



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 USA

July 12, 2012

Ref.: Case No. 12.271
Benito Tide Méndez et. al
Dominican Republic

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.271, Benito Tide Méndez et. al v. the Dominican Republic (hereinafter "the State of Dominican Republic", "the Dominican State" or "Dominican Republic") before the jurisdiction of the Inter-American Court of Human Rights. The case refers to the arbitrary detention and summary expulsion from the Dominican Republic of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Jeanty Fils-Aime, Janise Midi, Ana Virginia Nolasco, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, and the children Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Ana Lidia Sensión, Reyita Antonia Sensión, Berson Gelin, McKenson Jean, Victoria Jean, Miguel Jean, and Nathalie Jean. In its Merits Report, the Commission concluded that the summary expulsions occurred in a tense context of collective and mass expulsions of individuals, affecting both Dominicans and foreigners and both documented and undocumented persons who had their permanent residence in the country and strong employment and familial ties with the Dominican Republic.

In this regard, the Commission considered that phenotypical characteristics and skin color were decisive factors when individuals were selected for detention and subsequent expulsion, indicating a pattern of discrimination regarding these persons.

In addition, the Commission noted that, in this case, the State failed to submit information demonstrating that the repatriation procedure in effect at the time of these events had effectively been applied to the victims and noted, in particular, that there was no order of arrest from a competent authority or administrative or judicial proceedings opened regarding these persons; that the agents of the State did not individually identify the victims when detaining them; that the victims were not informed of the charges leading to their detention nor were they presented with information regarding the questioning of their legal status in the country.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica
Enclosure

Similarly, the Commission stated that the victims did not have time or adequate means to prove their nationality or legal status in the Dominican Republic, were not provided with legal assistance, and did not have the opportunity to appeal the decision, nor was there any order from a competent, independent, and impartial authority ruling on their deportation. Moreover, the Commission noted that the State did not indicate a specific remedy the victims could have accessed to protect their rights but that additionally, in this case, there were significant obstacles impeding their access to justice, and that the State did not initiate a serious, impartial and effective investigation to establish the facts and to determine the possible perpetrators.

The Commission also deemed proven that some of the expelled victims were Dominican nationals and had the relevant documentation to demonstrate that status. However, during their arbitrary detention and expulsion, the victims did not have the opportunity to present that documentation and, in those cases where it was presented, it was destroyed by the Dominican officials. The Commission noted that the destruction of the victims' identity documents meant that they were deprived of the ability to demonstrate their physical existence and juridical personality. This situation, added to the fact that they were expelled to a country with which they had no ties, constituted additional impediments preventing the victims from reapplying for documents that would prove their identity.

In addition, based on the context, legislation, and practices of the Dominican State at the time of the events, the Commission concluded that there was a series of impediments preventing the Haitian migrants from regularizing their legal situation in the country and registering their children born in Dominican territory. Thus, the Commission considered that the existing impediments to granting citizenship to persons born in Dominican territory, despite the fact that the State accepts the principle of *jus soli*, constituted an arbitrary deprivation of citizenship that fostered the detention and possible deportation of nationals and placed the victims in a situation of extreme risk and vulnerability.

Regarding the specific situation of children, the Commission noted that in this case a sequence of events can be seen that began with the refusal to record their birth and their resulting inability to obtain citizenship and to access basic health and education services, continued with the risk of being detained and arbitrarily expelled from the country where they were citizens, without taking into account their particular needs as children and affecting the normal course of their personal and family lives, and ended with their inability to access judicial remedies for the protection of their rights. The Commission also believed that the State failed to adopt special measures to protect children and also failed to guarantee their right to be heard with respect to these matters.

In addition, the Commission established that during their detention, the victims did not receive water, food, or medical assistance, and their expulsion led to the uprooting and breakdown of family structures and affected the normal development of familial relations, even for new family members. The Commission emphasized that in some cases families were reunited after a few days while in other cases the separation continued for several years, and that the victims have expressed well-founded fear of returning to the Dominican Republic for fear of being deported again. In addition, the Commission felt that family members who remained in the Dominican Republic suffered a great deal because they did not know the whereabouts of the family member who had been expelled.

Finally, the Commission concluded that the victims' expulsion entailed the automatic and *de facto* loss of everything they left in Dominican territory, which constituted an illegal deprivation of their assets. Additionally, they did not receive adequate compensation for those assets.

The State ratified the American Convention on Human Rights on April 19, 1978 and accepted the contentious jurisdiction of the Court on March 25, 1999. In this regard, the

Commission notes that the human rights violations established in this case continue to go unpunished and that, even after accepting the competence of the Court, the State has not taken any steps to investigate and shed light on the facts, to identify those responsible, and impose the corresponding sanctions. In addition, the Secretariat observed that the expulsions of Berson Gelin, Andrea Alezy, Rafaelito Pérez Charles, and the Medina Ferreras, Fils-Aime and Jean families occurred after the State had accepted the competence of the Court. Finally, the Secretariat notes that although the expulsion of Ana Virginia Nolasco, Ana Lidia Sensión, and Reyita Antonia Sensión occurred in 1994, the effects thereof extended and continued even after March 25, 1999, considering that family reunification occurred in 2002.

The Commission has designated Commissioner Rosa María Ortiz, and Deputy Executive Secretary, Elizabeth Abi-Mershed, as its delegates. Likewise, Isabel Madariaga and Tatiana Gos, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of Report 64/12 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1) and the annexes used in the preparation of Report 64/12 (Annexes). The Commission adopted Merits Report No. 64/12 on March 29, 2012, and transmitted it to the State on April 12, 2012. On May 17, 2012 the petitioners presented a communication in which they indicate the reasons to justify their request for the case to be referred to the jurisdiction of the Inter-American Court. On July 6, 2012 the State presented a report which does not reveal any progress in the compliance of the recommendations.

In particular, regarding the recommendation to **allow the return of the victims to the Dominican Republic**, the State argued that it is not able to comply with this recommendation because it has not been specified the names of alleged people who are in the Republic of Haiti, under what circumstance or quality would have entered Haitian territory from the country and what has been the role of state agents in that transfer. The Commission notes that the identification of the victims and the circumstances of manner, time and place are expressly set out in the Merits Report, and therefore the State should get updated information regarding the current and specific situation of the victims of this case and determine who are still in Haitian territory.

With respect to the recommendation to **recognize the Dominican nationality of some victims**, the State indicated that Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Medina Ney, Ana Lidia Sensión, Reyita Antonia Sensión and Rafaelito Pérez Charles are Dominican citizens as attested in civil status records, so there is no objection to substituting the documentation, either the birth certificate or the identity card, where applicable. Moreover, with respect to Miguel Jean, Victoria Jean and Natalie Jean, the State indicated that the Civil Registry Office of the 12th. Constituency, which has jurisdiction to register the births occurring in the Hospital San Lorenzo de Los Mina, has not timely or late birth registration concerning these people. The Commission recalls that during the friendly settlement proceedings, the petitioners indicated that Miguel Jean, Victoria Jean and Natalie Jean had a certificate of *nacido vivo* ("born alive"), and notes that the State did not indicate any actions oriented to effectively produce and deliver the appropriate identification documents to the victims.

In relation to the recommendation to **deliver to Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, John Fils-Aime, Berson Gelin and Victor Jean the documentation needed to prove their birth in the Dominican Republic and advance the procedures for the recognition of their Dominican nationality**, the State emphasized that it is in the best aim to comply with the recommendation if the petitioners provide documentation that attests these births in Dominican territory before of January 26, 2010, since the only evidence of

the alleged birth of these people in the Dominican Republic are the very statements of the complainants. The State also indicated that Mr. Gelin has Haitian nationality and that the JCE supplied certifications issued by the civil registry offices of Pedernales, which indicate that this person is not registered in their books of timely or late births. The Commission notes that, in accordance with the provisions of the Merits Report, the authorities have refused to register the births of these people, and that the State did not provide any information indicating that it has taken any measures to overcome those obstacles.

Regarding the recommendation that **Lilia Jean Pierre, Janise Midi, Carolina Fils-Aime, Ana Virginia Nolasco, Andrea Alezy, Marlene Mesidor, McKenson Jean, Haitian nationals, may legally remain in the Dominican Republic with their families**, the State indicated that these people have safe-conducts, and therefore there is no objection from the Dominican authorities for these people to stay in the country, as the Department of Immigration has reiterated on numerous occasions that "this document has no expiration date, so it is in force". In particular, the State considered that it is evident that Andrea Alezy has no interest in the outcome of the case and the measures that the Dominican authorities may adopt to comply with the recommendations of the IACHR, as well as there has been no requests for a safe-conduct in favor of McKenson Jean. Finally, the State argued that, beyond the safe-conducts, those who are interested in regularize and legalize their immigration status in the country, they must meet the requirements set out by the law. The Commission notes that the safe-conducts are only a temporary document created under the provisional measures ordered by the Court, which also presented certain difficulties in its implementation, since not every authority recognized their validity. In particular, the Commission recalls that according to the information available in the file, McKenson Jean would have safe-conduct N° 12.337 issued on August 13, 2002. In addition, the Commission notes that the safe-conducts do not provide certainty nor they definitively resolve the situation of the victims and, moreover, the State did not explain how these people would be able to legalize their immigration status.

With respect to the recommendation of **paying integral compensation to the victims, to publicly acknowledge the violations found in this case, and to investigate the facts of the case**, the State considered that from the combination of the facts alleged by the petitioners, the documents in the record and the explanations and actions of state authorities, it does not follow that the Dominican State has international responsibility for violation of the rights enshrined in the American Convention on Human Rights and the jurisprudence of the Court. The Commission observed that the State merely questioned the conclusions reached by the Commission and, therefore, did not report on any measure designed to comply with these measures of reparation.

In relation to the recommendation to **implement effective measures to eradicate the practice of raids or migration control operations based on racial profiling, and take measures of non-repetition to ensure the cessation of mass expulsions and the adequacy of the return procedures to international human rights standards, as well as including a review of domestic legislation on registration and granting of citizenship of people of Haitian descent born in Dominican territory**, the State argued that the immigration authorities do not perform collective expulsion of aliens, but each case is assessed and decided individually with the safeguards provided in the Constitution and immigration law. The State also denied that immigration law is applied based on racial, ethnic or linguistic profiling. In addition, the State also referred briefly to the deportation proceedings and the Protocol of Understanding between the Dominican Republic and the Republic of Haiti on the mechanisms of repatriation. The Commission notes that the State merely reiterated the arguments raised during the process before the Commission, without providing information about the compliance with the recommendations.

Regarding the recommendation to **ensure that the Dominican authorities that carry out immigration functions receive intensive training in human rights**, the State emphasized that the Department of Immigration has a training school called *Escuela Nacional de Migración*, where all

inspectors receive instruction on human rights, immigration law, history, geography, immigration officer's criminal responsibility, etc... The State indicated that the Dominican authorities do not tolerate misconduct of its agents and submits to the justice the cases of misconduct duly reported and verified. The Commission notes that the State did not provide specific information regarding the training of their officials in human rights, nor the alleged proceedings initiated in cases of misconduct. In this regard, the Commission considers that the information provided is generic and insufficient and, moreover, it does not reveal that any training measure related to the shortcomings identified in this case has been adopted.

In relation to the recommendation to **establish effective judicial remedies for cases of human rights violations in the context of removal proceedings or deportation**, the State indicated that the Department of Internal Affairs and Research Department within the General Directorate of Immigration are responsible for conducting the investigations and supervise the conduct of employees of the institution, and that complaints are received directly, by written, via Web or phone call. It also stated that if misconducts have criminal or civil implications, the General Directorate of Immigration transmits them to the pertinent instances. Finally, the State indicated that national and foreign citizens can file a *recurso de reconsideración*, a *recurso jerárquico* before the superior, a complaint before the Administrative Tribunal, an *amparo* or habeas corpus proceedings. The Commission notes that the information provided is limited, and refers to alleged disciplinary controls on migration agents, which not necessarily linked to the investigation of cases of human rights violations. The State did not present any information with respect to the scope, admissibility and effectiveness of these procedures, and therefore it does not allow considering the shortcomings proven in this case as overcome.

In these circumstances, the Commission submits this case to the jurisdiction of the Inter-American Court in view of to the need to obtain justice for the victims, the nature and gravity of the violations found, and the failure of the State to carry out the recommendations.

The Commission is submitting to the jurisdiction of the Court, the facts and human rights violations attributable to the State of Dominican Republic that took place and continued after the State accepted the competence of the Court on March 25, 1999, namely that the facts of the case continue to go unpunished, the arbitrary detention and expulsion of Berson Gelin, Andrea Alezy, Rafaelito Pérez Charles, and Medina Ferreras, Fils-Aime and Jean families, as well as the effects of the expulsion with respect to Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión, and requests the Court to adjudge and declare the international responsibility of the State of the Dominican Republic for the:

violation of the rights to juridical personality, humane treatment, personal liberty, a fair trial, protection of the family, rights of the child, nationality, property, freedom of movement and residence, equality and nondiscrimination, and juridical protection, recognized in articles 3, 5, 7, 8, 17, 19, 20, 21, 22.1, 22.5, 22.9, 24 and 25 of the American Convention, in relation to article 1(1) thereof, to the detriment of William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

violation of the rights to humane treatment, protected under Article 5 of the American Convention, and the right to protection of the family, recognized in Article 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Carolina Fils-Aime, William Gelin, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina and Antonio Sensión, Jessica Jean, Víctor Manuel Jean.

violation of the rights to juridical personality, a fair trial, protection of the family, rights of the child, nationality, equality and nondiscrimination, and juridical protection, recognized in articles 3, 8, 17, 19, 20, 24 and 25 of the American Convention, in relation to article 1(1) thereof, to the detriment of Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión.

violation of the rights to a fair trial and judicial protection, enshrined in articles 8 and 25 of the American Convention, in relation to article 1(1) thereof, to the detriment of Benito Tide Méndez.

Consequently, the Commission is asking the Inter-American Court to order the following reparations:

1. It permit all the victims who are still within Haitian territory to return to the territory of the Dominican Republic.

2. It take the measures necessary to:

a. recognize the Dominican citizenship of Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Miguel Jean, Victoria Jean and Natalie Jean and provide or replace all the necessary documentation certifying them as Dominican citizens.

b. provide Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin and Víctor Jean with the necessary documentation certifying that they were born in Dominican territory, and move forward with the procedures necessary to recognize their Dominican citizenship

c. ensure that Lilia Jean Pierre, Janise Midi, Carolina Fils-Aime, Ana Virginia Nolasco, Andrea Alezy, Marlene Mesidor and McKenson Jean Haitian nationals, are able to continue to live as legal residents in Dominican territory, with their families.

3. Pay an integral compensation to the victims or their successors in title, where necessary; the compensation should cover pecuniary and non-pecuniary damages and the property the victims had to leave behind in the Dominican Republic when they were expelled.

4. Publicly acknowledge the violations established in the present case, while ensuring adequate means to publicize the acknowledgement.

5. Adopt measures of non-repetition

a. that ensures the cessation of the practice of collective expulsions and deportations, adjust the repatriation procedures to conform to domestic law and the international human rights standards established in this report, while taking special care to guarantee the principles of equality and non-discrimination and to observe the State's specific obligations vis-à-vis children and women.

b. including a review of domestic legislation on inscription and granting of nationality to persons of Haitian descent born in Dominican territory, and the repeal of those provisions that directly or indirectly have a discriminatory impact based on the race or national origin, taking into account the principle of *ius soli* established by the State, the State obligation to prevent statelessness and international human rights law applicable standards.

6. Implement effective measures to eradicate the practice of sweeps or immigration control techniques that rely on racial profiling.

7. Ensure that the Dominican authorities who perform immigration-related functions receive intensive training in human rights to guarantee that, in performing their functions, they are respectful of and protect the basic human rights of all persons, without discrimination by reason of race, color, language, national or ethnic origin, or any other social condition.

8. Investigate the facts of this case, determine who is responsible for the violations proven and establish the necessary sanctions.

9. Establish effective judicial remedies for cases of human rights violations committed in expulsion or deportation proceedings and procedures.

The Commission also notes that this case involves issues of Inter-American public interest. In particular, this case represents an opportunity for the Court to resume its jurisprudence regarding the right to citizenship and its relationship with the right to juridical personality, as well as to develop case law regarding prohibitions on the expulsion of nationals, as expressly established in the American Convention.

In addition, the Commission notes that this case will allow the Court to establish human rights standards in the area of migration policies and, in particular, the parameters that should be respected by repatriation policies, in the light of respect for the rights to equality and non-discrimination, legal status, nationality, the principle of legality, due process, access to justice, protection of the family, the right of residence and movement, and the right to property. In addition, the Court will be able to analyze the differentiated approach that should be adopted when children are involved, by applying for the first time, as relevant, the standards adopted in the Advisory Opinion on Migrant Children.

The Commission also notes that the Court will be able to address the legal issues at the core of this case, in the context of a situation of structural discrimination regarding a specific population within the territory of a State, taking into consideration that the procedure in effect at the time of the events were not applied to the victims in this case, but rather that these were *de facto* expulsions without any legal support or subsequent administrative or judicial review, based on racial prejudices.

Likewise, given that these issues have a significant impact on inter-American public interest, the Commission would ask the Inter-American Court to incorporate the testimony given by the experts Samuel Martínez and Carol Batchelor in the case of *Yean and Bosico vs. Dominican Republic*, and Gabriela Rodríguez Pizzaro in the case of *Vélez Loor vs. Panamá*. In addition, taking into account that the organs of the Inter-American human rights system have been monitoring the issues of this case for more than a decade, the Commission would also like to offer the following expert's statements:

1. Carlos Quesada, who will refer to racial, structural, and institutional discrimination regarding a specific group in the territory of a State and the response of State and judicial authorities to situations like those in the instant case.

2. Pablo Ceriani, who will refer to the parameters that should be respected in migration policies and, in particular, the linkage of repatriation proceedings to the guarantee and protection of human rights, adopting a differentiated approach taking gender and the specific needs of children into account. In addition, the expert will present a comparative view of the regulation of repatriation procedures, illustrating good practices and the challenges to their effective implementation.

3. The third expert testimony will refer to international standards in the area of regulating the right to citizenship and their compatibility with international human rights law and will develop the content of the prohibition on the expulsion of nationals, in accordance with international law.

The curricula vitae of the expert proposed by the Inter-American Commission will be included in the annexes to merits report 64/12.

Finally, the name of the organizations that acted as petitioners in the case before the Commission and its particulars are as follows:

Centro por la Justicia y el Derecho Internacional (CEJIL)

[REDACTED]

Grupo de Apoyo a los Repatriados y los Refugiados

Movimiento de Mujeres Dominicano
Haitianas

Clínica de Derechos Humanos de la
Facultad de Derecho de la Universidad
de Columbia en Nueva York

Please accept renewed assurances of my highest regards.

Original signed

Elizabeth Abi-Mershed
Deputy Executive Secretary