

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

**DECEMBER 1, 2011**

**VICTIMS' LEGAL ASSISTANCE FUND**

**CASE OF THE MASSACRES OF EL MOZOTE AND SURROUNDING AREAS  
v. EL SALVADOR**

**HAVING SEEN:**

1. The brief of March 8, 2011 and its attachments, 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 El Salvador (hereinafter "El Salvador" or "the State"). The attachment to the aforementioned brief, among other documents, was received by the Secretariat of the Court on March 25, 2011.
2. The brief of August 12, 2011, in which the representatives of the alleged victims<sup>1</sup> (hereinafter "the representatives") submitted their pleadings, motions and evidence in relation to this case (hereinafter the "brief of pleadings and motions"), and stated that the alleged victims were requesting, through their representatives, "that the Court approve legal assistance in this case to cover specific costs related to the production of evidence during the proceedings before the Court," and presented an estimate of the specific expenses that they requested be covered by the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "Assistance Fund of the Court" or "Fund"). The attachments to the aforesaid brief were received on September 2, 2011.
3. The note of the Secretariat of September 16, 2011, in which the representatives were informed that their request, together with the additional documents submitted, would be brought to the attention of the President of the Court (hereinafter "the President").

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<sup>1</sup> The alleged victims in this case appointed as their representatives the *Centro por la Justicia y el Derecho Internacional* – CEJIL (Center for Justice and International law) and the *Oficina de Tutela Legal del Arzobispado de San Salvador* – OTLA (Human Rights Office of the Archdiocese of San Salvador).

## CONSIDERING THAT:

1. El Salvador is a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since June 23, 1978 and, according to Article 62 of the Convention, recognized the contentious jurisdiction of the Court on June 6, 1995.

2. In 2008 the General Assembly of the Organization of American States (hereinafter the “OAS”) created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter “the Assistance Fund of the Inter-American System”) and entrusted its regulation to the Permanent Council of the OAS<sup>2</sup>. Said Assistance Fund was created to “facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before it.”<sup>3</sup> As provided in the Rules of Procedure adopted by the Permanent Council of the OAS in November 2009<sup>4</sup>, the Assistance Fund of the Inter-American System maintains two separate accounts: one for the Inter-American Commission and the other for the Court. As to the financing of the Assistance Fund of the Inter-American System, this is currently comprised of “voluntary capital contributions from the Member States of the OAS, the Permanent Observer States and other States and donors that may wish to collaborate with the Fund”<sup>5</sup>. Likewise, pursuant to Article 4 of the Rules of Procedure approved by the Permanent Council, the Court shall determine the eligibility requirements for requesting assistance as well as the procedure for approving such assistance.

3. Accordingly, on February 4, 2010 the Court adopted the Rules for the Operation of the Assistance Fund, (hereinafter the “Rules of the Assistance Fund”), which entered into force on June 1, 2010, and whose purpose is to “regulate the operation of, and access to, the [...] Fund, for the litigation of cases before it.”<sup>6</sup> As established therein, alleged victims seeking to have access to the Fund must follow three steps: 1) request assistance in the written brief containing pleadings, motions and evidence; 2) demonstrate, by means of a sworn affidavit and other probative evidence that will satisfy the Court, that they lack the financial resources needed to cover the cost of litigation before the Inter-American Court, and 3) state precisely the aspects of their participation in the proceedings that require the use of resources of the Court’s Legal Assistance Fund<sup>7</sup>.

4. As stipulated in Article 3 of the Court’s Assistance Fund, in response to a request to have recourse to the Fund’s resources, the Secretariat of the Court shall conduct a preliminary review of the request for assistance and shall require the requesting party to present the background information necessary so that the request may be submitted to the

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<sup>2</sup> Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the XXXVIII Ordinary Period of Sessions of the OAS, at the fourth plenary session, held on June 3, 2008, “*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2.b.

<sup>3</sup> AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, operative paragraph 2.a, and CP/RES. 963 (1728/09), adopted on November 11, 2009 by the Permanent Council of the OAS, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” Article 1.1.

<sup>4</sup> Cf. Resolution CP/RES. 963 (1728/09), *supra* note 3, Article 3.1.

<sup>5</sup> Resolution CP/RES. 963 (1728/09), *supra* note 3, Article 2.1.

<sup>6</sup> Rules for the Operation of the Victims’ Legal Assistance Fund of the Inter-American Court of Human Rights, approved by the Court on February 4, 2010, Article 1.

<sup>7</sup> Cf. Rules for the Operation of the Assistance Fund, *supra* note 6, Article 2.

consideration of the President of the Court, who shall then evaluate the request and make a decision within three months of the date on which the background information required is received.

5. The President notes that, with regard to the request for resources from the Court's Assistance Fund, the representatives based their application on the fact that the surviving alleged victims and relatives of the alleged victims of the Massacres of El Mozote "do not have the financial resources to cover the costs of this process." To support their application, the representatives included the sworn statement rendered by María Dorila Márquez de Márquez, the testimonies rendered before the Archdiocese's Human Rights Office (*Tutela Legal*) in San Salvador by José Gervacio Díaz, Juan Bautista Márquez, Lucinda Hernández, María Ángel Díaz and María del Rosario López Sánchez, together with documents justifying the estimated expenses.

6. The President confirms that the representatives submitted, as attachments to the brief of pleadings and motions, the sworn statement of María Dorila Márquez de Márquez, in which she stated that she knew a large number of alleged victims, including survivors and relatives of alleged victims murdered in the Massacres of El Mozote and surrounding areas, who are "people with very few financial resources," and therefore "these people would not have the necessary financial resources to cover these expenses." She also stated that "until now, the costs of obtaining justice in this case ha[d] been assumed by the Archdiocese's Human Rights Office (*Tutela Legal*) of San Salvador and that without the intervention of this organization, it would not have been possible [...] to proceed with this process to the stage that it has reached now." Likewise, the representatives submitted the testimonies rendered before the Archdiocese's Human Rights Office (*Tutela Legal*) by José Gervacio Díaz, Lucinda Hernández and María del Rosario López Sánchez<sup>8</sup>, in which they describe, among other matters, their current means of subsistence and the decrease in their incomes. Finally, the representatives included the following approximate estimates of expenses: a) round trip airline tickets from San Salvador to San José and from Buenos Aires to San Jose, based on a quote obtained in March 2012; b) hotel costs; c) notarial services, and d) psychosocial report.

7. At the same time, the representatives pointed out that "[a]lthough Tutela Legal has, until now, covered the expenses of both the domestic and the international proceedings, the processing of this case before the [...] Court implies additional expenses, which Tutela Legal is not in a position to cover alone." The added that CEJIL and Tutela Legal "would be in a position to assume a number of expenses incurred by the proceeding before this [...] Court, and therefore the [alleged] victims have not included [these] in their application for assistance from the Fund. This, on the understanding that those amounts [would be] reimbursed by the [...] State of El Salvador, if the Court so orders in its judgment in this case." Finally, the representatives requested that the State be required to reimburse said expenses to the Legal Assistance Fund, according to Article 5 of the Rules of the Fund. This, without prejudice to the amounts for expenses and costs that the Court may determine for the alleged victims and their representatives, and for which they should be directly reimbursed.

8. The representatives explained that the alleged victims were requesting assistance from the Fund to cover: (i) travel expenses, including the "fares, hotel and *per diem* expenses" of the alleged victims, witnesses and expert witnesses that the Court may

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<sup>8</sup> The President notes that the testimonies of Juan Bautista Márquez and María Ángel Díaz are not included in Appendix 3 to the brief of pleadings and motions of the representatives.

summon to testify at a hearing; (ii) notarial expenses for the formalization of the affidavits that the Court may consider admissible, and (iii) expenses and travel costs incurred in preparing the expert reports, "for those cases in which the expert witnesses need to travel to El Salvador or travel internally within that country." The representatives emphasized that, at this stage of the proceedings, they were not in a position to determine whether all the witnesses and expert witnesses proposed in their brief of pleadings and motions would be admitted by the Court or, if admitted, whether they would be summoned to testify in person before it or before a notary public. Likewise they pointed out that they did not know where the Court might decide to hold the future hearing in this case, for which reason "the travel expenses could vary considerably." In view of the foregoing, they requested that, should Court approve this request, to do so bearing in mind "the testimonies and expert reports that it may decide to admit in its Decision."

9. Finally, the representatives presented an estimate of the expenses to be covered by the Fund for the appearance of the deponents at a future public hearing and for the production of evidence, including sworn statements and the expert reports offered. For the first item, the representatives estimated a total of fifteen declarants, including eleven alleged victims and witnesses, as well as four expert witnesses, for a total of approximately US\$ 21,875.00 (twenty-one thousand, eight hundred and seventy-five dollars of the United States of America). For the second item, the representatives calculated US\$ 100.00 (one hundred dollars of the United States of America) for each "notarization" and, given that the majority of the relatives of the alleged victims live outside of San Salvador, they added US\$ 60.00 (sixty dollars of the United States of America) for the transfer of two lawyers of Tutela Legal to the locations where they would be found. Finally, the representatives specified a cost of US\$ 3,060.00 (three thousand and sixty dollars of the United States of America) for the preparation of a psychosocial expert report. This would include at least 12 visits to the hamlet of El Mozote to hold group workshops as well as two workshops in the Canton of Lourdes, which would imply travel and food expenses.

10. First of all, the President confirms that the request for access to the Court's Assistance Fund had been submitted at the appropriate time, in the brief of pleadings and motions (*supra* Having Seen paragraph 2). Likewise, he notes that the representatives made the request to access the Legal Assistance Fund on behalf of the alleged victims. Indeed, the President reiterates that the alleged victims are the ones who should benefit from the Assistance Fund<sup>9</sup>. In this regard, the President takes cognizance of the fact that this case involves numerous alleged victims, although at this stage of the proceeding there is no requirement to make a pronouncement on the identification of the alleged victims in the case before the Court.

11. In this regard, the President takes cognizance of the lack of financial resources claimed by the alleged victims through their representatives and considers that the sworn statement rendered before a notary public, together with other probative evidence submitted, provide sufficient evidence thereof, pursuant to Article 2 of the Rules of the Assistance Fund.

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<sup>9</sup> Cf. *Case González Medina et al. v. the Dominican Republic*. Decision of the President of the Inter-American Court of Human Rights of February 23, 2011, Considering paragraph 8, and *Case Fornerón and daughter v. Argentina*. Decision of the President of the Inter-American Court of Human Rights of May 31, 2011, Considering paragraph 7.

12. The President also notes that the alleged victims have requested assistance from the Fund to cover expenses related to the production of evidence before the Court, and specifically to cover the presentation of testimonies, either at a hearing or by means of affidavits, as well as the preparation of one expert report (*supra* Considering paragraphs 8 and 9). Likewise, the President takes note of the representatives' comments regarding the fact that they are not in a position to precisely determine the expenses that would be incurred at this stage of the proceeding before the Court, even though they have submitted an estimate.

13. The President recalls that the Assistance Fund of the Court is comprised of voluntary contributions from donor sources (*supra* Considering paragraph 2), and that these limited resources are insufficient to cover all the expenses related to the possible appearance and presentation of evidence before the Court by the alleged victims. Therefore, in each specific case, the Presidency must consider a request for financial assistance on the basis of the resources available and bearing in mind the need for assistance that might arise in other cases before the Court, in order to ensure the correct administration and fair distribution of the Fund's limited resources.

14. The President notes that, at the present stage of the proceedings, it has not been determined which of the testimonies offered by the representatives shall be received by the Court, or the means by which these shall be obtained. In accordance with Article 50.1 of the Court's Rules of Procedure, that decision is taken by the Court or its President, once the parties have submitted the definitive lists of proposed declarants and the right to defense has been guaranteed, under the terms of Articles 45 to 49 of the Court's Rules of Procedure

15. Based on the foregoing considerations, the President considers valid the request of the alleged victims to have recourse to the Court's Legal Assistance Fund. Accordingly, having regard to the resources currently available in the Fund, the alleged victims are to be granted the necessary financial assistance for the presentation of a maximum of four testimonies, either by means of affidavits or at a public hearing. Likewise, the President considers it appropriate to defer a decision on the specific recipients and purpose of the financial assistance to be provided to the alleged victims, until such time as the Presidency, or the Court, rules on the validity and relevance of the testimonial and expert evidence and, if applicable, on the opening of the oral proceedings, under the terms of Article 50.1 of the Rules of Procedure of the Court, in order to have certainty regarding which of the testimonies shall be received by the Court, and the means by which these shall be obtained. (*supra* Considering paragraph 14).

**THEREFORE:**

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

in the exercise of his authority in relation to the Victims' Legal Assistance Fund of this Court, and in accordance with Article 31 of the Court's Rules of Procedure and Article 3 of the Rules of the Court's Legal Assistance Fund,

**DECIDES:**

1. To declare admissible the request submitted by the alleged victims, through their representatives, to have recourse to the Victims' Legal Assistance Fund of the Inter-

American Court of Human Rights, and to grant the financial assistance necessary to present a maximum of four testimonies, either by means of affidavits or at a public hearing. The specific recipients and purpose of this assistance shall be determined when a decision is made on the production of testimonial and expert evidence and on the opening of the oral proceedings, under the terms of Article 50 of the Court's Rules of Procedure, and in accordance with preambular paragraph 15 of this Decision.

2. To require the Secretariat of the Court to notify the representatives of the alleged victims, the Republic of El Salvador and the Inter-American Commission on Human Rights of this Decision.

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary