

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

OF OCTOBER 10, 2011**

**CASE OF THE YEAN AND BOSICO GIRLS V. THE DOMINICAN REPUBLIC
MONITORING OF COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment of preliminary objections, merits, reparations, and costs (hereinafter "the Judgment"), issued in this case by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on September 8, 2005.

2. The Order on Monitoring of Compliance with Judgment issued by the Inter-American Court on November 28, 2007, wherein it declared:

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 Tiramen Bosico Cofi and Leonidas Olive[n] Yean, ordered by the Court in operative paragraphs [nine and ten], respectively, of the Judgment delivered by the Inter-American Court of Human Rights on September 8, 2005 [...].

3. The Order on Monitoring Compliance with Judgment issued by the Presidency of the Inter-American Court on May 18, 2009, wherein it decided to summon the parties to a private hearing in order to obtain information from the State regarding the measures pending compliance. This private hearing took place on July 8, 2009, at the Court's headquarters.

4. The Order on Monitoring Compliance with Judgment issued by the Inter-American Court on August 27, 2010, wherein it declared:

1. That in accordance with [the] Order, the State has fully complied with operative paragraph six of the Judgment on Reparations, regarding the [publication], at least once, in the official gazette and another nationally circulated newspaper in the Dominican Republic, [of] both the section entitled "Proven Facts[,"] without the corresponding footnotes, and also the operative paragraphs of this judgment (*operative paragraph six of the Judgment*).

2. That in monitoring full compliance with the Judgment issued in the present case, it will maintain proceeding[s] to monitor compliance open, with [regard to] the following outstanding operative paragraphs:

* Judge Rhadys Abreu Blondet, of Dominican nationality, excused herself from hearing this Order on Monitoring of Compliance, in accordance with Article 19(2) of the Statute and 19(1) of the Rules of the Court. Judge Leonardo A. Franco informed the Court that, for reasons of force majeure, he could not be present at the deliberation and signing of this Order.

** Order adopted by the Court in its 44th Period of Extraordinary Sessions, held in Bridgetown, Barbados from October 10 to 14, 2011.

a) [the] organiz[ation of] a public act acknowledging [...] international responsibility and apologiz[ing] to the victims Dilcia Yean and Violeta Bosico, and to Leonidas Oliven Yean, Tiramen 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 [the] disseminat[ion] [of the act] in the media (radio, press[,] and television) (*operative paragraph seven of the Judgment*); and

b) [the] adopt[ion] within [the State's] domestic legislation, in accordance with Article 2 of the American Convention, [of] the legislative, administrative[,] and [...] other measures needed to regulate the procedure[s] and requirements [for the] acqui[sition of] Dominican nationality through late registration of birth (*operative paragraph eight of the Judgment*).

AND DECID[ED]:

1. To call upon the State to adopt all measures necessary to promptly and effectively comply with the outstanding operative paragraphs as stipulated in declarative point two above, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit before the Inter-American Court of Human Rights, by February 2, 2010 at the latest, a report indicating all of the measures adopted to comply with the outstanding reparations ordered by this Court, pursuant to Considering Clauses 14[,] 15[,] and 24 to 27.

[...]

5. The briefs of February 2 and 3, 2011, wherein the State of the Dominican Republic (hereinafter "the State" or "the Dominican Republic") presented the Court with the legislation that had been adopted in order to comply with the Judgment, and reiterated its willingness to carry out the public act of acknowledgment of international responsibility.

6. The communication of February 15, 2011, wherein the Secretariat of the Court (hereinafter "the Secretariat"), following instructions of the President of the Court, again requested that the State present a report to complement the information provided in the abovementioned briefs, no later than March 15, 2011. Similarly, on this same day the representatives of the victims (hereinafter "the representatives") and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") received the information presented by the State, and were informed that once the complementary report was received, it would be forwarded to them in order for their observations to be made.

7. The communication of March 15, 2011, wherein the State reported that it would provide the information requested by the Court in the following days. The communication of March 24, 2011, wherein the Secretariat granted an additional and non-extendable period ending April 23, 2011, in order for the State to submit the requested information. The communications of June 9 and September 12, 2011, wherein the Secretariat, in light of the expiration of the period of time provided, reiterated its requirement to the State, in order for it to provide the additional report being requested.

CONSIDERING THAT:

1. Monitoring compliance with decisions is a power inherent to the judicial functions of the Court.

2. The Dominican Republic has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since April 19, 1978, and acknowledged the Court's contentious jurisdiction on March 25, 1999.

3. Pursuant to Article 67 of the American Convention, the Court's judgments shall be fully and promptly complied with by the State.

4. In addition, Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Therefore, States must ensure that the rulings set out in the decisions of the Court are implemented at a domestic level.¹

5. The obligation to comply with the Court's judgments corresponds to a basic principle of International Law, as supported by international jurisprudence, under which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously indicated by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot neglect their pre-established international responsibility due to domestic orders.² The States Parties' treaty obligations bind all State powers and bodies.³

6. The States Parties to the Convention must ensure compliance with treaty provisions and their effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive norms of human rights treaties (*i.e.* those addressing protected rights), but also in connection with procedural rules, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. Pursuant to the Order of the Court of December 27, 2010 (*supra* Having Seen 4), the State should have presented on February 2, 2011, a report that indicated: a) the steps taken and to be taken by the State in order to carry out its act of acknowledgment of international responsibility and the tentative dates of said act; and b) which legislative, administrative or other measures were adopted subsequent to the issuance of the Judgment, and in what way these regulate the procedures and requirements for acquiring Dominican nationality upon late registration of birth.

a) Carrying out of a public act acknowledging international responsibility and apologizing to the victims (operative paragraph seven of the Judgment)

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of "Las Dos Erres" Massacre v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of July 6, 2011, Considering clause three, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Monitoring Compliance with Judgment*. Order of the Court August 30, 2011, Considering clause three.

² 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 "Las Dos Erres" Massacre v. Guatemala, supra* note 1, Considering clause four, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra* note 1, Considering clause four.

³ Cf. *Case of Castillo Petruzzi et al. v. Perú. Monitoring Compliance with Judgment*. Order of the Court of November 17, 1999, Considering clause three; *Case of "Las Dos Erres" Massacre v. Guatemala, supra* note 1, Considering clause four, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra* note 1, Considering clause four.

⁴ Cf. *Case of Ivcher Bronstein v. Perú. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of "Las Dos Erres" Massacre v. Guatemala, supra* note 1, Considering clause five, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra* note 1, Considering clause five.

8. The State noted in its report of February 2, 2011 that "it [was] very willing to coordinate the date of the public act of acknowledgment of international responsibility and apology with the representatives of the victims."

9. By way of its communication of February 15, 2011, pursuant to operative paragraph two of the Order (*supra* Having Seen 4), and following the instructions of the President of the Court, the Secretariat requested, yet again, that the State indicate any concrete actions it had taken and would take in order to carry out the act of acknowledgment of international responsibility. Moreover, the State was to indicate the tentative dates for this act.

10. In its communication of March 15, 2011, the State noted that "owing to the appointment of new officials in the Central Electoral Board, in the next few days [it would send to the Court] the relevant information." Given the State's failure to respond, a non-extendable period was afforded with a deadline of April 23, 2011. Nevertheless, the State has not provided the requested information to date.

11. The Court notes that, pursuant to operative paragraph six of the Judgment, the public act of acknowledgment of international responsibility should have been carried out within a period of six months as of the legal notice of the Judgment. More than five years have passed since that period expired, without fulfillment of this measure. Due to the foregoing, the Court considers it indispensable for the State to carry out all of the steps necessary for the public act to be carried out as soon as possible. In monitoring compliance with this obligation, the Court reiterates once again that the State must present a clear, precise, and detailed report on: a) the measures that have been taken and that will be taken to fulfill this obligation, and b) the tentative dates, agreed upon by the parties, on which the act will be held.

b) Adoption, at the domestic level, of the measures necessary to regulate the procedures and requirements for acquiring Dominican nationality based on late registration of birth (operative paragraph eight of the Judgment)

12. By way of a report of February 3, 2011, the State indicated that, "legislation adopted in response to the Judgment [is attached], regarding operative paragraph eight." Relating to this, the State forwarded the following documents, which are grouped according to their nature:

1) *Legislation adopted prior to the Judgment:* Manual or Guidelines of November 17, 2003, for the application of Order No.07/2003; Order No. 07/2003 of November 17, 2003, on Late Registration of Persons over 16 years of age; Order No. 5-99 of August 4, 1999; Dossier Circulations of the Central Electoral Board of 2004, and Dossier Circulations of the Plenary of the Central Electoral Board.

2) *Legislation adopted subsequent to the Judgment and previously forwarded to the Court:* Order No. 45/2008 of October 3, 2008, on Late Registration of Birth of Persons over 60 years of age, whose identification card states only the surname corresponding to the mother; Operational Guidelines of the Central Office of Late Registrations of Birth of October 22, 2008; Order No. 02/07 of April 18, 2007, for the entry into force of the Birth Registration Book for Children of Non-resident Alien Mothers in the Dominican Republic, and Dossier Circulations of the Central Electoral Board of 2005, 2007, and 2008.

3) *Legislation adopted subsequent to the Judgment, that had not been forwarded to the Court:* Preliminary Circulation Guidelines No. 44/2008 of November 19, 2008, on Late Registration of Birth of Persons over 60 years of age, whose identification only states the surname corresponding to the mother, and Order No. 08/2007 of November

7, 2007, that provides for the expedited issuance of Identification Cards for Minors to mothers under 16 years of age.

13. In light of the abovementioned documentation, the Court recalls that in its Order of August 27, 2010, it requested the State to indicate with specification the measures it had implemented subsequent to the Judgment and the manner in which these regulate the procedures for acquiring the nationality of the Dominican Republic upon late registration of birth. For this reason, the first group of documents, corresponding to measures provided prior to the ruling, will not be considered by the Court. In regard to the second group of documents, corresponding to those measures provided subsequent to the issuance of the Judgment and previously submitted to the Court, it was specified by way of the Order of the Court, that these could be relevant in establishing the progress made in compliance with operative paragraph eight. However, the State did not explain the relevance or connection of the documents provided, nor did it heed the Court's request for information in a timely manner, nor refer to the observations of the representatives, who have mentioned that some of the measures adopted by the State do not facilitate compliance with the Judgment.⁵ Regarding the third group of documents, forwarded for the first time to the Court, the Court notes that similar to the documents previously provided, the relevance of these documents has not been stated, nor has the State specified in a clear manner how these measures satisfy that ordered in the Judgment, as has been requested repeatedly of the State (*supra* Having Seen ***).

14. Pertaining to this, the Secretariat required the State, by way of a communication of February 15, 2011, to present a report by March 15, 2011, wherein it would state how the adopted measures comply with that ordered in the Judgment. Moreover, it noted that most of the information forwarded had already been presented to the Court on prior occasions. In response to this communication, on March 15, 2011, the State expressed that in the following days it would provide the Court with the requested information; furthermore, it stressed that it had sent documents related to compliance with operative paragraph eight of the Judgment. Given the abovementioned, the Secretariat, by way of a communication on March 24, 2011, granted the State an additional non-extendable period ending April 23, 2011, in which to present the solicited information. To date, despite the requests made on June 9 and September 12, 2011, the requested information has not been presented.

15. In this matter, the Dominican Republic must adopt all of the necessary provisions to immediately and effectively comply with that ordered by the Court in its Judgment. This obligation includes the duty to report on the measures adopted for compliance with that ordered in the Judgment. The timely observance of the State's obligation to indicate to the Court how it is complying with each of the requirements ordered is fundamental for the assessment of compliance with the Judgment as a whole, and this obligation is not satisfied with the mere formal presentation of a document, but rather, in order to fully satisfy this obligation effectively, it is required that the State formally present a document in the time frame provided, and that it present material that is specific, clear, current, and detailed, in reference to the matters being requested.⁶ Moreover, the Court reiterates that in both the proceedings of a contentious case, as well as in the monitoring of compliance, it is not enough

⁵ Cf. *Case of the Yean and Bosico Girls v. The Dominican Republic. Monitoring Compliance with Judgment*. Order of the Court of August 27, 2010, Considering clause 24.

⁶ Cf. *Matter of Liliana Ortega et al. regarding Venezuela. Provisional Measures*. Order of the Court of May 1, 2004, Considering clause sixteen; *Case of Suárez Rosero v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of July 10, 2007, Considering clause five, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra* note 1, Considering clause eight.

to simply forward evidentiary documents, but rather, the parties are required to present an argument relating this evidence with the point that it seeks to establish.⁷

16. Furthermore, this Court cannot exercise its power to monitor the execution of its judgments if the State fails to comply with its obligation to duly inform on the measures adopted. In this regard, the obligation of the State to present sufficient information on the measures adopted is a duty already established by the Court,⁸ and the General Assembly of the Organization of American States has reiterated that States Parties must provide information in an opportune manner, in order for the Court to satisfy its obligation to report on compliance with its rulings.⁹

17. In light of the aforementioned, the Court considers that while the State has carried out some actions in the execution of this specific obligation, the State still has not provided sufficient evidence to opportunely assess if the domestic measures adopted “regulate the procedures and the requirements for acquiring Dominican nationality upon late registration of birth,” pursuant to that established in paragraph 239 of the Judgment ordered by the Tribunal on September 8, 2005. Therefore, the Court reiterates the request made to the State to present a clear, specific, and detailed report, wherein it specifies: a) the specific legislative, administrative, and other measures carried out in compliance with that ordered, subsequent to the issuance of the Judgment; and b) in what way these measures regulate the procedures and requirements for acquiring Dominican nationality by way of late declaration of birth, pursuant to that established in operative paragraph eight of the Judgment (*supra* Having Seen 1). Moreover, the Court considers it indispensable that the representatives and the Commission state the measures that satisfy compliance with this obligation in their observations, in a specific and justified manner.

18. The Court shall consider the general state of compliance with the Judgment on preliminary objections, merits, reparations, and costs of September 8, 2005 once the relevant information is received on the obligations pending compliance.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its 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 31 and 69 of its Rules of Procedure,

DECLARES THAT:

1. Pursuant to that noted in Considering clauses 10 and 11 of this Order, to date, the State has not complied with its obligation to indicate the measures taken to organize a public

⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 277; *Case of Torres Millacura et al. v. Argentina. Merits, Reparations, and Costs.* Judgment of August 26, 2011. Series C No. 229, para. 198, and *Case of Contreras et al. v. El Salvador. Merits, Reparations, and Costs.* Judgment of August 31, 2011. Series C No. 232, para. 233.

⁸ Cf. *Case of Five Pensioners v. Perú. Monitoring Compliance with Judgment.* Order of the Court of November 17, 2004, Considering clause five; *Case of the Moiwana Community v. Suriname. Monitoring Compliance with Judgment.* Order of the Court of November 22, 2010, Considering clause seven, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra* note 1, Considering clause nine.

⁹ Cf. General Assembly, Order AG/RES. 2587 (XL-O/10) approved in the fourth plenary session, held on June 8, 2010, entitled, “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, operative paragraph four.

act of acknowledgment of international responsibility ordered in operative paragraph seven of the Judgment.

2. Pursuant to that established in Considering clauses 13 to 17 of this Order, the State has failed to comply with its obligation to inform, in a clear, concise, and detailed manner, on the measures adopted to comply with operative paragraph eight of the Judgment.

3. The Court will keep the proceedings on monitoring compliance open, in regard to the following obligations pending fulfillment:

a) Organization of a public act acknowledging international responsibility and apologizing 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 this act in the media (radio, press, and television) (*operative paragraph seven of the Judgment*); and

b) Adoption by the State, within its domestic laws, of the legislative, administrative, and other measures needed to regulate the procedures and requirements for acquiring Dominican nationality upon late registration of birth, in accordance with Article 2 of the American Convention (*operative paragraph eight of the Judgment*).

AND DECIDES TO:

1. Reiterate to the State its obligation to adopt, as soon as possible, all necessary measures to promptly and effectively comply with obligations pending compliance, noted in operative paragraph three of this Order, as set forth in Article 68(1) of the American Convention on Human Rights.

2. Request that the State, in compliance with its obligation to inform the Court of the measures adopted, present a report by January 16, 2012, wherein it notes the measures adopted in compliance with the reparations ordered by this Court that are pending completion, pursuant to that indicated in Considering clauses 11 and 17 of this Order.

3. Request that the representatives and the Inter-American Commission on Human Rights present observations to the State's report mentioned in the prior Operative Paragraph, within a period of 4 and 6 weeks, respectively, as of reception of this report and in conformity with that indicated in Considering clauses 11 and 17 of this Order.

4. Continue monitoring the outstanding operative paragraphs of the Judgment on preliminary objections, merits, reparations, and costs of September 8, 2005.

5. Require the Secretariat of the Court to provide legal notice of this Order to the State, the Inter-American Commission on Human Rights, and the victims or their representatives.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary