

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

OF MARCH 16, 2012

CASE OF GARCÍA AND FAMILY v. GUATEMALA

HAVING SEEN:

1. The brief submitting the case, which was filed by the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on February 9, 2011, whereby the Commission offered two expert opinions, indicating their purpose, without identifying the experts.
2. The communication of February 14, 2011, whereby the Commission indicated the names of the two expert witnesses and forwarded the list of annexes to its brief submitting the case.
3. The communication of February 16, 2011, whereby the Inter-American Commission forwarded the original of the brief submitting the case, its attachments and the file of the case before the Commission.
4. The brief with pleadings, motions, and evidence (hereinafter "the pleadings and motions brief") filed by the representatives of the presumed victims (hereinafter also "the representatives")¹ on June 1, 2011, in which they offered two statements and an expert opinion. In addition, the brief of June 3, 2011, with which they forwarded the attachments to the pleadings and motions brief.
5. The note of the Secretariat of the Court of June 24, 2011, *inter alia*, on the instructions of the President of the Court (hereinafter "the President"), the representatives were advised that the time frame for submitting the curriculum vitae of the proposed expert witness expired on June 26, 2011. In addition, the Secretariat's notes of July 8, 2011, placing on record that the representatives had not forwarded the curriculum vitae or the contact information of the said expert witness.
6. The brief answering the submission of the case and with observations on the pleadings and motions brief (hereinafter "answering brief") presented by the Republic of Guatemala (hereinafter also "the State" or "Guatemala") on September 12, 2011, whereby the State offered two expert opinions. In addition, the communication of October 3, 2011, whereby the State submitted the curricula vitae of both experts.²

¹ The presumed victims appointed the *Grupo de Apoyo Mutuo* Foundation (GAM) as their representatives.

² In its answering brief, the State had indicated that it offered of two expert witnesses; however, in subsequent communications, it indicated that one of those expert witnesses would appear as a witness.

7. The Secretariat's notes of November 29, 2011, whereby, *inter alia*, on the instruction of the President, and in accordance with Article 46(1) of the Rules of Procedure of the Court³ (hereinafter "the Rules of Procedure"), it asked the State, the Commission and the representatives to forward, by December 9, 2011, at the latest, their respective definitive lists of deponents (hereinafter "definitive lists") and, for reasons of procedural economy, to indicate which deponents could provide their testimony or expert opinions by affidavit, and which of them should be called to testify at a hearing.

8. The briefs of December 9 and 12, 2011, whereby the representatives and the Inter-American Commission, respectively, forwarded their definitive lists. The Commission confirmed the two proposed expert witnesses, requesting the appearance of María Laura Lencia at a public hearing and of Manolo Estuardo Vela Castañeda by affidavit, and advised of certain circumstances relating to the registration of in-coming communications, due to which there had been a delay in sending its brief. The representatives forwarded the curriculum vitae of the expert witness they had proposed, and confirmed the two statements and the expert opinion proposed in their pleadings and motions brief. However, they did not indicate who could testify by affidavit and who should appear at a hearing.

9. The note of the Secretariat on December 15, 2011, placing on record that the State had not presented its definitive list of deponents, forwarding the definitive lists to the parties, and advising them that they had until January 9, 2012, to present any observations they deemed pertinent on the said lists.

10. The communication of January 3, 2012, whereby the State submitted its definitive list, and in which it confirmed the proposed expert witness and witness, requested the appearance of the expert witness at a hearing, and asked that the testimony of the witness be provided by affidavit. In addition, the State presented its observations on the representatives' definitive list and advised that it had not received the definitive list submitted by the Commission.

11. The communication of January 9, 2012, in which the Inter-American Commission indicated that it had no observations to make on the definitive list of deponents submitted by the representatives, and asked to be allowed to submit questions to the expert witness they had proposed.

12. The Secretariat's note of January 12, 2012, underlining that the presentation of the State's definitive list was time-barred and, consequently, that the President of the Court would be advised of this situation for the pertinent effects; confirming that the Commission's definitive list had been duly forwarded to the State in a communication on December 15, 2012, and placing on record that the representatives had not submitted observations on the Commission's definitive list.

13. The communication of February 9, 2012, in which the State advised that there had been a problem with the receipt of the definitive list of deponents presented by the Inter-American Commission.

CONSIDERING THAT:

³ The Rules of Procedure approved by the Court at its eighty-fifth regular session, held from November 16 to 28, 2009.

1. The offer and the admission of evidence, as also the convening of presumed victims, witnesses and expert witnesses are regulated by Articles 35(1)(f), 40(2)(c), 41(1)(c), 46, 47, 50 and 57 of the Court's Rules of Procedure.

2. The Commission offered as evidence two expert opinions, the representatives offered the statement of two presumed victims and one expert witness, and the State offered one witness and one expert opinion. The evidence offered by the representatives was indicated at the appropriate procedural opportunity, except for the submission of the curriculum vitae of the person proposed as an expert witness (*supra* having seen paragraphs 4 and 8 and *infra* considering paragraphs 12 and 13). The State and the Commission submitted their definitive lists outside the established time frame (*supra* having seen paragraphs 8, 9, 10 and 12). In this regard, the Commission forwarded its definitive list three days after the time frame had expired, indicating that it did so "because it had not recorded the time limit when the letter was received[; i]n principle, the Inter-American Commission's document management system only records the main communications, [and i]n this case, the Court's letter with information on the time limit was received as an attachment to an e-mail." When submitting the said brief, the Commission explained the effects on inter-American public order, based on which it appointed the two expert witnesses. For its part, the State submitted its definitive list almost one month after the time limit had expired, without having requested an extension or giving any reason for its time-barred submission. Consequently, the President does not admit the said documents and will only consider the evidence offered by the Commission and by Guatemala in the brief presenting the case and in the answering brief, respectively (*supra* having seen paragraphs 1 and 6).

3. The Court guaranteed the parties the right to defense with regard to the evidence offered in the brief presenting the case, the pleadings and motions brief, and the answering brief, as well as in the definitive list (*supra* having seen paragraphs 9, 10, 11 and 12).

4. The Commission indicated that it had no observations on the representatives' definitive list. The representatives did not present observations on the definitive lists. The State presented observations on the deponents and the expert witness proposed by the representatives. Specifically, with regard to the testimonial evidence, it "ask[ed] that the statements of the persons indicated be assessed in their capacity as presumed victims" and, regarding the expert opinion, that "the efforts made to guarantee access to the information contained in the country's historical archives be taken into consideration."

5. With regard to the statements offered by the representatives and the State, which have not been contested, the President considers it advisable to admit the said evidence, so that the Court can assess its significance at the appropriate procedural opportunity, within the context of the existing body of evidence and according to the rules of sound judicial discretion. The President will determine the purpose of these statements and the way in which they will be received in this Order (*infra* operative paragraphs 1 and 5).

6. The President will now refer to the following aspects: (a) the offer of expert evidence by the Inter-American Commission; (b) the statement of Velia Muralles Bautista and the Commission's request to pose questions; (c) the evidence offered by

the State; (d) the way in which the statements and the expert opinions will be received, and (e) the final oral and written arguments and observations.

A. Expert evidence offered by the Inter-American Commission

7. Under Article 35(1)(f) of the Rules of Procedure, the Inter-American Commission is entitled to decide the “possible appointment of expert witnesses” “when the inter-American public order of human rights is affected in a significant manner,” and the grounds and purpose must be adequately founded. This provision signifies that the designation of expert witnesses by the Commission is exceptional, and is subject to the said requirement, which is not met merely because the evidence that it is intended to provide relates to an alleged human rights violation. The “inter-American public order of human rights” must be “affected in a significant manner,” and the Commission must substantiate this situation.⁴

8. In its submission of the case, the Inter-American Commission offered the opinion of María Laura Lencia as expert evidence; the purpose related to “the role of military intelligence in the State’s counterinsurgency policy, the existence and declassification of the *Diario Militar* [Translator’s note: the name given to a list of 183 people who were disappeared by the Guatemalan security forces between August 1983 and March 1985] and the Historical Archives of the National Police, and their concealment for many years, from the perspective of the effects on both the right of access to information and the right of access to justice for the next of kin of the victims of human rights violations during the internal armed conflict.” In addition, the Commission offered the expert opinion of Manolo Estuardo Vela Castañeda, the purpose of which related to “the persecution of student and labor union leaders in the context of the State’s counterinsurgency policy, the fact that they were viewed as the ‘internal enemy’ and, in general, the human rights violations perpetrated against these groups.”

9. The State and the representatives did not raise any objection to the offer of these two expert opinions by the Inter-American Commission.

10. This President notes that the expert opinions offered by the Commission do not address issues of inter-American public order, since they do not refer to the interest of the parties in dispute, or to the State concerned, but rather, on the one hand, refer specifically to the role of military intelligence in Guatemala and the declassification of military information and the difficulty of access to this by the next of kin of victims of human rights violations during the Guatemalan armed conflict and, on the other hand, to the alleged context of the counterinsurgency policy in Guatemala and the human rights violations allegedly perpetrated against student and labor union leaders in that country (*supra* considering paragraph 8).

11. Consequently, the expert opinions of Mr. Vela Castañeda and Ms. Lencia, proposed by the Inter-American Commission, are not admitted.

B. Statement of Velia Muralles Bautista and the Commission’s request to pose questions

⁴ Cf. *Case of Pedro Miguel Vera Vera et al. v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, ninth considering paragraph, and *the Case of Pacheco Teruel et al. v. Honduras*. Order of the President of the Inter-American Court of Human Rights of January 27, 2012, third considering paragraph.

12. The representatives proposed Ms. Muralles Bautista as an expert witness in this case, who would testify about the “findings in the Historical Archives of the National Police, in relation to the forced disappearance of Edgar Fernando García.” The submission of her curriculum vitae was time-barred; therefore the said document is inadmissible.

13. The President observes that, although Ms. Muralles Bautista was proposed as an expert witness, from the purpose of her statement it can be inferred that she will refer to facts and circumstances of which she is aware regarding the findings relating to the forced disappearance of the presumed victim in the case in the Historical Archives of the National Police; therefore, her statement is that of a witness and not of an expert witness. Consequently, the President considers that it is appropriate to receive Ms. Muralles Bautista’s statement in the capacity of a witness and will determine the purpose of her testimony and the way in which it will be received in the operative paragraphs of this decision (*infra* operating paragraph 5).

14. The Inter-American Commission requested the possibility of questioning Ms. Muralles Bautista, offered by the representatives, given that “her expert opinion will address questions of inter-American public interest.”

15. In this regard, the President recalls the criteria established in the current Rules of Procedure with regard to the reception of testimony proposed by the Commission, as well as in relation to its prerogative to examine the deponents offered by the other parties.⁵

16. In particular, in accordance with Article 50(5) in conjunction with Article 52(3) of the Court’s Rules of Procedure, the Commission is entitled to question the expert witnesses presented by the other parties, after certain requirements have been met. However, the Rules of Procedure do not indicate that the witnesses proposed by the State or the representatives can be questioned by the Commission.

17. Having established that Ms. Muralles Bautista will appear as a witness and not as an expert witness, the request of the Inter-American Commission with regard to the possibility of posing questions cannot be admitted.

C. Evidence offered by the State

18. In its answering brief, the State offered the expert opinions of Marco Tulio Álvarez Bobadilla and Manuel Giovanni Vásquez Vicente. Subsequently, the State forward their curricula vitae and indicated that Mr. Vásquez Vicente “will testify as a witness.” The President takes note of the proposed change and considers that, given the purpose of the statement, Mr. Vásquez Vicente must be admitted as a witness.

19. The analysis of the curriculum vitae of Mr. Álvarez Bobadilla reveals that he is the “Director of the Peace Archives,” and that he “has presented three expert opinions concerning research on the historical context in cases of human rights violations during

⁵ Cf. *Case of González Medina and Family v. Dominican Republic*. Order of the President of the Inter-American Court of Human Rights, forty-eighth considering paragraph, and *Case of Castillo González et al. v. Venezuela*, Order of the President of the Inter-American Court of Human Rights of January 31, 2012, twenty-first considering paragraph.

the armed conflict, such as the forced disappearance of Edgar Fernando García.” In addition, the expert opinion will refer to “the efforts made by the State to guarantee access to information by means of the country’s historical archives.”

20. The President considers that Mr. Álvarez Bobadilla will refer to facts and circumstances of which he is aware in relation to the purpose of his statement; namely with regard to the processes related to the disappearance of the presumed victim in this case and the historical archives in Guatemala. Consequently, it is appropriate to receive his statement as a witness. Based on the above, the President will determine the purpose of both testimonies and the way in which they will be received in the operative paragraphs of this Order (*infra* operative paragraph 5).

D. Method of presentation of the statements and expert opinions

21. It is necessary to ensure the most extensive presentation of facts and arguments by the parties in relation to everything that is pertinent to the settlement of the matters in dispute, guaranteeing them the right to defend their respective positions. At the same time, the Court’s ability to examine adequately the cases submitted to its consideration must be guaranteed, bearing in mind that their number has increased considerably and is growing constantly. In addition, a reasonable time must be ensured for the duration of the proceedings, as required by effective access to justice. Based on the foregoing, the greatest number possible of testimonies and expert opinions must be received by affidavit, and the presumed victims, witnesses and expert witnesses heard in a public hearing, since their direct statements are truly essential, taking into consideration the circumstances of the case and the purpose of the testimony and opinions.

D.1. Statements to be rendered as affidavits

22. Bearing in mind the provisions of Article 50(1) of the Rules of Procedure, the observations of the representatives and the State, the purpose of the statements offered, and the principle of procedural economy, the President considers it desirable to receive, by affidavit, the statement of Alejandra García Montenegro, presumed victim, proposed by the representatives, and the testimony of Manuel Giovanni Vásquez Vicente, proposed by the State. The President recalls that Article 50(5) of the Court’s Rules of Procedure establishes the possibility that the presumed victims or their representatives and the State may provide a list of questions to ask those persons called upon to provide affidavits.

23. Under the provisions of the said Rules of Procedure, the President proceeds to grant the State and the representatives an opportunity to present, if they so wish, any questions they deem pertinent to the deponents of the other party mentioned in the preceding paragraph. When preparing their affidavits, the presumed victim and the witness must respond to these questions, unless the President rules otherwise. The corresponding time frames will be established in the second operative paragraph of this Order. These statements will be forwarded to the Inter-American Commission, the representatives, and the State. In turn, the State and the representatives may present any observations they deem pertinent within the time frame indicated in this Order (*infra* operative paragraph 4). The Court will determine the probative value of the said statements at the appropriate opportunity, taking into account all the points of view, if applicable, expressed by the representatives and the State in exercise of their right of defense.

D.2. Statements to be received at a public hearing

24. This case is now ready for the opening of the oral proceedings with regard to the preliminary objection, merits, reparations and costs; hence, the President finds it pertinent to convene a public hearing to receive the statement of a presumed victim, Nineth Varenca Montenegro Cottom, together with the testimony of Velia Muralles Bautista, proposed by the representatives, and the testimony of Marco Tulio Álvarez Bobadilla, proposed by the State.

E. Final oral and written arguments and observations

25. The representatives and the State may submit to the Court their respective final oral arguments on the preliminary objection, the merits and the possible reparations and costs in the instant case, when the statements by the presumed victim and the witnesses have concluded. As established in Article 51(8) of the Rules of Procedure, the Inter-American Commission will present its final oral observations when the arguments have concluded.

26. In accordance with Article 56 of the Rules of Procedure, the presumed victims or their representatives, the State, and the Commission may present their final written arguments and final written observations, respectively, with regard to the preliminary objection, the merits and the possible reparations and costs, within the time frame established in the thirteenth operative paragraph of this Order.

THEREFORE:

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

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

DECIDES:

1. To require, for the reasons given in this Order (*supra* considering paragraph 22), in accordance with the principle of procedural economy and in exercise of the authority vested in him under Article 50(1) of the Rules of Procedure of the Court, that the following persons provide their statements by affidavit:

Presumed victim proposed by the representatives

- 1) *Alejandra García Montenegro*, who will declare about: the facts of the instant case, *inter alia*, the presumed harm to her family as a result of the alleged forced disappearance of her father, Edgar Fernando García, and the efforts she has made before Guatemalan courts of justice in order to discover his whereabouts.

Witness proposed by the State

- 1) *Manuel Giovanni Vásquez Vicente*, who will testify about: the steps taken by the State to investigate, try and punish those responsible for the alleged forced disappearance of Edgar Fernando García, and the search for his mortal remains.
2. To require the State and the representatives to forward, if they consider it appropriate and within the non-extendible time frame that expires on March 28, 2012, the questions they deem pertinent to pose, through the Inter-American Court, to the presumed victim and the witness of the other party, indicated in the first operative paragraph of this Order. The statements required in the first operative paragraph must be submitted to the Court by April 20, 2012, at the latest.
3. To require the representatives and the State to coordinate and take the necessary steps to ensure that, when the questions have been received from the other party, the deponents they have proposed include the answers in their respective statements provided by affidavit, in accordance with considering paragraph 23 of this Order.
4. To stipulate that, when the testimonies required in the first operative paragraph have been received, the Secretariat of the Inter-American Court must forward them to the other parties so that, if they deem necessary, the State and the representatives may present their observations on these statements, at the latest, with their final written arguments.
5. To convene the Republic of Guatemala, the representatives of the presumed victims, and the Inter-American Commission on Human Rights to a public hearing to be held on April 26, 2012, starting at 9 a.m., during its forty-fifth special session in Guayaquil, Ecuador, in order to receive their final oral arguments and final oral observations, respectively, on the preliminary objection, the merits and the possible reparations and costs, as well as the statements of the following persons:

Presumed victim proposed by the representatives

- 1) *Nineth Varenca Montenegro Cottom*, who will declare about: the facts of this case, *inter alia*, the alleged refusal of the State of Guatemala to provide information that establishes the whereabouts of her husband, and the supposed unjustified delay in prosecuting those who masterminded the presumed victim's disappearance.

Witnesses

A) Proposed by the representatives

- 1) *Velia Muralles Bautista*, who will testify about the findings in the Historical Archive of the National Police regarding the alleged forced disappearance of Edgar Fernando García.

B) Proposed by the State

- 2) *Marco Tulio Álvarez Bobadilla*, who will testify about the alleged efforts made by the State to guarantee access to the information by means of the country's historical archives.
6. To require the Republic of Guatemala to facilitate the exit from and entrance to its territory, if they reside or are in the territory, of the deponents who have been called upon in this Order to testify at the public hearing of this case, in accordance with the provisions of Article 26(1) of the Court's Rules of Procedure.
7. To request, in accordance with the provisions of Article 26(3) of the Rules of Procedure, the cooperation of Ecuador in order to conduct the public hearing convened by this Order to be held in that country, as well as to facilitate the entrance to and exit from its territory of the persons called on to testify before the Inter-American Court during this hearing and those who will represent the Inter-American Commission, the State, and the presumed victims at the hearing. To this end, the Secretariat is required to notify this Order to the State of Ecuador.
8. To require the State and the representatives to notify this Order to the persons they have proposed who have been called upon to testify, in accordance with the provisions of Articles 50(2) and 50(4) of the Rules of Procedure.
9. To inform the State and the representatives that they must cover the costs of providing or producing the evidence they have proposed, in accordance with Article 60 of the Rules of Procedure.
10. To require the State and the representatives to inform the persons called upon by the Court to testify that, under the provisions of Article 54 of the Rules of Procedure, the Court will inform the State when any person summoned to appear or declare, fails to appear or refuses to testify without legitimate cause or, when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, so that appropriate action may be taken under the relevant domestic legislation.
11. To inform the representatives, the State, and the Inter-American Commission, that, when the statements rendered at the public hearing have concluded, they may present to the Court their final oral arguments and final oral observations, respectively, on the preliminary objection, the merits, and the possible reparations and costs in this case.
12. To require the Secretariat of the Court, in accordance with the provisions of Article 55(3) of the Rules of Procedure, to inform the Inter-American Commission, the representatives, and the State, of the electronic link to the recording of the public hearing on the preliminary objection, the merits and the possible reparations and costs, as soon as possible.
13. To inform the representatives, the State, and the Inter-American Commission that they have until June 1, 2012, to present their final written arguments and final written observations, respectively, as well as any possible attachments, with regard to the preliminary objection, the merits and the possible reparations and costs in the instant case. This time limit may not be extended.
14. To order the Secretariat of the Inter-American Court to notify this Order to the Inter-American Commission on Human Rights, the representatives of the presumed victims, and the Republic of Guatemala.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary