

**Order of the
Inter-American Court of Human Rights
of November 28, 2007
Case of the Girls Yean and Bosico v. Dominican Republic
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on preliminary exceptions, merits, reparations, and costs delivered on September 8, 2005 by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), whereby the Court, in its pertinent parts, ordered that:

[...]

6. The State should publish at least once, within six months of notification of th[e] 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 th[e] Judgment, in the terms of paragraph 234 [of the Judgment].

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, Tiramen 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 th[e] 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 th[e] Judgment.

9. The State should pay, as compensation for non-pecuniary damage, the amount established in paragraph 226 of th[e] 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 th[e] Judgment to Leonidas Oliven Yean and Tiramen 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 Dominico 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 th[e] 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 th[e] 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 th[e] Judgment.

[...]

2. The communication submitted by the representatives of the victims and their next of kin (hereinafter the "representatives") on September 29, 2005, requesting the Court to "order the State to omit the names of victims Dilcia Yean and Violeta Bosico in the publication of the [J]udgment" of the Court delivered on September 8, 2005, as a means to safeguard safety and humane and moral integrity of the victims based on the concerns expressed by Mrs. Yean and Mrs. Bosico and their next of kin regarding their personal safety.

3. The notes of the Secretariat of the Court (hereinafter the "Secretariat") of October 7, 2005, wherein, following instructions of the Court, it informed the parties that the request filed by the representatives on September 29, 2005, was submitted after the Judgment had been signed and the opinions had been delivered, for it was not possible to omit the names of the victims therein. Nevertheless, the Dominican Republic (hereinafter the "State" or the "Dominican Republic") was required to "take any necessary step to comply with the sixth operative paragraph of the Judgment [...] on publication of the relevant parts thereof, and omit the names of the girls and their next of kin, and name their initials instead."

4. The reports submitted by the State on April 5 and 28 and November 2, 2006, February 19, 2007 and November 21, 2007, whereby it submitted information on the means of compliance with the provisions of the Judgment delivered by the Court on September 8, 2005 (hereinafter the "Judgment"), and stated, *inter alia*, that:

a) with regard to the sixth and seventh operative paragraphs referring to the request of the Court to omit the names of the girls and their next of kin and name their initials instead in compliance with sixth operative paragraph of the Judgment, it stated that in granting the representatives request to amend the Judgment for such purposes, the Court impliedly "repealed the seventh operative paragraph insofar it is illogic" to organize a public act acknowledging the State's international responsibility and apologizing to the victims whose "identities would be revealed and the [victims'] concerns about their safety would increase if not made by other means;"

b) it requested recommendations on the means of compliance with said operative paragraph because it was aware of the fact that "as they are obliged to omit the names in the publication, photographs or television images should not be published either so as to prevent Dominican authorities from being accused of having violated the request;" and

c) it stated that it had complied with the payments for non-pecuniary damage in favor of Dilcia Yean and Violeta Bosico, and the payment for costs and expenses in favor of Leonidas Oliven Yean and Tiramén Bosico Cofi.

5. The briefs of the representatives of March 27, May 5 and December 4, 2006 and November 27, 2007, whereby they submitted comments on the means of compliance with the Judgment and stated, *inter alia*, that:

- a) even though two years had elapsed and the terms established by the Court had expired, the Dominican Republic failed to adopt measures aimed at complying with unfulfilled operative paragraphs of Judgment of the Court;
 - b) regarding the sixth operative paragraph, they requested that “[t]he notice of willingness made by the representatives in September, 2005 be deemed ineffective insofar they moved for an omission of the names from the Judgment,” said request was granted by the Court in October, 2005;
 - c) with regard to the seventh operative paragraph, the State had refused to implement the measures aimed at publicly acknowledging its international responsibility and apologizing to the victims; it had also failed to contact them to effectively make the public acknowledgment of state responsibility. They also pointed out that the State had made an interpretation that implied a failure to assume its obligation to comply with the seventh operative paragraph and requested the Court to recall the State that compliance with the obligation to acknowledge its international responsibility and apologize to the victims necessarily implies the participation of the victims, their next of kin and representatives;
 - d) as concerns the payments ordered as compensation, they were able to verify the information submitted by the State as they were present when payments were made. They also noted that no interest was either paid or claimed despite it had accrued for almost six months since expiration of the term for compliance with said obligation; and
 - e) regarding the adoption of domestic legal measures, they considered that, as two years had elapsed and the eighth operative paragraph of the Judgment remained unfulfilled, the likelihood of a legal reform of the procedure and requirements for acquiring Dominican nationality based on late declaration of birth being implemented was low.
6. The briefs submitted by the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “Inter-American Commission”) on May 19 and December 18, 2006, and November 27, 2007, whereby it presented comments on the means of compliance with the Judgment and stated, *inter alia*, that:

- a) the State failed to comply with its obligation to publish the facts and operative paragraphs of the Judgment as ordered by the Court in the sixth operative paragraph of the Judgment. As a consequence, it requested the Court to recall the State its obligation to comply therewith;
- b) it did not agree with the interpretation made by the State of the seventh operative paragraph of the Judgment. The communication whereby the Court requested the State to afford certain confidentiality to the names of the victims and their next of kin is very clear in that it requested that the names of the victims and their next of kin be omitted in the publication of the relevant parts of the Judgment, but this does not prevent it from organizing a public act to acknowledge its international responsibility and apologizing to the victims and their next of kin;
- c) it acknowledged the statements of the State regarding payment of the compensations for non-pecuniary damage and reimbursement of costs and expenses made on February 15 and March 21, 2007. It also beheld with satisfaction that the orders of the Court under ninth and tenth operative paragraph of the Judgment had been complied with; and
- d) it was awaiting further reports from the State on compliance with the remaining obligations set out in the Judgment.

CONSIDERING:

1. That the Dominican Republic is a State Party to the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") since April 19, 1978 and accepted the binding jurisdiction of the Court on March 25, 1999.
2. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.
3. That on September 8, 2005, the Court delivered the Judgment on preliminary exceptions, merits, reparations, and costs in the instant case (*supra* first Having Seen paragraph).
4. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For such purpose, States are required to guarantee implementation of the Court's rulings at the domestic level.¹
5. That, given the final and not-subject-to-appeal nature of the Court's judgments, as established in Article 67 of the American Convention, said Judgments are to be promptly and fully complied with by the State.²
6. That the obligation to comply with the decisions of the Court conforms to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with the international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their domestic legislation to escape their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.³
7. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure their effects (*effet utile*) at the domestic law level. This principle applies not only in connection with the substantive provisions of human rights treaties (i.e. those dealing with the protected rights) but

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of García-Asto and Ramírez-Rojas v. Peru. Compliance with Judgment*. Order of July 12, 2007, fourth Considering paragraph, and *Case of Molina-Theissen v. Guatemala. Compliance with Judgment*. Order of July 10, 2007, second Considering paragraph.

² Cf. *Case of Castillo-Petruzzi. Compliance with Judgment*. Order of November 17, 1999. Series C No. 59, second and sixth Considering paragraphs; *Case of García-Asto and Ramírez-Rojas*, *supra* note 1, fifth Considering paragraph; and *Case of Gómez-Palomino. Compliance with Judgment*. Order of October 18, 2007, seventh Considering paragraph.

³ Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Baena-Ricardo et al. v. Panama. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 22, 2002, third Considering paragraph; *Case of García-Asto and Ramírez-Rojas*, *supra* note 1, sixth Considering paragraph; and *Case of Molina-Theissen*, *supra* note 1, third Considering paragraph.

also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.⁴

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8. That with regard to the publication of the Judgment delivered by the Court on September 8, 2005, in consideration of the statements made by the State and the Commission, as well as the statements of the representatives whereby they requested that “the[ir] notice of willingness made in September, 2005 be deemed ineffective in full” (*supra* forth, fifth and sixth Having Seen paragraphs), this Court reminds that the State should proceed with the ordered publication at least once in the official gazette and in another newspaper with national circulation in the Dominican Republic, as required under the sixth operative paragraph of said Judgment (*supra* first Having Seen paragraph). Therefore, the statements made in the communication dated October 7, 2005 are deemed ineffective. (*supra* third Having Seen paragraph).

9. That with regard to the seventh operative paragraph of the Judgment delivered by the Court on September 8, 2005, which refers to the obligation of the State to organize a public act acknowledging its international responsibility and apologizing to the victims, in light of the considerations made by the State (*supra* fourth Having Seen paragraph) and the comments made by the representatives and the Commission (*supra* fifth and sixth Having Seen paragraphs), this Court considers that the State should organize a public act to acknowledge its international responsibility and apologize to the victims under the provisions of the above-mentioned Judgment of the Court (*supra* first Having Seen paragraph).

10. That the State informed it had complied with the payments ordered under the Judgment of September 8, 2005 in regards to non-pecuniary damage, as well as costs and expenses (*supra* fourth Having Seen paragraph). To this regard, the representatives pointed out that they had verified the information submitted by the State on the payments ordered as compensation (*supra* fifth Having Seen paragraph), and the Commission beheld with satisfaction that the orders of the Court had been complied with (*supra* sixth Having Seen paragraph). Consequently, the Court deems fulfilled the ninth and tenth operative paragraphs of the Judgment.

11. That the Court considers it imperative that the State furnishes additional updated information on the following obligations in order to determine if they have been effectively and fully complied with:

- a) Publication, at least once, 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 of the operative paragraphs of the [...] Judgment (*sixth operative paragraph of the Judgment delivered on September 8, 2005*);

⁴ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Gómez-Palomino*, *supra* note 1, third Considering paragraph, and *Case of García-Asto and Ramírez-Rojas*, *supra* note 1, seventh Considering paragraph.

b) Organization of a public act acknowledging the international responsibility of the State and apology to the victims Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, with the participation of state authorities, the victims and their next of kin, as well as the representatives, disseminated in the media (radio, press and television), (*seventh operative paragraph of the Judgment delivered on September 8, 2005*); and

c) Adoption by the State within its domestic law, in accordance with Article 2 of the American Convention, of legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth (*eighth operative paragraph of the Judgment delivered on September 8, 2005*).

AND THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has fully complied with the payments ordered as compensation for non-pecuniary damage in favor of Dilcia Yean and Violeta Bosico, as well as for costs and expenses in favor of Tiramén Bosico Cofi and Leonidas Olive Yean, ordered by the Court in the ninth and tenth operative paragraphs, respectively, of the Judgment delivered by the Inter-American Court of Human Rights on September 8, 2005 in the instant case.

2. That it will keep open the proceeding for monitoring compliance with the following obligations pending fulfillment in the instant case:

a) To publish, at least once 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 the Judgment (*sixth operative paragraph of the Judgment*);

b) To organize a public act acknowledging its international responsibility and apologize to the victims Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramén Bosico Cofi and Teresa Tucent Mena, with the participation of state authorities, the victims and their next of kin, as well as their representatives, and to disseminate it in the media (radio, press and television) (*seventh operative paragraph of the Judgment*).

c) To adopt within its domestic legislation, 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 (*eighth operative paragraph of the Judgment*).

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly, effectively, and fully comply with the measures of reparation pending compliance ordered by the Court in the Judgment on preliminary exceptions, merits, and reparations and costs of September 8, 2005, as established in Article 68(1) of the American Convention on Human Rights.
2. To request that the State submit a report to the Inter-American Court of Human Rights, no later than by April 4, 2008, specifying all such measures as may have been adopted to fully comply with the reparations ordered by this Court and which are pending fulfillment, in accordance with the provisions of the eleventh Considering paragraph and the second declarative paragraph herein.
3. To request the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their observations on the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.
4. To continue monitoring those issues addressed in the Judgment on preliminary exceptions, merits, reparations, and costs of September 8, 2005, that are still pending compliance.
5. To request that the Secretariat of the Court notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary