “[t]he Commission insists that Mrs. J was raped, even though the petitioner herself has denied it in her brief of pleadings, motions and evidence.” The State indicated that since “the Court [...] has heard several cases related to [the issue of rape ...] and a significant body of case-law exists in this regard, the presentation of this expert opinion is not warranted under the terms stated by the Inter-American Commission.”

35. Regarding Mr. Trechsel’s expert opinion, the State noted that following several

decisions by the Court and reports by the Commission on Decree Law No. 25475, which is the object of this expert opinion, "the Peruvian State carried out a comprehensive internal process of legal review and reform which has been reported on several occasions, both to the Commission and to the Court, [and] has also been the subject of extensive analysis by both inter-American organs. The State added that, in its view, this expert opinion goes beyond an analysis of this case, and should therefore be rejected." It further argued that "in this case, that legislation was not applied substantively to the petitioner; she was tried for crimes defined in the Criminal Code in force at the time- which were maintained because criminal law is applicable over time - and although it is true that some procedural aspects were applied in the investigation, the process was subsequently declared null and void and remedied with the reforms mentioned." The State added that the object of the expert opinion is "clearly limited to the specific situation of the Peruvian State, without [...] significantly affecting the inter-American public order, since it does not transcend the specific interests of the instant case."

36. First of all, the Court points out that the questions regarding whether Mrs. J was a victim of sexual violence or rape, as well as whether Decree Law No. 25475 was applied to her, are factual matters that the Court shall determine at the appropriate procedural moment (*supra* Considering para. 17). As to the possible relevance for the inter-American public order of the expert opinions proposed by the Commission, the acting President considers that the expert opinion of Mrs. Viseur Sellers transcends the concerns and object of this case, inasmuch as it is not limited to the specific situation of Peru and seeks to encompass legal aspects related to "the different forms of sexual violence and their characterization in light of international human rights law." The acting President also considers that the expert opinion of Mrs. Viseur Sellers could help to strengthen, clarify and understand in greater detail the international standards regarding the different forms of sexual violence. Accordingly, the acting President considers it pertinent to admit the expert opinion of Mrs. Viseur Sellers, in accordance with the object and in the manner determined in the operative part of this Order (*infra* Operative para. 5), and recalls that the value of said expert 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.

37. In relation to Mr. Trechsel, the acting President notes that, contrary to the State's arguments, the object of his expert opinion is not limited to the Peruvian situation or legal system. Although upon justifying the relevance of said expert opinion to the inter-American public order the Commission mentioned the possible effects on the Peruvian legal system, it also referred to the impact it could have "on other States in the region in relation to the crime of terrorism". In this regard, the acting President considers that the aforesaid expert opinion may contribute to strengthen the standards of protection of the Inter-American System of Human Rights in relation to criminal due process, in the context of legal frameworks designed to prosecute and punish terrorism, which is also relevant to other States Parties to the Convention. Therefore, the acting President considers that the object of the expert opinion to be offered by Mr. Stefan Trechsel transcends the specific facts of this case and the specific interests of the parties in litigation, and is therefore of relevance and interest to the inter-American public order. Consequently, he deems it appropriate to admit his statement, in accordance with the object and manner defined in the operative section of this Order (*infra* Operative para. 5), and recalls that the value of said expert 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.

***H. Request by the Commission to submit questions to the four expert witnesses offered by the State***

38. In its observations to the definitive lists, the Commission requested “an opportunity to formulate verbal or written questions, insofar as these are relevant and reasonable, to the four expert witnesses offered by the State of Peru, whose statements are related both to the inter-American public order and the subject matter of the expert opinions offered by the Inter-American Commission.” In this regard, it indicated that the expert opinions of Federico Javier Llaque Moya, José María Asencio Mellado and Eduardo Alcocer Pavis, offered by the State, “are directly related to the topic to be addressed by the expert witness Stefan Trechsel,” while the expert opinion of Miguel Ángel Soria, “is related to the expert opinion to be rendered by Patricia Visseur Sellers.”

39. With regard to the Commission’s request, the acting 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.<sup>18</sup> 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.<sup>19</sup>

40. The acting President notes that the Commission mentioned two “issues” that link “part of the objects proposed” for the expert opinions offered by the State with the expert opinions offered by that body and with matters of inter-American public order in this case, namely: i) the standards of criminal due process to be taken into account in terrorism trials, and ii) conceptual elements for the legal definition of acts of sexual violence such as those suffered by Mrs. J.

41. Regarding the links described and alleged by the Commission, the acting President recalls that it previously considered that the objects of the expert opinions offered by the Commission concern the inter-American public order because they are related to “the different forms of sexual violence and their characterization in light of international human rights law”, and to standards for the protection of criminal due process in the context of legal frameworks designed to prosecute and punish terrorism (*supra* Considering paras. 36 and 37). The acting President further notes that the objects of the expert opinions proposed by the State are not limited to the situation of Peru or to this specific case, with the exception of part of the expert opinion of José María Asencio Mellado. The acting President considers that the object of the expert opinions offered by the Commission coincides with part of the objects of the expert opinions offered by the State regarding which the

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<sup>18</sup> Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Court of June 3, 2011, Considering para. 48, and *Case of the Pacheco Tineo Family v. Bolivia*. Order of the President of the Court of February 19, 2013, Considering para. 38.

<sup>19</sup> Cf. *Case of Contreras et al. v. El Salvador*. Order of the President of the Court of April 14, 2011, Considering para. 25, and *Case of the Pacheco Tineo Family v. Bolivia*. Order of the President of the Court of February 19, 2013, Considering para. 38.

Commission requested an opportunity to formulate questions.

42. Therefore, having regard to Articles 50(5) and 52(3) of the Rules, the acting President considers it appropriate to grant the Commission an opportunity to formulate questions to the expert witnesses José María Asencio Mellado, Eduardo Alcocer Pavis and Miguel Ángel Soria, specifically on matters related to the inter-American public order, but not on those aspects that exclusively apply to this specific case. As to the request to interrogate Mr. Federico Javier Llaque Moya, given that the challenge presented by the representative was accepted and his statement is to be received for information purposes only, it is not appropriate to consider this request.

***I. Admissibility of transferring an expert opinion rendered in the context of the case of the Miguel Castro Castro Prison v. Peru and of witness statements included as attachments to the brief of pleadings and motions***

43. The representative requested that “the [e]xpert report prepared by Ana Deutsch [...] in the case of the Miguel Castro Castro Prison [,]be annexed to the instant [case] since it is relevant as regards the impact of what happened to J, [and] her mother, who was one of the persons interviewed by expert witness Deutsch.” Moreover, the representative attached two “sworn statements”, one from J’s mother, rendered in the case of the *Miguel Castro Castro Prison v. Peru*, and another from Emma Viguera “who acted as legal representative [...] of another detainee in the same operation in which [J] was arrested”, and which was presented before the Commission in the processing of this case. These attachments were transmitted to the Commission and the State together with the brief of pleadings and motions.

44. In this regard, the State objected to the inclusion of the expert opinion of Ana Deutsch rendered in the case of the *Miguel Castro Castro Prison*, arguing that this expert opinion “refers to a Psychological and Psychosocial Evaluation carried out on the survivors of the events in that case”, and indicated that “such facts do not form part of this case”. Moreover, the State noted that the statement of J’s mother refers to “what she experienced as a mother in relation to the facts under investigation in [that] case”, and would therefore be outside the factual framework of this case. The State did not submit observations regarding the “sworn statement” of Emma Viguera.

45. The acting President recalls that this is not the appropriate procedural stage to rule on the factual framework or the determination of alleged victims in this case (*supra* Considering para. 17). Therefore, the State’s observations regarding the statement of J’s mother are not admissible at this stage. With regard to the reception and assessment of the evidence, the Court has previously stated that the proceedings conducted before it are not subject to the same formalities as domestic proceedings, and that when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and procedural equality between the parties.<sup>20</sup> In particular, regarding the representative’s request to transfer testimony, the acting President notes that the expert opinion of Mrs. Ana Deutsch, rendered in the case of the *Castro Castro Prison v. Peru*, was presented by

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<sup>20</sup> Cf. *Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of November 22, 2004. Series C. No. 117, para. 55, and *Case of Suárez Peralta v. Ecuador*. Order of the President of the Court of December 20, 2012, Considering para. 14.

affidavit.<sup>21</sup> The acting President considers that, without prejudging the merits of this matter, part of the expert opinion of Mrs. Deutsch could be useful in relation to the arguments that the representative seeks to prove in this case. The evidence and arguments that form part of the position held by the representative in this proceeding shall be considered and assessed by the Court in due course, bearing in mind the State's observations in this regard. Therefore, having regard to the principles of procedural economy and celerity, the acting President considers it appropriate to include in the body of evidence of this case, where pertinent, the written expert opinion rendered by Mrs. Ana Deutsch, since this could prove useful in resolving this case.<sup>22</sup>

46. Despite the foregoing, the acting President recalls that is the Court or its President who must decide whether the testimony of a person or an expert opinion is pertinent to a case. Also, it is up to the Court or its President to define the object of the statements and expert opinions offered by the parties. Given that neither the Court nor its President requested the statements submitted by the representative and the expert opinion of Mrs. Deutsch, and that no object was defined in relation to these, the President points out that these statements shall only be regarded as documentary evidence. The State may refer to those documents in its final arguments, which shall be assessed in due course, within the context of the existing body of evidence and according to the rules of sound judgment.<sup>23</sup>

### ***J. Manner in which the statements and expert opinions will be received***

47. It is necessary to ensure knowledge of the truth and 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 parties' right 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.

#### ***J.1. Statements and expert opinions to be rendered by affidavit***

48. Bearing in mind the provisions of Article 50(1) of the Rules, the indications of the Commission, the representative and the State in their definitive lists of deponents and in other briefs, the object of the statements offered, as well as the principle of procedural economy, the acting President deems it appropriate to receive, through affidavits rendered before a notary public, the witness statements of: J's partner, Susan Pitt and Martin Rademacher, proposed by the representative; Nancy de la Cruz Chamilco, Pablo Talavera Elguera, Ana María Mendieta, proposed by the State; and the expert opinions of José María

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<sup>21</sup> The object of that expert opinion was on "the facts of the [Case of the *Miguel Castro Castro Prison v. Peru*] and on matters related to [possible] reparations in [that] case", in his capacity as an "expert on torture." Cf. *Case of Juárez Cruz Cruzat et al. v. Peru*. Order of the President of May 24, 2006, Operative para. 1.

<sup>22</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru*. Order of the President of March 18, 2005, Considering paras. 7 to 10, and *Case of Suárez Peralta v. Ecuador*. Order of the President of December 20, 2012, Considering para. 14.

<sup>23</sup> Similarly, see *Case of Abrill Alosilla et al. v. Peru*. Order of the Acting President of the Court of September 8, 2010, Considering para. 24, and *Case of Gudiel Álvarez et al. v. Guatemala*. Order of the President of the Court of March 20, 2012, Considering para. 33.

Asencio Mellado, Miguel Ángel Soria Fuerte and Eduardo Alcocer Povis, proposed by the State. The acting President recalls that Article 50(5) of the Rules of the Court, applicable to this case, makes provision for alleged victims or their representatives, the respondent State and, in certain cases, the Commission, to submit a list of questions that they wish to be answered by those summoned to render statements before a notary public.

49. In application of this provision, the acting President proceeds to grant an opportunity for the representative and the State to submit, if they so wish, any questions they consider pertinent to the witnesses and expert witnesses mentioned in the preceding paragraph. In turn, the Commission may submit any questions deemed pertinent regarding the expert opinions proposed by the State, for which it has been granted an opportunity to submit questions (*supra* Considering para. 42). In rendering their statements by affidavit, the witnesses and expert witnesses shall answer those questions, unless the President decides otherwise. The corresponding terms shall be specified *infra*, in the operative part of this Order. The aforementioned testimonies and expert opinions shall then be transmitted to the Commission, the representative and the State. In turn, pursuant to Article 50(6) of the Rules, the representative and the State may submit any observations considered pertinent regarding those statements, within the period specified in this Order, and the Commission may submit any observations deemed pertinent regarding the expert opinions offered by the State (*infra* Operative para. 4). The Court shall assess the evidentiary value of these witness statements and expert opinions in due course, taking into account all points of view, as appropriate, expressed by the parties in exercise of their right to defense and, where appropriate by the Commission, in the context of the existing body of evidence and according to the rules of sound judgment.

#### *J.2. Statements and expert opinions to be received at the public hearing*

50. Given that the Court records in the instant case are ready for the opening of the oral proceedings on the preliminary objection and possible merits, reparations and costs, the acting President of this Court deems it appropriate to convene a public hearing to receive the statements of J's sister, proposed by the representative; the statements of the witness Magda Victoria Atto Mendives, and of one deponent for information purposes, Javier Llaque Moya, proposed by the State; and two expert opinions rendered by Patricia Viseur Sellers and Stefan Trechsel, proposed by the Commission.

#### **K. Application of the Victims' Legal Assistance Fund**

51. In his Order of October 24, 2012 (*supra* Having Seen 5), the acting President decided to admit the request filed by the alleged victim to have access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, and granted the financial assistance necessary for the presentation of a maximum of two statements, either by affidavit or at a public hearing, and for the appearance of one representative at the public hearing.

52. Having determined that the statements offered by the representative shall be received by the Court and the means by which these shall be rendered, it is now appropriate to specify the amount, recipients and purpose of said assistance.

53. Accordingly, the acting President decides that financial assistance shall be assigned to cover the travel and accommodation expenses necessary to enable J's sister to render her witness statement before the Court and so that the representative or, as the case may be, the person designated for that purpose, may appear at the public hearing to be held in the city of San Jose, Costa Rica. Also, assistance shall be provided to cover the cost of

formalizing and sending the affidavit of one witness, to be determined by the representative, as stipulated in the operational part of this Order. The representative shall inform the Court as to whether she will personally attend the public hearing, or otherwise provide the name of the person who will appear on her behalf, as well as the name of the deponent whose affidavit shall be covered by the Assistance Fund. The representative shall also submit an estimate of the cost of notarizing a sworn statement in the deponent's country of residence and sending it, within the period established in the operational part of this Order.

54. As to the persons summoned to appear at the public hearing, the Court shall make the pertinent and necessary arrangements to cover their travel, hotel and per diem expenses with resources from the Legal Assistance Fund.

55. 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 the Fund.

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

#### ***L. Final oral and written arguments and observations***

57. The representative and the State may submit to the Court their final oral arguments regarding the preliminary objection and possible merits, reparations and costs in this case, respectively, once the witnesses, the deponent who shall testify for information purposes and the expert witnesses have rendered their statements. As established in Article 51(8) of the Rules, once the arguments have concluded, the Inter-American Commission shall present its final oral observations

58. According to Article 56 of the Rules, the representative, the State and the Commission may submit their final written arguments and final written observations, respectively, in relation to the preliminary objection and possible merits, reparations and costs, within the term established in Operative para. 13 of this Order.

#### **THEREFORE:**

#### **THE ACTING PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in accordance with Articles 24(1) and 25(2) of the Court's Statute and Articles 4, 5, 15(1), 26(1), 31(2), 35(1), 40(2), 41(1), 45, 46, 48, 50 to 56 and 60 of its Rules of Procedure,

#### **DECIDES:**

1. To require, for the reasons stated in this Order (*supra* Considering para. 48), 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, that the following individuals render their statements by affidavit:

#### **A. Witnesses**



*Proposed by the representative*

- 1) J's partner, who shall testify on the manner in which the alleged actions of the State in this case have allegedly affected J and her life plan with her partner.
- 2) Susan Pitt, who will testify on J's situation as an asylum seeker in the United Kingdom and the impact that being separated from her family had on J and on her family. This witness will also refer to the presumed effects on J of the alleged actions by the Peruvian State, regarding her new arrest in Germany, and the manner in which the alleged actions of the Peruvian State affected her life project.
- 3) Martin Rademacher, who will testify on the situation that J faced in Germany, in the context of her extradition, comment on aspects of the application for extradition by the Peruvian State, as it relates to this case, and will describe the presumed impact of J's detention on her and on her family.

*Proposed by the State*

- 4) Nancy de la Cruz Chamilco, who will testify on the medical examination performed on J, its results, the extent of her injuries and their location.
- 5) Pablo Talavera Elguera, who will testify on the criminal trial opened against Mrs. J and other defendants, the criminal charges brought against them, the warrants for her location and arrest, the extradition proceeding in the domestic courts and the confidentiality of the process against Mrs. J.
- 6) Ana María Mendieta, who will testify on the standards for the investigation of violence against women and the implementation of training programs for public officials.

**B. Expert witnesses proposed by the State**

- 1) José María Asencio Mellado, a lawyer, who will render an expert opinion on the scope of criminal procedure law applicable to this case, and on the principles of *ne bis in idem*, criminal legality and retroactivity.
- 2) Miguel Ángel Soria Fuerte, a lawyer, who will render an expert opinion on the legal definition of types of conduct that may constitute torture and other cruel, inhumane and degrading treatment, as well as on the obligations of States in response to such actions.
- 3) Eduardo Alcocer Pavis, lawyer, who will render an expert opinion on arrests in cases of *flagrante delicto* and the principle of *ne bis in idem*.

2. To require the representative and the State to submit, if considered pertinent, and within the non-renewable term that expires on April 23, 2013, any questions they consider appropriate through the Inter-American Court to the witnesses and expert witnesses specified in Operative para. 1 of this Order. Within that same term the Commission may submit any questions deemed pertinent regarding the expert opinions proposed by the State for which the Court granted it an opportunity to submit questions (*supra* Considering

para. 42). The testimonies and expert opinions required in Operative para. 1 shall be submitted to the Court no later than May 5, 2013.

3. To require the representative and the State to coordinate and make the necessary arrangements so that, once the opposing party's questions have been received, and if pertinent, those of the Commission, the witnesses and the expert witnesses, to include the corresponding answers in their statements rendered by affidavit, under the terms of Considering paragraph 49 of this Order.

4. To require the Secretariat of the Inter-American Court, once the statements and expert opinions required in Operative paragraph 1 have been received, to transmit them to the representative, the State and the Commission so that they may submit their observations, under the terms of Considering para. 49, no later than with their final written arguments or observations, respectively.

5. To summon the Republic of Peru, the representative of the alleged victim and the Inter-American Commission on Human Rights to a public hearing to be held during the Court's 99<sup>th</sup> Regular Period of Sessions, at the seat of the Court in San Jose, Costa Rica, on May 16, 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 the statements the following persons:

**A. Witnesses**

*Proposed by the representative*

- 1) J's sister, who will testify on the impact that the facts of this case have had on J and her family.

*Proposed by the State*

- 2) Magda Victoria Atto Mendives, who will testify on her alleged participation in the police operations carried out on April 13 and 14, 1992 in which Mrs. J was arrested, the subsequent raids on various homes and the initial investigations undertaken by the Public Prosecutor's Office.

**B. Deponent for information purposes proposed by the State**

- 1) Federico Javier Llaque Moya, a lawyer, who will testify on the criminal proceedings applicable to crimes of terrorism, legal reforms, flagrancy in such crimes, as well as their definition as permanent or continuous crimes.

**C. Expert witnesses proposed by the Commission**

- 1) Patricia Viseur Sellers, a lawyer, who will testify on different forms of sexual violence and their characterization in light of international human rights law. She will also refer to elements that are relevant to the definition of different forms of sexual violence as acts of torture, and to international obligations to investigate and punish the perpetrators in these types of cases. Finally, this expert witness will refer to the international standards to be taken into consideration when deciding on reparations in cases involving sexual violence.

- 2)** Stefan Trechsel, a lawyer, who will testify on international standards of criminal due process which are relevant to the analysis of restrictions to due process, for example, to the possibilities of exercising the right to defense, in the context of legal frameworks designed to prosecute and punish terrorism. This expert witness will provide elements to analyze the compatibility of said restrictions with the American Convention.

6. To require the Republic of Peru to facilitate the exit from and entrance into its territory of the deponents who reside or are present therein, and who have been summoned in this Order to render their statements at the public hearing, under the terms of Article 26(1) of the Court's Rules of Procedure.

7. To require the Inter-American Commission, the State and the representative 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 Inter-American Commission, the State and the representative that that they must cover the costs incurred in providing or rendering the evidence they have offered, pursuant to Article 60 of the Rules, notwithstanding the provisions of Considering paragraphs 51 to 56 of this Order.

9. To require the representative to inform the Court of the name of the representative who will attend the public hearing, and of the deponent whose affidavit shall be covered by the Assistance Fund, and to submit an estimate of the cost of notarizing and sending a sworn statement in the deponent's country of residence, no later than April 23, 2013, in accordance with Considering para. 53 of this Order.

10. To require the Commission, the State and the representative to inform the persons summoned by the Court to render statements 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.

11. To inform the representative, 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.

12. To order the Secretariat of the Court, in accordance with Article 55(3) of the Rules of Procedure, to provide the Inter-American Commission, the representative and the State with the link to the recording of the public hearing regarding the preliminary objection and possible merits, reparations and costs in this case, as soon as possible after the hearing.

13. To inform the representative, 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 in this case expires on June 16, 2013. This term is non-renewable and is separate from the submission of the copy of the recording of the public hearing.

14. 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 that Fund.

15. To require the Secretariat of the Inter-American Court to serve notice of this Order to the Inter-American Commission on Human Rights, the representative of the alleged victim and the Republic of Peru.

Manuel Ventura Robles  
Acting President

Pablo Saavedra Alessandri  
Secretary

So ordered,

Manuel Ventura Robles  
Acting President

Pablo Saavedra Alessandri  
Secretary