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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Dilcia Oliven Yean and Violeta Bosico Cofi v. Dominican Republic
Doc. Type:	Judgement (Preliminary Objections, Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Manuel E. Ventura Robles
Dated:	8 September 2005
Citation:	Yean v. Dominican Republic, Judgement (IACtHR, 8 Sep. 2005)
Represented by:	APPLICANTS: MUDHA, CEJIL and the International Human Rights Law Clinic
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In the case of the Yean and Bosico children,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 29, 31, 37(6), 56 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment.

I. INTRODUCTION OF THE CASE

1. On July 11, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Court an application against the Dominican Republic (hereinafter “the Dominican Republic” or “the State”), originating from petition No. 12,189, received by the Secretariat of the Commission on October 28, 1998.

2. The Commission submitted the application based on Article 61 of the American Convention, for the Court to declare the international responsibility of the Dominican Republic for the alleged violation of Articles 3 (Right to Juridical Personality), 8 (Right to a Fair Trial), 19 (Rights of the Child), 20 (Right to Nationality), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the children Dilcia Oliven Yean and Violeta Bosico Cofi [FN1] (hereinafter “the children Dilcia Yean and Violeta Bosico”, “the Yean and Bosico children”, “the children Dilcia and Violeta”, “the children” or “the alleged victims”), with regard to the facts that have occurred and the rights that have been violated since March 25, 1999, the date on which the Dominican Republic accepted the contentious jurisdiction of the Court.

[FN1] On March 25, 1999, the date on which the State accepted the Court's contentious jurisdiction, Dilcia Yean was 2 years old and Violeta Bosico was 14 years old.

3. In its application, the Commission alleged that the State, through its Registry Office authorities, had refused to issue birth certificates for the Yean and Bosico children, even though they were born within the State's territory and that the Constitution of the Dominican Republic (hereinafter "the Constitution") establishes the principle of *ius soli* to determine those who have a right to Dominican citizenship. The Commission indicated that the State obliged the alleged victims to endure a situation of continued illegality and social vulnerability, violations that are even more serious in the case of children, since the Dominican Republic denied the Yean and Bosico children their right to Dominican nationality and let them remain stateless persons until September 25, 2001. According to the Commission, the child Violeta Bosico was unable to attend school for one year owing to the lack of an identity document. The Commission also alleges that the absence of a mechanism or procedure for an individual to appeal a decision of the Registry Office before a judge of first instance, and also the discriminatory acts of the Registry Office officials, who did not allow the alleged victims to obtain their birth certificate, violate specific rights embodied in the Convention. The Commission requested the Court to order the State to grant reparations that make full amends for the alleged violations of the children's rights. It also requested that the State adopt the legislative and other measures necessary to ensure respect for the rights embodied in the Convention and establish guidelines that contain reasonable requirements for the late registration of births and do not impose excessive or discriminatory obligations, so as to facilitate the registration of Dominican-Haitian children. Lastly, the Commission requested the Court to order the State to pay the reasonable costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the Inter-American System.

II. COMPETENCE

4. The Court has jurisdiction to hear the preliminary objections and possible merits, reparations and costs in this case, in the terms of Articles 62 and 63(1) of the Convention, because the Dominican Republic has been a State Party to the American Convention since April 19, 1978, and accepted the contentious jurisdiction of the Court on March 25, 1999 (*infra paras.* 100 to 108 and 132).

III. PROCEEDING BEFORE THE COMMISSION

5. On October 28, 1998, the Yean and Bosico children, through Genaro Rincón Miesse [FN2] and Solain Pierre, [FN3] General Coordinator of the *Movimiento de Mujeres Dominicano-Haitianas* [Movement of Dominican-Haitian Women] (hereinafter "MUDHA"), submitted a petition to the Inter-American Commission based on the "denial to [the Yean and Bosico children] of their birth certificates, which [would] allow them to have a nationality and a name; [this refusal ...] curtailed their right to an education, because, among other matters, without a birth certificate it is not possible to attend school in the [Dominican] Republic."

[FN2] This Court notes that, according to his passport, Genaro appears with the last names “Rincón Miesse”; however, in various documents submitted by the parties, he appears with the last names “Rincón Martínez”; the Court therefore considers it is the same person. For the effects of this judgment, the name “Genaro Rincón Miesse” will be used, as it appears in his passport.

[FN3] This Court notes that, according to her birth certification, Solain appears with the last name “Pie”; however, in various documents submitted by the parties, she appears with the last name “Pierre”; the Court therefore considers it is the same persons. For the effects of this judgment, the name “Solain Pierre” will be used, as she is usually known.

6. On April 27, 1999, the Commission received an amended petition in English and a request for precautionary measures, submitted by Genaro Rincón Miesse, representative of MUDHA, María Claudia Pulido, representative of the Center for Justice and International Law (hereinafter “CEJIL”), and by Laurel Fletcher and Roxana Altholz, representatives of the International Human Rights Law Clinic, Boalt Hall School of Law, University of California, Berkeley (hereinafter “International Human Rights Law Clinic”), as representatives of the petitioners. On June 11, 1999, the final version of the petition in Spanish was submitted to the Inter-American Commission. In it, the petitioners’ representatives alleged the violation of Articles 3, 17, 18, 19, 20, 21, 22, 23 and 24 of the American Convention, and also Articles VI, VII, VIII, XII, XVII, XIX, XX and XXIII of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”), because “refusing to register [the children] based [on] their legal status and the origin of their parents constitute[d] a violation of [their] rights [...and] endangered their immediate and long-term personal safety and wellbeing.”

7. On July 7, 1999, the Commission opened the case, forwarded the pertinent parts of the petition to the State, requested it to provide information concerning the facts and, in accordance with its Rules of Procedure in force at the time, asked the State to provide “any information that [would] enable [the Court ...] to assess whether the remedies under domestic law ha[d] been exhausted.”

8. On August 27, 1999, the Commission requested the Dominican Republic to adopt precautionary measures in favor of the children Dilcia Yean and Violeta Bosico, in order “to grant [the children] forthwith the necessary guarantees to avoid them being expelled from Dominican territory and so that Violeta Bosica (sic) m[ight] continue attending school regularly, and receiving the education offered to all other Dominican children.”

9. On August 30, 1999, the State requested the Inter-American Commission to provide it with information on “the reasons that [had] led it to request precautionary measures at this time and not previously or subsequently,” and also about any new facts that justified this request. On September 2, 1999, the Commission informed the State that the request for precautionary measures referred to a situation that “me[t] the requirements of truth and urgency, and the need to prevent irreparable harm to persons.”

10. On September 30, 1999, having been granted an extension, the State informed the Commission that “the Central Electoral Board, the organ to which the Registry Office and the officials of the civil status department are attached, ha[d] report[ed] that it had not been asked to examine the case in question, so that [...] domestic remedies ha[d] not been exhausted in the case,” and attached copies of an official letter dated September 2, 1999, addressed to the Head of the International Studies Division by the President of the Central Electoral Board, a letter dated September 20, 1999, addressed to the Inspectorate of the Central Electoral Board by Thelma Bienvenida Reyes, Civil Status Registrar, and a list of eleven requirements for late declaration of birth issued by the Central Electoral Board.

11. On September 30, 1999, also, and in relation to the adoption of precautionary measures, the State advised that “the Dominican Republic [would] never repatriate a Haitian citizen who was in the country legally, with a legal residence permit, a work permit, [or] a valid Dominican visa[,] or according to any of the conditions that have been established for accepting illegal immigrants, [such as] individuals who have been in the country for a long time, or who are related to Dominican nationals,” and that “the Directorate General of Migration [had] reiterated the provisions it had established for repatriation procedures to the corresponding departments, emphasizing [...] that the [Yean and Bosico children] should not be repatriated while the procedure of verifying the legitimacy of their arguments was underway.”

12. On October 5, 1999, the Inter-American Commission held a hearing on the precautionary measures ordered in this case, during which the petitioners’ representatives alleged that “the actions of the [State] ha[d] left the children Dilcia and Violeta without a nationality and ha[d] exposed them to the risk of immediate and arbitrary expulsion from the country in which they were born.” The State indicated that “it had never violated the law or refused to register their births[, rather] the procedure established [by law] had not been complied with;” it added that “it doubted that domestic remedies had been exhausted.”

13. On November 1, 1999, the Commission advised that “it place[d] itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.”

14. On December 1, 1999, the State advised the Commission that it was willing to accept the friendly settlement mechanism and put on record that “domestic remedies ha[d] not yet been exhausted.”

15. On December 2, 1999, the petitioners’ representatives alleged that “they ha[d] exhausted domestic remedies [and] ha[d] complied with the provisions of Dominican law to appeal the denied registration [..., because the children had] appealed the decision before the Public Prosecutor[, who had] rejected the appeal.” The petitioners’ representatives also alleged that the Central Electoral Board “ha[d] already considered [the registration request] and decided against the [children] and, consequently, Dilcia and Violeta ha[d] exhausted the questionable ‘appeal procedure’ before the [Central Electoral Board].”

16. On January 11, 2000, the petitioners’ representatives advised that they were willing to take part in the friendly settlement procedure proposed by the Commission.

17. On March 1, 2000, the petitioners' representatives submitted a proposal for a friendly settlement to the Commission, requesting specific measures of satisfaction, such as: registration of the children's births; modification of the requirements for late declaration of birth to ensure the rights of Dominican children with Haitian parents; establishment of an internal complaint mechanism to settle disputes, and the guarantee of the right to education, without any distinction based on nationality. Furthermore, with regard to compensation, they requested non-pecuniary damages for the children and their next of kin, and consequential damages for the children's next of kin.

18. On March 6, 2000, during its one hundred and sixth regular session, the Commission held a hearing on a possible friendly settlement in this case. On that occasion, the petitioners' representatives reiterated the requests submitted in their proposed friendly settlement and, at the end of the hearing, they asked the Commission to terminate the friendly settlement procedure. For its part, the State indicated that the case of the Yean and Bosico children was not an isolated case and that domestic remedies had not been exhausted. The State also advised that the registration procedure requirements established by Act No. 659 of July 17, 1944, on Civil Status Acts (hereinafter "Act No. 659") are of a general nature and are not discriminatory, because it is a national law; accordingly, accepting the children's request would entail violating domestic law.

19. On March 6, 2000, the State submitted a brief on the arguments presented during the hearing before the Commission and indicated that: (a) "the [State] finds it unacceptable that the [children] are attempting to obtain a birth certificate illegally [...]; a late declaration made without respecting the provisions of [Act No. 659] would be absolutely void;" (b) "the requirements of [the Central Electoral] Board are obligatory for all those on Dominican territory [and] the Public Prosecutor's refusal to accept the [late] declaration [...] was based [...] on the fact that the obligatory legal requirements had not been fulfilled;" and (c) "the procedure exhausted by the [children] concluded with the ruling of the Public Prosecutor of the District of Monte Plata." In this regard, article 41 of Act No. 659 establishes that "[t]he Civil Status Registrar who has received a late declaration of birth shall immediately forward a certified copy of the record to the Public Prosecutor of the corresponding judicial district, who [...] shall authorize the court of first instance [to consider the matter, and that court shall] make a ruling ratifying or not the record of the late declaration. [...] It is therefore evident that domestic remedies have not been exhausted in the instant case."

20. On May 2, 2000, the petitioners' representatives indicated that "they ha[d] exhausted the pertinent domestic remedies [and that] they [did] not have to exhaust any other remedy before the Central Electoral Board or any other Dominican institution, because such remedies were neither appropriate nor effective." In this regard, they repeated that "there was no recognized procedure for making an appeal before the Central Electoral Board," and they mentioned that article 6 of Electoral Act No. 275-97 of December 21, 1997, stipulated that the decisions of the Central Electoral Board may not be appealed. This is confirmed in the case law of the Supreme Court of Justice of the Dominican Republic (hereinafter "Supreme Court of Justice"), so there was no possibility of a judicial review of the decisions of the Central Electoral Board. Regarding compliance with article 41 of Act No. 659, they stated that, on the one hand, the remedy addressed to the Public Prosecutor was an appropriate response to the refusal of the Civil Status Registrar to issue the birth certificates and, on the other hand, "there is no legal provision

establishing the obligation or the possibility” of appealing before the court of first instance, because the Public Prosecutor is responsible for transmitting late declarations to that court and “there is no provision that authorizes the [children] to do this themselves.”

21. On June 19, 2000, the State indicated that the “authorization [...] of the Public Prosecutor [was] a procedural error, because the correct procedure is the one established in article 41 of [Act No.] 659” and that, if the representatives reject the Central Electoral Board’s authority to examine the matter, “they [should] resort to the ordinary courts.”

22. On February 22, 2001, during its one hundred and tenth regular session, the Commission adopted Report No. 28/01, in which it declared that the case was admissible and decided to proceed to consider the merits. In this regard, the Commission stated that:

The petitioners do not have the legal standing to file judicial proceedings, since they must ask the Public Prosecutor to do this, according to article 41 of Act 659. Also, the arguments that appear in the file show that the Public Prosecutor did not authorize the judge of first instance to initiate the investigation in order to grant the late declaration of birth of the Yean and Bosico children, as established in the said article 41 of Act [No.] 659.

[...] In this case, the State has not specified in detail the appropriate and effective remedies that the petitioners should have exhausted.

[...] The State has not provided evidence that the administrative decisions of the Public Prosecutor or the Central Electoral Board may be modified by an appropriate remedy; and the State did not contradict the arguments of the petitioners with regard to the absence of mechanisms that would allow the petitioners to appear directly.

[...] The Commission considered that the petitioners had exhausted the remedies expressly established in the domestic laws in force and as established in article 46(1) of the American Convention. Also, there are no appropriate remedies in the domestic jurisdiction that should be exhausted before having recourse to the international instance, so that, in the instant case, the exception of exhaustion of domestic remedies established in Article 46(2)(a) applies.

23. On April 17, 2001, the representatives indicated that they were not interested in being a party to a friendly settlement in this case and wanted a hearing to be held in order to discuss the merits of the matter.

24. On August 24, 2001, the Commission held a meeting in the Dominican Republic attended by the representatives and the State, in order to reach a friendly settlement. On August 27, 2001, the Commission convened a hearing on the merits of the case.

25. On October 1, 2001, the State informed the Commission that “accepting the friendly settlement proposed by the Commission, it ha[d] decided to grant birth certificates to the children,” and attached copies of the records of the birth certificates in the names of the children Dilcia Yean and Violeta Bosico; both records were issued on September 25, 2001.

26. On October 17, 2001, the representatives informed the Commission that, even though the granting of the children’s birth certificates by the State was an important step forward, they

considered that this action did not constitute a friendly settlement in this case, because, during the hearing of March 6, 2000, the State had not considered any of the points they had proposed.

27. On November 15, 2001, during its one hundred and thirteenth regular session, the Commission held a hearing on the merits of the case. The State indicated that the Dominican Republic did not have a policy of discrimination based on race or ethnic origin and repeated that “domestic remedies ha[d] not been exhausted” in this case. The State also manifested that “it ha[d] complied with the petitioners’ request to grant Dilcia and Violeta their birth certificates;” consequently, the situation that gave rise to the petition to the Commission no longer existed. During the hearing, the petitioners’ representatives stated that the harm caused to the children as a result of the discriminatory registration procedure, as well as the fact that they had lived as stateless persons for more than four years, was not remedied by the granting of the birth certificates by the State and that this action did not represent a friendly settlement, because their proposal included the adoption of other measures, such as public acknowledgement of the violations, compensating the children for the harm caused by their situation as stateless persons, and the adoption of measures to ensure non-repetition.

28. On January 31, 2002, having been granted an extension, the State submitted a brief in which it indicated that “in the interests of reaching a friendly settlement in the case and satisfying the petitioners’ basic demand, it had granted the requested birth certificates to the Yean and Bosico children] [...] even though the petitioners [...] had not concluded the proceeding before the Public Prosecutor [...] or had recourse to a court of first instance or the Central Electoral Board.” In this regard, the State indicated that “[t]here was no provision in Dominican laws that prevented access to these bodies [, and that] what the law does not prohibit is permitted.”

29. On March 6, 2003, during its one hundred and seventeenth regular session, the Commission adopted Report No. 30/03 on the merits of the case and recommended that the State should:

- a) Establish guidelines that contain reasonable requirements and do not impose excessive or discriminatory obligations in order to facilitate the registration of Dominican-Haitian children with the Registry Office officials.
- b) Establish a procedure that allows the requirements established in paragraph (a) to be applied in the case of late declarations of the birth of those born on Dominican territory.
- c) Create a legal mechanism that, in case of dispute, allows individuals to file their reports directly before the judicial instance, so that their complaints can be reviewed by an independent and impartial judicial organ.
- d) This mechanism should provide a simple, prompt and inexpensive recourse for individuals without a birth certificate.
- e) Adopt the necessary measures to ensure that the children Dilcia Yean and Violeta Bosico, and also their mothers, Leonidas Yean and Tiramén Bosico Cofi, receive adequate and timely reparation and public acknowledgement of the violations of their human rights contained in Articles 1, 2, 3, 8, 19, 20, 24 and 25 of the American Convention on Human Rights and [in] Article XII of the American Declaration of the Rights and Duties of Man. When making this recommendation, the Commission recognize[d] that the State had made an effort to remedy the situation; however, some measures remained pending.

f) Adopt the necessary measures to prevent such facts being repeated in future.

30. On March 11, 2003, the Commission forwarded this report to the State and granted it two months from the date the communication was transmitted to provide information on the measures adopted to comply with the recommendations. The same day, the Commission informed the petitioners' representatives that it had issued Report No. 30/03 on the merits of the case, and asked them to advise it, within one month, of their position with regard to the pertinence of the case being submitted to the Inter-American Court.

31. On April 21, 2003, having been granted a fifteen-day extension, the petitioners' representatives requested the Commission to submit the case to the Court.

32. On June 5 and July 3, 2003, having been granted an extension, the State submitted its brief on the measures adopted to comply with the recommendations made in Report No. 30/03 on the merits of the case. The State indicated that "it had not failed to meet the obligation that the children should have a nationality, because, if they had not been granted Dominican nationality, they would be Haitian." It stated that the petitioners "had not filed [...] their petition before the competent court *ratione materiae*, that [...] this was the court of first instance [...], which could have heard an 'action to claim civil status' and which also hears matters relating to nationality [...]." The State also indicated that the children had not had recourse "to the Central Electoral Board, which is the supreme body responsible for the Civil Status Registrars." The State alleged that "it had not violated the rights contained in Articles 1, 2, 3, 8, 19, 20, 24 and 25 of the American Convention [... or] the right to education embodied in Article XII of the American Declaration [...]." Lastly, with regard to the current requirements for making a late declaration, it advised that "the passport c[ould] be an identity document," and attached the draft law modifying Act No. 659, and facilitating the Registry Office procedure.

IV. PROCEEDING BEFORE THE COURT

33. On July 11, 2003, the Commission submitted the application to the Court.

34. The Commission appointed Susana Villarán and Santiago Cantón as its delegates and Bertha Santhoscoy and Ariel Dulitzky as its legal advisers. [FN4] It also indicated the names of the original petitioners: Viviana Krsticevic and Roxanna Altholz, representing CEJIL, and Laurel Fletcher, representing the International Human Rights Law Clinic.

[FN4] While this case was being processed, the Commission made changes in those it had designated to represent them before the Court.

35. On August 12, 2003, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, with its attachments, and informed the State of the time limits for answering it and appointing its representatives in the proceeding. On the President's instructions, the Secretariat also advised the State of its right to designate a judge ad hoc.

36. On August 11, 2003, as established in Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat notified the application to MUDHA, CEJIL and the International Human Rights Law Clinic, as representatives of the alleged victims and their next of kin [FN5] (hereinafter “the representatives”), and informed them of the time limit for submitting their brief with requests, arguments and evidence (hereinafter “brief with requests and arguments”).

[FN5] While this case was being processed, the representatives made changes in those it had designated to represent them before the Court.

37. On September 3, 2003, the State appointed Ambassador Rhadys Abreu de Polanco Judge ad hoc and indicated that “[her] functions are not incompatible with her designation as judge ad hoc.” The State also designated José Marcos Iglesias Iñigo, Minister Councilor, as Agent, and Anabella de Castro, Minister Councilor, Responsible for Human Rights, as Deputy Agent. [FN6]

[FN6] While this case was being processed, the State made changes in those it had designated to represent them before the Court.

38. On October 13, 2003, having been granted an extension, the representatives submitted their brief with requests and arguments. The representatives alleged that, in addition to the rights indicated by the Inter-American Commission in the application, the State had allegedly violated the rights embodied in Articles 17 (Rights of the Family), 18 (Right to a Name) and 26 (Progressive Development) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof. They also requested the Court to order the State to adopt specific measures of reparation and reimburse costs and expenses. Subsequently, in their final written arguments submitted on April 14, 2005, the representatives indicated that the State had violated Articles 5 (Right to Humane Treatment) and 12 (Freedom of Conscience and Religion) of the American Convention (infra para. 49).

39. On November 13, 2003, the State submitted its brief filing preliminary objections, answering the application and with observations on the brief with requests and arguments (hereinafter “brief answering the application”), in which it filed two preliminary objections, which it called “[...] failure to exhaust the State’s domestic remedies [...]” and “[n]on-compliance [with the] friendly settlement [proposal] submitted by the Commission and accepted by the State [...]” Subsequently, during the public hearing, the State alleged the preliminary objection of lack of competence *ratione temporis*.

40. On November 19, 2003, the representatives presented an “objection to the State’s designation of Ambassador Rhadys I. Abreu de Polanco, as Judge ad hoc of the Court,” and indicated that there was a situation of incompatibility and conflict of interests. On December 19, 2003, Rhadys I. Abreu de Polanco presented a note in which she rejected the objection to her designation as judge ad hoc. On December 19, 2003, the Commission forwarded its comments

on the brief on the objection of the Judge ad hoc and requested the Court “to proceed to decide on the incompatibility and impediment” of Mrs. Abreu de Polanco to exercise the position of judge ad hoc.

41. On May 4, 2004, the Court issued an Order in which it decided that “the participation of Rhadys Iris Abreu de Polanco in the proceeding before the Inter-American Commission with regard to this case resulted in an impediment to her exercising the functions of Judge ad hoc.” It therefore invited the State to designate another judge ad hoc within 30 days; the Dominican Republic did not do so.

42. On January 21, 2004, having been granted an extension, the Commission and the representatives submitted their respective briefs with arguments on the preliminary objections filed by the Dominican Republic, in which they requested the Court to reject them and to continue processing the merits stage of the case.

43. On January 10, 2005, the State appointed Ambassador Rhadys I. Abreu de Polanco as Deputy Agent for the case.

44. On January 31, 2005, the President issued an Order in which, pursuant to Article 47(3) of the Rules of Procedure, he called upon the children Dilcia Yean and Violeta Bosico, and also Tiramen Bosico Cofi, Teresa Tucent Mena (infra note 45), Leonidas Oliven Yean and Samuel Martínez, proposed by the Commission and the representatives, the first five persons as witnesses and the sixth person as an expert witness, to make their statements and report in the form of an affidavit (a statement before a notary public). He also granted the State a non-extendible period of seven days after receipt of the affidavits to present any comments it deemed pertinent. Furthermore, the President convened the Commission, the representatives and the State to a public hearing to be held at the seat of the Court starting on March 14, 2005, to hear their arguments on preliminary objections and possible merits, reparations and costs, and to hear the testimony of Genaro Rincón Miesse, Amada Rodríguez Guante and Thelma Bienvenida Reyes, and the expert reports of Frederick John Packer and Débora E. Soler Munczek, offered by the Commission, the representatives and the State, as applicable. He also informed the parties that they had until April 14, 2005, to submit their final written arguments.

45. On February 15, 2005, the representatives presented the authenticated statements made by the six persons mentioned in the preceding paragraph.

46. On February 23, 2005, the State observed, with regard to the statements presented and the representatives, that “there [were] contradictions between the facts stated and the evidence before [the Court],” and that the State “reserved the right to specify these during the public hearing to be held on March 14 and 15[, 2005. It also indicated...] that the absence of [the alleged victims] would alter the procedural equilibrium and denaturalize the adversarial nature of the public hearing.”

47. On March 14 and 15, 2005, during the public hearing, the Court received the statements of the witnesses and the expert reports of the expert witnesses proposed by the parties, and heard the arguments of the Commission, the representatives and the State on preliminary objections

and possible merits, reparations and costs. There appeared before the Court: (a) for the Inter-American Commission: Ariel Dulitzky, Juan Pablo Albán and Lilly Ching, legal advisers; (b) for the representatives: Laurel Fletcher, of the International Human Rights Law Clinic, Solain Pierre and Moisés Medina Moreta, of MUDHA, and Viviana Krsticevic, Roxanna Althoz and Alejandra Nuño, of CEJIL, and (c) for the State: José Marcos Iglesias Iñigo, Agent, Rhadys I. Abreu de Polanco, Deputy Agent, Julio César Castaños Guzmán and Adonai Medina, advisers, and Rafael González, assistant. The following appeared as witnesses: Genaro Rincón Miesse, proposed by the Commission and the representatives, and Amada Rodríguez Guante and Thelma Bienvenida Reyes, proposed by the State; and as expert witnesses: Débora E. Soler Munczek and Frederick John Packer, proposed by the Commission and the representatives.

48. On March 14, 2005, the representatives submitted some documents they indicated were supervening evidence, in accordance with Article 43(3) (sic) of the Rules of Procedure.

49. On April 14, 2005, the representatives presented their final arguments in English, together with the respective attachments and, on April 28, 2005, they forwarded the respective translation into Spanish. On April 14, 2005, the State remitted its final written arguments and the attachments. On April 15, 2005, the Commission forwarded its final written arguments.

50. On August 3, 2005, on the instructions of the President and in accordance with Article 45(1) of the Rules of Procedure, the Secretariat requested the Commission, the representatives, and the State to forward the following documents it considered would be helpful: Resolution No. 5-88 of the Central Electoral Board of June 8, 1988; Act No. 8-92 of April 13, 1992, [and a copy of] the documents provided by Genaro Rincón and Marcelino de la Cruz as attachments to the document: ‘declaration requesting authorization for late declaration’ submitted to the ‘Judge of the Court of First Instance of the Judicial District of Monte Plata’ on September 11, 1997.”

51. On August 16, 17 and 26, 2005, respectively, the State, the representatives, and the Commission presented some of the documents requested by the Secretariat as helpful evidence.

52. On September 5, 2005, the State submitted a brief with observations (and some attachments), on the documents forwarded and the representatives on August 17, 2005, “to help the Court decide.”

53. On January 31, February 15 and 25, March 2, 14 and 25, April 1, 13 and 14, and June 3, 2005, the Court received amici curiae from the following persons, organizations and institutions:

- a) Centre on Housing Rights and Evictions (COHRE);
- b) Asociación Civil de Centros Comunitarios de Aprendizaje (CECODAP);
- c) Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM);
- d) Minority Rights Group International (MRG);
- e) Katarina Tomasevski;

- f) Secretaría Ampliada de la Red de Encuentro Dominicano Haitiano Jacques Viau (RED), consisting of the Centro Cultural Dominicano Haitiano (CCDH), the Movimiento Sociocultural de los Trabajadores Haitianos (MOSCTHA), the Servicio Jesuita a Refugiados y Migrantes (SRJM-RD), the Centro Dominicano de Investigaciones Legales (CEDAIL) and the Asociación Pro-Desarrollo de la Mujer y el Medio Ambiente, Inc. (APRODEMA);
- g) Comparative International Education Society (CIES);
- h) Themis Foundation, in collaboration with the University of Ottawa School of Law;
- i) Open Society Justice Initiative, and
- j) Centro de Estudios Legales y Sociales (CELS), Servicio de Apoyo y Orientación a Inmigrantes y Refugiados (CAREF), Clínica Jurídica para los Derechos de Inmigrantes y Refugiados (Law School of the Universidad de Buenos Aires, CELS and CAREF) and Christian Curtis, Professor of the Universidad de Buenos Aires and the Instituto Tecnológico Autónomo de México.

54. On April 4 and 15 and on June 7, 2005, the Secretariat forwarded copies of these amici curiae to the Commission, the representatives, the State, and the persons, organizations and institutions.

V. PRELIMINARY OBJECTIONS

55. The State filed the following preliminary objections: “[...] failure to exhaust the State’s domestic remedies [...]” and “[n]on-compliance with the friendly settlement [proposal] presented by the Commission and accepted by the State [...]” in its brief answering the application. Subsequently, during the public hearing held at the seat of the Court on March 14 and 15, 2005, the State alleged the preliminary objection of the Court’s “[l]ack of competence *ratione temporis*.”

FIRST PRELIMINARY OBJECTION

Failure to exhaust the State’s domestic remedies

Arguments of the State

56. The State argued that:

- a) This preliminary objection was duly filed before the Inter-American Commission during the first stages of the proceeding as evidenced by, among other elements, “documents and communications prepared by the State[, such as] the note dated September 28 1999 [submitted to the Commission on September 30, 1999; the [record of the hearing [held on] October 5, 1999, [...] at the seat of the [Commission, and the] note of November 22, 1999 [submitted to the Commission on December 1, 1999].” Even though this objection was rejected by the Commission, the Court is competent to hear it;
- b) The most appropriate domestic remedy in this case is the hierarchic recourse that exists in administrative law, established in article 1 of Act No. 1494 of August 2, 1947. This remedy

should be filed before the superior administrative instance to the one that committed the alleged violation, in this case the Central Electoral Board. The alleged victims did not make use of this remedy;

- c) The Public Prosecutor's intervention is part of the late declaration procedure and is not an instance before which a remedy should be filed. "When a procedure is carried out before a civil status registrar, the latter (not the parties) forwards the file to the Public Prosecutor so that the latter may issue his opinion and the court of first instance decides whether or not to ratify the late declaration." The action filed by the representatives before the Public Prosecutor of the Judicial District of the Province of Monte Plata on September 11, 1997, does not constitute filing a hierarchic recourse. In these procedures, this step is only deemed to be a consultation, so that the Public Prosecutor may make a recommendation to the court of first instance designated to hear the late declaration proceeding;"
- d) The alleged victims did not exhaust the remedy of review before the Civil Status Registrar, nor did they file the matter directly with the court of first instance with jurisdiction to hear all matters concerning human rights;
- e) The alleged victims did not file an application for amparo [an action for the protection of constitutional rights] although this has existed in the Dominican Republic since 1978, when the State ratified the American Convention. In 1999, the "Supreme Court of Justice established in a judgment that the procedure for applications for amparo was the same as the procedure for civil matters;" however, prior to this ruling, several courts had already heard amparo actions;
- f) The alleged victims did not file an action for unconstitutionality against the norm that denied them access to recognition of their nationality, and
- g) The Court should declare that it lacked jurisdiction to hear this case, because the State has appropriate mechanisms and opportunities for settling this dispute.

Arguments of the Commission

57. The Inter-American Commission stated that:

- a) Articles 46 and 47 of the American Convention stipulate that it is the Commission, as one of the principal organs of the system, that determines whether a petition is admissible;
- b) The arguments presented by the State concerning the failure to exhaust domestic remedies are time-barred and unfounded; they seek to return the proceeding to the stage prior to the admissibility of the petition, which is precluded, because the Commission, with strict respect for the adversary principle, has considered the arguments of both parties together with the information and documentation in the file, and has decided to declare the case admissible on the grounds set out in the admissibility report;
- c) The State's "new" position concerning non-exhaustion of domestic remedies, in which it indicated that the hierarchic recourses of amparo and unconstitutionality, which were not mentioned during the admissibility stage before the Commission, are the "existing" remedies, continues to be without merit, because it is time-barred. The State has not proved that such remedies are effective, and has merely mentioned their existence;
- d) With regard to the hierarchic recourse before the Central Electoral Board, which is of an administrative nature, Dominican legislation does not provide for the possibility of those whose request for a late registration of birth has been rejected being able to file a remedy of appeal or an appeal for revision before the Central Electoral Board. Since [the petitioners] had been unable

to comply with the basic requirements for obtaining a late registration of birth, and bearing in mind that the Central Electoral Board does not consider requests for registration that are submitted without the required documentation attached, a possible appeal before this body would not have been effective;

e) When the facts of the case occurred, the laws contained no provision allowing an individual to appeal the decision of the Public Prosecutor before a court of first instance. According to Act No. 659, the Public Prosecutor is the person responsible for submitting late declarations to the court of first instance and, in this case, he did not do so. The request for late registration was rejected by the Public Prosecutor on July 20, 1998, and this closed the way to the possibility of resolving the problem, since the alleged victims were not entitled to bring a legal action in order to reverse the administrative authority's decision;

f) At the time of the facts, Dominican law had not established a remedy of amparo. On February 24, 1999, almost two years after the registration of the alleged victims was rejected, the Supreme Court of Justice created the remedy of amparo, through its case law; this recourse can be filed within 15 days of the alleged harmful act. It is not possible to require the exhaustion of a remedy that was not expressly established by law;

g) The remedy of unconstitutionality is of an extraordinary nature and, in general, only remedies that are appropriate to protect the juridical situation that has been violated must be exhausted. The validity of this remedy against administrative acts was decided by the Supreme Court of Justice on August 8, 1998;

h) During the public hearing before the Court in this case, the State invoked the non-exhaustion of the remedy of an appeal for review before the Civil Status Registrar, and the direct remedy based on "full jurisdiction" before a court of first instance. However, based on the estoppel principle, the State was barred from alleging these remedies for the first time at that hearing; and

i) The discussion concerning whether "there are effective and appropriate remedies that the parties have not filed at the domestic level," raised by the State as a preliminary objection, is an element of the central dispute submitted to the Court, so that "resolving this question does not correspond to the characteristics of a preliminary objection."

Arguments of the representatives

58. The representatives argued that:

a) According to Articles 46 and 47 of the American Convention, the Commission is empowered to determine the admissibility of a petition and decide on the exhaustion of domestic remedies. Once the Commission has taken a decision on the admissibility of a case, having examined the arguments of the parties, this decision is of a "final" and "indivisible" nature;

b) The Dominican Republic did not argue the failure to exhaust domestic remedies during the initial stages of the proceeding before the Commission. In this regard, it should be noted that the State provided several responses during the admissibility stage before the Commission, such as those of September 30, 1999; November 22, 1999, submitted to the Commission on December 1, 1999, and June 7, 2000, submitted to the Commission on June 19, 2000, in which it maintained that domestic remedies had not been exhausted and that the children should resort to the Central Electoral Board and to the ordinary courts; it never mentioned the remedy of amparo or the remedy of unconstitutionality;

- c) The hierarchic recourses established in Dominican administrative law were neither appropriate nor effective, and were not alleged at the appropriate time;
- d) The Central Electoral Board is the administrative authority responsible for recording registrations; an informal appeal before this body does not constitute an effective remedy, since this is a discretionary procedure. The Central Electoral Board is an autonomous body that makes decisions against which there is no appeal, that does not have any formal procedures and that has not published regulations or established procedures that petitioners may use to request a review of an adverse decision of the Civil Status Registrars. Furthermore, the law does not grant the Central Electoral Board authority to consider individual cases decided by the Civil Status Registrars. The only remedy established by the laws in force when the facts occurred for appealing the rejection of a registration request was the appeal before the Public Prosecutor;
- e) In the Dominican Republic, the remedy of amparo is not regulated in any specific law. It is part of positive law based on the judgment of the Supreme Court of Justice of February 24, 1999. The State has not proved that this remedy is effective, and
- f) The State has not proved that the remedy of unconstitutionality is effective, since enabling regulations for its implementation have not been issued.

Considerations of the Court

59. The American Convention establishes that the Court has full jurisdiction over matters relating to the cases submitted to it, including the rules of procedure on which its capacity to exercise its jurisdiction are based. [FN7]

[FN7] Cf. Case of The Serrano Cruz Sisters. Preliminary objections. Judgment of November 23, 2004. Series C No. 118, para. 133; Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 47, and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 65.

60. Article 46(1)(a) of the Convention establishes that, to determine the admissibility of a petition or communication lodged before the Inter-American Commission in accordance with Articles 44 or 45 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. [FN8] This means that these remedies must not only exist formally, but also that they must be appropriate and effective, as a result of the objections established in Article 46(2) of the Convention. [FN9]

[FN8] Cf. Case of the Moiwana community. Judgment of June 15, 2005. Series C No. 124, para. 48; Case of Tibi, supra note 7, para. 48, and Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 80.

[FN9] Cf. Case of the Serrano Cruz Sisters. Preliminary objections, supra note 7, para. 134; Case of Tibi, supra note 7, para. 50, and the Case of Mayagna (Sumo) Awas Tingni Community. Preliminary objections. Judgment of February 1, 2000. Series C No. 66, para. 53.

61. The Court has already established clear criteria to be followed when filing the objection of failure to exhaust domestic remedies. Based on the generally recognized principles of international law, to which the rule of exhaustion of domestic remedies refers, it is clear: first, that the defendant State can waive its right to invoke this rule expressly or tacitly. Second, the correct moment for introducing the objection of failure to exhaust domestic remedies is during the admissibility stage of the proceeding before the Commission; in other words, before any consideration of the merits of the case; to the contrary, it is assumed that the State has tacitly waived its right to invoke it. Third, the Court has stated that the failure to exhaust domestic remedies is a simple matter of admissibility and that the State which alleges it must indicate the domestic remedies that have to be exhausted, and also prove that those remedies are adequate and effective. [FN10]

[FN10] Cf. Case of the Moiwana community, *supra* note 8, para. 49; the Case of Serrano Cruz Sisters. Preliminary objections, *supra* note 7, para. 135, and Case of Tibi, *supra* note 7, para. 49.

62. In the instant case, the State made three different assertions in relation to the failure to exhaust domestic remedies. During the admissibility procedure before the Commission it merely indicated that domestic remedies had not been exhausted, because “the Central Electoral Board [...] ha[d]not been seized of the case,” and that the representatives “should [...] have recourse to the regular courts” (*supra* paras. 10 and 21). During the procedure before the Commission on the merits of the case, on January 31, 2002, the State indicated that the alleged victims “had not concluded the proceeding before the Public Prosecutor [...], or had recourse to a court of first instance or to the Central Electoral Board” (*supra* para. 28). Lastly, during the proceeding before the Court, in its brief answering the application, the State alleged that the hierarchic, amparo and unconstitutionality remedies had not been exhausted; and, during the public hearing, that the remedy of appeal for revision was pending exhaustion before the Civil Status Registrar and before the court of first instance.

63. With regard to the position of the Dominican Republic, in its Admissibility Report No. 28/01 issued on February, 2001, the Commission noted that, on the one hand, “the State had not shown that administrative decisions made by the Public Prosecutor, or by the Central Electoral Board admitted an appropriate remedy to modify them;” and it had not established that there were mechanisms allowing petitioners to appeal directly to these bodies. Consequently, it stated that there were no appropriate remedies in the domestic jurisdiction that could be exhausted in relation to the procedure of late declaration of birth. The Commission also stated that, according to the Dominican laws it was aware of, the alleged victims did not have legal standing to bring an action, since it was the Public Prosecutor who should do so according to Article 41 of Act No. 659, and that, in the instant case, the Public Prosecutor did not empower the judge of first instance to initiate an investigation in order to allow the late declaration of birth of the alleged victims.

64. The Court considers that, according to the above criteria (*supra* paras. 60 and 61), by not specifying the appropriate and effective remedies that should have been exhausted during the

admissibility procedure before the Inter-American Commission, the State implicitly waived its right to a means of defense that the American Convention establishes in its favor and tacitly admitted the inexistence of such remedies or their due exhaustion. [FN11] In view of the foregoing, the State was barred from alleging the failure to exhaust the hierarchic recourses, and the remedies of amparo, unconstitutionality and appeal for revision before the Civil Status Registrar and before the court of first instance, in the proceeding before the Court.

[FN11] Cf. Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary objections, supra note 9, para. 56; Case of Castillo Petruzzi et al.. Preliminary objections. Judgment of September 4, 1998. Series C. No. 41, para. 56, and Case of Loayza Tamayo. Preliminary objections. Judgment of January 31, 1996. Series C. No. 25, para. 43.

65. Consequently, and bearing in mind the Inter-American Commission's reasoning, which is consequent with the relevant provisions of the American Convention, the Court rejects the first preliminary objection filed by the State.

SECOND PRELIMINARY OBJECTION

Non-compliance with the friendly settlement presented by the Commission and accepted by the State

Arguments of the State

66. The State argued that:

- a) On November 1, 1999, the Commission made itself available to the parties to reach a friendly settlement, a procedure accepted by the Dominican Republic and, in this context, the representatives made demands, which it considered "[went] far beyond the purpose of a friendly settlement;"
- b) On August 24, 2001, the State, the Commission and the representatives met in Santo Domingo, the Dominican Republic, at the offices of the Central Electoral Board, in order "to resolve this case," and
- c) On September 25, 2001, the State delivered the birth certificates to the children Dilcia Yean and Violeta Bosico. However, the representatives have not wanted to accept that the delivery of the birth certificates was the result of the friendly settlement. In this case, Article 49 of the American Convention should be applied, based on the Commission's credibility before the States, and the application should be rejected.

Arguments of the Commission

67. The Commission argued that:

- a) As of November 1, 1999, it urged the parties to commence a procedure with the purpose of achieving a friendly settlement. Given the positions of the representatives and the State, it considered that the negotiations were terminated following the meeting held in the Dominican Republic on August 24, 2001;
- b) It is obvious in this case that, despite the pertinent efforts of the parties, a friendly settlement was not reached, because the representatives withdrew and because the State indicated that it could not accept it. Consequently, it is incomprehensible that the State should request the application of Article 49 of the American Convention to avoid the Court hearing the merits of the case;
- c) Bearing in mind that the alleged victims are the fundamental purpose of the Inter-American System, the representatives' declaration that the granting of the birth certificates by the State did not constitute a friendly settlement is a determining factor. This procedure was important for resolving the instant case, but it is not the only matter under discussion. Since one of the parties to the procedure manifested that it did not wish to continue with the negotiations to reach a friendly settlement, the Commission had no alternative but to proceed to examine the merits of the case, pursuant to the provisions of Article 50(1) of the Convention;
- d) Although the State took certain steps designed to remedy at least in part the violations committed to the detriment of the alleged victims – the importance of which was duly acknowledged by the Commission – these steps did not constitute comprehensive, adequate and, above all, final reparation, and
- e) It had complied with its treaty-based, statutory and regulatory obligations in relation to the friendly settlement procedure in this case, so that the arguments presented by the State in this regard are unfounded.

Arguments of the representatives

68. The representatives stated that:

- a) The State unilaterally granted the children birth certificates in September 2001, outside the framework of a friendly settlement. This action did not resolve the case, because it will not be resolved until the alleged human rights violations have been acknowledged and totally repaired. In addition to the delivery of birth certificates, the friendly settlement proposal included the following points: financial compensation, public acknowledgement of the violations allegedly committed, modification of the requirements for late registration of births, and establishment of a judicial mechanism for resolving complaints. However, each attempt failed, owing to the State's reluctance to repair the alleged violations comprehensively, and
- b) The Dominican Republic has never acknowledged its responsibility for the violations that were allegedly committed; it denied this in the proceeding before the Commission, and it is now denying it before the Court.

Considerations of the Court

69. The Court observes that the Commission indicated that on November 1, 1999, it made itself available to the parties in order to reach a friendly settlement. On December 1, 1999, and on January 11, 2000, the State and the representatives, respectively, agreed to accept this procedure. On March 1, 2000, the representatives submitted a proposal for a friendly settlement

that contained various demands. On March 6, 2000, the Commission held a hearing in order to examine the possibility of reaching a friendly settlement. During this hearing, the representatives reiterated their proposal and the State indicated that it could not comply with it, because “accepting the petitioners’ request [would] involve violating domestic law.” Then, on February 22, 2001, the Commission adopted Admissibility Report No. 28/01 in which it again put itself at the disposal of the parties to reach a friendly settlement. On April 17, 2001, the representatives informed the Commission that they were not interested in reaching a friendly settlement. Finally on August 24, 2001, the Commission held a meeting in Santo Domingo, the Dominican Republic, with the State and the representatives, but a friendly settlement was not reached.

70. On October 1, 2001, the State informed the Commission that on September 25, 2001, it had delivered birth certificates to the children Dilcia Yean and Violeta Bosico.

71. On October 17, 2001, the representatives informed the Commission that the State had delivered birth certificates to the alleged victims, and indicated that this action did not constitute a friendly settlement because, during the hearing of March 6, 2000, the State had not considered any of the points they had proposed.

72. The Court deems that in order to reach a friendly settlement there must be a basic consensus among the parties, which shows their willingness to end the dispute on the merits of the matter and the possible reparations and this has not occurred in the instant case.

73. The Court observes that, in this case, the Commission made itself available to the parties to reach a friendly settlement, and the representatives and the State agreed to accept this procedure. The representatives made a proposal for a friendly settlement during the procedure. However, the State did not accept it and stated that “the petitions [of the representatives] [went] far beyond the purpose of a friendly settlement.” The Commission also indicated that it considered negotiations had concluded, because a friendly settlement had not been reached, following the meeting held in the Dominican Republic on August 24, 2001, with the participation of the representatives of the State, the children and the Commission. On September 25, 2001, the State granted birth certificates to the children. However, on October 17, 2001 the representatives indicated that the State’s action did not constitute a friendly settlement, because their proposal involved the adoption of other measures; they also reiterated that the action was not carried out within a formal friendly settlement procedure.

74. From the above, it is clear that the friendly settlement procedure did not conclude with an express agreement of the parties to settle the matter. Consequently, the Court rejects the second preliminary objection filed by the State.

THIRD PRELIMINARY OBJECTION

Lack of competence *ratione temporis*

Arguments of the State

75. The State argued that:

- a) The alleged violation of the rights of the Yean and Bosico children occurred on March 5, 1997, and the State accepted the contentious jurisdiction of the Court on March 25, 1999; namely, two years after the alleged violation;
- b) The Court has established that it cannot exercise its contentious jurisdiction to apply the Convention when the alleged facts occur before the Court's jurisdiction has been accepted, and
- c) Although the State did not invoke this preliminary objection at the due moment, the Commission did invoke it opportunely, and the Court should therefore rule on it.

Arguments of the Commission

76. The Commission did not refer to this preliminary objection.

Arguments of the representatives

77. The representatives stated in their final oral arguments during the public hearing that the State's attempt to file a new preliminary objection was time-barred.

Considerations of the Court

78. With regard to the argument of the State concerning the Inter-American Court's alleged lack of competence *rationae temporis* to hear the facts of this case that occurred on March 5, 1997, before the State accepted its contentious jurisdiction, the Court reiterates that, as any organ with jurisdictional functions, it has the power inherent in its attributes to determine the scope of its own competence, because by accepting its jurisdiction the States undertake to accept the Court's right to decide any dispute concerning its jurisdiction [FN12] according to the provisions of Article 62(1) of the American Convention. Consequently, the Court will take into consideration both the date of acceptance of its contentious jurisdiction by the Dominican Republic, and the principle of non-retroactivity, established in Article 28 of the 1969 Vienna Convention on the Law of Treaties in order to determine the scope of its competence in this case (*infra paras. 100 to 108 and 132*).

[FN12] Cf. Case of Baena Ricardo. Competence. Judgment of November 28, 2003. Series C No. 104, para. 68; Case of Constitutional Court. Competence. Judgment of September 24, 1999. Series C No. 55, para. 33, and Case of Ivcher Bronstein. Competence. Judgment of September 24, 1999. Series C No. 54, para. 34.

79. In view of the above, the Court rejects the third preliminary objection filed by the State.

VI. EVIDENCE

80. Before examining the evidence provided, the Court will make some observations, in light of the provisions of Articles 44 and 45 of the Rules of Procedure which have been developed in its case law and are applicable to this case.

81. The adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence. This principle is embodied in Article 44 of the Rules of Procedure, as regards the time at which the evidence should be submitted to ensure equality between the parties. [FN13]

[FN13] Cf. Case of Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 40; Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 106, and Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 43.

82. According to the Court's practice, at the commencement of each procedural stage, the parties must indicate the evidence they will offer at the first opportunity they are given to communicate with the Court in writing. Moreover, in exercise of the discretionary powers included in Article 45 of its Rules of Procedure, the Court may request the parties to provide additional probative elements as helpful evidence; and this shall not provide a new opportunity for expanding or completing the arguments or offering fresh evidence, unless the Court expressly permits it. [FN14]

[FN14] Cf. Case of Acosta Calderón, supra note 13, para. 41; Case of Yatama, supra note 13, para. 107, and Case of Fermín Ramírez, supra note 13, para. 44.

83. In the matter of receiving and assessing evidence, the Court has indicated that its proceedings are not subject to the same formalities as domestic proceedings and, 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 the procedural equality of the parties. Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the quantum of evidence needed to support a judgment. This criterion is true for international human rights courts, which have greater latitude to assess the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience. [FN15]

[FN15] Cf. Case of Acosta Calderón, supra note 13, para. 42; Case of Yatama, supra note 13, para. 108, and Case of Fermín Ramírez, supra note 13, para. 45.

84. Based on the foregoing, the Court will now proceed to examine and weigh the documentary probative evidence forwarded by the Commission, the representatives and the State

at different procedural opportunities or as helpful evidence requested by the Court and its President, as well as the expert evidence and testimony provided to the Court during the public hearing, all of which constitute the body of evidence in this case, according to the principle of sound criticism within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

85. The Commission and the representatives forwarded authenticated statements and a report, in response to the President's request in his Order of January 31, 2005, (*supra* para. 44). These statements and the report are summarized below.

Statements

a) Proposed by the Inter-American Commission and the representatives

1) Violeta Bosico, alleged victim

She was born on March 13, 1985, in the Social Insurance Maternity Clinic in Sabana Grande de Boyá, the Dominican Republic. Her mother is Tiramén Bosico Cofi and her father is Delima Richard.

The witness lives with her sister, Teresa Tucent Mena, and her family in Batey Palavé in Manoguayabo. She attends second year of secondary school during the evening session at the Manoguayabo School. She hopes to be the first person in her family to go to university.

2) Tiramén Bosico Cofi, mother of the child Violeta Bosico

She was born on October 24, 1956, in Batey Las Charcas in Sabana Grande de Boyá, the Dominican Republic. She has six children: Teresa, Daisy, Violeta, Heriberto, Rudelania and Esteban.

The witness gave an explanation concerning the names of her children. She referred to the difficulty in registering her daughters, Violeta and Daisy. She had to obtain a "document" from the mayor saying that Violeta had been born at home, when she was really born in the Social Insurance Maternity Clinic in Sabana Grande de Boyá. She did this because the Maternity Clinic was too far away from her home and she did not have the time or money to visit it in order to obtain the evidence that Violeta was born there.

The witness indicated that it was easier to obtain the documents for some of her children than for others. She said it was easier to register her children, Heriberto and Rudelania, because their father is from the Dominican Republic, had an identity document and accompanied her to register them. When registering Esteban, she encountered the same problems as with Violeta and Daisy. When she went with representatives of MUDHA to register Violeta and Daisy, they also wanted to register Esteban but could not.

Two of her children, Daisy and Esteban, still have no birth certificates. Daisy is very afraid of being away from her home or community because she has no documents and she thinks that she could be detained at any moment. Daisy stopped going to school because she knew that she was not going to be able to take the national examinations in eighth grade since she had no documents. Daisy has two children who are undocumented, because she herself has no

documents. The witness has not attempted to register her children, Daisy and Esteban, again, because she does not have the money and is unable to take time off from work to travel to obtain all the documents that are required; also does not know whether she will be able to register them even when she has all the documents.

Immigration officials continue to detain and deport people who do not have documents or “more exactly, because they are dark-skinned.” The witness indicated that, if she were detained, she would not give up her identity document, in case they tore it up and she would have no documents. She would prefer to be taken to Haiti with her documents so that she could return to the Dominican Republic. She has been very frightened that something could happen to her family because they are involved in this case.

Lastly, the witness indicated that there is nothing that could compensate them for all that has happened, but at least she hopes that they are compensated for all the time spent and expenses incurred because of this case, and that Violeta is granted a scholarship so she can continue studying at university.

3) Teresa Tucent Mena, sister of the child Violeta Bosico

She was born on July 7, 1974. She is the daughter of Tiramén Bosico Cofi, and the sister of Violeta Bosico, who lives with the witness in Batey Palavé. She clarified that her correct last name is Tucent Mena, and not Tuseimena.

The witness believes that, to resolve this case and to solve the registration problems, it would be fair if undocumented mothers could declare or register their children just by going in person and providing documentary evidence that their child had been born in the Dominican Republic.

She hopes that her sister Violeta will be able to go to university, because they are very poor and it would be good if she had a scholarship to continue studying.

She is sometimes afraid when something related to this case is published in the national media, because she knows there are people who say that the witness and her family are denouncing the Dominican Republic and causing problems because of this case. This is why she is afraid that something bad could happen.

4) Dilcia Yean, alleged victim

Her mother is Leonidas Oliven Yean. She is 8 years old. She lives in her aunt’s house in Santo Domingo. She is currently in first grade at school, but she will enter second grade when this school year is over, because she is doing well. When she grows up she wants to work in an office near her family and be a lawyer to help others.

5) Leonidas Oliven Yean, mother of the child Dilcia Yean

She was born on August 24, 1972, in Batey Enriquillo, Sabana Grande de Boyá, the Dominican Republic. Since 2001, she has lived in Santo Domingo in the home of her brother, Rufino.

She registered her daughter, Magdalena, in October 2004. To do this, she was asked for her identity card, witnesses, a document from the church and a document from the mayor. To solve the problems relating to the birth registration of children, the State should register children in the schools.

Expert reports

- b) Proposed by the representatives
- 1) Samuel Martínez, anthropologist

Dominican-Haitians are struggling not only for legal citizenship but also for cultural citizenship, for a more widespread recognition that they are part of the Dominican Republic and so that, legally, they are part of this country. Cultural citizenship is a broad expression created by legal scholars and social scientists in order to describe those undeclared assumptions about individuals who, in terms of race, ethnic affiliation and class, belong wholly to the nation, and to define their fundamental identity. Exclusion from cultural citizenship can have negative social, economic and psychological consequences for those who are internally colonized or the underprivileged ethnic-racial minorities who are relegated to an enduring situation as second class citizens or who are totally denied citizenship.

Well-known State leaders of opinion are opposed to the rights of Haitian immigrants and tend to speak of Haitians as an undifferentiated mass, making no distinction between Dominican-Haitians and Haitian citizens, suggesting and, at times, affirming explicitly that those born in the Dominican Republic are as Haitian as their parents who were born in Haiti. However, social research suggests that Dominican-Haitians are culturally Dominican, are loyal to the Dominican Republic, and seek to obtain legal citizenship of the country in which they were born and the only one they know.

Late registration is often the only way that Dominican-Haitians have of obtaining an official birth certificate. Many Haitians in the Dominican Republic decide to give birth to their children at home, instead of going to a medical center, due to lack of financial resources and the difficulty of having access to adequate means of transportation from remote rural settlements, or to the fear that hospital personnel or police agents will report them, since many of them are in the country illegally. In recent years, hospital personnel have denied birth certifications even to Haitians born in hospitals.

The recruitment of Haitians is frequently permitted and even assisted by the Dominican police because very few Haitians would dare to enter a country for the first time where they know no one, do not speak the language, and have no guarantee of employment.

Haitians and their children born into poverty in the bateyes are willing to work for lower wages than those that Dominicans would accept for dangerous work which demands considerable effort.

The desire and also the tendency to return to their homes in Haiti has been especially strong among the Haitian immigrants and nine out of every ten men who migrate to the Dominican Republic to cut cane return home within two years. The Haitians who remain in the Dominican Republic do so because they have formed a family there.

Moreover, in the context of globalization where the flow of financial and cultural transactions involves an increasing demand for displacement from one country to another, the marginalization of those who are stateless increases. The ability to move to another country is not a luxury, but a necessity for hundreds of thousands of Dominicans seeking better living conditions; but this is an opportunity from which stateless Dominican-Haitians are excluded, since they do not have the necessary documentation.

Furthermore, the lack of an identity document lays the Dominican-Haitians open to the violation of their procedural guarantees because, if arrested, they are deported to Haiti without any type of judicial review or recourse.

With regard to education, a child who has not been registered is unable to enroll in secondary school or university. For children of Haitian origin from the working classes, higher education is practically the only reliable way of rising on the social and financial scale.

Poverty, lack of safe potable water, inadequate sanitation infrastructure, and the dilapidated conditions and overcrowding of the housing expose the Haitian population to greater risk of diseases and death from pathogens that contaminate water and insects.

Lastly, the refusal to register the children almost inevitably denies Dominican-Haitians a series of human rights, closes the door to financial prosperity and social inclusion, and prevents them from achieving their full potential as human beings.

B) TESTIMONIAL AND EXPERT EVIDENCE

86. On March 14 and 15, 2005, during a public hearing, the Court received the statements of the witnesses proposed by the Commission, the representatives and the State, and of the expert witnesses proposed by the Inter-American Commission and the representatives (*supra* para. 47). The Court summarizes the principal parts of these statements and expert reports below.

Testimonies

a) Proposed by the Commission and the representatives

1) Genaro Rincón Miesse, lawyer

He is Dominican, resides in Santo Domingo, and is a lawyer by profession. He is legal adviser to the organization Movimiento de Mujeres Domínico-Haitianas (MUDHA).

The obstacles to registering children of Haitian origin are the number of requirements and the lack of access of the fathers, who are “braceros” [day laborers], to the identification required by the civil status registrar (either an identity card or a residence card), since they only have a letter issued by the State’s Sugar Board.

The Central Electoral Board establishes the registration requirements. In 1997, the requirements for children up to 12 years of age were: birth certification issued by a hospital or clinic and, in the case of children born outside a hospital or clinic, if this was in an urban area, a statement made by the midwife before a notary indicating the birth of the child and, if it was in a rural area, a declaration of the “pedáneo” [auxiliary] mayor endorsed by the midwife; the parents’ documentation and marriage certificate, if they were married. In 1997, the following 11 documents were required to register children over 12 years of age: the birth certification as described above; the parents’ documentation; marriage certificate; certificates from all the civil status registrars in the province indicating that the person had not been registered previously; school certification; baptism certificate; sworn statement by three witnesses over the age of 50 years who know how to read and write; the identity cards of three witnesses; two photographs of the person; certificate indicating whether or not the person had an identity card; and a letter addressed to the Central Electoral Board requesting authorization for late declaration. The civil status registrars do not apply these requirements coherently. In the districts where the Haitian

population lives, registrars do not apply the requirements consistently; in contrast, registrars in districts where there is no Haitian immigrant population are more flexible.

On March 5, 1995, (sic) he went to the Registry Office of Sabana Grande de Boyá to register twenty children, including the Yean and Bosico children. In the case of Dilcia Yean the documentation presented was her mother's identity card and the birth certification from the hospital in Sabana Grande de Boyá, and in the case of Violeta Bosico, the identity card of her mother, Tiramén Bosico, and the birth certification issued by the auxiliary mayor of Sabana Grande de Boyá.

Thelma Bienvenida Reyes, the Civil Status Registrar, refused to accept the documentation because children of Haitian immigrants could not be declared, since their parents were in the country illegally. If the parents are Haitian, the children are also Haitian, since the parents are in transit. The Civil Status Registrar added that she was following orders from her superiors, which she had in writing, even though she refused to produce the document. She then commented on the "strange," "Africanized" or Haitian nature of the children's last names. Lastly, the Civil Status Registrar told them to go to the Immigration Office in the Municipality of the provincial capital of Monte Plata.

The same day, he went to the Immigration Office, together with the MUDHA promoter. The inspector in this Office in Monte Plata gave him the same answer as the Civil Status Registrar. From there he went to the Directorate General of Immigration in Santo Domingo, to the Haitian Affairs Department, where he verified that the Immigration Office was authorized to decide matters relating to the registration of the children of Haitians.

He resorted to the Public Prosecutor, because this official was responsible for guaranteeing civil rights and also for the late declaration procedure. When a late declaration has been submitted to the Registry Office, it is submitted to the consideration of the Public Prosecutor to determine whether it is in order. He communicated with the Public Prosecutor six times; and the latter told him that he was waiting for his superior, Juan Serrano, to take a decision. Finally, the Public Prosecutor refused the petition because it did not comply with the procedural requirements and sent it back to the Registry Office.

He decided not to appeal before the Central Electoral Board, because, in the past, this body has not replied to the petitions submitted to it. The responsible authorities showed no interest in the matter. Moreover, at that time, there was no remedy of amparo against administrative decisions.

The child Violeta Bosico was expelled from school by the director, because she did not have a birth certificate; consequently, she was enrolled in evening classes. However, she went back to studying at the day school when the Commission ordered precautionary measures (supra para. 8). Also, the Central Electoral Board granted the birth certificates, but it did so in a different jurisdiction to the applicable one, and after presentation of the documents indicated above.

The case of the child Violeta Bosico is not the only case of a child who does not have access to education. Similar cases have been documented by the non-governmental organizations, MUDHA, and the Comité Dominicano de Derechos Humanos.

b) Proposed by the State

2) Amada Rodríguez Guante, Director of the Palavé Basic Education School

She is the director of the Palavé Basic Education School where the child Violeta Bosico studied. The child Violeta Bosico completed basic education in eight courses. This school, as any

institution, is regulated by law and, therefore, has a rule that a birth certificate is required in order to enroll a child. The mother is required to produce their birth certificates when she enrolls her children in school. The child Violeta Bosico decided to change from day school to evening classes, where she completed two years during one school year. By law, the evening session is for adults only; that is, those over 18 years of age; but children under 18 years of age can also take the courses. She is not sure how old the child Violeta Bosico was when she attended the school for adults in the evening. Parents have the right to decide where their children attend school. A birth certificate is required to avoid a child enrolling under a different given name or surname. When she started school, the child Violeta Bosico was enrolled under the surname of Richard and then, in eighth grade, when she presented the document, it appeared that her surname was Bosico.

3) Thelma Bienvenida Reyes, Civil Status Registrar of Sabana Grande de Boyá

Children should be registered within sixty days of birth. However, this can vary depending on whether the mother lives in a rural or an urban area: sixty days for an urban area and ninety days for a rural area. The requirements for a regular declaration are the birth certification from the hospital or clinic or from the auxiliary mayor, and the parents' identity cards, together with their marriage certificate if they are married. The declaration can be made by the mother, the parents, or the midwife; anyone can make the declaration. The requirements for late declarations are: the same birth certification, the parents' identity cards, a school certification of whether they attend school or not, and a certificate from the Church stating whether they are baptized or not. In the case of the children Dilcia Yean and Violeta Bosico the declaration was not in order, because the identity cards were not presented; merely the certification from the mayor and another one from the hospital. When the attempt was made to register the children Dilcia Yean and Violeta Bosico, they were about one year old and about 11 or 12 years old, respectively. With regard to the procedure, there is a communication from Manuel Ramón Morel Cerda, President of the Central Electoral Board stating that the procedure complied with the law. The Public Prosecutor is not empowered to establish requirements for late declarations. A negative decision regarding birth registration can be appealed before the hierarchic tribunal which is the Central Electoral Board; then there is the procedure of the Public Prosecutor, and also the remedy of amparo. In the case of a late declaration, any probative documents that are considered necessary can be requested, even though they are not included among the requirements set out in the resolutions of the Central Electoral Board.

Expert reports

c) Proposed by the Commission and the representatives

1) Débora E. Soler Munczek, psychologist

She interviewed the children Dilcia Yean and Violeta Bosico, and also their next of kin on February 1, 2 and 3, 2005. She found that the environment of discrimination and stigmatization against those of Haitian origin who live in the Dominican Republic has permeated the psychological structure not only of the alleged victims and their next of kin, but also of the whole community. Both children showed evidence of an acceptable social adaptation; however, their

self-esteem, self-perception and concept of trust and personal safety and with regard to the world around them have been affected significantly owing to this environment of discrimination and stigmatization. The alleged victims and their next of kin are frightened of the reprisals they could suffer because they are defending their rights; and even though the families are more relaxed now that they have received the birth certificates issued by the State, their fear of deportation persists. Both families consider that the education of the children Dilcia and Violeta is an essential factor for their socio-economic future, so they have made significant financial and legal sacrifices to preserve this right.

2) Frederick John Packer, lawyer and professor

Issues relating to nationality have traditionally fallen within the State's jurisdiction, but principles of international law, such as the right of individuals not to be stateless and the obligation of States to protect human rights have limited this power in recent years. Nationality, as a legal term, is traditionally defined based on two principles: on blood (or family heritage) and on place of birth. However, international treaties – such as the United Nations Convention on the Reduction of Statelessness and the European Convention on Nationality – and international courts – such as the Inter-American Court of Human Rights and the International Court of Justice – have adopted the principle of an effective connection between the individual and the State to define nationality. This change reflects the interest of States to improve inter-State relations and their desire to protect human rights, particularly of vulnerable individuals, such as children and women.

The effective connection between the individual and the State may be proved by various elements considered together. Thus any fact or act by an individual or the State that shows a real union between them satisfies this purpose; for example, the place of birth and the place of residence, or the identification of the applicant with the people of the said State.

States can choose the administrative procedure they prefer in order to grant nationality to those who request it. However, they are obliged to make this procedure simple and reasonable, especially when the applicants are individuals who would otherwise remain stateless. The two international treaties mentioned above order the State to grant nationality automatically to any person born on its territory who would otherwise remain stateless. In other cases, nationality is granted following a request made after a period of residence (either 3 or 5 years, depending on the treaty).

Although they are related, the procedures for nationality and for birth registrations are different and have different purposes. The nationalization procedure formally establishes the connection between the individual and the State; thus the individual can have recourse to the State's protection. In contrast, the main purpose of the Registry Office procedure is to contribute to the State's interest in controlling health, safety and public order.

It is reasonable for States that choose to use the birth registration system as part of the nationalization procedure to require documents that establish the identity of the individual, such as the birth certification, the baptism certificate or an attestation of the person who delivered the child. However, it is not reasonable to request all these documents at the same time, or ask for documents that show the legal migratory status of the father or mother of the applicant, or the existence of a formal marriage between them. First, requesting all these documents at the same time creates an unacceptable financial burden and requires an excessive amount of time. Second, the request for documents that prove the marital union or the migratory status of the parents

constitutes a discrimination based on origin and membership of a social group. Third, documents that show the relationship of the applicant's parents with the State are irrelevant, because the connection that has to be proved is the one that exists between the applicant and the State.

In the case of the Yean and Bosico children, it is clear that their connection, the structure of their lives and their relationships are with the Dominican Republic; thus they could not have Haitian nationality, because there is no real connection between these children and the State of Haiti. By requiring a series of documents to be submitted concurrently, the administrative procedure of the Dominican Republic places a significant burden on the applicant. Moreover, these documents are redundant, because just one of them can satisfy the purpose of documenting the identity of the applicant and his/her connection with the State. No nationalization procedure in the fifty-five countries that the witness is aware of calls for all these requirements or documents simultaneously. The argument that all these documents are requested to prevent a possible electoral fraud is unsustainable, because the Dominican Republic can achieve this purpose by appropriate registration procedures that do not affect the procedure to obtain nationality.

Finally, even though international law does not define the concept of "people in transit," this is not important when deciding whether a person has a specific nationality, because what is important is the existence of the real connection between the individual and the State.

C) EVIDENCE ASSESSMENT

Documentary evidence assessment

87. In this case as in others, [FN16] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence in accordance with Article 45 of its Rules of Procedure, which were not contested or opposed, and whose authenticity was not questioned.

[FN16] Cf. Case of Acosta Calderón, *supra* note 13, para. 45; Case of Yatama, *supra* note 13, para. 112, and Case of Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 40.

88. In accordance with Article 45(1) of the Rules of Procedure and considering them useful to decide this case, the Court adds to the body of evidence the documents presented by the representatives, which they indicated were supervening evidence [FN17] (*supra* para. 48); the documents submitted by the representatives as attachments to their final written arguments [FN18] (*supra* para. 49); the documents contributed for the first time by the State as attachments to their final written arguments [FN19] (*supra* para. 49), and the documents submitted by the State on January 10, May 24 and September 5, 2005. [FN20]

[FN17] Namely: the Code for the Protection System and Fundamental Rights of Children and Adolescents (Act No. 136-03), promulgated on August 7, 2003; Migration Act No. 285-04 of the Dominican Republic, promulgated on August 15, 2004; list of requirements for the late declaration of birth of persons over 16 years of age, issued by the Central Electoral Board on

December 11, 2003; Resolution No. 07/2003, “Resolution on late declaration of persons over the age of sixteen years” issued by the Central Electoral Board on November 17, 2003, and the manual or guidelines for applying resolution No. 7/2003, of November 17, 2003, of the Central Electoral Board with regard to the procedure for late declarations of persons over 16 years of age.

[FN18] Namely: copy of the decision of August 6, 1988 of the Supreme Court of Justice “on the action on unconstitutionality and nullity of the resolutions of the Senate and the Chamber of Deputies of the Republic,” and several expenses vouchers submitted by CEJIL in the case of the Yean and Bosico children.

[FN19] Namely: birth certificate of Solain Pierre; certification of the Civil Status Registrar of Sabana Grande de Boyá of November 6, 2003; official letter of the Public Prosecutor of the National District addressed to the President of the Civil and Commercial Chamber of the court of first instance of the National District requesting ratification of late declarations of birth; resolution of the Supreme Court of Justice of the Dominican Republic of February 24, 1999; document of the State entitled: “Claims of the petitioners during the friendly settlement before the [Commission];” certification of the Director of the Palavé Basic School of November 6, 2003; certification of the Dominican Teachers Association of March 11, 2005; Basic Education diploma of the child Violeta Bosico of July 1, 2004; certification of the Association of Parents and Friends of the Palavé Basic School of March 11, 2005, and certification of the Las Mercedes Neighborhood Committee of March 11, 2005.

[FN20] Namely: the document entitled “The Uses of Children: A Study of Trafficking in Haitian Children;” USAID/Haiti Mission, Port-au-Prince, Haiti, July 14, 2004, by Glenn R. Smucker and Gerald F. Murray; Resolution No. 11-89 of the Central Electoral Board of August 22, 1989, and certificate issued on March 7, 2005, by the director of the “local health center” of Sabana Grande de Boyá, the Dominican Republic.

89. In application of the provisions of Article 45(1) of the Rules of Procedure, the Court incorporates into the body of evidence in this case, the documents presented by the State, the Commission and the representatives that were requested by the Court as helpful evidence (*supra* paras. 50 and 51); namely, a copy of Act No. 8-92 of April 13, 1992, presented by the three parties, and a copy of Resolution No. 5/88 of the Central Electoral Board of June 8, 1988, presented by the State and the representatives, because they are useful for deciding this case. With regard to the Court’s request that the parties should present as helpful evidence the attachments to the “application requesting authorization for late declarations [...]” submitted to the Public Prosecutor of the Judicial District of Monte Plata, the Dominican Republic, on September 11, 1997, the Court notes the observations of the State [FN21] and the Commission, [FN22] which did not forward the attachments alleging that they did not have them; and the representatives only forwarded the attachments that were already in the case file indicating that “although the request to the Public Prosecutor was filed in favor of a group of children of Haitian origin, [...] they [would] provide only the documents corresponding to the Yean and Bosico children.” In view of the foregoing, the Court notes that the parties must provide all the probative elements requested *de officio*, as helpful evidence or at the request of a party, because the Court should have the greatest possible number of probative elements in order to assess and draw conclusions about the facts.

[FN21] The State indicated that “[t]his whole file was returned to the petitioners.”

[FN22] The Commission stated that it hoped that the State and the representatives “are able to provide [...] the documentation submitted at the domestic level.”

90. The Court also adds the following documents to the body of evidence in application of Article 45(1) of the Rules of Procedure, because it considers them useful to decide this case:(a) United Nations Development Programme, Human Development Office of the Dominican Republic, Informe Nacional de Desarrollo Humano 2005: Hacia una inserción mundial incluyente y renovada; (b) United Nations, Committee on the Rights of the Child, Examination of the Reports presented by the States Parties under Article 44 of the Convention. Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic. UN Doc. CRC/C/15/Add.150, 21 February 2001; (c) World Bank, Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000), 2 volumes, 2001; (d) Bridget Wooding and Richard Moseley-Williams, *Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana*. Santo Domingo, the Dominican Republic: Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, 2004; (e) United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, 28 May 2002; (f) Organization of American States, Annual Report of the Inter-American Commission on Human Rights 1991, OEA/Ser.L/V/II.81, doc. 6 rev. 1, of February 14, 1992; (g) Organization of American States, Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104, doc. 49 rev. 1, of October 7, 1999, and (h) United Nations, Commission on Human Rights, “Human Rights and Extreme Poverty,” report presented by the independent expert responsible for the issue of human rights and extreme poverty, A. M. Lizin, in accordance with resolution 2002/30 of the Commission on Human Rights, Addition: Mission to the Dominican Republic. UN Doc. E/CN.4/2003/52/Add.1, 16 January 2003.

91. The Court admits the authenticated statements made by the children Dilcia Yean and Violeta Bosico (supra paras. 85(a)(4) and 85(a)(1)), and by Tiramén Bosico Cofi, Leonidas Oliven Yean and Teresa Tucent Mena (supra paras. 85(a)(2), 85(a)(5) and 85(a)(3)), to the extent they are in keeping with the purpose of the statement, and assesses them together with the body of evidence. The Court considers that, as they are the alleged victims and their next of kin who have a direct interest in the case, their statements must be assessed together with all the evidence in the proceedings and not in isolation. The statements of the alleged victims and those of their next of kin are useful insofar as they can provide more information on the consequences of the alleged violations. [FN23]

[FN23] Cf. Case of Yatama, supra note 13, para. 116; Case of Yakye Axa Indigenous Community, supra note 16, para. 43, and the Case of Moiwana community, supra note 8, para. 84.

92. In relation to the expert report submitted by Samuel Martínez (supra para. 8(b)(1)), which the State contested because it considered that the instant case “was not a class action that attempted to group together all the children of Haitian origin, and it did not refer to nationals of that country, so that it was totally irrelevant and out of order for [Mr. Martínez] to refer to aspects of Haitian migration and discrimination,” this Court admits it, because it considers it useful to decide the case; however, it bears in mind the State’s objections and assesses the report together with the body of evidence, applying the rules of sound criticism.

93. With regard to the abovementioned statements of the children Dilcia Yean and Violeta Bosico and of Tiramén Bosico Cofi, Teresa Tucent Mena and Leonidas Oliven Yean, as well as the expert report of Samuel Martínez, which have been authenticated and were not made before notary public, the Court admits them as it has on other occasions, because this does not affect legal certainty or the procedural equality of the parties. [FN24]

[FN24] Cf. Case of Yatama, supra note 13, para. 116; the Case of Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 39, and Case of Lori Berenson Mejía. Judgment of November 25, 2004, Series C No. 119, para. 82.

94. In relation to the statements made by Leonidas Oliven Yean on June 9 or July 25, 1999, and on July 24, 2001; the statement made by Tiramén Bosico Cofi on July 11, 1999, and the statement made by Genaro Rincón Miesse on August 9, 1999, provided by the Commission, the representatives and the State as documentary evidence, attached to their respective briefs of application, requests and arguments, and answering the application, the State indicated that these contained contradictions and a lack of precision. Accordingly, the Court admits them, bearing in mind the State’s objections and assesses them in the context of the body of evidence and not in isolation.

95. With regard to the birth certificate of the child Violeta Bosico, issued on March 3, 1997, by the auxiliary mayor of the Second Circumscription of Sabana Grande de Boyá, the State contested the veracity of the place of birth indicated on this certificate, because Tiramén Bosico had stated before the said mayor that the child was born at home, while in the statement that she made on February 2, 2005, authenticated by Marcelino de la Cruz, she explained that the child “was born in the Social Insurance Maternity Clinic of Sabana Grande de Boyá.” The Court notes that the State’s objection refers to the place of birth of the child Violeta Bosico; namely whether she was born at home or in a maternity clinic. In other words, the State did not contest or oppose the other elements on the certificate, that is, the name of the child, her date of birth, the name of her mother and the fact that she was born in the Dominican Republic. Consequently, the Court considers that, since the State did not contest the fact that the child Violeta Bosico was born in the Dominican Republic, the elements to which the State objects do not affect the Court’s decision on the central issue of this case.

96. Regarding the articles published by the press and presented by the parties, this Court considers that they can be assessed to the extent that they refer to well-known public facts, or statements by State officials, or corroborate aspects related to the case. [FN25]

[FN25] Cf. Case of Yatama, *supra* note 13, para. 119; Case of Fermín Ramírez, *supra* note 13, para. 51, and Case of Yakye Axa Indigenous Community, *supra* note 16, para. 46.

Testimonial and expert evidence assessment

97. With regard to the testimony of Genaro Rincón Miesse (*supra* para. 86(a)(1)), and the expert reports of Débora E. Soler Munczek and Frederick John Packer (*supra* paras. 86(c)(1) and 86(c)(2)), the Court admits them because it considers them useful to decide the instant case, but it also bears in mind the State's observations regarding the expert witnesses, and assesses the testimony together with the body of evidence, according to the rules of sound criticism.

98. In relation to the testimony of Thelma Bienvenida Reyes (*supra* para. 86(b)(3)), which was not contested or opposed, the Court admits it and recognizes its probative value. Regarding the testimony of Amada Rodríguez Guante (*supra* para. 86(b)(2)), the Court notes that, during the public hearing, the purpose of her testimony was modified and it was decided that she should testify on the education of the child Violeta Bosico and the alleged non-pecuniary damage the child suffered by losing one year of school; this was not contested or opposed, so the Court admits it insofar as it corresponds to the purpose of the examination of the witness, and grants it probative value.

99. Based on the above, the Court will assess the probative value of the documents, statements and expert reports presented in writing or made before it. All the evidence submitted during the proceeding has been incorporated into a single body of evidence, which will be considered as a whole. [FN26]

[FN26] Cf. Case of Acosta Calderón, *supra* note 13, para. 49; Case of Yakye Axa Indigenous Community, *supra* note 16, para. 49, and the Case of Serrano Cruz Sisters, *supra* note 24, para. 46.

VII. PRIOR CONSIDERATIONS

100. The Court considers that, before examining the merits of the dispute, it should clarify its competence in this case, since the Dominican Republic accepted the Court's contentious jurisdiction on March 25, 1999.

101. In its application, the Commission indicated that it was not requesting the Court to establish violations based on facts that occurred prior to March 25, 1999; it stated that the facts that took place prior to that date were "submitted to the Court to provide background material to the violations that can be attributed to the State following its acceptance of the Court's contentious jurisdiction."

102. In this respect, the representatives stated that “the Court has full jurisdiction to decide cases of alleged violations [of] the Convention by the State as of March 25, 1999,” and advised that “they recognize that the children’s situation of abandonment also results from facts that occurred prior [to that date, which the] Court should consider [...] as background material.”

103. The State indicated that “the temporal jurisdiction of the Court [...] is delimited by the moment at which the State accepted this jurisdiction.”

104. When determining whether or not it has jurisdiction to hear a case pursuant to Article 62(1) of the American Convention, the Court must take into consideration both the date of the State’s acceptance of its jurisdiction, and also the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties, which applies to the period during which the juridical effects of the acceptance of the Court’s jurisdiction are effective. [FN27]

[FN27] Cf. Case of the Moiwana community, *supra* note 8, paras. 38 and 39; Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 108, and the Case of Serrano Cruz Sisters. Preliminary objections, *supra* note 7, paras. 64 and 65.

105. This principle establishes that the Court cannot exercise its contentious jurisdiction to apply the Convention and declare that its norms have been violated when the alleged facts or conduct of the defendant State that could involve international responsibility precede acceptance of the Court’s jurisdiction.

106. Consequently, the Court has jurisdiction to hear and declare violations to the Convention in two different situations: when the facts that produced a violation are subsequent to the date of acceptance of its jurisdiction, or in the case of a continuing or permanent violation that persists after the acceptance, even though it began before it. [FN28]

[FN28] Cf. the Case of Moiwana community, *supra* note 8, paras. 38 and 39; the Case of Serrano Cruz Sisters. Preliminary objections, *supra* note 7, paras. 64 and 65, and Case of Alfonso Martín del Campo Dodd. Preliminary objections. Judgment of September 3, 2004. Series C No. 113, para. 79.

107. Also, when interpreting the Convention in accordance with its object and purpose, the Court must do so in a way that preserves the integrity of the mechanism established in Article 62(1) of the Convention. It would be inadmissible to subordinate this mechanism to constraints that render ineffectual the system to protect human rights established in the Convention and, consequently, the Court’s jurisdictional function. [FN29]

[FN29] Cf. Case of the Serrano Cruz Sisters. Preliminary objections, *supra* note 7, para. 68; Case of Baena Ricardo et al. Competence, *supra* note 12, para. 128, and Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 19.

108. In view of the above, the Court considers it necessary to establish that although the facts presented by the Inter-American Commission as background material took place prior to March 25, 1999, some of these facts could persist after the date on which the state accepted the contentious jurisdiction of the Inter-American Court (*supra* para. 4), a situation which the Court will examine in this case.

VIII. PROVEN FACTS

109. The Court considers proven the facts that form part of the background and context of this case which it is considering in the exercise of its competence. These facts are described below:

Background

SOCIAL CONTEXT

109(1) The first important migrations of Haitians towards the Dominican Republic took place in the first third of the twentieth century when around 100,000 persons went to work on the sugar plantations in that country. The Dominican mills were originally in the hands of private companies and, later, most of them were transferred to the control of the State Sugar Council (CEA). Many Haitian migrants went to live permanently in the Dominican Republic, formed a family in that country, and now live there with their children and grandchildren (second and third generation Dominicans of Haitian origin) who were born in and live in the Dominican Republic. [FN30]

[FN30] Cf. National Coalition for Haitian Rights, “Beyond de Bateyes – Haitian Immigrants in the Dominican Republic”, 1996 (file of attachments to the application, attachment 9, folios 819 to 821 and 829 to 831); Human Rights Watch, “Personas Ilegales - Haitianos y Dominicanos en la República Dominicana.” New York: 2002, (file of attachments to the brief with requests and arguments, attachment 19, folios 310 to 320); Marco Scuriatti, “Background Papers – A review of the Haitian Immigrant Population in the Dominican Republic.” In: World Bank, “Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000),” volume II, 2001, pp. 81 to 83, and Bridget Wooding and Richard Moseley-Williams, “Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana.” Santo Domingo, the Dominican Republic: Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, 2004, pp. 1 to 103.

109(2) Most of the Haitians and Dominicans of Haitian origin in the Dominican Republic live in conditions of poverty in areas known as “bateyes,” which consist of settlement of agricultural workers located around the sugar cane plantations. [FN31] There are few basic public services in

these places and the roads are not maintained so that, during the rainy season, communication between the bateyes and the towns can be cut for several days. [FN32]

[FN31] Cf. National Coalition for Haitian Rights, “Beyond de Bateyes – Haitian Immigrants in the Dominican Republic,” 1996 (file of attachments to the application, attachment 9, folio 820); United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, 28 May 2002, para. 42; United Nations, United Nations Development Programme, Human Development Office of the Dominican Republic, Informe Nacional de Desarrollo Humano 2005 – Hacia una inserción mundial incluyente y renovada, pp. 119 to 144, and Bridget Wooding and Richard Moseley-Williams, “Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana,” Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, Santo Domingo, the Dominican Republic, 2004, pp. 1 to 103.

[FN32] Cf. National Coalition for Haitian Rights, “Beyond de Bateyes – Haitian Immigrants in the Dominican Republic,” 1996 (file of attachments to the application, attachment 9, folios 852 to 861); World Bank, “Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000),” volume I, 2001, pp. 44 to 55; Marco Scuriatti, Background Papers – A review of the Haitian Immigrant Population in the Dominican Republic. In: World Bank, Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000), volume II, 2001, pp. 84 to 85, and United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, 28 May 2002, para. 46.

109(3) In 2005, the Office of the United Nations Development Programme in the Dominican Republic indicated that:

Haitians live in the country in very precarious conditions of extreme poverty. Furthermore, most of them are undocumented and must face a generally hostile political and social situation, without the possibility of legal assistance and with limited access to health, sanitation and education services, and this includes the children of Haitians, who have been born in the country. It should be noted that the constraints to access to public services and the problem of lack of documentation are general among the poorest segments of the Dominican population. [...] Regarding Haitian immigration, our information confirms the conditions of their incorporation into sectors of the labor market assigned to this group of immigrants, [...] characterized by low salaries and appalling working conditions with low technology, known internationally as the three Ds: dirty, dangerous, demanding. Evidently, these are not precisely acceptable conditions from a human development perspective. [...]. [FN33]

[FN33] Cf. United Nations, United Nations Development Programme, Human Development Office of the Dominican Republic, Informe Nacional de Desarrollo Humano 2005 – Hacia una inserción mundial incluyente y renovada, pp. 121, 139, 141 222 and 143.

109(4) In its report to the United Nations when presenting the “Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee,” the State affirmed that its greatest concern was “to combat exclusion and social inequality by seeking mechanisms to integrate society as a whole and ensure that anti-Haitian practices are a thing of the past.” [FN34]

[FN34] Cf. United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, 28 May 2002, para. 46.

109(5) In this report to the United Nations, the State indicated that the President of the Republic in 2002, Hipólito Mejía, had spoken out “in favor of enhancing the status of the bateyes,” and affirmed that “since we bank on the future, we cannot remain passive in the face of situations that involve the direst poverty that offend our humanitarian conscience. If we ask ourselves what best symbolizes this type of situation, I believe we would all say, living conditions in the bateyes.” [FN35]

[FN35] Cf. United Nations, Human Rights Committee, Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/71/DOM/Add.1, 28 May 2002, para. 46.

THE CHILDREN DILCIA YEAN AND VIOLETA BOSICO

109(6) Dilcia Yean was born on April 15, 1996, in the “local health center,” in the Municipality of Sabana Grande de Boyá, Province of Monte Plata, the Dominican Republic. [FN36] She grew up in this municipality and, in 2003, attended the Alegría Infantil School. [FN37] Her mother is Leonidas Oliven Yean, of Dominican nationality. [FN38] Her father is Haitian and is not in communication with his daughter. [FN39] Her maternal grandparents are Dos Oliven, Haitian, and Anita Oliven Yean. [FN40] Dilcia Yean is of Haitian origin through her father and her maternal grandfather.

[FN36] Cf. extract from the birth certificate of the child Dilcia Oliven Yean issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2105); certificate of declaration of the birth of the child Dilcia Oliven Yean issued on September 25, 2001, by the Civil Status Registry Office of the First Circumscription of the National District, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2113; file of attachments to the brief with requests and arguments, attachment 14, folio 90, and file of attachments to the answer to the application, attachment 18, folio 43), and official report of the birth of the child Dilcia

Yean issued on March 5, 1997, by the “local health center” of Sabana Grande de Boyá, Monte Plata, Secretariat of State for Health and Social Assistance, the Dominican Republic (file of attachments to the application, attachment 3, folio 98; file of attachments to the brief with requests and arguments, attachment 7, folio 48, and file of attachments to the answer to the application, attachment 19, folio 45).

[FN37] Cf. MUDHA report on the visit to the next of kin of the children Dilcia Yean and Violeta Bosico on April 9, 2003 (file of attachments to the brief with requests and arguments, tome I, folio 389).

[FN38] Cf. extract from the birth certificate of the child Dilcia Oliven Yean issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2105); birth certificate of Leonidas Oliven Yean issued on October 9, 1978, by the Central Electoral Board, the Dominican Republic (file of attachments to the brief answering the application, attachment 1, folio 2), and identity card number 090-0002085-0, of Leonidas Oliven Yean issued on January 29, 1994, by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folios 102 and 103). In the statement made by Leonidas Oliven Yean on February 3, 2005, authenticated by Marcelino de la Cruz Nuñez, she clarified that she is known as “Nany” (file of preliminary objections and possible merits and reparations, tome III, folio 905).

[FN39] Cf. statement made by Leonidas Oliven Yean on June 25 or July 9, 1999, before Katherine A. Fleet, in Batey Enriquillo, Sabana Grande de Boyá (file with attachments to the application, attachment 14, tome III, folios 1752 to 1756; file with attachments to the brief with requests and arguments, attachment 34, folios 411 to 415, and file of attachments to the brief answering the application, attachment 15, folios 31 and 32).

[FN40] Cf. extract from the birth certificate of Leonidas Oliven Yean issued on September 10, 2001, by the Central Electoral Board, in Sabana Grande de Boyá, the Dominican Republic (file of attachments to the application, attachment 9, folio 697, and file of attachments to the answer to the application, attachment 8, folio 17); birth certificate of Leonidas Oliven Yean issued on October 9, 1978, by the Central Electoral Board, the Dominican Republic (file of attachments to the brief answering the application, attachment 1, folio 2); birth certificate of Rufino Oliven Yean issued on November 30, 1974, by the Central Electoral Board, the Dominican Republic (file of attachments to the brief answering the application, attachment 2, folio 4), and birth certificate of Julio Oliven Yean issued on October 9, 1978 by the Central Electoral Board, the Dominican Republic (file of attachments to the brief answering the application, attachment 3, folio 6).

109(7) Violeta Bosico was born on March 13, 1985, in the Dominican Republic. [FN41] Her mother is Tiramén Bosico Cofi, of Dominican nationality. [FN42] Her father is Delima Richard, of Haitian nationality, and he is not in communication with his daughter. [FN43] Her maternal grandparents are Anol Bosico, who is Haitian, and Juliana Cofi. [FN44] Violeta Bosico is of Haitian origin through her father and maternal grandfather.

[FN41] Cf. extract from the birth certificate of the child Violeta Bosico Cofi issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First

Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2104); certificate of declaration of the birth of the child Violeta Bosico Cofi issued on September 25, 2001, by the Civil Status Registry Office of the First Circumscription of the National District, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2112; file of attachments to the brief with requests and arguments, attachment 15, folio 91, and file of attachments to the answer to the application, attachment 35, folio 105), and birth certificate of Violeta Bosico Cofi issued on March 3, 1997, by the auxiliary Mayor of Batey Las Charcas, Office of the Auxiliary Mayor, Section Juan Sánchez, Sabana Grande de Boyá, the Dominican Republic (file of attachments to the application, attachment 3, folio 94; file of attachments to the brief with requests and arguments, attachment 8, folio 49, and file of attachments to the answer to the application, attachment 24, folio 55).

[FN42] Cf. extract from the birth certificate of the child Violeta Bosico Cofi issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2104); birth certificate of Tiramén Bosico Cofi issued on October 27, 1956, by the Civil Status Registrar of Sabana Grande de Boyá, the Dominican Republic (file of attachments to the brief answering the application, attachment 28, folio 69); identity card of Tiramén Bosico Cofi issued by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folio 95), and identity card, number 090-0013606-0 of Tiramén Bosico Cofi issued by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 9, folios 620 and 621).

[FN43] Cf. additional statement made by the child Violeta Bosico Cofi before Hillary Ronen on July 31, 2001, in Batey Palavé, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments, attachment 27, folios 393 to 396), and statement of Tiramén Bosico Cofi made before Katherine A. Fleet on July 11, 1999, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 4, folios 376 to 387; file of attachments to the brief with requests and arguments, attachment 4, folios 28 to 39, and file of attachments to the brief answering the application, attachment 25, folios 57 to 60).

[FN44] Cf. extract from the birth certificate of Tiramén Bosico Cofi issued on September 10, 2001, by the Civil Status Registrar of Sabana Grande de Boyá, the Dominican Republic (file of attachments to the application, attachment 9, folio 622, and file of attachments to the final arguments brief of the State, attachment 13, folio 3873), and birth certificate of Tiramén Bosico Cofi issued on October 27, 1956, by the Civil Status Registrar of Sabana Grande de Boyá, the Dominican Republic (file of attachments to the brief answering the application, attachment 28, folio 69).

109(8) Violeta Bosico lived with her mother and siblings in Batey Las Charcas, until 1992, when she went to live with her sister, Teresa Tucent Mena, in Batey Verde, also called Batey Enriquillo. In 1993, she moved, together with her sister to Batey Palavé, outside Santo Domingo, where she lives now. Violeta Bosico has grown up in the Dominican Republic, attended the Palavé School and, in 2005, went to secondary school. [FN45]

[FN45] Cf. statement made by the child Violeta Bosico Cofi, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits and reparations, folios 892 to 893bis, and file of attachments to the final arguments brief of the State, attachment 33, folios 3944 and 3945); statement made by the child Violeta Bosico Cofi on August 8, 1999, before Katherine A. Fleet, in Batey Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 6, folios 446 to 457, and file of attachments to the brief with requests and arguments, attachment 24, folios 370 to 381); additional statement made by the child Violeta Bosico Cofi before Hillary Ronen on July 31, 2001, in Batey Palavé, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments, attachment 27, folios 393 to 396); statement made by Teresa Tucent Mena, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits and reparations, tome III, folios 899 to 900); statement made by Teresa Tucent Mena on August 8, 1999, before Katherine A. Fleet, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 25, folios 382 to 388); statement made by Tiramén Bosico Cofi before Katherine A. Fleet on July 11, 1999, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 4, folios 376 to 387; file of attachments to the brief with requests and arguments, attachment 4, folios 28 to 39, and file of attachments to the brief answering the application, attachment 25, folios 57 to 60); certification issued on November 6, 2003, by Amada Rodríguez Guante, Director of the Palavé Basic School (file of attachments to the final arguments brief of the State, attachment 28, folio 3934), and Basic Education diploma of Violeta Bosico issued on July 1, 2004, by the National Education Council, the Dominican Republic (file of attachments to the final arguments brief of the State, attachment 30, folio 3938). With regard to the name of Teresa Tucent Mena, the child Violeta Bosico's sister, it was noted that her last name is "Tucent Mena" and not "Tuseimena", as she herself indicated in the statement she made on February 2, 2005, authenticated by Marcelino de la Cruz Nuñez. For the effects of this judgment, the last name "Tucent Mena" will be used, even though the parties and several documents refer to the last name "Tuseimena," in the understanding that both names refer to the same person.

109(9) Owing to their Haitian ancestry, the children Dilcia Yean and Violeta Bosico, form part of a vulnerable social group in the Dominican Republic. [FN46]

[FN46] Cf. National Coalition for Haitian Rights, "Beyond de Bateyes – Haitian Immigrants in the Dominican Republic," 1996 (file of attachments to the application, attachment 9, folios 809 to 875); Human Rights Watch, "Personas Ilegales" - Haitianos y Domínico-Haitianos en la República Dominicana. New York: 2002, (file of attachments to the brief with requests and arguments, attachment 19, folios 310 to 320); United Nations, Committee on the Rights of the Child, Examination of the Reports presented by the States Parties under Article 44 of the Convention. Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic. UN Doc. CRC/C/15/Add.150, of 21 February 2001, para. 22; Bridget Wooding and Richard Moseley-Williams, "Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana." Santo Domingo, the Dominican Republic: Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, 2004, pp. 1 to

103; World Bank, "Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000)," volume I, 2001, pp. 50 to 53, and Marco Scuriatti, "Background Papers – A review of the Haitian Immigrant Population in the Dominican Republic"; In: World Bank, Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000), volume II, 2001, pp. 84 and 85.

THE REQUEST MADE BY THE CHILDREN DILCIA YEAN AND VIOLETA BOSICO FOR LATE BIRTH REGISTRATION IN THE CIVIL STATUS REGISTRY OFFICE

109(10) Most Haitians and Dominicans of Haitian origin use the late declaration of birth procedure to declare their children born in the Dominican Republic. The mothers usually give birth at home, given the difficulty of traveling from the bateyes to the hospitals in the cities, their limited financial resources, and their fear of making themselves known to the hospital officials, the police and officials of the office of the auxiliary mayor and being deported. The Dominican Republic has deported Haitians and Dominicans of Haitian origin irrespective of their migratory status in the country. In such cases, the decisions have been taken without any prior investigation procedure. In some cases in the 1990s, these deportations included many thousands of persons. [FN47]

[FN47] Cf. statement made by Samuel Martínez, authenticated on February 14, 2005, by the notary public Richard J. Wolak (file of preliminary objections and possible merits, reparations and costs, tome III, folios 908 to 933 and tome IV, 976 to 1002); National Coalition for Haitian Rights, "Beyond de Bateyes – Haitian Immigrants in the Dominican Republic," 1996 (file of attachments to the application, attachment 9, folios 809 to 875); Glenn R. Smucker and Gerald F. Murray, "The Uses of Children: A Study of Trafficking in Haitian Children," Port-au-Prince, Haiti: USAID/Haiti Mission, 2004, pp. 124 and 125 (file of attachments to the State's brief of January 10, 2005, folios 3060 to 3223); Human Rights Watch, "Personas Ilegales" - Haitianos y Domínico-Haitianos en the Dominican Republic. New York: 2002, (file of attachments to the brief with requests and arguments, attachment 19, folios 310 to 320); Bridget Wooding and Richard Moseley-Williams, "Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana." Santo Domingo, the Dominican Republic: Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, 2004, pp. 1 to 103; United Nations, United Nations Development Programme, Human Development Office of the Dominican Republic, Informe Nacional de Desarrollo Humano 2005, – Hacia una inserción mundial incluyente y renovada, p. 128; Organization of American States, Annual Report of the Inter-American Commission on Human Rights 1991, OEA/Ser.L/V/II.81, doc. 6 rev. 1, of February 14, 1992, and Organization of American States, Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104, doc. 49 rev. 1, of October 7, 1999.

109(11) In the Dominican Republic there have been cases in which the public authorities have placed obstacles in the way of Dominican children of Haitian origin obtaining birth certificates. Consequently, these children have had difficulty in obtaining an identity card or a

Dominican passport, attending public schools, and having access to healthcare and social assistance services. [FN48]

[FN48] Cf. interview with Manuel Ramón Morel Cerda, President of the Central Electoral Board, conducted by Katherine A. Fleet on February 8, 2001 (file of attachments to the brief with requests and arguments, attachment 48, folios 498 to 506); National Coalition for Haitian Rights, “Beyond de Bateyes – Haitian Immigrants in the Dominican Republic,” 1996 (file of attachments to the application, attachment 9, folios 809 to 875); United Nations, United Nations Development Programme, Human Development Office of the Dominican Republic, Informe Nacional de Desarrollo Humano 2005 – Hacia una inserción mundial incluyente y renovada, p. 130); United Nations, Committee on the Rights of the Child, Examination of the Reports presented by the States Parties under Article 44 of the Convention. Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic. UN Doc. CRC/C/15/Add.150, of February 21, 2001. paras. 22 and 26, and Bridget Wooding and Richard Moseley-Williams, “Inmigrantes haitianos y dominicanos de ascendencia haitiana en la República Dominicana.” Santo Domingo, the Dominican Republic: Cooperación Internacional para el Desarrollo y el Servicio Jesuita a Refugiados y Migrantes, 2004, pp. 1 to 103.

109(12) The Constitution of the Dominican Republic stipulates that all those born on its territory are Dominicans. The State adopted the principle of *ius soli* to grant Dominican nationality, except for the children of foreign diplomats resident in the country or the children of those in transit. [FN49]

[FN49] Cf. Constitution of the Dominican Republic promulgated on August 14, 1994, Article 11 (file of attachments to the brief with requests and arguments, attachment 20, folios 332 to 360).

109(13) In the Dominican Republic, there are a series of requirements for late birth registration that vary according to the age of the applicant. There are different requirements for children under 13 years of age and for children over 13 years of age, which are indicated on lists issued by the Central Electoral Board or by any of the different Registry Offices. The requirements may vary according to the location of the Registry Office or the registrar applying them (*infra* paras. 109(18), 109(20) to 109(28)). [FN50]

[FN50] Cf. brief of June 5, 2003, with the State’s comments on Report No. 30/03 issued on March 6, 2003, by the Inter-American Commission (file of attachments to the application, attachment 14, tome 7, folios 2995 to 3014); testimony of Genaro Rincón Miesse given before the Inter-American Court during the public hearing held on March 14, 2005; testimony of Thelma Bienvenida Reyes given before the Inter-American Court during the public hearing held on March 14, 2005.

109(14) On March 5, 1997, when Dilcia Yean was 10 months old and Violeta Bosico was 12 years old, Genaro Rincón Miesse, who was the MUDHA lawyer at the time, Tiramén Bosico Cofi, who accompanied her daughter, Violeta Bosico, [FN51] and Martha Remigio, a cousin of Dilcia Yean's mother, who accompanied this child, [FN52] went to the Registry Office of Sabana Grande de Boyá to request late registration of the birth of Dilcia Yean and Violeta Bosico, among other children.

[FN51] Cf. statement made by Tiramén Bosico Cofi, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits and reparations, tome III, folios 895 to 897bis); statement made by Tiramén Bosico Cofi before Katherine A. Fleet on July 11, 1999, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 9, folios 612 to 619; file of attachments to the brief with requests and arguments, attachment 4, folios 28 to 39, and file of attachments to the answer to the application, attachment 25, folios 57 and 60); testimony of Genaro Rincón Miesse before the Inter-American Court during the public hearing held on March 14, 2005, and statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 2, folios 16 to 25, and file of attachments to the brief answering the application, attachment 34, folios 94 to 103).

[FN52] Cf. statement made by Leonidas Oliven Yean on June 25 or July 9, 1999, before Katherine A. Fleet, in Batey Enriquillo, Sabana Grande de Boyá (file of attachment to the application, attachment 14, tome III, folios 1752 to 1756; file of attachments to the brief with requests and arguments, attachment 34, folio 411 to 415, and file of attachments to the brief answering the application, attachment 15, folios 31 and 32); statement made by Leonidas Oliven Yean, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objects and possible merits and reparations, tome III, folios 905 and 906), and statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 2, folios 16 to 25, and file of attachments to the brief answering the application, attachment 34, folios 94 to 103).

109(15) The documents that the applicants brought to the Registry Office of Sabana Grande de Boyá were the identity cards of the children's mothers. [FN53] In the case of Dilcia, they also provided the birth certification issued by the "local health center" of Sabana Grande de Boyá and, in the case of Violeta, the certification of her birth issued by the auxiliary mayor of Batey Las Charcas, Sabana Grande de Boyá. [FN54]

[FN53] Cf. identity card of Tiramén Bosico Cofi issued by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folio 95); identity card number 090-0002085-0 of Leonidas Oliven Yean issued on January 29, 1994, by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folios 102 and 103); the State's brief entitled: "the reply [...] of the Dominican Republic to the

document ‘memorandum prepared for the hearing on merits’ presented by the petitioners [...] during the hearing held on November 15, 2001, [before the Inter-American Commission]” (file of attachments to the application, attachment 14, tome VI, folios 2547 to 2561); testimony of Genaro Rincón Miesse given before the Inter-American Court during the public hearing held on March 14, 2005; statement made by Leonidas Oliven Yean on June 25 or July 9, 1999, before Katherine A. Fleet, in Batey Enriquillo, Sabana Grande de Boyá, the Dominican Republic (file of attachments to the application, attachment 14, tome III, folios 1752 and 1756, and file of attachments to the brief with requests and arguments, attachment 34, folio 411); statement made by Tiramén Bosico Cofi before Katherine A. Fleet on July 11, 1999, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 9, folios 612 to 619; file of attachments to the brief with requests and arguments, attachment 4, folios 28 to 39, and file of attachments to the answer to the application, attachment 25, folios 57 and 60), and statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 2, folios 16 to 25, and file of attachments to the brief answering the application, attachment 34, folios 94 to 103).

[FN54] Cf. document with official report of the birth of the child Dilcia Yean issued on March 5, 1997, by the Secretariat of State for Health and Social Assistance, Dominican Republic (file of attachments to the application, attachment 3, folio 98 and file of attachments to the brief with requests and arguments, attachment 7, folio 48, and file of attachments to the answer to the application, attachment 19, folio 45); birth certificate of Violeta Bosico Cofi issued on March 3, 1997, by the auxiliary Mayor of Batey Las Charcas, Office of the Auxiliary Mayor, Section Juan Sánchez, Sabana Grande de Boyá, the Dominican Republic (file of attachments to the application, attachment 3, folio 94); file of attachments to the brief with requests and arguments, attachment 8, folio 49 and file of attachments to the answer to the application, attachment 24, folio 55); the State’s brief entitled: “the reply [...] of the Dominican Republic to the document ‘memorandum prepared for the hearing on merits’ presented by the petitioners [...] during the hearing held on November 15, 2001, [before the Inter-American Commission]” (file of attachments to the application, attachment 14, tome VI, folio 2547 al 2555); testimony of Genaro Rincón Miesse given before the Inter-American Court during the public hearing held on March 14, 2005, and statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 2, folios 16 to 25, and file of attachments to the brief answering the application, attachment 34, folios 94 to 103).

109(16) In 1997, children under 13 years of age were required to present a birth certification, the parents’ identity cards and, if the latter were married, their marriage certificate, when requesting late registration of birth. [FN55]

[FN55] Cf. testimony of Genaro Rincón Miesse given before the Inter-American Court during the public hearing held on March 14, 2005; brief with final arguments presented by the State on April 14, 2005, (file of preliminary objections and possible merits and reparations, tome V, folio

1224), and resolution No. 5/88 issued by the Central Electoral Board on June 8, 1988 (file of preliminary objections and possible merits and reparations, tome VI, folio 1557).

109(17) In the Registry Office of Sabana Grande de Boyá, the registrar responsible for registering births, Thelma Bienvenida Reyes, informed Genaro Rincón Miesse that it was not possible to register the children because the applicants did not have all the documents that Central Electoral Board required for this procedure. [FN56]

[FN56] Cf. the State's brief entitled: "the reply [...] of the Dominican Republic to the document 'memorandum prepared for the hearing on merits' presented by the petitioners [...] during the hearing held on November 15, 2001, [before the Inter-American Commission]" (file of attachments to the application, attachment 14, tome VI, folios 2547 to 2561); statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 2, folios 16 to 25, and file of attachments to the brief answering the application, attachment 34, folios 94 to 103), and statement made by Leonidas Oliven Yean on June 25 or July 9, 1999, before Katherine A. Fleet, in Batey Enriquillo, Sabana Grande de Boyá (file of attachments to the application, attachment 14, tome III, folios 1752 to 1756; file of attachments to the brief with requests and arguments, attachment 34, folios 411 to 415, and file of attachments to the brief answering the application, attachment 15, folios 31 and 32).

109(18) While the case was being processed before the Commission, the State presented a communication signed by Thelma Bienvenida Reyes, and attached a list issued by the Central Electoral Board, with the eleven documents required for late registration of birth: [FN57]

1. Document from the Mayor (if the child was born in a rural area), or certification from the clinic or hospital where the child was born.
2. Certification from the church or parish on whether the child was baptized or not.
3. School certification, if the child is in school.
4. Certification from all the Registry Offices in the place where the child was born.
5. Copies of the parents' identity cards; if the parents are deceased, copies of the death certificates.
6. If the parents are married, copy of the marriage certificate.
7. Sworn statement (Form OC-25) signed by three witnesses over 50 years of age who have an identity card (the new identity card), and who know how to sign their names.
8. Copies of the witnesses' identity cards.
9. Letter addressed to the President of the Central Electoral Board requesting late declaration of birth.
10. Letter addressed to the President of the Central Electoral Board requesting certification of whether or not the child has an identity document; if the applicant is over 20 years of age, he/she also requires a certification from the Edificio El Huacalito: National District [...] of whether or not he/she has an identity document.

11. Two (2) photographs [...].

[FN57] Cf. the State's brief entitled: "the reply [...] of the Dominican Republic to the document 'memorandum prepared for the hearing on merits' presented by the petitioners [...] during the hearing held on November 15, 2001, [before the Inter-American Commission]" (file of attachments to the application, attachment 14, tome VI, folios 2547 to 2561); letter of September 30, 1999, from the Permanent Mission of the Dominican Republic to the Organization of American States to the Inter-American Commission (file of attachments to the application attachment 14, tome II, folios 1411 to 1418, and file of attachments to the brief with requests and arguments, attachment 13, folios 82 to 89), official letter issued on September 20, 1999, by the Civil Status Registrar, Thelma Bienvenida Reyes, to the Head of the Inspectorate, Luis Felipe Gomez, attached to the State's letter to the Inter-American Commission of September 30, 1999 (file of attachments to the application attachment 14, tome II, folio 1417, and file of attachments to the brief with requests and arguments, attachment 13, folio 88), and list of "requirements for late declaration of births" issued by the Central Electoral Board of the Dominican Republic, attached to the State's letter to the Inter-American Commission of September 30, 1999 (file of attachments to the application attachment 14, tome II, folio 1418, and file of attachments to the brief with requests and arguments, attachment 13, folio 89).

109(19) On September 11, 1997, MUDHA and the Comité Dominicano de Derechos Humanos (CDH), through its lawyers, Genaro Rincón Miesse and Marcelino de la Cruz Nuñez, filed a "petition requesting authorization for late declarations," before the Public Prosecutor of the court of first instance of the Judicial District of the Province of Monte Plata, in favor of a specific group of children, including the children Dilcia Yean and Violeta Bosico. [FN58]

[FN58] Cf. "submission of formal request for authorization for late declarations," filed by the Movimiento de Mujeres Domínico-Haitianas (MUDHA) and the Comité Dominicano de Derechos Humanos (CDH), filed before the Public Prosecutor of the court of first instance of the Judicial District of the Province of Monte Plata, on September 11, 1997 (file of attachments to the application, attachment 3, folios 90 to 93); identity card of Tiramén Bosico Cofi issued by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folio 95); identity card, number 090-0002085-0, of Leonidas Oliven Yean issued on January 29, 1994, by the Central Electoral Board, the Dominican Republic (file of attachments to the application, attachment 3, folios 102 and 103); birth certificate of Violeta Bosico Cofi issued on March 3, 1997, by the auxiliary Mayor of Batey Las Charcas, Office of the Auxiliary Mayor, Section Juan Sánchez, Sabana Grande de Boyá (file of attachments to the application, attachment 3, folio 94), and document with official report of the birth of the child Dilcia Yean issued on March 5, 1997, by the Secretariat of State for Public Health and Social Assistance, the Dominican Republic (file of attachments to the application, attachment 3, folio 98 and file of attachments to the brief with requests and arguments, attachment 7, folio 48, and file of attachments to the answer to the application, attachment 19, folio 45).

109(20) On July 20, 1998, the Public Prosecutor of the Judicial District of Monte Plata, Julio César Castro Castro, decided “to refuse [...] the request for late declaration of birth, because it was not accompanied by the appropriate documentation and procedure, [and] to refer the parties concerned to the Civil Status Registrar of Sabana Grande de Boyá, so that the application could be made in keeping with the ordinary procedure,” because the twelve following requirements had to be fulfilled in order to make a late registration of birth: [FN59]

[...]

1. Birth certification (hospital, clinic, midwife).
2. Certification from the parish on whether the child was baptized or not.
3. Certification from the school concerning the education received by the applicant, and the level of schooling achieved.
4. Certification of the registry offices in the place where the applicant was born.
5. Copies of the parents’ identity cards.
6. If the parents are deceased, copies of the death certificates.
7. Sworn statement signed by three witnesses over 50 years of age, who have identity cards.
8. Copies of the witnesses’ identity cards.
9. Letter addressed to the President of the Central Electoral Board requesting late declaration of birth.
10. If the applicant is 20 years of age or over, certification of whether or not he/she has the old identity card.
11. Two photographs
12. Certification of identity, with seven witnesses[.]

[FN59] Cf. resolution refusing the request for late declaration issued on July 20, 1998, by the Public Prosecutor for the Judicial District of Monte Plata, Julio César Castro Castro, in Monte Plata, the Dominican Republic (file of attachments to the application, attachment 14, tome I, folios 1030 and 1031, and file of attachments to the brief with requests and arguments, attachment 3, folios 26 and 27).

109(21) In a communication of November 15, 2001, addressed to the Inter-American Commission, the representatives attached a document with seven requirements for “late declarations and their ratification by a ruling,” required by the “Civil Status Registry office of the Second Circumscription [National District],” for children over 13 years of age, and indicated three requirements for children under 13 years of age, as follows: [FN60]

1. Certification from the clinic or hospital where the child was born.
2. Certification issued by the Central Electoral Board (CEB) on whether or not the applicant has an identity document (for applicants over 16 years of age).
3. The parents’ identity cards (if the applicant is legitimate or recognized; to the contrary, only the mother’s identity card. If they do not have identity cards, they should obtain a CIE form from the CEB). If one of the parents is under 16 years of age, he/she should also present a birth certificate.
4. Marriage certificate of the parents (if the child is legitimate).

5. Certification of non-declaration issued by all the registry offices in the National District:

1st District: Calle José Gabriel García, corner of El Número, Ciudad Nueva

2nd: Calle Barahona, corner of Abreu

3rd: Pedro Livio Cedeño near Av. Duarte

4th: Calle 17 No. 3, Ens. Ozama

5th: Villa Mella, in front of the park

6th: Calle Ramón Cáceres, almost on the corner of Pedro Livio Cedeño

7th: La Victoria

8th: Guerra

9th: Boca Chica

6. Baptism certificate. Certification from the school or copy of school report.

7. Sworn statement signed by three witnesses, over 50 years of age on the DC-25 form, provided by the Registry Office.

NOTE: In the case of children under 13 years of age, it is sufficient to present the documents indicated in Nos. 1, 3 and 4 (the latter if the child is legitimate).

When the person has already been declared, document No. 1 can be substituted by the certification of identity, with seven witnesses, that has been registered.

[...]

[FN60] Cf. list of “requirements for late declarations and ratification by judgment” issued by the Civil Status Registry Office of the Second Circumscription, National District, the Dominican Republic, attached to the communication that the representatives addressed to the Inter-American Commission on November 15, 2001 (file of attachments to the application attachment 14, tome V, folio 2262, and file of attachments to the brief with requests and arguments, attachment 6, folio 47).

CIVIL STATUS REGISTRY OFFICE OF THE SECOND CIRCUMSCRIPTION, N.D.

OTHER LISTS OF REQUIREMENTS FOR LATE BIRTH REGISTRATION IN THE REGISTRY OFFICES OF THE DOMINICAN REPUBLIC

109(22) Resolution No. 5/88 issued by the Central Electoral Board on June 8, 1988, establishes the following list of six requirements for late registration of birth of a person over 13 years of age: [FN61]

FIRST: In order to establish the truth of any late declaration of birth of a person over 13 years of age, it is decided that, in addition to the legal requirements, the applicant must previously have presented the following documents to the Civil Status Registrar:

1. Certification from the clinic or hospital where the child was born, recording the sex of the child, the date of birth, and the mother’s name;

2. Baptism certificate of the person whose birth is to be declared issued by the parish of the place of birth or of residence of the parents; if the person is not a Catholic, the certificate should be issued by the church of the religion practiced;

3. Identity card of the person whose birth is to be declared, if he/she has been issued with such a card;

4. Certification from the public or private school, stating the last school year attended by the person whose birth is to be declared;

5. Certification of the Registry Office of the jurisdiction where the birth occurred, stating that the birth of the person whose birth is the object of the late declaration has not been registered in that office, when the late registration is being made in a different place from that where the birth occurred, and

6. Sworn statement signed by three witnesses, over 50 year of age, testifying to the truth of the statements made by the person making the declaration.

SECOND: The person who proposes to make the late declaration of birth should be at least 18 years older than the person whose birth will be declared, unless the declarer is the father or mother. Verification of this requirement will be based on the information on the declarer's identity card.

THIRD: With the exception of the identity card of the person whose birth is the object of the late declaration, the other documents indicated in this Resolution, as evidence of the truth of the declaration, must be filed by the respective Civil Status Registrar.

[FN61] Cf. resolution No. 5/88 issued by the Central Electoral Board on June 8, 1988 (file of preliminary objections and possible merits and reparations, tome VI, folio 1557).

109(23) Resolution No. 5/99 issued by the Central Electoral Board on August 4, 1999, concerning late declarations of births recorded in the corresponding registers from 1965 to 1992, that have not been ratified by a ruling of the competent court, establishes that the parties concerned must present the following documents: [FN62]

1. Copies of the identity cards of the parents (or the person making the declaration), or a certification of these or of another document establishing the identity of these persons;

2. Sworn declaration on form OC-25, to be signed before the respective Civil Status Registrar by the person concerned or his/her legal representative, and also by the witnesses to which it refers, attaching a copy of the latter's identity cards, and

3. Any other document that the respective Civil Status Registrar deems pertinent.

[FN62] Cf. resolution of the Central Electoral Board No. 5/99 of August 4, 1999 (file of attachments to the final arguments brief of the State, attachment 19, folios 3886 to 3890).

109(24) On September 3, 2001, the Central Electoral Board and the Secretariat of State for Education signed a collaboration agreement under which the Central Electoral Board would conduct a campaign in schools attached to the Secretariat of Education "in order to facilitate the procedure of late declaration of birth for all Dominican children under 13 years of age who are enrolled in schools without a birth certificate." This agreement stipulated that the following five requirements must be complied with for the late registration of birth: [FN63]

1. The child must be a Dominican under 13 years of age.
2. Two current photographs of the child, size 2x2.
3. Certification of birth from the clinic or hospital where the child was born, or a certification from the Auxiliary Mayor, duly legalized by the city council of the place of birth.
4. Copies of the identity cards of the parents, or of the mother if the child is illegitimate.
5. Certification of whether or not the child has been baptized.

[FN63] Cf. collaboration agreement signed by the Central Electoral Board and the Secretariat of State for Education on September 3, 2001 (file of attachments to the application, attachment 14, tome IV, folios 2114 and 2115).

109(25) On June 5, 2003, in its brief with comments on Merits Report 30/03 issued by the Inter-American Commission during the processing of the case, the State indicated that the requirements for late registration of birth are: [FN64]

For children up to 12 years of age:

1. Certification of birth, recording the sex of the child, the date of birth and the mother's name.
2. Identity of the mother, in the case of an illegitimate child, and of the father, if the latter makes the declaration and recognition in writing.
3. Marriage certificate if the parents are married.
4. Certification from the school, if the child attends an educational establishment.

In the case of declarations for children aged 13 years or more:

1. Certification of birth, recording the sex of the child, the date of birth and the mother's name.
2. Certification from the public or private school, stating the last school year attended by the person whose birth is to be declared and their situation, indicating that to date the birth certificate has not been presented.
3. Identity of the mother, in the case of an illegitimate child, and of the father, if the latter makes the declaration and recognition in writing
4. Marriage certificate if the parents are married.
5. Baptism certificate issued by the parish of the place of birth; if the person is not a Catholic, the certificate should be issued by the church of the religion practiced;
6. Certification of whether or not the person whose birth is to be declared has an identity card.
7. Certification of the Civil Status Registry Office in the jurisdiction where the birth occurred, stating that the birth of the person whose birth is the object of the late declaration is not registered in that Office, when the late declaration is to be made in a different place to the one where the birth occurred. When there is more than one Registry Office in the place of birth, each of them must issue a certification.

8. Sworn statement by three (3) witnesses, over 50 years of age, testifying to the birth. The OC-25 form should be used for this purpose; this form is for the exclusive and judicious use of the Civil Status Registrar.

[FN64] Cf. brief of June 5, 2003, with the State's comments on Report No. 30/03 issued on March 6, 2003, by the Inter-American Commission (file of attachments to the application, attachment 14, tome 7, folios 2995 to 3014).

109(26) The official letter of July 3, 2003, addressed by the State to the Inter-American Commission, describing the measures adopted by the Dominican Republic to comply with the recommendations contained in Report No. 30/03 of the Commission, and stating that the requirements for late declaration of birth are as follows: [FN65]

1. The child must be a Dominican under the age of 13 years.
2. Two current photographs of the child, size 2x2.
3. Certification of birth from the clinic or hospital where the child was born, or else a certification from the auxiliary mayor, duly legalized by the city council of the place of birth.
4. Copies of the parents' identity cards (or passports), or of the mother, if the child is illegitimate.
5. Certification of whether or not the child has been baptized.

[FN65] Cf. official letter on the measures adopted in relation to the recommendations contained in Report No. 30/03 of the Inter-American Commission, addressed to the Commission on July 3, 2003, by the Permanent Representative of the Dominican Republic to the Organization of American States, Sofía Leonor Sánchez Baret (file of attachments to the application, attachment 14, tome VII, folios 3038 to 3039).

109(27) The list issued on November 17, 2003, by the Central Electoral Board, which established six requirements for the late declaration of birth for those over 16 years of age: [FN66]

- A) Certification of birth from the clinic or hospital where the child to be registered was born, issued by the doctor, clinic or hospital, midwife or auxiliary mayor;
- B) Current identity cards of the parents of the child to be registered, if the child is legitimate or recognized, or of the mother, if the child is illegitimate; or of the person making the declaration as established by law (art. 43 of Act 659 on Civil Status Acts). If one or both parents are deceased, the death certificate issued by the corresponding civil status registrar should be presented.
- C) Recent marriage certificate of the parents of the person to be registered, if they have been married;

- D) Certification of the Registry Offices of the Municipality or National District where the person to be declared was born that the latter has not be registered already; this certification is issued free of charge and without any tax;
- E) Baptism certificate with birth certification;
- F) Two photographs of the person to be registered, size 2x2.

[FN66] Cf. list of requirements for late declaration of birth of persons over 16 years of age issued on December 11, 2003, by the Central Electoral Board, the Dominican Republic (file of documents presented by the representatives on March 14, 2005, attachment 3, folio 3236).

109(28) On August 14, 2005, while the case was being processed before the Court, the State forwarded a list with the following five requirements for requesting late declaration of birth for children under 13 years of age: [FN67]

1. The child must be a Dominican under 13 years of age.
2. Two current photographs of the child, size 2x2.
3. Certification of birth from the clinic or hospital where the child was born, or else a certification from the auxiliary mayor, duly legalized by the city council of the place of birth.
4. Copies of the parents' identity cards, or of the mother, if the child is illegitimate.
5. Certification of whether or not the child has been baptized.

[FN67] Cf. requirements for requesting late declaration of birth for persons over 13 years of age (file of attachments to the final arguments brief of the State, attachment 2, folio 3752).

THE GRANTING OF BIRTH CERTIFICATES TO THE YEAN AND BOSICO CHILDREN

109(29) On March 25, 1999, when the Dominican Republic accepted the contentious jurisdiction of the Inter-American Court, the children Dilcia Yean and Violeta Bosico did not have birth certificates of Dominican nationality. [FN68]

[FN68] Cf. communication from the Head of Services of the Directorate General of Migration and from the Head of the International Studies Division of the Dominican Republic addressed to the Inter-American Commission on September 30, 1999 (file of attachments to the application, attachment 14, tome II, folios 1441 to 1444); extract from the birth certificate of the child Dilcia Oliven Yean issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2105), and extract from the birth certificate of the child Violeta Bosico Cofi issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2104).

109(30) On September 8, 1999, owing to the precautionary measures ordered by the Inter-American Commission in favor of the children Dilcia and Violeta, the State ordered the Directorate General of Migration to issue “temporary certificates of residence in the country [to the alleged victims] until their migratory status in the Dominican Republic ha[d] been examined and defined.” [FN69]

[FN69] Cf. communication from the Head of Services of the Directorate General of Migration and from the Head of the International Studies Division of the Dominican Republic addressed to the Inter-American Commission on September 30, 1999 (file of attachments to the application, attachment 14, tome II, folio 1441 to 1444).

109(31) On September 21, 2001, after communicating with officials of the Ministry of Foreign Relations, Leonidas Oliven Yean and Tiramén Bosico Cofi, accompanied by Genaro Rincón Miesse, went to the Registry Office of the First Circumscription to register the birth of their daughters, Dilcia Yean and Violeta Bosico, respectively. They were not asked to pay any fees in the Registry Office, or to sign documents or to make a public declaration. [FN70]

[FN70] Cf. letter from the Movimiento de Mujeres Domínico-Haitianas addressed to the Inter-American Commission on September 28, 2001 (file of attachments to the application, attachment 14, tome IV, folios 2110 to 2111).

109(32) On September 25, 2001, the State granted the child Dilcia Oliven Yean a birth certificate issued by the Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic. [FN71]

[FN71] Cf. extract from the birth certificate of the child Dilcia Oliven Yean issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2105), and certificate of declaration of the birth of the child Dilcia Oliven Yean issued on September 25, 2001, by the Civil Status Registry Office of the First Circumscription of the National District, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2113; file of attachments to the brief with requests and arguments, attachment 14, folio 90, and file of attachments to the answer to the application, attachment 18, folio 43).

109(33) On September 25, 2001, the State granted the child Violeta Bosico a birth certificate issued by the Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic. [FN72]

[FN72] Cf. extract from the birth certificate of the child Violeta Bosico Cofi issued on September 25, 2001, by the Central Electoral Board, Civil Status Registry Office of the First Circumscription of the National District of the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2104), and certificate of declaration of the birth of the child Violeta Bosico Cofi issued on September 25, 2001, by the Civil Status Registry Office of the First Circumscription of the National District, Santo Domingo, the Dominican Republic (file of attachments to the application, attachment 14, tome IV, folio 2112; file of attachments to the brief with requests and arguments, attachment 15, folio 91, and file of attachments to the answer to the application, attachment 35, folio 105).

THE EDUCATION OF THE CHILD VIOLETA BOSICO

109(34) During her early years, Violeta Bosico was admitted to school without a birth certificate. In 1991, Violeta entered primary school in Batey Las Charcas. In 1994, having interrupted her studies, she returned to school and began to attend the Palavé School up until third grade. [FN73]

[FN73] Cf. statement made by the child Violeta Bosico Cofi on August 8, 1999, before Katherine A. Fleet in Batey Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 6, folios 446 to 457, and file of attachments to the brief with requests and arguments, attachment 24, folios 370 to 381); statement made by Tiramen Bosico Cofi made before Katherine A. Fleet on July 11, 1999, in Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 9, folios 612 to 619; file of attachments to the brief with requests and arguments, attachment 4, folios 28 to 39, and file of attachments to the answer to the application, attachment 25, folios 57 and 60), and testimony of Amada Rodríguez Guante given before the Inter-American Court during the public hearing held on March 14, 2005.

109(35) In September and October 1998, when trying to enroll for fourth grade, the State did not allow Violeta Bosico to enroll in day school because she did not have a birth certificate. [FN74] For the 1998-1999 school year, the child had to enroll in the school for adults during the evening, which is for those over 18 years of age. She attended fourth and fifth grades there. [FN75]

[FN74] Cf. statement made by the child Violeta Bosico Cofi on August 8, 1999, before Katherine A. Fleet in Batey Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 6, folios 446 to 457, and file of attachments to the brief with requests and arguments, attachment 24, folios 370 to 381); additional statement made by the child Violeta Bosico Cofi before Hillary Ronen on July 31, 2001, in Batey Palavé, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments,

attachment 27, folios 393 to 396), and statement of Teresa Tucent Mena on August 8, 1999, before Katherine A. Fleet (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 25, folios 382 to 388).

[FN75] Cf. statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments, attachment 2, folio 18); statement made by Amada Rodríguez Guante before the Inter-American Court during the public hearing held on March 14, 2005; certification issued on November 6, 2003, by Amada Rodríguez Guante, Director of the Palavé Basic School (file of attachments to the final arguments brief of the State, attachment 28, folio 3934); additional statement made by the child Violeta Bosico Cofi before Hillary Ronen on July 31, 2001, in Batey Palavé, Santo Domingo, The Dominican Republic (file of attachments to the brief with requests and arguments, attachment 27, folios 393 to 396), and statement of Teresa Tucent Mena on August 8, 1999, before Katherine A. Fleet (file of attachments to the application, attachment 4, folios 358 to 367; file of attachments to the brief with requests and arguments, attachment 25, folios 382 to 388).

109(36) The main purpose of evening school is to teach adults to read and write and they adopt a “compressed” type of education, in which pupils do two grades in one year. This method makes fewer demands than day school. Most of those attending the evening session are from 20 to 30 years of age; exceptionally, there are adolescents. The classes in the evening are shorter, usually two and a half hours a day, and there is no break. [FN76]

[FN76] Cf. statement made by the child Violeta Bosico Cofi, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits and reparations, tome III, folios 892 and 893, and file of attachments to the State’s brief with final arguments, attachment 33, folio 370 to 381); statement made by the child Violeta Bosico Cofi on August 8, 1999, before Katherine A. Fleet in Batey Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 6, folios 446 to 457, and file of attachments to the brief with requests and arguments, attachment 24, folios 370 to 381); statement made by Genaro Rincón Miesse on August 9, 1999, before Katherine A. Fleet, in Gazcue, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments, attachment 2, folio 18), and testimony of Amada Rodríguez Guante given before the Inter-American Court during the public hearing held on March 14, 2005.

109(37) In 2001, Violeta Bosico reverted to attending school during the day, completed sixth grade, and was enrolled for seventh grade in day school. [FN77]

[FN77] Cf. additional statement made by the child Violeta Bosico Cofi before Hillary Ronen on July 31, 2001, in Batey Palavé, Santo Domingo, the Dominican Republic (file of attachments to the brief with requests and arguments, attachment 27, folios 393 to 396), and Basic Education diploma of Violeta Bosico issued by the Palavé Center on July 1, 2004 (file of attachments to the final arguments brief of the State, attachment 30, folio 3938).

THE NON-PECUNIARY DAMAGE CAUSED TO THE CHILDREN DILCIA YEAN AND VIOLETA BOSICO AND THEIR NEXT OF KIN

109(38) The child Dilcia Yean and her next of kin have suffered non-pecuniary damage [FN78] (infra paras. 224 and 227).

[FN78] Cf. expert report of Débora Munczek given before the Inter-American Court during the public hearing held on March 14, 2005, and statement made by Leonidas Oliven Yean on June 25 or July 9, 1999, before Katherine A. Fleet, in Batey Enriquillo, Sabana Grande de Boyá (file of attachments to the brief with requests and arguments, attachment 34, folio 411).

109(39) The child Violeta Bosico and her next of kin have suffered non-pecuniary damage [FN79] (infra paras. 224, 225 and 227).

[FN79] Cf. expert report of Débora Munczek given before the Inter-American Court during the public hearing held on March 14, 2005; statement made by Teresa Tucent Mena, authenticated on February 2, 2005, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits and reparations, folios 899 al 900), and statement made by the child Violeta Bosico Cofi on August 8, 1999, before Katherine A. Fleet in Batey Palavé, Manoguayabo, the Dominican Republic (file of attachments to the application, attachment 14, tome III, folio 1758).

THE REPRESENTATION OF THE ALLEGED VICTIMS AND THEIR NEXT OF KIN AND THE RESPECTIVE EXPENSES

109(40) The Yean and Bosico children have been represented [FN80] in the proceedings before the domestic system, and also those conducted before the Commission and the Court by the Movimiento de Mujeres Domínico-Haitianas (MUDHA), [FN81] the Center for Justice and International Law (CEJIL), [FN82] and the International Human Rights Law Clinic, University of California, Berkeley, Boalt Hall School of Law, [FN83] who have incurred a series of expenses related to the said measures.

[FN80] Cf. power of attorney granted by Leonidas Oliven Yean to Genero Rincón M. authenticated on October 10, 1998, and power of attorney granted by Tiramén Bosico Cofi to Genero Rincón M. authenticated on October 10, 1998 (file of attachments to the brief with requests and arguments, attachment 1, folios 3748 to 3750); power of attorney granted by Tiramén Bosico Cofi to the Center for Justice and International Law (CEJIL), the University of California, Berkeley, Boalt Hall School of Law, and the Movimiento de Mujeres Domínico-Haitianas (MUDHA) authenticated on June 13, 2003, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits, reparations and costs, tome I, folios 76 and 77), and

power of attorney granted by Leonidas Oliven Yean to the Center for Justice and International Law (CEJIL), the University of California, Berkeley, Boalt Hall School of Law, and the Movimiento de Mujeres Domínico-Haitianas (MUDHA) authenticated on June 13, 2003, by Marcelino de la Cruz Nuñez (file of preliminary objections and possible merits, reparations and costs, tome I, folios 78 and 79).

[FN81] Cf. MUDHA expense vouchers in the case of the Yean and Bosico children (file of attachments to the brief with requests and arguments, attachments 55 and 56, folios 729 to 828).

[FN82] Cf. CEJIL expense vouchers in the case of the Yean and Bosico children (file of attachments to the brief with requests and arguments, attachment 54, folios 537 to 728, and file of preliminary objections and possible merits and reparations, tome V, folios 1314 to 1319).

[FN83] Cf. expense vouchers of the International Human Rights Law Clinic in the case of the Yean and Bosico children (file of attachments to the brief with requests and arguments, attachment 57, folios 829 to 852).

IX. VIOLATION OF ARTICLES 19, 20, 24, 3 AND 18 OF THE AMERICAN CONVENTION IN RELATION ARTICLE 1(1) THEREOF (Rights of the Child, Right to Nationality, Right to Equal Protection, Right to Juridical Personality, Right to a Name, and Obligation to Respect Rights)

Arguments of the Commission

110. With regard to Article 19 of the American Convention, the Commission indicated that:

- (a) The State failed to comply with its international obligations because it did not adopt the necessary measures that took into consideration the superior interest of the child and ensured the protection of Dominican children of Haitian origin, such as the children Dilcia and Violeta;
- (b) The State disregarded its obligation to protect the children Dilcia and Violeta in accordance with Article 19 of the Convention, by maintaining them in a situation of legal, social and economic vulnerability and marginalization, and failing to ensure their right to nationality, exposing the children to the risk of being expelled from the Dominican Republic, and
- (c) The State did not comply with its obligation to ensure the right to education, since the child Violeta was prevented from enrolling in day school because she had no birth certificate.

111. In relation to Article 20 of the American Convention, The Commission argued that:

- (a) The Constitution established *ius soli* as the principle for acquiring Dominican nationality, and the right to nationality based on having been born on Dominican territory is protected by the Constitution, irrespective of the nationality or legal status of the parents. Any restriction of the right to nationality that is not based on a child's place of birth directly contradicts this principle;
- (b) It is unacceptable to describe the alleged victims in this case as "foreigners in transit," since those who live for 10, 15 or more years in a country cannot be described as transients;
- (c) The Central Electoral Board insists that a series of documents must be presented in order to proceed with a late declaration of birth. These requirements violate not only rights contained in the Constitution and laws deriving from it, but also rights enshrined in the American Convention, because they are difficult to comply with, involve expenditure and constitute

obstacles that prevent the enjoyment of the right to nationality of most children in the same situation as the children Dilcia and Violeta; namely, Dominicans of Haitian origin;

(d) The inconsistent procedures of the civil status registrars did not allow the children Dilcia and Violeta to obtain their birth certificates for four years and four months, even though they had complied with the requirements established for children under 13 years of age;

(e) The delivery of the birth certificates to the alleged victims in the instant case was the result of a decision of the State, which could possibly deny their validity in the future, owing to the way in which they were granted, and

(f) The collaboration agreement signed by the State at the end of 2001 eliminated several requirements that tended to hinder the late declaration procedure; however, it retained the principal requirement of the parents' identity cards, which is a contradiction to the principle of *ius soli*.

112. Regarding Article 24 of the American Convention, the Commission indicated that:

(a) States may establish distinctions in the enjoyment of certain benefits between its citizens, foreigners in a regular situation, and foreigners in an irregular situation. Nevertheless, to do this, the content and scope of the norm must be examined in detail, together with its justification and consequences;

(b) The treatment that the alleged victims received was due to considerations relating to their origin, their name and the migratory status of their parents. Policies and practices that are deliberately discriminatory, as well as those that have a discriminatory impact on a specific category of individuals are prohibited, even if the discriminatory intention cannot be proved;

(c) The secondary legislation applicable in this case is open and allows the authorities of the Central Electoral Board and the Civil Status Registry Office to establish the requirements for late declarations of birth and to apply them discretionally, and(d) Although it has indicated that some officials may have shown a discriminatory attitude, the State has not investigated or penalized such practices.

113. With regard to Article 3 of the Convention, the Commission stated that:

(a) The right to juridical personality is a fundamental requirement for the enjoyment of all the basic freedoms, because this right grants the individual recognition before the law;

(b) The Dominican Republic's domestic legislation, in the Code for the Protection of Children and Adolescents (Act No. 14-94), recognizes the relationship between legal identity and the protection of the fundamental rights of the child, and guarantees the child's fundamental right to dignity, which includes the right to identity and explicitly prohibits any discrimination in granting or withdrawing the fundamental rights of the child based on race or nationality, and

(c) The refusal by Dominican officials to register the children Dilcia and Violeta in the Civil Status Registry Office resulted in their exclusion from the State's juridical and institutional system since, for over four years, neither Dilcia nor Violeta had a birth certificate (the legal document recognized by the Dominican Republic as proof of identity) and, consequently, they were not recognized before the law, which violates Article 3 of the American Convention.

114. The Commission did not allege that Article 18 of the Convention had been violated.

Arguments of the representatives

115. With regard to Article 19 of the American Convention, the representatives indicated that:

(a) Given the legal incapacity and vulnerability of the children Dilcia and Violeta, the State had a special obligation, required by their status as minors under Article 19 of the Convention, to adopt measures of protection to ensure their rights to nationality, juridical personality, education, the family and judicial protection. The arbitrary and inconsistent impediments to which the State subjected the children in their efforts to obtain the documentation constitute a direct violation of the rights embodied in Article 19 of the American Convention, in relation to Article 1(1) thereof, and

(b) Article 19 of the Convention requires special protection measures to be taken to guarantee the right of children to education, owing to their specific situation of vulnerability and because this right cannot be protected without special assistance from the family, society and the State. The right to education is one of the rights protected by Article 26 of the American Convention.

116. In relation to Article 20 of the Convention, the representatives argued that:

(a) The Dominican Republic violated the right to nationality of the children Dilcia and Violeta by denying them the possibility of registering their birth on national territory under the constitutional principle of *ius soli*, based on their race and parentage;

(b) The State's interpretation of the "in transit" exception, and its application in the instant case, adds a restriction to obtaining nationality that is not stipulated in either the Constitution or the Civil Code of the Dominican Republic (hereinafter "Civil Code"), or in Act No. 659;

(c) Most of the requirements for late registration of birth established in the guidelines issued by the Civil Status Registry Office and not by law bear no relationship to proving birth on Dominican territory and are therefore disproportionate and unnecessary. This is especially pertinent in relation to individuals of Haitian origin who live in the bateyes. Restrictions to obtaining nationality should fulfill certain requirements to be considered legitimate and non-arbitrary. They should: (1) be established by law; (2) be non-discriminatory; (3) pursue a legitimate purpose, and (4) strictly respect the principles of need and proportionality, and

(d) To prove a child's identity, States usually ask for either a birth certification or a baptism certificate or a certification from a midwife or the hospital, but not all of these documents simultaneously. Since, under the *ius soli* system, it is only necessary for the child to have been born on the State's territory, the father's legal status is irrelevant and the parents only have to prove their relationship to the child by means of any common identity document, such as an identity card or a driving license.

117. With regard to Article 24 of the American Convention, the representatives argued that:

(a) The State had violated Articles 24 and 1(1) of the American Convention by introducing into its laws discriminatory regulations relating to legal protection and by applying them to the alleged victims, owing to the intentionality of the discriminatory acts of the public officials when refusing to grant them the birth declarations, and to the discriminatory effects produced by the application of the laws that regulate registration. To justify a distinction that affects children

principally, it must be shown clearly that the violation of their rights is absolutely necessary to achieve a public interest objective, and the State did not prove this;

(b) There is no relationship between granting nationality and preventing the trafficking of children or electoral fraud and, even though these may be legitimate objectives, the means to achieve them are incompatible with the protection of human rights;

(c) International law prohibits direct discrimination as well as indirect discrimination or the discriminatory effect, and

(d) The regulations introduced into the laws of the Dominican Republic have a discriminatory effect on Dominicans of Haitian origin, resulting from a series of requirements demanded by Dominican officials in order to grant late declarations of birth, which, in practice, prevent the former from obtaining Dominican nationality.

118. Regarding Article 3 of the Convention, the representatives indicated that:

(a) The right to juridical personality is protected by numerous international instruments and may never be suspended. In the Dominican Republic, the birth certificate is the legal document used as official proof of name and identity; consequently, it is necessary to ensure juridical personality, and

(b) The children were deprived of the fundamental right to recognition of juridical personality for more than four years. During this time, the children Dilcia and Violeta lived in a situation of illegality in which they were permanently at risk of deportation to Haiti. Without a birth certificate, they could not obtain legal property titles, they could not obtain an identity card, and they would not have been allowed to vote when they came of age.

119. As regards Article 18 of the Convention, the representatives argued that:

(a) The right to a name, as the right to nationality and to juridical personality, is a fundamental right and can never be suspended. The right to a name is closely linked to the identity of an individual and is associated with the rights to privacy and juridical personality;

(b) The State has failed to comply with its obligation to ensure to Dilcia and to Violeta their right to a name, by refusing to grant them a birth certificate for more than four years. Without official names, the children Dilcia and Violeta did not have any of the State protections that arise from registration of a name, and

(c) Since the Public Prosecutor and the Central Electoral Board maintained that the children had not complied with the requirements, the State granted them birth certificates illegally because they had not complied with the requirements; this action could therefore be revoked by the State. Consequently, the violation is continuing, because their rights have still not been assured.

Arguments of the State

120. With regard to Article 19 de Convention, the State indicated that:

(a) The fact that Violeta has had problems with her education is not the State's responsibility, because the different reasons that have prevented her from studying continuously have been caused by her family, since they changed their place of residence constantly and she

had to leave several educational establishments abruptly. Even though Violeta did not present her birth certificate, she was allowed to attend school for several years, and

(b) Despite the efforts of the competent public bodies to ensure the right to education and facilitate the enrolment of all children of school age, there is an unavoidable public policy rule with regard to education that makes it necessary to enroll children with their birth certificates.

121. In relation to Article 20 of the American Convention, the State argued that:

(a) The fact that the children are of Haitian origin bears no relationship to the reasons why the civil status registrars did not register them and acknowledge their Dominican nationality. The decision was based on non-compliance with the presentation of the requirements to opt for this nationality. There is no evidence that the Registry Office refused to register them for discriminatory reasons, since this Office cannot make exceptions and its work is merely to confirm that applicants have proved they were born in the country;

(b) It is irrelevant whether the fathers of the Yean and Bosico children were in transit in the country because, by being born on Dominican territory, the children had the right to opt for this nationality and never lost this privilege; however, this matter is of no interest since, the children now have Dominican nationality;

(c) The alleged victims were able to opt for Haitian nationality because of the *ius sanguinis* connection through their fathers; therefore, they were never in danger of being stateless;

(d) The presentation of the parents' identity cards is a requirement for obtaining late declaration of birth, to show whether they are the legitimate children of foreigners who are resident in the country, or diplomats, or in transit. In this specific case, the children's mothers are Dominicans so they should not have had any problem complying with this requirement. The other documents required are necessary to ensure that the registration mechanism is reliable and to avoid fraudulent supplantation;

(e) The alleged continuing situation of illegality of the children does not exist, because there is no deportation policy against individuals who are illegally on Dominican territory, and

(f) The State is not responsible for a continuing violation of the right to nationality, because the delay in granting it was due to the negligence of the mothers who did not register the births of the children opportunely and who, when they attempted to make a late registration, did not provide the evidence and the requirements needed to complete this procedure.

122. In relation to Article 24 of the American Convention, the State argued that:

(a) The particular situation of late birth declaration of the children Dilcia Yean and Violeta Bosico means that they are treated separately from the general regime for all other Dominicans who are registered at birth. The regulations in force for all those who have not been registered with the Civil Status Registry Office are applied to them; namely the late declaration procedure. This procedure must be carried out in accordance with a series of requirements and steps needed to show reliably and legally that the applicants have a real right to Dominican nationality, and

(b) It has not been proved and it is not true that the Dominican Republic civil status registrars have been instructed by their superiors to prevent the registration of children of Haitian origin and not grant them birth certificates. The civil status registrars involved in this case were simply complying with their obligation to ask for the documents that are required of both Dominicans and foreigners, without any form of distinction, for late declarations of birth.

123. In relation to Article 3 of the Convention, the State argued that it had not violated the right to juridical personality, since it never prevented the children's registration.

124. The State did not submit any specific arguments concerning Article 18 of the Convention.

Considerations of the Court

125. Article 20 of the American Convention establishes that:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

126. Article 24 of the American Convention stipulates that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

127. Article 19 of the American Convention stipulates that:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

128. Article 3 of the American Convention establishes that:

Every person has the right to recognition as a person before the law.

129. Article 18 of the American Convention stipulates that:

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

130. Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

131. The Court will take into consideration its competence *ratione temporis* (*supra* paras. 4 and 100 to 108) and the facts of the case *sub judice* to determine whether the Dominican

Republic is responsible for the alleged violation of the said articles of the American Convention, which are considered together in this chapter.

132. The Court considers it necessary to emphasize that, although the rejection of the application for late registration of birth in the Registry Office took place on March 5, 1997, and the decision of the Public Prosecutor confirming this rejection was issued on July 20, 1998, both facts determined that the children Dilcia Yean and Violeta Bosico had no nationality until September 25, 2001. Consequently, this denial persisted after March 25, 1999, the date on which the Dominican Republic accepted the contentious jurisdiction of the Court; and this is the reason why this Court affirms that it is competent to consider the refusal (*supra* paras. 4 and 100 to 108).

133. The Court notes that when the State accepted the Court's contentious jurisdiction, Dilcia Yean and Violeta Bosico were children [FN84] who, as such, had special rights corresponding to specific obligations of the family, society and the State that required the special protection of the State, and this should be understood as an additional and complementary right. [FN85]

[FN84] The Court notes that when it delivered this judgment, Dilcia Yean was 9 years old and Violeta Bosico was 20 years old; however, given that on March 25, 1999, Dilcia and Violeta were 2 years old and 14 years old, respectively, the Court will refer to the alleged victims as children, Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 42.

[FN85] Cf. *Juridical Status and Human Rights of the Child*, *supra* note 84, paras. 53, 54 and 60, and the Case of Gómez Paquiyauri Brothers. Judgment of July 8, 2004, Series C No. 110, para. 164.

134. This Court has stated that the cases in which the victims of human rights violations are children are particularly serious. [FN86] The prevalence of the child's superior interest should be understood as the need to satisfy all the rights of the child, and this obliges the State and affects the interpretation of the other rights established in the Convention when the case refers to children. [FN87] Moreover, the State must pay special attention to the needs and the rights of the alleged victims owing to their condition as girl children, who belong to a vulnerable group. [FN88]

[FN86] Cf. Case of the "Street Children" (Villagrán Morales). Judgment of November 19, 1999. Series C. No. 64 para. 146; the Case of Gómez Paquiyauri Brothers, *supra* note 85, para. 162, and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 133.

[FN87] Cf. *Juridical Status and Human Rights of the Child*, *supra* note 84, paras. 56, 57 and 60.

[FN88] Cf. United Nations, Committee for the Elimination of All forms of Discrimination against Women, General Recommendation No. 24, on the application of Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women.

135. In view of the above, the Court will not rule on the alleged violation of Article 19 of the American Convention in isolation, but will include its decision in this regard together with the examination of the other articles that are relevant to this case.

136. With regard to the right embodied in Article 20 of the Convention, the Court understands that nationality is a juridical expression of a social fact that connects an individual to a State. [FN89] Nationality is a fundamental human right enshrined in the American Convention, and other international instruments, [FN90] and is non-derogable in accordance with Article 27 of the Convention.

[FN89] Cf. Nottebohm case (Liechtenstein vs. Guatemala), second phase. Judgment of 6 April 1955. International Court of Justice, ICJ Reports 1955, p. 23.

[FN90] Cf., among others, American Declaration of Human Rights, Article XIX; Universal Declaration of Human Rights, Article 15; International Covenant on Civil and Political Rights, Article 24(3); Convention on the Rights of the Child, Article 7(1); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29, and Convention on the Reduction of Statelessness, Article 1(1).

137. The importance of nationality is that, as the political and legal bond that connects a person to a specific State, [FN91] it allows the individual to acquire and exercise rights and obligations inherent in membership in a political community. As such, nationality is a requirement for the exercise of specific rights.

[FN91] Cf. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 35.

138. The Court has established that:

It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights. [...]

The classic doctrinal position, which viewed nationality as an attribute granted by the State to its subjects, has gradually evolved to a conception of nationality which, in addition to being the competence of the State, is a human right. [FN92]

[FN92] Cf. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, *supra* note 91, paras. 32 and 33.

139. The American Convention recognizes both aspects of the right to nationality: the right to have a nationality from the perspective of granting the individual a “minimal measure of legal protection in international relations through the link his nationality establishes between him and the State in question; and second the protection accorded the individual against the arbitrary deprivation of his nationality, without that are tied to the nationality of the individual.” [FN93]

[FN93] Cf. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, *supra* note 91, para. 34.

140. The determination of who has a right to be a national continues to fall within a State’s domestic jurisdiction. However, its discretionary authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness. [FN94]

[FN94] Cf. *inter alia*, Convention on the Reduction of Statelessness, Article 1(1); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29, and Convention on the Rights of the Child, Article 7(1), and International Covenant on Civil and Political Rights, Article 24(3).

141. The Court considers that the peremptory legal principle of the equal and effective protection of the law and non-discrimination determines that, when regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights. [FN95] Moreover, States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.

[FN95] Cf. Case of Yatama, *supra* note 13, para. 185; Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 de September 17, 2003, Series A No. 18, para. 88, and Juridical Status and Human Rights of the Child, *supra* note 84, para. 44.

142. States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.

143. The Convention on the Reduction of Statelessness, which was signed by the Dominican Republic on December 5, 1961, was ratified by 26 States, and entered into force on December 13, 1975. Its Article 1 establishes that States shall grant nationality to a person born in their territory who would otherwise be stateless. This Convention establishes that nationality shall be granted at birth, by operation of law, or upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law, and that this application may not be rejected unless the person concerned does not comply with the following list of conditions, to which the State may subordinate the granting of its nationality:

- (a) That the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
- (b) That the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
- (c) That the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
- (d) That the person concerned has always been stateless.

144. According to the facts of the instant case, the children Dilcia Yean and Violeta Bosico were born in the Dominican Republic on April 15, 1996, and March 13, 1985, respectively, and they have grown up and lived there. Also, their mothers, Leonidas Oliven Yean and Tiramen Bosico Cofi, are of Dominican nationality and have lived in the Dominican Republic, and the children's fathers are Haitians (*supra paras.* 109(6) and 109(7)).

145. On March 5, 1997, when Dilcia Yean was 10 months old and Violeta Bosico was 12 years old, the children applied for late registration of their births before the Civil Status Registry Office of Sabana Grande de Boyá. These applications for late registration were rejected by the Registrar, who considered that the documents presented by the children were insufficient for late registration, based on a list of eleven requirements (*supra paras.* 109(14), 109(17) and 109(18)). On September 11, 1997, the children had recourse to the Public Prosecutor of the Judicial District of Monte Plata, who confirmed the Registrar's decision on July 20, 1988, and ratified the rejection, because the late registration "was not supported by the documentation and procedure

established for this course of action,” based on a list containing twelve requirements for late registration of birth (supra paras. 109(19) and 109(20)).

146. To register their births in the Registry Office, the children Dilcia Yean and Violeta Bosico were asked to comply with the eleven requirements listed in the attachment to the State’s communication to the Inter-American Commission of September 30, 1999, or the twelve requirements indicated in the decision issued by the Public Prosecutor of the Judicial District of Monte Plata on July 20, 1998 (supra paras. 109(18) and 109(20)). In other words, the birth certificates were not granted owing to the children’s failure to comply with the presentation of the eleven or twelve requirements demanded by the said State officials. However, in its final written arguments, the State indicated that they should have presented three documents to the Registrar on March 5, 1997, and they did not do this (supra para. 109(16)). From the foregoing we can conclude that the State adopted different positions regarding the requirements the children had to fulfill while the case was being processed before the Inter-American System for the protection of human rights. This situation shows that there are no standard criteria for demanding and applying the requirements for late birth registration of children under 13 years of age in the Dominican Republic.

147. Following the meeting held by the Commission in the Dominican Republic on August 24, 2001, in the exercise of its jurisdiction, the State informed Leonidas Oliven Yean and Tiramen Bosico Cofi that they should register the births of their daughters, and on September 25, 2001, the Dominican Republic granted birth certificates to the Yean and Bosico children and, consequently, on this date it granted them Dominican nationality (supra paras. 109(32) and 109(33)).

148. In the Dominican Republic, nationality is regulated in the Constitution promulgated on August 14, 1994, in force at the time of the facts. Article 11 of the Constitution establishes that Dominicans are:

All persons who were born in the territory of the Republic, except for the legitimate children of foreign diplomats resident in the country or foreigners who are in transit.
[...]

149. Also, article 9 of the Civil Code stipulates

Dominicans are:

First – All persons who have been born or will be born on the territory of the Republic, whatsoever the nationality of their parents.

For the effects of this provision, the legitimate children of foreigners resident in the country either representing or serving their own country shall not be considered as having been born in the territory of the Republic.

[...]

150. As can be inferred from article 11 of the Constitution, the Dominican Republic has established the principle of *ius soli* to determine those who have a right to nationality. Nevertheless, in order to acquire this nationality by birth, the child may not be included in one of the constitutional exceptions, which refer to the children of diplomats or foreigners who are in the country in transit.

151. The Court will not examine the first exception concerning the children of diplomats, because the facts of the instant case do not relate to this.

152. With regard to the exception concerning foreigners in transit, both the Commission and the representatives alleged that the State authorities had taken the position, and made it effective in the practice, that children of Haitian origin born in the Dominican Republic, such as the children Dilcia and Violeta, would not be Dominican nationals, because their fathers are Haitian migratory workers and are considered to be in transit.

153. Regarding the Dominican authorities' interpretation of the condition of person in transit, in its 1999 Report on the Situation of Human Rights in the Dominican Republic the Inter-American Commission observed that:

[...] Around 500,000 undocumented Haitian workers live in the Dominican Republic. In many cases, these are people who have lived there for 20 or 40 years and many of them have been born on Dominican territory. Most of them face a situation of permanent illegality, which they transmit to their children, who cannot obtain Dominican nationality because, according to the restrictive interpretation that Dominican Authorities give to article 11 of the Constitution, they are children of 'foreigners in transit.' It is not possible to consider that people are in transit when they have lived for many years in a country where they have developed innumerable connections of all kinds. [FN96]

[FN96] Cf. Organization of American States, Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104, doc.49, rev. 1, of October 7, 1999, para. 363.

154. Judgment No. 453 of the Civil Chamber of the Appeals Court of the National District, delivered on October 16, 2003, concerning the registration in the Civil Status Registry Office of two children whose fathers are Haitian and live in the Dominican Republic, established that:

[...] It is not possible to equate the situation of a foreigner's illegality to the notion of transit, because they are different concepts; also, in neither the regulations for the application of the Migration Law nor the report issued by the [Inter-American] Commission on Human Rights [on the Situation of Human Rights in the Dominican Republic in 1999], is the condition of legality established as a requirement for having the right to the nationality of the place of birth; [...] that, in the instant case, there is no possibility that the parents of the children who are applying for their birth to be registered can be considered in transit because, from the documents in the case file, it is clear that they have lived in the country for several years [...], and] that, although it is

true that the parents of the child live in the country illegally, it is no less true that this situation of illegality cannot in any way affect the children, who can benefit from Dominican nationality merely by proving that they were born on Dominican territory, and that their parents are not diplomats in the country and are not in transit in it [...]. [FN97]

[FN97] Cf. judgment No. 453 of the Civil Chamber of the Court of Appeal of the National District issued on October 16, 2003 (file of preliminary objections and possible merits, reparations and costs, tome II, folios 586 to 612).

155. The Court considers it should mention that the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of a person's migratory status in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner who is on its territory, without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause. [FN98]

[FN98] Cf. Juridical Status and Rights of Undocumented Migrants, supra note 95, para. 118.

156. In view of the above, and considering the right to nationality of the children of migrants in the Dominican Republic according to the pertinent constitutional provision and the international principles concerning protection for migrants, the Court considers that:

- (a) The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights; [FN99]
- (b) The migratory status of a person is not transmitted to the children, and
- (c) The fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born.

[FN99] Cf. Juridical Status and Rights of Undocumented Migrants, supra note 95, para. 134.

157. In addition to the foregoing, the Court considers it opportune to refer to Section V of the Migration Regulations of the Dominican Republic No. 279 of May 12, 1939, in force at the time of the request for late registration of birth in this case. This establishes clearly that the purpose of the person in transit is merely to pass through the territory and, to this end, it establishes a temporal limit of no more than ten days. [FN100] The Court observes that, to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit.

[FN100] Section V of the Rules of Procedure of Migration No. 279 of May 12, 1939, stipulates that “Foreigners endeavoring to enter the Republic with the principal purpose of proceeding through the country towards another country shall be granted the privileges of “transients.” These privileges shall be granted even though the foreigner is not admissible as an immigrant, provided his entry is not contrary to public order and health. The foreigner shall be required to state his destination, the chosen means of transportation, and the date and place of leaving the Republic. A period of 10 days shall usually be considered sufficient to be able to pass through the Republic[; and] a foreigner admitted in order to proceed through the country shall be granted a Landing Permit, valid for 10 days [...]” (file of attachments to the brief with requests and arguments, attachment 21, folios 364 and 365).

158. The Court considers that, under no circumstances, could the State have applied the exception referring to the children of a person in transit to the Yean and Bosico children, because the mothers of the alleged victims are Dominican and the children were born in the Dominican Republic, the latter being the condition established in article 11 of the Constitution for granting Dominican nationality.

159. The Court will now examine the application of the requirements for the late registration of birth in the Dominican Republic and their effects on the Yean and Bosico children in this case.

160. In the Dominican Republic the birth registration procedure is regulated in articles 39, 40 and 41 of Act No. 659 on Civil Status Acts of July 17, 1944. [FN101] This law establishes that in the case of late declaration of birth, the civil status registrar may register it or not in the corresponding register, after investigating the truth of the declaration. The truth is verified by the presentation of a series of documents that are considered requirements for late declaration of birth, to be established by the Central Electoral Board, as can be inferred from article 9 of Act No. 659. [FN102]

[FN101] Act No. 659 on Civil Status Acts of July 17, 1944, stipulates:

Art. 39. Birth declarations shall be made before the Civil Status Registrar of the place where the birth takes place within the following thirty (30) days. If there is no registrar in the place of birth, the declaration shall be made within sixty (60) days before the Civil Status Registrar corresponding to that jurisdiction.

If the Civil Status Registrar has any doubt about the existence of the child whose birth is declared, he shall require the child to be brought before him immediately should the birth have taken place in the same village, and if it took place in another place, the certification of the (Mayor), today Justice of the Peace of the district, shall suffice.

Art. 40. (Modified by Act 90 of December 23, 1965, G.O. No. 8963.) In the case of late declarations of birth, the civil status registrar may, following an investigation into the truth of this declaration, register the birth or not in the corresponding register under [article] 38 of this law, but he shall not issue a copy to the party concerned until the registration has been ratified by

the competent court, pursuant to [article] 41 hereof. Nevertheless, late declarations of birth shall not be admitted until the person concerned submits a certification issued [by] the civil status registrar of the jurisdiction where the person in question is alleged to have been born, stating that this person has not been declared previously in that jurisdiction; this requirement shall be noted in the margin of the corresponding record. Only when this formality has been completed can the registrar receive the respective testimonial information or identity certification. If the birth occurred after January 1, 1945, and if there is more than one civil status registrar in the municipality where the person declared is alleged to have been born, the certification can be issued by the Director of the Central Civil Status Office, following an inspection of the registers for which he is responsible, and the late declaration shall be received by the civil status registrar of the corresponding jurisdiction. This certification shall not be necessary when the declaration is made before the civil status registrar corresponding to the place of birth of the person to be declared when there is only one registrar, after the records have been inspected by this official, who records this in the respective registration record and who shall be responsible should this formality be omitted. The documents proving that the beneficiary has not been declared in the place of birth, together with a certified copy of the ratification judgment, must be carefully recorded and filed by the acting official.

Officials responsible for receiving testimonial identity certifications to substitute for civil status records must also require presentation of the certification of the corresponding civil status registrar indicating that the person concerned is not registered in the registers for which he is responsible.

Art. 41 – (Modified by Act 90 of December 23, 1965, G.O. No. 8963.) The civil status registrar who has received a late declaration of birth shall immediately transmit a certified copy of the record to the public prosecutor of the corresponding judicial district, who, following the appropriate investigation shall forward it to the court of first instance; the latter can request any type of probative measure; this includes consulting books, the papers of the parents (even if they are deceased), hearing witnesses and summoning the parties concerned, so that it can issue a ruling ratifying or not the record of late declaration. The public prosecutor shall forward a copy of the respective judgment to the civil status registrar, and the latter must note this in the margin of the corresponding birth declaration, with any valid objections, and can then issue a copy of this record (file of attachments to the brief with requests and arguments, attachment 1, folios 11 to 12).

[FN102] Article 9 of Act No. 659 on Civil Status Acts of July 17, 1944, establishes the following: "the Civil Status Registrars shall follow the instructions they receive from the Central Electoral Board and from the Central Civil Status Office and shall be under the immediate and direct supervision of the Public Prosecutors."

161. In the Dominican Republic the lists of requirements have been drawn up based on the age of the child to be registered, but distinctions have also been made involving the number and type of requirements for the same age group, according to the competent authority who applies them, without any objective criteria being followed.

162. According to the facts of this case, when the request for late registration was made, the birth certifications of the children were presented; namely, for Dilcia Yean, the birth certification issued by the "local health center" of Sabana Grande de Boyá, and for Violeta Bosico, the birth

certification issued by the Auxiliary Mayor of Batey Las Charcas de Sabana Grande de Boyá; and also the identity cards of the mother of each child (supra para. 109(15)).

163. The Court considers that by appearing before the Civil Status Registrar and making a request for late registration, the children claimed their right to nationality. To this end, they presented their birth certifications and the identity cards of their mothers, which were the two requirements that should be applied according to the pertinent domestic legislation and their ages (supra para. 109(16)). Despite this, the State rejected the request and denied Dominican nationality to the alleged victims (supra paras. 109(17), 109(18) and 109(20)).

164. The Court observes that the request for late registration of birth was denied based on failure to comply with the presentation of 11 or 12 requirements that were not needed in the case of children under 13 years of age, and that were applied to the children, even though at the time of the request Dilcia Yean was 10 months old and Violeta Bosico was 12 years old (supra paras. 109(14), 109(17), 109(18) and 109(20)).

165. It should be observed that age is the legal norm used in the Dominican Republic to make a distinction in the application of requirements for late registration of birth. Under the applicable laws, the circumstances of the Yean and Bosico children did not differ from other Dominican children under 13 years of age in a way that could justify increasing the requirements for registering their birth. By applying to the alleged victims requirements that, as children under 13 years of age, did not correspond to them, the pertinent domestic norms were violated and a disproportionate and undue burden of proof was imposed on them.

166. The Court considers that, by applying to the children requirements that differed from those requisite for children under 13 years of age in order to obtain nationality, the State acted arbitrarily, without using reasonable and objective criteria, and in a way that was contrary to the superior interest of the child, which constitutes discriminatory treatment to the detriment of the children Dilcia Yean and Violeta Bosico. This situation placed them outside the State's juridical system and kept them stateless, which placed them in a situation of extreme vulnerability, as regards the exercise and enjoyment of their rights. [FN103]

[FN103] Cf. Juridical Status and Human Rights of the Child, supra note 84, para. 56.

167. Bearing in mind that the alleged victims were children, the Court considers that the vulnerability arising from statelessness affected the free development of their personalities, since it impeded access to their rights and to the special protection to which they are entitled.

168. Furthermore, the Court considers that the discriminatory treatment imposed by the State on the Yean and Bosico children is situated within the context of the vulnerable situation of the Haitian population and Dominicans of Haitian origin in the Dominican Republic, to which the alleged victims belong (supra para. 109(9)).

169. In this regard, the United Nations Committee on the Rights of the Child expressed its deep concern “at the discrimination against children of Haitian origin born in the territory [of the Dominican Republic] or belonging to Haitian migrant families, especially their limited access to housing, education and health services, and note[d] in particular the lack of specifically targeted measures to address this problem.” The Committee, specifically in relation to birth registration, indicated that “in particular, concern [was] expressed about the situation of children of Haitian origin or belonging to Haitian migrant families whose right to birth registration has been denied in the State [... and, as a] result of this policy, those children have not been able to enjoy fully their rights, such as to access to health care and education.” [FN104]

[FN104] Cf. United Nations, Committee on the Rights of the Child, Examination of the Reports presented by the States Parties under Article 44 of the Convention. Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic. UN Doc. CRC/C/15/Add.150, of 21 February 2001, paras. 22 and 26.

170. The United Nations Commission on Human Rights, through an independent expert, issued a report entitled “Human rights and extreme poverty,” in which it referred to the situation of Haitians in the Dominican Republic as follows:

The issue of racism [...] is sometimes manifested among Dominicans themselves, but above all it is evident towards Haitians or those of Haitian origin whose families have, at times, been established for several generations and who continue entering the country. [...] There are very few Haitians, even those who have been living in the Dominican Republic since 1957, [...] who obtain naturalization. This is the strongest discrimination that the independent expert has met throughout her mission. The authorities are very aware of this problem [...]. The fact that Haitians do not have legal existence in the Dominican Republic is based on a deep-rooted phenomenon of lack of recognition [...] [FN105]

[FN105] Cf. United Nations, Commission on Human Rights, “Human rights and extreme poverty,” report presented by the independent expert on the question of human rights and extreme poverty, A. M. Lizin, under Resolution 2002/30 of the Commission on Human Rights. Addition: Mission to the Dominican Republic. UN Doc. E/CN.4/2003/52/Add.1, paras. 8 to 13.

171. Considering that it is the State’s obligation to grant nationality to those born on its territory, the Dominican Republic must adopt all necessary positive measures to guarantee that Dilcia Yean and Violeta Bosico, as Dominican children of Haitian origin, can access the late registration procedure in conditions of equality and non-discrimination and fully exercise and enjoy their right to Dominican nationality. The requirements needed to prove birth on Dominican territory should be reasonable and not represent an obstacle for acceding to the right to nationality.

172. The Court finds that, owing to the discriminatory treatment applied to the children, the State denied their nationality and left them stateless, which, in turn, placed them in a situation of continuing vulnerability that lasted until September 25, 2001; in other words, after the date on which the Dominican Republic accepted the Court's contentious jurisdiction.

173. The Court considers that the Dominican Republic failed to comply with its obligation to guarantee the rights embodied in the American Convention, which implies not only that the State shall respect them (negative obligation), but also that it must adopt all appropriate measures to guarantee them (positive obligation), [FN106] owing to the situation of extreme vulnerability in which the State placed the Yean and Bosico children, because it denied them their right to nationality for discriminatory reasons, and placed them in the impossibility of receiving protection from the State and having access to the benefits due to them, and since they lived in fear of being expelled by the State of which they were nationals and separated from their families owing the absence of a birth certificate.

[FN106] Cf. the Case of "Children's Rehabilitation Institute." Judgment of September 2, 2004. Series C No. 112, para. 158; the Case of Gómez Paquiyauri Brothers, supra note 85, para. 129, and the Case of the 19 Tradesmen. Judgment of July 5 2004. Series C. No. 109, para. 153.

174. The Court finds that for discriminatory reasons, and contrary to the pertinent domestic norms, the State failed to grant nationality to the children, which constituted an arbitrary deprivation of their nationality, and left them stateless for more than four years and four months, in violation of Articles 20 and 24 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico.

175. The situation of extreme vulnerability of the children Dilcia Yean and Violeta Bosico, owing to lack of nationality and the condition of statelessness, had consequences on their rights to juridical personality and to a name.

176. Article 3 of the American Convention, as well as other international instruments, [FN107] embodies the right to juridical personality, regarding which the Inter-American Courts has stated that:

Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights. The right to the recognition of juridical personality implies the capacity to be the holder of rights (capacity and exercise) and obligations; the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of such rights and obligations. [FN108]

[FN107] Cf. among others, the Universal Declaration of Human Rights, Article 6; the International Covenant on Civil and Political Rights, Article 16; the American Declaration on the Rights and Duties of Man, Article XVII, and the African Charter of Human's and People's Rights, Article 5.

[FN108] Cf. Case of *Bámaca Velásquez*. Judgment of November 25, 2000, Series C No. 70, para. 179.

177. Regarding exercise of the entitlement to human rights, the Court has indicated that:

Adulthood brings with it the possibility of fully exercising rights, also known as the capacity to act. This means that a person can exercise his or her subjective rights personally and directly, as well as fully undertake legal obligations and conduct other personal or patrimonial acts. Children do not have this capacity, or lack this capacity to a large extent. Those who are legally disqualified are subject to parental authority, or in its absence, to that of guardians or representatives. But they are all subjects of rights, entitled to inalienable and inherent rights of the human person. [FN109]

[FN109] Cf. *Juridical Status and Human Rights of the Child*, supra note 84, para. 41.

178. A stateless person, *ex definitione*, does not have recognized juridical personality, because he has not established a juridical and political connection with any State; thus nationality is a prerequisite for recognition of juridical personality.

179. The Court considers that the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual's condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals.

180. In this specific case, the State maintained the Yean and Bosico children in a legal limbo in which, even though the children existed and were inserted into a particular social context, their existence was not recognized juridically; in other words they did not have juridical personality.

181. With regard to the alleged violation of the right to a name established in Article 18 of the American Convention, it should be noted that, although this was not alleged by the Inter-American Commission, the Court has established that the alleged victims, their next of kin or their representatives can invoke different rights from those included in the Commission's application, based on the facts presented by the latter. [FN110]

[FN110] Cf. Case of *Yatama*, supra note 13, para. 183; Case of *De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 122, and the Case of "Children's Rehabilitation Institute," supra note 106, para. 125.

182. The right to a name, embodied in Article 18 of the American Convention, constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State. This right is also established in several international instruments. [FN111]

[FN111] Cf. among others, the International Covenant on Civil and Political Rights, Article 24(2); the Convention on the Rights of the Child, Article 7(1); the African Charter on the Rights and Welfare of the Child, Article 6(1), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29. The European Court has stated that the right to a name is protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, even though it is not specifically mentioned; cf. *Stjerna v. Finland*, judgment of 25 November 1994, Series A, No. 299-B, p. 60, para. 37, and *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A No. 280-B, p. 28, para. 24.

183. Under Article 18 of the Convention, States are obliged not only to protect the right to a name, but also to provide the necessary measures to facilitate the registration of an individual, immediately after birth.

184. The State must also ensure that the individual is registered under the name that he or his parents have chosen, according to the moment when registration occurs, without any type of restriction to the right or interference in the decision of choosing the name. Once an individual is registered, the possibility of preserving and re-establishing the given name and surname must be ensured. The given name and surname are essential to establish formally the connection that exists between the different members of the family with society and with the State, and this was not ensured to the Yean and Bosico children by the Dominican Republic.

185. In addition to the above, the Court considers that the vulnerability to which the children were exposed as a result of the lack of nationality and juridical personality was also reflected, in the case of the child Violeta Bosico, by the fact that she was prevented from attending day school at the Palavé School during the 1998-1999 school year. It was precisely because she had no birth certificate that she was forced to study at evening school, for individuals over 18 years of age, during this period. This fact also exacerbated her situation of vulnerability, because she did not receive the special protection, due to her as a child, of attending school during appropriate hours together with children of her own age, instead of with adults (*supra* paras. 109(34), 109(35) and 109(36)). It is worth noting that, according to the child's right to special protection embodied in Article 19 of the American Convention, interpreted in light of the Convention on the Rights of the Child and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, in relation to the obligation to ensure progressive development contained in Article 26 of the American Convention, the State must provide free primary education to all children in an appropriate environment and in the conditions necessary to ensure their full intellectual development.

186. The Court observes that the violation of the right to nationality of the Yean and Bosico children, the situation of statelessness in which they were kept, and the non-recognition of their juridical personality and name, denaturalized and denied the external or social projection of their personality.

187. Based on the above, the Court considers that by depriving the children of their nationality, the Dominican Republic violated the rights to juridical personality and to a name embodied in Articles 3 and 18 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico.

188. The representatives and the Commission alleged that the domestic laws of the Dominican Republic on birth registration and the granting of nationality are applied discretionally and produce discriminatory effects on children of Haitian origin, such as the Yean and Bosico children.

189. The State argued that the Constitution and the migration and civil registration laws offer the necessary guarantees to protect the rights embodied in the American Convention.

190. In this regard, the Court considers that the domestic norms establishing the requirements for late birth registration must be coherent with the right to nationality in the Dominican Republic and with the terms of the American Convention and other international instruments; [FN112] namely, they must accredit that the person was born on the State's territory.

[FN112] Cf. among others, the American Declaration of Human Rights, Article 19; the Universal Declaration of Human Rights, Article 15; the International Covenant on Civil and Political Rights, Article 24(3); the Convention on the Rights of the Child, Article 7(1); the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Article 29, and the Convention on the Reduction of Statelessness, Article 1(1).

191. In accordance with the obligation arising from Article 2 of the American Convention, the Court considers that the requirements for obtaining nationality must be clearly and objectively established previously by the competent authority. Likewise, the law should not provide the State officials applying it with broad discretionary powers, because this creates opportunities for discriminatory acts.

192. The requirements for late declaration of birth cannot be an obstacle for enjoying the right to nationality, particularly for Dominicans of Haitian origin, who belong to a vulnerable sector of the population in the Dominican Republic.

X. ARTICLE 17 OF THE AMERICAN CONVENTION (Rights of the Family)

Arguments of the representatives

193. With regard to the alleged violation of the rights of the family, embodied in Article 17 of the American Convention, the representatives argued that:

- a) The State is obliged to adopt basic measure to protect family unity. In this case, the State has not instituted the necessary measures to guarantee the rights of the child (especially in relation to the right not to be forcibly separated from its family) and to ensure the right of the child to reside in the country. The State has violated the rights of the family of the children Dilcia and Violeta by refusing to grant birth certificates to children of Haitian origin; and
- b) Although the Dominican Republic has not attempted to separate the children Dilcia and Violeta from their families as yet, there is a real threat of separation, given that the State systematically carries out collective expulsions of Haitians and Dominicans of Haitian origin.

Arguments of the Commission

194. The Commission did not submit any arguments concerning Article 17 of the American Convention.

Arguments of the State

195. With regard to the alleged violation of Article 17 of the American Convention, the State indicated that it cannot be accused of violating the rights of the family when this violation does not exist. In addition, the State mentioned that the families were responsible for the failure to register the Yean and Bosico children.

Considerations of the Court

196. Article 17(1) of the American Convention stipulates:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
[...]

197. In this regard, the Court considers that the alleged facts concerning the alleged violation of this article have already been examined in relation to the condition of vulnerability of the children Dilcia Yean and Violeta Bosico (*supra paras. 172 and 173*).

XI. ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION (RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION)

Arguments of the Commission

198. In relation to the alleged violation of Articles 8 and 25 of the Convention, the Commission argued that:

- (a) The children's mothers made a direct request to the Public Prosecutor of the District of Monte Plata to order the registration of their daughters in the Civil Status Registry Office, because the Public Prosecutor is the person responsible for monitoring and reporting on errors committed by the registrars. The Public Prosecutor rejected the petition and ordered the file to be returned to the Registry Office;
- (b) The State's legislation establishes two procedural measures for revision of the decisions of the Civil Status Registry Office on requests for late declaration: the administrative procedure which devolves upon the Public Prosecutor and can also be reviewed by the Central Electoral Board; and that of the court of first instance. These measures do not provide for an appeal against a negative decision by the Registry Office. The Central Electoral Board is not a judicial authority, nor does it belong to the judicial system under Dominican law; moreover, its decisions cannot be appealed, so that the hierarchic recourse cannot be considered an effective remedy. The alleged victims lacked the legitimacy to file a legal action, and their requests were never reviewed by a competent court;
- (c) The remedy of amparo did not exist in law at the time of the facts, and the remedy of unconstitutionality was not appropriate in the case of administrative acts until 1998; and
- (d) The State has not investigated, sanctioned or repaired the alleged violations committed by its agents in this case.

Arguments of the representatives

199. With regard to the alleged violation of Articles 8 and 25 of the Convention, the representatives indicated that:

- (a) The State has not established a mechanism or procedure for appeal before a competent judge or court against a decision not to register an individual. Despite several reasonable attempts by the mothers of the children Dilcia and Violeta, the negative decision of the Civil Status Registrar was never reviewed by a competent and independent court;
- (b) There are two procedures for reviewing the decisions of a civil status registrar: (1) the review established in Act No. 659, and (2) review by the administrative authority responsible for recording the registrations, in this case the Central Electoral Board. The Central Electoral Board is not regulated by formal procedures and has not published regulations or issued procedures that applicants may use to request a review of the adverse decisions of the civil status registrars. Consequently, the State does not offer an effective remedy that would allow the children Dilcia and Violeta to contest the Civil Status Registrar's refusal;
- (c) The resolution of remedies of amparo and unconstitutionality can take up to two years; accordingly, in the Dominican Republic, there is no simple recourse, and this constitutes a violation of Article 25 of the Convention, and
- (d) The State deprived the children of the procedural guarantees embodied in Article 8 of the Convention by not granting them the right to be heard in a judicial proceeding on the denial of birth certificates. Under the former legislation and the new decision of the Central Electoral Board, when a civil registrar refuses to issue a birth certificate, this official must immediately request the Central Electoral Board to review the case, without providing the applicants with any type of document.

Arguments of the State

200. The State argued that there cannot be a violation of the right to judicial protection when the alleged victims have never made use of these mechanisms. The children had a series of administrative and judicial guarantees at their disposal and they failed to use them, alleging that they knew nothing about their existence or how they functioned; thus the alleged victims are responsible for not having used these recourses, and this cannot be attributed to the State.

Considerations of the Court

201. The Court will not refer to the alleged violations of Articles 8 and 25 of the American Convention, because it lacks jurisdiction to rule on possible violations based on facts or acts that occurred prior to March 25, 1999, the date on which the Dominican Republic accepted the contentious jurisdiction of the Inter-American Court.

XII. ARTICLES 5 AND 12 OF THE AMERICAN CONVENTION (Right to Humane Treatment and Freedom of Conscience and Religion)

202. In the final part of their brief with final arguments, the representatives indicated that the State had violated, among others, Articles 5 (Right to Humane Treatment) and 12 (Freedom of Conscience and Religion) of the Convention; however, they did not submit any arguments to support these alleged violations.

Considerations of the Court

203. With regard to the alleged violations of Articles 5 and 12 of the American Convention, which the representatives only indicated in the final part of the brief with final arguments, and which were not included in the brief with requests and arguments, this Court considers that these allegations are time-barred; however, nothing prevents it from examining them, under the *iura novit curia* principle. [FN113]

[FN113] Cf. Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, para. 76; Case of Castillo Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, para. 166, and Case of Blake. Judgment of January 24, 1998. Series C No. 36, para. 112.

204. In this case, the Court acknowledges the situation of vulnerability of the Yean and Bosico children when they did not obtain Dominican nationality. Also, owing to the lack of a birth certificate, the child Violeta Bosico was unable to enroll in day school, but was obliged to enroll in evening classes, during the 1998-1999 school year. This caused her suffering and uncertainty; the Court will therefore assess these circumstances when establishing the pertinent reparations, and will not refer to the alleged violation of Article 5 of the American Convention to the detriment of the children.

205. With regard to the next of kin of the children Dilcia Yean and Violeta Bosico, based on the American Convention and in light of the said *iura novit curia* principle, the Court considers

that Leonidas Oliven Yean and Tiramen Bosico Cofi, the children's mothers, and Teresa Tucent Mena, the child Violeta's sister, were also caused uncertainty and insecurity by the situation of vulnerability that the State imposed on the Yean and Bosico children, owing to the very real fear that they could be expelled from the Dominican Republic, of which they were nationals, owing to the lack of birth certificates, and to the various difficulties they faced to obtain these documents.

206. Based on the above, the Court considers that the State violated the right to humane treatment embodied in Article 5 of the American Convention, in relation to 1(1) thereof, to the detriment of Leonidas Oliven Yean, Tiramen Bosico Cofi and Teresa Tucent Mena.

207. Regarding Article 12 of the American Convention, the Court considers that the facts of the instant case are not adapted to it, so the Court will not rule on it.

XIII. REPARATIONS (APPLICATION OF ARTICLE 63(1))

Obligation to repair

208. In accordance with the considerations in the preceding chapters, the State is responsible for the violation of the rights embodied in Articles 3, 18, 20 and 24 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico. The State is also responsible for the violation of the right embodied in Article 5 of the Convention, in relation to Article 1(1) thereof, to the detriment of Leonidas Oliven Yean and Tiramen Bosico Cofi, the victims' mothers and Teresa Tucent Mena, the child Violeta Bosico's sister. Article 63(1) of the American Convention establishes that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

209. This precept reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN114]

[FN114] Cf. Case of Acosta Calderón, *supra* note 13, para. 146; Case of Yatama, *supra* note 13, para. 231, and Case of Yakye Axa Indigenous Community, *supra* note 16, para. 180.

210. Whenever possible, reparation of the damage caused requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible,

as in the instant case, the international court must determine measures to ensure the damaged rights, repair the consequences of the violations and avoid new violations, and also establish compensation for the damage caused. The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law. [FN115]

[FN115] Cf. Case of Acosta Calderón, supra note 13, para. 147; Case of Yatama, supra note 13, para. 232, and Case of Fermín Ramírez, supra note 13, para. 123.

211. The purpose of reparations is to eliminate the effects of the violations that have been committed. Their nature and amount depend on the characteristics of the violations committed, the legally-protected interest affected and both the pecuniary and non-pecuniary damage that has been caused. Reparations should not make the victims or their successors either richer or poorer. [FN116]

[FN116] Cf. Case of Acosta Calderón case, supra note 13, para. 148; Case of Yatama case, supra note 13, para. 233, and Case of Fermín Ramírez case, supra note 13, para. 124.

212. In accordance with the probative elements amassed during the proceeding and in light of the above criteria, the Court will examine the claims of the parties with regard to reparations and order the measures it deems pertinent.

A) BENEFICIARIES

Arguments of the Commission

213. The Commission argued that, owing to the nature of this case and without detriment to what the representatives of the alleged victims would determine at the opportune moment, the beneficiaries of the reparations ordered by the Court are: Dilcia Yean and Violeta Bosico, and their mothers, Leonidas Yean and Tiramen Bosico Cofi.

Arguments of the representatives

214. The representatives stated that the Dominican Republic should make reparation to the children Dilcia and Violeta and to their next of kin for the harm suffered owing to the alleged violations of which they were victims.

Arguments of the State

215. The State did not present any arguments in this respect.

Considerations of the Court

216. The Court finds that the children Dilcia Yean and Violeta Bosico are the “injured parties,” as victims of the violations of the rights embodied in Articles 3, 18, 20 and 24 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention; they will therefore be beneficiaries of the reparations that the Court establishes for non-pecuniary damage.

217. In addition, Leonidas Oliven Yean and Tiramen Bosico Cofi, the victims’ mothers, and Teresa Tucent Mena, the child Violeta Bosico’s sister, as victims of the violation of the right embodied in Article 5 of the American Convention, in relation to Article 1(1) thereof, are considered “injured parties” in this case.

B) PECUNIARY AND NON-PECUNIARY DAMAGE

Arguments of the Commission

218. The Commission did not refer to pecuniary damage and, regarding compensation for non-pecuniary damage, stated that:

- (a) The reparations required to ensure that the State complies with its international responsibility include payment of fair compensation for “the non-pecuniary damage caused;”
- (b) The children’s uncertainty about their fate caused them and their next of kin anxiety and fear. The fear of two single mothers, with limited financial resources, that their children of eleven months and 12 years of age respectively, could be expelled and sent to Haiti, has a significance which goes beyond pecuniary reparation, and
- (c) In the case of Violeta Bosico, her mother experienced feelings of frustration on seeing that, owing to the imposing of a requirement with which she was unable to comply, and not because of lack of the right, but rather owing to discriminatory application of the law by several State officials, the efforts to ensure that her daughter could go to school and improve her situation were interrupted and suspended for a year.

Arguments of the representatives

219. The representatives did not refer to pecuniary damage and, regarding non-pecuniary damage, indicated:

- (a) On its own, the judgment of the Court is insufficient to ensure that the violations committed in this case are not repeated or that full restitution is made to the alleged victims;
- (b) The violations committed by the Dominican Republic subjected the children Dilcia and Violeta to grave and irreparable damage, which included negative psychological consequences;
- (c) The mothers of the children Dilcia and Violeta suffered harm when the State refused their children their rights to juridical personality, nationality and a name, because they feared their children could be expelled from the Dominican Republic. Moreover, they had to face the possibility that their daughters would never be acknowledged as persons and as Dominicans by the State, and

(d) The fear and uncertainty caused by the State's past and continuing violations has created feelings of anxiety and uncertainty for the children Dilcia and Violeta and their next of kin. Consequently, they requested the Court to order the State to pay, for non-pecuniary damage, US\$8,000.00 (eight thousand United States dollars) to each child; US\$4,000.00 (four thousand United States dollars) to their mothers, and US\$2,000.00 (two thousand United States dollars) to Teresa Tucent Mena, Violeta's sister.

Arguments of the State

220. The State argued that:

(a) No form of compensation was appropriate in this case because no causal relationship has been established between the effective damage to the alleged victims and the alleged acts and omissions of the State. To the contrary, it was the children's mothers who did not take up and use the legal instruments made available to them by the State in order to comply with the obligation of all Dominicans to register their children, and

(b) It would be a financial impossibility for the State to pay these expenses because, should they be awarded to the applicants, based on the principle of non-discrimination it would have to make financial reparation to all the other citizens who have carried out similar measures, and this would seriously undermine the Dominican Republic's financial reserves.

Considerations of the Court

221. This Court will not rule on pecuniary damage in favor of the victims or their next of kin, since neither the Commission nor the representatives requested compensation for this concept.

222. Non-pecuniary damage can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to these people, and also changes, of a non-pecuniary nature, in the living conditions of the victims or their family. [FN117]

[FN117] Cf. Case of Acosta Calderón, supra note 13, para. 158; Case of Yatama, supra note 13, para. 243, and Case of Fermín Ramírez, supra note 13, para. 129.

223. International case law has established repeatedly that the judgment constitutes, per se, a form of reparation. However, owing to the circumstances of the instant case, and the suffering that the facts have caused to the children, to their mothers and to the sister of the child Violeta Bosico, this Court will consider whether, in fairness, it is pertinent to order the payment of compensation for non-pecuniary damage. [FN118]

[FN118] Cf. Case of Acosta Calderón, supra note 13, para. 159; Case of Yakye Axa Indigenous Community, supra note 16, para. 200, and the Case of Moiwana community, supra note 8, para. 192.

224. When establishing the compensation for non-pecuniary damage in the case sub judice, it should be borne in mind that the State did not recognize the Dominican nationality of the children Dilcia and Violeta until September 25, 2001; in other words, more than four years and four months after they requested late registration of their birth. By not granting the children Dominican nationality, the State placed them in a situation of extreme vulnerability and, for discriminatory reasons, violated their right to nationality as well as other rights, namely: the right to juridical personality and to a name and the right to equal protection, all in relation to the rights of the child. Moreover, the State did not grant them the special protection that was due to them, prevented them from having access to the benefits that were there due, and caused them to live in the very real fear of being expelled from the State of which they were nationals and separated from their families. The children Dilcia and Violeta did not have the protection that the Dominican Republic should have provided according to its treaty-based international obligations.

225. Also, during the 1998-1999 school year, the child Violeta Bosico attended school during the evening, because she had no birth certificate (supra paras. 109(34) and 109(35)). Thus, the State prevented the child from enrolling in day school, which she should have attended together with her peers, owing to her age, aptitudes and the appropriate curriculum and level of difficulty. This situation caused the child uncertainty and anxiety.

226. In view of the foregoing, the Court considers it should decide that the children should be paid compensation. Accordingly, based on the representatives' indications (supra para. 219(d)), it establishes, in fairness, the amount of US\$8,000.00 (eight thousand United States dollars) to be paid to the child Dilcia Yean for non-pecuniary damage and the amount of US\$8,000.00 (eight thousand United States dollars) to be paid to the child Violeta Bosico under the same heading.

227. In addition, the situation of vulnerability that the State imposed on the Yean and Bosico children caused the victims' next of kin uncertainty and insecurity, and also the very real fear that they could be expelled from their country, owing to the lack of birth certificates and the difficulties they faced to obtain them. This was mentioned by Leonidas Oliven Yean, Dilcia's mother, in a statement made on July 24, 1999, when she indicated that "she feared that Dilcia [could be] expelled to Haiti [...] because she knew many people of Haitian origin in Sabana Grande de Boyá who did not have birth certificates and who were expelled by Migration for this reason." Also, Teresa Tucent Mena, the child Violeta Bosico's sister, with whom the latter has lived, suffered because her sister could be expelled owing to the lack of a birth certificate, and because she could not conclude her education for the same reason.

228. In view of the above, the situation of the children Dilcia and Violeta caused their mothers and Violeta Bosico's sister anxiety and insecurity.

229. With regard to the non-pecuniary damage suffered by Leonidas Oliven Yean, Tiramen Bosico Cofi and Teresa Tucent Mena, the Court considers that the judgment per se constitutes a form of reparation, as indicated above (supra para. 223), together with the various measures of satisfaction and the guarantees of non-repetition established in this judgment (infra paras. 234, 235 and 239 to 242), which have public repercussions.

C) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION)

230. The Court will now consider the harmful effects of the facts, which are not of a financial or patrimonial nature, and which could be repaired by actions taken by the public authorities.

Arguments of the Commission

231. The Commission argued that:

(a) In this case, comprehensive reparation of the damage caused to the children is necessary, to guarantee non-repetition of this type of situation. The State cannot allege that, with the delivery of documents that were not issued in accordance with Dominican law, it has repaired a violation that had serious effects on the especially susceptible victims, who required the special protection of the State;

and requested that:

(b) The State should acknowledge publicly the violations committed to the detriment of the children and offer a public apology;

(c) The State should modify the birth registration system to ensure that the right to a birth certificate is not denied to Dominican children of Haitian origin, either by law or by the discretionary application of the law by State officials;

(d) The State should modify the law to adapt it to the American Convention, which implies not only eliminating requirements that become arbitrary and discriminatory, but also providing an appropriate and effective remedy that allows people to have recourse to appropriate bodies when necessary, and

(e) The State should initiate a serious and exhaustive investigation into the actions of the officials of the Dominican Civil Status Registry and the Public Prosecutor's Office who violated the fundamental rights of the children Dilcia and Violeta.

Arguments of the representatives

232. The representatives requested the Court to order the State:

(a) To acknowledge the violations of the human rights of the children Dilcia and Violeta and offer them a public apology, to be made by the President of the Republic. The public acknowledgement would indicate to the civil status registrars in the Dominican Republic that discrimination will not be tolerated. This public acknowledgement is necessary to prevent future violations;

(b) To implement the judgment and disseminate it in the media;

(c) To modify or repeal all laws, practices and procedures that are contrary to the norms established in the American Convention and the Constitution;

(d) To establish laws and procedures that protect and ensure the rights of Dominican children of Haitian origin. In this regard, the State should offer additional assistance to the Dominican-

Haitian communities to repair the damage caused by the practice of not registering Dominican children of Haitian origin and implement registration campaigns and other programs;

- (e) To implement a campaign and a policy to guarantee the right of children to be registered immediately at birth;
- (f) To accept the presentation of documents identifying the parents other than the identity card, when registering children;
- (g) To send civil status registrars to register the children in the communities where they live;
- (h) To reduce birth registration costs;
- (i) To eliminate the requirement to present birth certificates for school enrolment, as well as all other obstacles that prevent children from exercising their right to education, and
- (j) To establish a fund to enable the children Dilcia and Violeta to pay for the cost of their schooling together with their living expenses during their studies at the primary, secondary and higher education levels. This fund will allow Dilcia and Violeta to complete their education despite the serious damage caused to their life projects. The State should also pay tutoring expenses to ensure the children attain an appropriate level of education for their age and recover their self-confidence and belief in the possibility of successfully completing their education.

Arguments of the State

233. The State indicated that the requests of the Commission and the representatives that the Court should order the adaptation and simplification of the legal requirements for access to the late declaration procedure were unwarranted and unnecessary. Moreover, when submitting the answer to the application, it had indicated that Congress was considering a draft law that would facilitate this procedure, setting up birth registration offices in clinics, hospitals, rural health facilities and other community entities to register all those born on Dominican territory.

Considerations of the Court

- a) Publication of the pertinent part of the judgment of the Court

234. The Court finds, as it has on other occasions, [FN119] that, as a measure of satisfaction, the State should publish in the official gazette and in another newspaper with national circulation in the Dominican Republic at least once, within six months from notification of this judgment, both the section entitled “Proven facts,” without the corresponding footnotes, and the operative paragraphs of the judgment.

[FN119] Cf. Case of Acosta Calderón, *supra* note 13, para. 164; Case of Yatama, *supra* note 13, para. 252, and Case of Yakyé Axa Indigenous Community, *supra* note 16, para. 227.

- b) Public act to acknowledge international responsibility and to make reparation to the children Dilcia Yean and Violeta Bosico and their next of kin

235. With regard to the act of public apology requested by the victims’ representatives and the Commission as a result of the violations established in this judgment, the Court finds that the

State should organize a public act to acknowledge its international responsibility for the facts referred to in this judgment and to apologize to the children Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, within six months of this judgment, with the participation of the authorities, the victims and their next of kin, and disseminate it via the media (radio, press, television). This act would be a measure of satisfaction and would serve as a guarantee of non-repetition.

c) Regarding the norms on late birth registration in the civil status registry

236. The State should adopt “the legislative or other measure necessary to make effective” the rights established in the American Convention. This is an obligation the State should fulfill because it has ratified this legal instrument. [FN120]

[FN120] Cf. Case of Yatama, *supra* note 13, para. 254; Case of Fermín Ramírez, *supra* note 13, para. 130(d), and Case of Yakye Axa Indigenous Community, *supra* note 16, para. 225.

237. Given the characteristics of this case, the Court finds it necessary to refer to the context of late registration of birth in the Dominican Republic. In this regard, the United Nations Committee on the Rights of the Child has recommended that the Dominican Republic:

[...] strengthen and increase its measures to ensure the immediate registration of the birth of all children. Special emphasis should be placed on the registration of children belonging to the most vulnerable groups, including children of Haitian origin or belonging to Haitian migrant families. [FN121]

[FN121] Cf. United Nations, Committee on the Rights of the Child, Examination of the Reports presented by the States Parties under Article 44 of the Convention. Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic. UN Doc. CRC/C/15/Add.150, of 21 February 2001, para. 27.

238. The Court has noted that the Dominican Republic modified its legislation and, in particular, the norms applicable to late registration of birth, while this case was being heard by the organs of the Inter-American System for the protection of human rights.

239. The Court finds that, pursuant to Article 2 of the American Convention and within a reasonable time, the Dominican Republic should adopt within its domestic laws, the legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality by late declaration of birth. This procedure must be simple, accessible and reasonable, because, to the contrary, applicants could remain stateless. Furthermore, there must be an effective recourse for cases in which the request is refused.

240. The Court finds that, when establishing the requirements for late registration of birth, the State should take into consideration the particularly vulnerable situation of Dominican children of Haitian origin. The requirements should not constitute an obstacle for obtaining Dominican nationality and should be only those essential for establishing that the birth occurred in the Dominican Republic. In this regard, the identification of the father or the mother of the child cannot be restricted to the presentation of the identity card; rather, for this purpose, the State should accept another appropriate public document, since the said identity card is only held by Dominican citizens. Moreover, the requirements should be specified clearly and be standardized, and their application should not be left to the discretion of State officials, in order to guarantee the legal certainty of those who use this procedure and to ensure an effective guarantee of the rights embodied in the American Convention, pursuant to Article 1(1) of the Convention.

241. The State should also take the permanent measures necessary to facilitate the early and opportune registration of children, irrespective of their parentage or origin, so as to reduce the number of individuals who resort to the procedure of late registration of birth.

242. The Court also finds that the State should implement, within a reasonable time, a program to provide training on human rights, with special emphasis on the right to equal protection and non-discrimination, to the State officials responsible for registering births, during which they should receive guidance on the special situation of children, and a culture of tolerance and non-discrimination is fostered.

243. The Commission and the representatives alleged that the children's nationality is not safe, because the State issued their registration documents in violation of the pertinent domestic regulations and could revoke them at any time. The State indicated that the children's birth certificates are of a permanent nature because they were issued by the competent authority. The Dominican Republic, in the exercise of its powers, delivered birth certificates to the children Dilcia Yean and Violeta Bosico on September 25, 2001, and on that date granted them Dominican nationality (*supra* paras. 109(32), 109(33) and 147). The Court considers that the State made a positive contribution by granting the children Dominican nationality, by which it ensured them the rights to nationality, juridical personality and a name.

d) Regarding education

244. The State should comply with its obligation to guarantee access to free primary education for all children, irrespective of their origin or parentage, which arises from the special protection that must be provided to children.

D) Costs and Expenses

Arguments of the Commission

245. The Commission indicated that, after hearing the representatives, the Court should order the State to pay the costs arising from the legal procedures undertaken by the alleged victims in

the national sphere, and also those arising from processing the case at the international level before the Commission and the Court, which are duly authenticated by the representatives.

Arguments of the representatives

246. The representatives indicated that:

- (a) They have a right to reimbursement of the expenses incurred for travel, translation costs, honoraria of experts, telephone calls, copies and also legal fees;
- (b) MUDHA has worked on this case since 1997, and has incurred expenses of US\$4,513.13 (four thousand five hundred and thirteen United States dollars and thirteen cents);
- (c) CEJIL has worked on this case since 1999, and has incurred expenses of US\$37,995.94 (thirty seven thousand nine hundred and ninety-five United States dollars and ninety-four cents);
- (d) The International Human Rights Law Clinic has devoted five years of the time of its personnel and students to this case, so they request reimbursement of US\$50,000.00 (fifty thousand United States dollars) as a symbolic amount for the expenses incurred, and
- (e) The amount listed for the expenses of the different organizations does not include those they will incur during the remaining procedure before the Court.

Arguments of the State

247. The State requested the Court to condemn the “plaintiffs” to pay the costs and professional fees arising from this proceeding, based on the inadmissibility of their claim.

Considerations of the Court

248. The Court has indicated that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the measures taken by the victims, their qualifying dependents or their representatives in order to obtain justice at the international level imply expenditure and financial commitments that must be compensated. [FN122] For purposes of reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those incurred during the proceedings before the Inter-American System, taking into account the legitimate expenses, the circumstances of each specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of fairness and by taking into account the expenses authenticated by the parties, providing the quantum is reasonable. [FN123]

[FN122] Cf. Case of Yatama, *supra* note 13, para. 264; Case of Yakye Axa Indigenous Community, *supra* note 16, para. 231, and the Case of Moiwana community, *supra* note 8, para. 222.

[FN123] Cf. Case of Yakye Axa Indigenous Community, *supra* note 16, para. 231; the Case of Moiwana Community, *supra* note 8, para. 222, and the Case of Gómez Paquiyauri Brothers, *supra* note 85, para. 242.

249. The costs include those related to access to justice at the national level, and to the international proceedings before the Commission and the Court. [FN124]

[FN124] Cf. Case of Acosta Calderón, supra note 13, para. 168; Case of Yakye Axa Indigenous Community, supra note 16, para. 231, and Case of Molina Theissen. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 96.

250. MUDHA incurred expenses for the measures taken in representation of the victims at the domestic level. Also, MUDHA, CEJIL and the International Human Rights Law Clinic incurred expenses when representing the victims in the international proceedings. Consequently, the Court considers it fair to order the State to reimburse the amount of US\$6,000.00 (six thousand United States dollars) or the equivalent in the currency of the Dominican Republic to Leonidas Oliven Yean and Tiramén Bosico Cofi for costs and expenses, and they should make payments to MUDHA, CEJIL and the International Human Rights Law Clinic to compensate their expenditures.

E) Methods of compliance

251. The State shall pay the compensations and reimburse the costs and expenses (supra para. 226 and 250) within one year of notification of this judgment. In the case of the other reparations ordered, it shall comply with the measures within a reasonable time (supra paras. 239 to 241 and 242), or within the time indicated in this judgment (supra paras. 234 and 235).

252. The payment of the compensation established in favor of the victims shall be made directly to them. If any of them shall have died, the payment shall be made to the successors.

253. With regarding the compensation ordered in favor of the child Dilcia Yean, the State shall deposit it in a solvent Dominican institution. The investment shall be made within one year under the most favorable financial conditions allowed by law and banking practice, until the beneficiary comes of age. It may be withdrawn when the beneficiary comes of age or before this, if this is in the superior interest of the child, established by the decision of a competent judicial official. If the compensation is not claimed within ten years of the child attaining her majority, the amount shall revert to the State together with the accrued interest.

254. If, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the period indicated, the State shall deposit such amounts in their favor in an account or a deposit certificate in a reputable Dominican banking institution under the most favorable conditions permitted by law and banking practice. If, after ten years, the compensation has not been claimed, the amount shall revert to the State together with the accrued interest.

255. The payment to reimburse the costs and expenses generated by the representatives in the domestic and international proceedings shall be made to Leonidas Oliven Yean and Tiramén Bosico Cofi (supra para. 250), who shall make the corresponding payments.

256. The State shall comply with the financial obligations indicated in this judgment by payment in the currency of the Dominican Republic or the equivalent in United States dollars.

257. The amounts allocated in this judgment for compensation, expenses and costs shall not be affected, reduced or conditioned by any current or future taxes or charges. Consequently, the total amount shall be delivered to the beneficiaries as established in this judgment.

258. If the State should delay payment, it shall pay interest on the amount owed, calculated according to the bank rate of interest on arrears in the Dominican Republic.

259. As it has decided and put in practice in all the cases submitted to its consideration, the Court shall monitor compliance with all aspects of this judgment. This task is inherent in the Court's jurisdictional attributes and is necessary for the due observation by the Court of Article 65 of the Convention. The case shall be deemed complete when the State has fully complied with the terms of this judgment. Within one year of notification of this judgment, the State shall provide the Court with a first report on the measures adopted to comply with the judgment.

XIV. OPERATIVE PARAGRAPHS

260. Therefore,

THE COURT,

DECIDES:

Unanimously

1. To reject the three preliminary objections filed by the State, in accordance with paragraphs 59 to 65, 69 to 74, and 78 and 79 of this judgment.

DECLARES:

Unanimously that:

2. The State violated the rights to nationality and to equal protection embodied, respectively, in Articles 20 and 24 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico, in the terms of paragraphs 131 to 174 of this judgment.

3. The State violated the rights to a name and to juridical personality embodied, respectively, in Articles 3 and 18 of the American Convention, in relation to Article 19 thereof, and also in relation to Article 1(1) of the Convention, to the detriment of the children Dilcia Yean and Violeta Bosico, in the terms of paragraphs 131 to 135 and 175 to 187 of this judgment.

4. The State violated the right to humane treatment embodied in Article 5 of the American Convention, in relation to 1(1) thereof, to the detriment of Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, in the terms of paragraphs 205 to 206 of this judgment.

5. This judgment constitutes per se a form of reparation, in the terms of paragraph 223 thereof.

AND ORDERS,

Unanimously that:

6. The State should publish at least once, within six months of notification of this judgment, in the official gazette and in another newspaper with national circulation in the Dominican Republic, both the section entitled “Proven Facts”, without the corresponding footnotes, and also the operative paragraphs of this judgment, in the terms of paragraph 234 thereof.

7. The State should organize a public act acknowledging its international responsibility and apologizing to the victims Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, within six months, in the presence of State authorities, the victims and their next of kin, and also the representatives and this shall be disseminated in the media (radio, press and television). The purpose of this act is to provide satisfaction and to serve as a guarantee of non-repetition, in the terms of paragraph 235 of this judgment.

8. The State should adopt within its domestic law, within a reasonable time, in accordance with Article 2 of the American Convention, the legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth. This procedure should be simple, accessible and reasonable since, to the contrary, applicants could remain stateless. Also, an effective remedy should exist for cases in which the request is rejected in the terms of the American Convention, in accordance with paragraphs 239 to 241 of this judgment.

9. The State should pay, as compensation for non-pecuniary damage, the amount established in paragraph 226 of this judgment to the child Dilcia Yean and the amount established in the same paragraph to the child Violeta Bosico.

10. The State should pay the amount established in paragraph 250 of this judgment to Leonidas Oliven Yean and Tiramén Bosico Cofi for costs and expenses arising in the domestic sphere and in the international sphere before the Inter-American System for the protection of human rights; and they should make the payments to the Movimiento de Mujeres Domínico Haitianas (MUDHA), the Center for Justice and International Law (CEJIL), and the International Human Rights Law Clinic, Boalt Hall School of Law, University of California, Berkeley, to compensate the expenses they incurred.

11. The Court shall monitor implementation of this judgment and will deem the case closed when the State has fully complied with the terms of this judgment. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it, in the terms of paragraph 259 of this judgment.

Judge Cançado Trindade informed the Court of his separate opinion, which accompanies this judgment.

DONE, in San José, Costa Rica, on September 8, 2005, in Spanish and English, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. While voting in favor of the adoption of the judgment of the Inter-American Court of Human Rights in the Case of Yean and Bosico children versus the Dominican Republic, with which I am basically in agreement, in this separate opinion I wish to add some brief personal observations on the central issue of the case, because this is the first time in its history that the Inter-American Court is ruling on the right to nationality under the American Convention on Human Rights when deciding a contentious case. Therefore, allow me to focus on three key aspects of this matter – to which I attribute particular relevance: (a) normative advances with regard to nationality and the troubling persistence of the causes of statelessness; (b) the legal response to the disturbing diversification of the manifestations of statelessness, and (c) the broad scope of the general protection obligations (Articles 1(1) and 2) of the American Convention.

I. Normative advances with regard to nationality and the troubling persistence of the causes of statelessness

2. Over the past three decades, I have been indicating that there is no issue that belongs intrinsically to the sphere reserved to the State or to its exclusive national jurisdiction. The locus classicus for examining the question continues to be the celebrated obiter dictum of the former Permanent Court of International Justice in its Advisory Opinion on the Nationality Decrees in Tunis and Morocco (1923). According to this, determination of whether or not a matter falls within the jurisdiction of a State is a relative matter, dependent on the development of international relations. [FN1] In fact, in regard to the right to nationality, this development has

effectively removed the matter from exclusive national competence and, for some time, has raised it to the level of the international juridical system.

[FN1] A.A. Cançado Trindade, *O Direito Internacional em um Mundo em Transformação*, Rio de Janeiro, Edit. Renovar, 2002, pp. 413 and 475; and cf., for a general overview, A.A. Cançado Trindade, "The Domestic Jurisdiction of States in the Practice of the United Nations and Regional Organisations", 25 *International and Comparative Law Quarterly* - London (1976) pp. 713-765.

3. In short, the issue of nationality cannot be considered merely from the perspective of the State's discretionary authority, because general principles of international law are involved, such as the obligation to protect. Consequently, I consider that certain constructs concerning nationality (original or acquired) derived from traditional doctrine that revolves around the State have been totally surpassed; these include the unlimited power of the State, the exclusive will of the State, the sole interest of the State, and also the contractualist theory (a variant of voluntarism). The emergence and impact of international human rights law has made a decisive contribution to this advancement.

4. Even at the level of domestic law, the acquisition of nationality is a matter of *ordre public* that conditions and regulates the relationship between the individual and the State, through the acknowledgement and observance of reciprocal rights and obligations. The attribution of nationality, as a matter of *ordre public*, always involves, at the level of domestic law, principles and obligations arising from international law, owing to the interaction and interpenetration of the national and international juridical systems.

5. More than a quarter of a century before the adoption of the Convention on the Reduction of Statelessness (1961), it had been observed – but only considering the need for advances in treaty-based international law and not taking into account general international law – that it was urgent to tackle the problem of stateless persons (both those who had never had a nationality and those who had had one and lost it), bearing in mind that the organization of the international community assumed that the normal condition of all individuals was to have a nationality, and that statelessness represented an anomaly with disastrous consequences for those in that situation. [FN2]

[FN2] This observation had also been made in view of the perverse tendency (of that time) towards de-nationalization and de-naturalization (even as a punishment), which violated the "fundamental principles of the organization of the international community", and owing to the need to tackle statelessness by eliminating its causes; J.-P.-A. François, "Le problème des apatrides", 53 *Recueil des Cours de l'Académie de Droit International de La Haye* (1935), pp. 371-372.

6. After all, in international law, according to the writings of its founders, *jus gentium* was conceived to include not only States, but also individuals (subjects of rights and holders of obligations emanating directly from the law of the peoples) and already, in classical international law, the regime of nationality began to be regulated by basic principles of *jus soli* and *jus sanguinis* [FN3] (at times in different combinations that did not exclude one another). This regime provided individuals with an important means of protecting their inherent rights, at least at the level of domestic law; these are the rights of each individual (who is the *dominus litis* when seeking their protection) and not of the State, whose *raison d'être* is based on certain fundamental principles, such as the protection of the individual. [FN4]

[FN3] *Ibid.*, pp. 315 and 288.

[FN4] *Ibid.*, pp. 316 and 318. And, for more general information, cf., e.g. P. Weis, *Nationality and Statelessness in International Law*, London, Stevens, 1956, pp. 3 ff.

7. However, with the passage of time, it became evident that the nationality regime was not always sufficient to provide protection under any and every circumstance (as evidenced, for example, by the situation of stateless persons). Throughout the twentieth century and to date, international human rights law has sought to remedy this deficiency or vacuum, by denationalizing protection (and thus including every individual, even stateless persons). As I pointed out more than two decades ago, nationality has ceased being the *vinculum juris* (distinct from diplomatic protection), and this came to be constituted by the condition of victim of the alleged human rights violations (in the fundamentally different context of the international protection of human rights). [FN5]

[FN5] A.A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law*, Cambridge, University Press, 1983, pp. 16-17, 19-20, 33, 35-36, 301 and 311-312.

8. The right to nationality is effectively a right inherent in the human being, embodied as a non-derogable right in the American Convention on Human Rights (Articles 20 and 27), as emphasized in this judgment (para. 136). It is also protected under the 1966 United Nations International Covenant on Civil and Political Rights (Article 24(3)), the United Nations 1989 Convention on the Rights of the Child (Article 7), and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 29), and also in the Universal Declaration of Human Rights (Article 15) and the American Declaration of the Rights and Duties of Man (Article 19) of 1948. Moreover, the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) appear to acquire even greater relevance nowadays, given the disturbing persistence of cases of loss of nationality and statelessness.

9. The 1954 Convention sought to protect stateless persons, without attempting to be a substitute for the attribution and acquisition of nationality. The 1961 Convention seeks the

attribution and acquisition or retention of nationality, to reduce or avoid statelessness. It incorporates general principles of relevant international law, which have been a source of inspiration for both new international instruments (such as the 1997 European Convention on Nationality) and new national laws on nationality. I consider that the 1961 Convention pronounced one of those general principles that belong to both international treaty-based law and general international law when it determines in its Article 1(1), that "each Contracting State shall grant its nationality to the persons born within its territory who would otherwise be stateless," the mentioned 1961 Convention states, in my opinion, one of those general principles of treaty-based and general International Law.

II. The legal response to the disturbing diversification of the manifestations of statelessness

10. Despite normative progress in this sphere, it is regrettable that the causes of statelessness continue to exist and are perhaps compounded nowadays, insofar as they are sometimes combined with current population displacements (intrinsic to the so-called "globalized" world in which we live). Among the causes of statelessness are situations and practices such as those revealed in this Case of the Yean and Bosico Children versus the Dominican Republic (in which the children Dilcia Yean and Violeta Bosico, whose mothers are Dominican and whose fathers are Haitian, were deprived of nationality and remained stateless for more than four years and four months), in addition to other causes, such as conflicts concerning laws on nationality, laws on marriage (particularly, with regard to married women), situations of children who have been abandoned and whose births have not been registered, and discriminatory administrative practices. [FN6]

[FN6] For example, transfers of territory (in cases of dissolution or succession of States and changes in borders), loss of nationality owing to de-nationalization, loss of nationality through waiver without prior acquisition of another nationality.

11. The persistence of causes of statelessness constitutes a disturbing picture, because the possession of a nationality is a basic requirement for the exercise of other individual rights, such as political rights, and the right of access to education and healthcare, along with so many others. Nowadays, the de jure stateless persons are joined by the de facto stateless persons, i.e., those who are unable to prove their nationality, and those without an effective nationality (for the effects of protection). Nowadays, the de facto stateless persons – whose registration documents have often been confiscated or destroyed by those who control and exploit them – are multiplying, owing to the barbarian practice of the "invisible" trafficking of human beings (especially children and women) throughout the world. [FN7] This is a widespread contemporary tragedy.

[FN7] Cf., e.g. R. Piotrowicz, "Victims of Trafficking and De Facto Statelessness", 21 Refugee Survey Quarterly - UNHCR/Geneva (2002), pp. 50-59.

12. In actual fact, international human rights protection (essential) and diplomatic protection (discretionary), operating in fundamentally different ways and contexts, continue to co-exist nowadays, thereby mitigating the extreme vulnerability of many people. Diplomatic protection is conditioned by nationality (effective) as a *vinculum juris*, while international human rights protection emphasizes the general obligation of States Parties to human rights treaties, such as the American Convention, to respect and ensure the respect of the protected rights, for the benefit of all individuals subject to their respective jurisdictions, irrespective of their nationality.

13. In this respect, this judgment of the Court provides a timely warning – bearing in mind the general obligations of the States Parties to the American Convention stipulated in Articles 1(1) and 2 thereof - that discriminatory administrative practices and legislative measures on nationality are prohibited (starting with its attribution and acquisition - paras. 141-142). The judgment takes care to emphasize the fact that Dilcia Yean and Violeta Bosico were children, which increased their vulnerability, and jeopardized the development of their personalities, making it impossible to grant them the special protection of their rights to which they were entitled (para. 167); in this respect, the Court rightly recalled the important legacy of its own Advisory Opinion No. 17 (on the Juridical Status and Human Rights of the Child, 2002) as regards their protection as subjects of inalienable and inherent rights (para. 177).

14. In this case of the Yean and Bosico children, the Court understood that the violation of the right to nationality and the rights of the child also resulted in the violation of the rights to juridical personality, to a name and to equal protection under the American Convention (paras. 174-175, 179-180 and 186-187). Significantly, following this same line of lucid reasoning – in keeping with the challenges of our times, which the Court commenced in its historical Advisory Opinion No. 19 on the Juridical Status and Rights of Undocumented Migrants (2003) – it observed in this case that:

"(...) the obligation to respect and ensure the principle of the right to equal protection and non-discrimination is irrespective of the migratory status of a person in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner who is on its territory, without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause.

In view of the above, (...) the Court considers that:

- a) The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights;
- b) The migratory status of a persons is not transmitted to their children, and
- c) The fact that a person has been born on the territory of a State is the only fact that needs to be demonstrated for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born" (paras. 155-156).

III. The broad scope of the general protection obligations (Articles 1(1) and 2) of the American Convention.

15. Thus, the obligation to respect and ensure respect for the protected rights (Article 1(1) of the American Convention) is of a continuous and permanent nature; if the State does not take all possible measures to guarantee this, new victims may arise leading per se (owing to the State's inaction) to additional violations, without these having to be related to the rights that were originally violated. Consequently, my understanding differs fundamentally from the argument according to which there cannot be a violation of Article 1(1) of the Convention if it is not accompanied by a parallel and associated violation of the rights protected by the Convention.

16. This argument, which I cannot accept, corresponds to a restrictive, atomized and disaggregated vision of a general obligation to guarantee under the Convention as a whole. Allow me the metaphor that it would be equivalent to observing only the nearest tree and losing sight of the forest around it. My interpretation of Article 1(1) – and also of Article 2 - of the Convention is and always has been much broader, and evidently aggregative, maximizing the protection under the Convention. I stated this clearly, in this Court, more than eight years ago, in my dissenting opinion in the Case of Caballero Delgado and Santana versus Colombia (judgment on reparations of January 29, 1997). Allow me to recapitulate it here in brief, as a final reflection in this separate opinion.

17. When emphasizing the “comprehensive scope” of the general obligation of States stipulated in Article 1(1) of the American Convention in that dissenting opinion, I stated that compliance with this obligation calls for a series of measures from the States Parties to the Convention:

"... to the effect of educating and empowering individuals under their jurisdiction to make full use of all the protected rights. They include the adoption of legislative and administrative measures designed to remove obstacles, fill in lacunae, and enhance the conditions for the exercise of the protected rights (para. 3).

Thus, I added, to deny the “comprehensive scope” of Article 1(1) of the Convention would be to deprive the American Convention of its effects, since Article 1(1) "embraces all the rights" that the Convention protects (para. 4).

18. Subsequently, in the same dissenting opinion in the Case of Caballero Delgado and Santana, I sought to show that the two general obligations enshrined in the American Convention - Articles 1(1) and (2) – are “ineluctably intertwined” and I referred to hypothetical situations to illustrate this (para. 9). Further on, I expanded on this:

"In my understanding, despite the assertion that there was no violation of Article 2 of the Convention, the finding of non-compliance with the general duty of Article 1(1) is per se sufficient to determine to the State Party that it ought to take measures, including of a legislative character, to guarantee to all persons under its jurisdiction the full exercise of all the rights protected by the American Convention" (para. 19).

19. Cases soon appeared in which the Inter-American Court itself took a stance in this respect. In the Case of Five Pensioners versus Peru (judgment of February 29, 2003), the Court concluded that the defendant State had committed an autonomous violation of the general

obligation embodied in Article 2 of the Convention (of harmonizing its domestic law with the provisions of this article), in combination with the general obligation of Article 1(1) thereof (paras. 164-168). Previously, following the same line of thought, in Case of Castillo Petruzzi et al. versus Peru (judgment of May 30, 1999), the Court determined that a violation of Articles 1(1) and 2 of the Convention had occurred separately (paras. 204-208). Also, in Case of Baena Ricardo et al. versus Panama (judgment of February 2, 2001), the Court decided that the defendant State had failed to comply with the general obligations of Articles 1(1) and (2) of the Convention, and devoted a whole chapter (No. XIII) of the judgment to this (paras. 176-184).

20. In this regard, in the memorable Case of Suárez Rosero versus Ecuador (judgment of November 12, 1997), for the first time in its history, the Court decided expressly that a norm of domestic law (the Ecuadorian Penal Code) violated per se Article 2 of the American Convention, "irrespective of whether it had been applied in the instant case" (paras. 93-99, particularly para. 98). Significantly, this judgment of the court in the Case of Suárez Rosero also devoted a whole chapter (No. XIV) to establishing the autonomous violation of the general obligation of Article 2 of the American Convention. [FN8]

[FN8] Shortly afterwards (on December 12, 1977), the Supreme Court of Ecuador decided to declare that the norm in question was unconstitutional; this was the first time that a provision of domestic emergency law was modified promptly owing to a decision of the Inter-American Court.

21. Likewise, in Case of Hilaire, Constantine and Benjamin et al. versus Trinidad and Tobago (judgment on merits of June 21, 2002), invoking the principle of *jura novit curia*, the Court considered that the defendant State had incurred in an autonomous violation of Article 2 of the American Convention owing to the mere existence of its "Law on Crimes against the Person," irrespective of its application (paras. 110-118). Lastly, in the instant case of the Case of Yean and Bosico children versus the Dominican Republic, when ordering reparations in the judgment it has just adopted, the Court stressed the broad scope of the general obligations of Articles 2 and 1(1) of the Convention, when it considered that:

"(...) Pursuant to Article 2 of the American Convention, the Dominican Republic should adopt in its domestic laws, within a reasonable time, the legislative, administrative and any other measures necessary to regulate the procedure and requirements for acquiring Dominican nationality by late declaration of birth. This procedure must be simple, accessible and reasonable, because, to the contrary, applicants could remain stateless. Furthermore, there must be an effective recourse for cases in which the request is refused.

(...) When establishing the requirements for late registration of birth, the State should take into consideration the particularly vulnerable situation of Dominican children of Haitian origin. The requirements should not constitute an obstacle for obtaining Dominican nationality and should only be those that are essential for establishing that birth occurred in the Dominican Republic.

(...) Moreover, the requirements should be specified clearly and be standardized, and their application should not be left to the discretion of State officials, in order to guarantee the legal

certainty of those who use this procedure and to ensure an effective guarantee of the rights embodied in the American Convention, pursuant to Article 1(1) of the Convention.

The State should also take the permanent measures necessary to facilitate the early and opportune registration of children, irrespective of their parentage or origin, so as to reduce the number of individuals who resort to the procedure of late registration of birth" (paras. 239-241).

22. In brief, in this judgment, the Court has preserved the standards of protection embodied in its consistent case law. It has availed itself of the extremely useful contribution made by its Advisory Opinion No. 18, on the Juridical Status and Rights of Undocumented Migrants (2003), and also the relevant legacy of its Advisory Opinion No. 17 (on the Juridical Status and Human Rights of the Child, 2002); it has interrelated the violated rights (right to nationality and rights of the child, right to a name and to juridical personality, and the right to equal protection and the right to humane treatment [FN9]), instead of dealing with them in an unduly compartmentalized way [FN10]; and it has underscored the broad scope of the general obligations of Articles 1(1) and 2 of the American Convention. I would greatly regret it if, in future (tempus fugit), the Court moved away from this case law which maximizes the protection of human rights under the American Convention.

[FN9] In this specific case, the latter violation with regard to the next of kin.

[FN10] In my recent separate opinion in Case of Acosta Calderón versus Ecuador (Judgment of June 24, 2005), I reiterated my continued understanding that “the best hermeneutics for the protection of human rights is that which interrelates the indivisible protected rights – and not that which seeks incorrectly to separate them, rendering the bases of protection unduly fragile” (para. 16).

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary