

**REPORT No. 64/12**  
**CASE 12.271**  
**MERITS**  
**BENITO TIDE MÉNDEZ ET AL.**  
**DOMINICAN REPUBLIC**  
**March 29, 2012**

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**I. SUMMARY**

1. On November 12, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") received a petition that the International Human Rights Law Clinic at Boalt Hall School of Law of the University of California, Berkeley, the Center for Justice and International Law (CEJIL) and the National Coalition for Haitian Rights (NCHR) (hereinafter "the petitioners")<sup>1</sup> lodged against the Dominican Republic (hereinafter "the State," "the Dominican Republic" or "the Dominican State") alleging violation of the rights protected under articles 3, 5, 7, 8, 17, 19, 20, 22, 24 and 25 of the American Convention on Human Rights (hereinafter "the American Convention," "the Convention" or "the ACHR") in relation to the obligations established in Article 1(1) thereof. In the original petition, the IACHR was asked to grant precautionary measures on the grounds that hundreds of thousands of persons were being expelled from the Dominican Republic. Later, as the petition was being processed, the petitioners named the following persons as alleged victims in the case: Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Jeanty Fils-Aime, Janise Midi, Ana Virginia Nolaco, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor; and the following children born in the Dominican Republic: Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Lidia Sensión and Reyita Antonia Sensión<sup>2</sup>, Victoria Jean, Miguel Jean y Nathalie Jean<sup>3</sup> (all the whom will hereinafter be collectively referred to as "the alleged victims").

2. The petitioners claimed that the alleged victims were detained and, within less than 24 hours, arbitrarily expelled from the Dominican Republic to Haiti without any advance notice, without a hearing and without being given the opportunity to collect their personal effects and contact family members. The circumstances of their expulsion had very serious consequences, including material losses and profound personal suffering. The petitioners added that the expulsions were carried out without the necessary due process guarantees and without taking appropriate measures to protect the best interests of the children. The petitioners further assert that State failed to afford the alleged victims an effective judicial remedy by which to challenge the authorities' decision to expel them from the country or to question the lawfulness of their arrest. The petitioners also argued that these expulsions are part of the Dominican State's established practice of systematically and collectively expelling persons it presumes to be of Haitian origin. This practice is done through the use of "racial profiling, based on the victim's presumed nationality," and thus constitutes discrimination. The petitioners further maintained that the Dominican authorities keep

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<sup>1</sup> During the merits phase, the alleged victims were represented by the Center for Justice and International Law (CEJIL), the Human Rights Clinic at Columbia University School of Law, the Movement of Dominican-Haitian Women (MUDHA) and the Support Group to Repatriates and Refugees (GARR).

<sup>2</sup> Information the representatives provided when preparing the Addendum to the Request for Provisional Measures filed with the Inter-American Court on behalf of persons who, although not named, belong to a defined category: Haitians and Dominicans of Haitian origin who were subject to the jurisdiction of the Dominican Republic, June 13, 2000.

<sup>3</sup> Information presented by the petitioners on January 30, 2002.

Dominicans of Haitian descent and Haitians living in the Dominican Republic undocumented, which exposes them to possible expulsion.

3. The State, for its part, reaffirmed that the repatriation of aliens in dominican territory unlawfully is a non-renounceable and non-negotiable right of the dominican State, as it is a fundamental principle of its sovereignty and does not violate any treaty or convention to which the Dominican Republic is party. The State also denied that it was engaging in the practice of collective repatriations and reported that there was an established repatriation proceeding that was based on the law and implemented by the Office of the Director General of Immigration. It claimed that this proceeding guaranteed due process to persons facing repatriation, and ensured individualized treatment of such cases. As for the specific situation of the alleged victims, the Dominican State denied the petitioners' allegations and argued that in the detention process, individuals had every right and opportunity to present any type of document showing that they had legal immigration status in the Dominican Republic. The State further asserted that there was no record indicating that the petitioners ever turned to any court or authority in the Dominican Republic seeking legal protection for the persons whose rights they claimed were violated.

4. On October 13, 2005, the Commission approved Report No. 68/05, in which it declared that it was competent to examine the petition and decided that the petition was admissible with respect to the alleged violation of the rights protected under articles 3, 5, 7, 8, 17, 19, 20, 22, 24 and 25 of the American Convention, in relation to the obligations established in Article 1(1) thereof, and with respect to Article 7 of the Convention of Belém do Pará.<sup>4</sup>

5. After examining the evidence and the arguments made by the parties, the Inter-American Commission concludes that the Dominican State is responsible for violation of the rights to juridical personality, the right to humane treatment, the right to personal liberty, the right to a fair trial, the rights of the family, the rights of the child, the right to nationality, the right to property, freedom of movement and residence, right to equal protection, and the right to judicial protection, recognized, respectively, in articles 3, 5, 7, 8, 17, 19, 20, 21, 22.1, 22.5, 22.9, 24 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean. The Commission also concludes that the State violated the right to humane treatment, protected under Article 5 of the American Convention, and the rights of the family protected under Article 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez y Teresita Méndez, Carolina Fils-Aime, William Gelin, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina, Antonio Sensión, Ana Dileidy Sensión, Maximiliano Sensión, Emiliano Mache Sensión, Analideire Sensión, Gili Sainlis, Jamson Gelin, Faica Gelin, Kenson Gelin, Jessica Jean, Víctor Manuel Jean. Moreover, the Commission considers that, to date of the approval of the present report, it does not have sufficient elements to rule on possible violations of article 7 of the Convention of Belém do Pará.

## II. PROCESSING WITH THE COMMISSION

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<sup>4</sup> IACHR, Report No. 68/05 (Admissibility), Petition 12.271, Benito Tide Méndez, Antonio Sensión, Andrea Alezi, Janty Fils-Aime, William Medina Ferreras, Rafaelito Pérez Charles and Berson Gelin *et al.*, Dominican Republic, October 13, 2005.

6. The Commission received the original petition on November 12, 1999. The processing the petition underwent from the time it was presented to the date of the decision on admissibility is documented in Admissibility Report No. 68/05,<sup>5</sup> approved on October 13, 2005.

7. On November 22, 1999, during its 105th session, the Commission asked the State to take precautionary measures in order to put a stop to the collective expulsions of Haitians and Dominicans of Haitian descent and, where deportations of persons within Dominican territory were called for, to ensure that due process guarantees were fully observed.

8. On November 16, 2005, the Commission sent the parties notification of the Admissibility Report's approval. It advised them that the case had been registered as number 12.271 and, pursuant to Article 38(1) of the Commission's Rules of Procedure then in force, gave the petitioners two months in which to submit any additional observations they might have concerning the merits of the case. Also, in keeping with Article 48(1)(f) of the American Convention, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter.

9. On November 7, 2005, the State supplied additional information on the case; and on January 17, 2006, it submitted its observations on the admissibility report. In those observations the State expressed its willingness to avail itself of the friendly settlement mechanism, although it pointed out that "since August 18, 2000, its communications pertaining to case 12.271 have been exclusively with the Inter-American Court of Human Rights; in those communications the State has been requesting that the petitioners exhaust the domestic remedies, that they file their complaint with the Dominican authorities so that they can look into each case." It concluded by stating that "the Dominican State has not backed away from any of its preliminary objections." The State offered no observations on the merits of the case at that time. On January 26, 2006, the Commission sent the State a communication to remind it the procedural stage of the case and that a decision had already been made regarding the petition's admissibility and. The State sent additional information on February 3, 2006.

10. On January 17, 2006, the petitioners requested a 60-day extension on the deadline for presenting their observations. On January 31, 2006, the Commission granted the extension. The petitioners submitted their observations on the merits on April 16, 2009.

11. On March 2, 2007, a working meeting was held with the Commission where the parties expressed their willingness to initiate the friendly settlement process. Thereafter, working meetings were held on March 20, 2010 and March 26, 2011. At the second of the two working meetings, the State provided information on Benito Tide Méndez, William Medina Ferreras, Antonio Sensión and Carmen Méndez.

12. In the friendly settlement process, the petitioners provided additional information on May 4 and November 27, 2007, April 22, 2008, November 2, 2009, January 25, March 1, June 17 and August 13, 2010, and January 6, February 15, and March 22, 2011. The State, for its part, submitted additional information on July 27, 2009, May 5, 2010, and March 29 and July 26, 2011. With its July 26, 2011 communication, the State enclosed a copy of the long-form birth certificates of Benito Tide Méndez, William Medina Ferreras and Antonio Sensión.

13. On June 28, 2011, the petitioners requested that the IACHR proceed to process the case and issue the Merits Report indicated in Article 50 of the ACHR. On September 15, 2011, the petitioners sent a communication in which they requested that, given the amount of time that had

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<sup>5</sup> IACHR, Report No. 68/05, paragraphs 4, 5 and 6.

passed, the State be deemed to have forfeited its opportunity to submit its observations on the merits and that the report on the merits of this case be drawn up without further delay.

14. On September 26 and 28, 2011, the Commission advised the parties that given the length of time that had passed and in consideration of the petitioners' request, the Commission, in application of Article 40 of its Rules of Procedure, was terminating its intervention in the friendly settlement procedure and had decided to continue to move forward with the processing of the case.

#### **A. Provisional measures ordered by the Inter-American Court of Human Rights**

15. On May 30, 2000, the Commission sent a brief to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court") in which it requested that provisional measures be adopted to require the State to suspend the Dominican authorities' massive expulsions-deportations of Haitians and Dominicans of Haitian descent, since these measures placed at risk the life and physical integrity of those deported and of family members who are separated, especially under-age children who are left abandoned.

16. On August 18, 2000, the Court granted provisional measures for Benito Tide Méndez, Antonio Sensión, Andrea Alezy, Janty Fils-Aime and William Medina Ferreras, in order to safeguard their lives and personal integrity. On September 14, 2000, the Court decided to amplify the provisional measures to also include Rafaelito Pérez Charles and Berson Gelin. As of the date of this report, the provisional measures are still in effect with respect to Antonio Sensión, William Medina Ferreras and Berson Gelin.

17. While the provisional measures were being negotiated, the parties agreed to introduce safe-conducts as a useful means of protecting the beneficiaries and their family members. A safe-conduct is a provisional document, created for purposes of the provisional measures and issued by the Dominican Republic. It states that the bearer is "authorized to travel and work anywhere in the territory of the Dominican Republic until such time as the Inter-American Court [...] decides case 12.271." The parties and the Court were of the view that safe-conducts were a suitable means to protect the life and physical integrity of the beneficiaries and, if need be, to prevent them from being deported or expelled from the Dominican Republic.

### **III. POSITION OF THE PARTIES**

#### **A. The petitioners**

18. The petitioners alleged that Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean 13/17 of whom were children, were arbitrarily arrested and expelled from the Dominican Republic to Haiti, without prior notice, without a hearing, and without the opportunity to collect their personal effects or contact family members. They further alleged that the summary deportations –consummated in less than 24 hours- caused the alleged victims severe hardship, including significant material losses and profound personal suffering.

19. Specifically, they alleged that the Sensión family was deported in December 1994, Benito Tide Méndez in 1998, Rafaelito Pérez Charles on July 24, 1999, the Medina Ferreras and Fils-Aime families in November 1999, Berson Gelin in 1995 and again on December 5, 1999, Andrea Alezy on January 7, 2000 and the Jean family on December 1, 2000.

20. The petitioners pointed out that the alleged victims included Dominican citizens, persons born in Dominican territory and therefore citizens by virtue of the principle of *jus soli*, as Dominican law at the time prescribed; it also included persons born in Haiti who had strong family and personal ties in the Dominican Republic and had lived there for many years. Because of the differing circumstances among the alleged victims, the petitioners classified them up as follows: a) persons born in the Dominican Republic and having official documentation ((Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles and Miguel Jean, Victoria Jean, Nathalie Jean); b) persons born in the Dominican Republic but without official documentation (Jeanty Fils-Aime, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin and Víctor Jean), and c) persons born outside Dominican territory (Lilia Jean Pierre, Janise Midi, Ana Virginia Nolaco, Andrea Alezy and Marlene Mesidor y McKenson Jean).

21. They alleged that summary expulsions is a routine practice of the Dominican State and involves the systematic and collective deportation of persons presumed to be of Haitian origin. The petitioners' contention was that Dominican immigration officials have identified and deported persons with black skin and African features on the suspicion that they are Haitians, even though many of these people are in fact of an altogether different nationality or origin. The petitioners added that the Dominican authorities go after "black" people who live in the *bateyes*<sup>6</sup> and work in the cane fields and whose socio-economic status is low. The authorities target these people because they assume that they are Haitians or of Haitian descent. The petitioners further alleged that the Dominican authorities keep Dominicans of Haitian origin and Haitians living in the Dominican Republic permanently undocumented by continually denying them legal documentation.

22. The petitioners maintained that the tightening of immigration policy is not a legitimate justification for violating the principle of equal protection of the law and nondiscrimination recognized in Article 24 of the American Convention. They asserted that the summary expulsions of the alleged victims were based on race, were conducted using "racial profiling, based on the victim's presumed nationality" and were, therefore, discriminatory. Similarly they argued that the discrimination manifested itself in a variety of ways, among them the racist verbal abuse practiced by state agents and their use of force against persons identified as Haitians. The petitioners therefore alleged that the expulsions are a *prima facie* case of discrimination.

23. According to the petitioners, in discrimination cases the burden of proof should be reversed, especially when all or most of the information as to how the events unfolded is in the State's exclusive control and when, as in this case, the State allegedly failed to provide a legitimate justification for the discriminatory treatment that the alleged victims suffered.

24. Concerning the right to personal liberty, the petitioners maintained that the alleged victims were deprived of their freedom without ever being informed of any deportation proceeding against them or of the reasons for their arrest; they were not immediately brought before a competent judge or authority who could examine the lawfulness of their arrest.

25. The petitioners asserted that the Dominican officials who participated in the arrest and expulsion of the alleged victims did not follow the procedures prescribed by Dominican law – Immigration Law No 95 of 1939 and its Regulation No. 279 of May 12, 1939, and the Protocol of Understanding concluded between the Dominican Republic and the Republic of Haiti on Repatriation Mechanisms- which, according to the petitioners, established a number of guarantees for

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<sup>6</sup> Bateyes are rudimentary settlements built by companies to lodged workers of sugarcane.

immigrants and standards to be followed when effecting deportations, such as: i) conducting a "thorough investigation" when a violation of immigration law may have been committed; ii) a well-founded request seeking an "arrest warrant" where deportation is called for; iii) the detainee's right to a hearing; iv) the detainee's right to a second review of his/her case; and v) examination by the Secretary of State of the Interior and Police and a reasoned decision.

26. As for the right to humane treatment, the petitioners argued that the analysis of the alleged victims' treatment must consider racial discrimination as a factor, as an arrest based solely on race is a clear violation of the individual's most basic rights. Racial profiling and discriminatory treatment by the authorities of a State are a violation of the principle prohibiting degrading treatment.

27. The petitioners also asserted that the alleged victims were subjected to degrading and inhuman treatment on three levels: i) the discriminatory treatment they suffered; ii) being denied documentation, and iii) being uprooted. The petitioners argued, firstly, that the alleged victim were subjected to degrading treatment when forcibly arrested, sustained injuries while in police custody, and were distinguished as a group based on race. Specifically, they asserted that Benito Tide Méndez was beaten and robbed of the money he was carrying and that the Medina Ferreras family was forced to walk two kilometers at night and was held under arrest under degrading conditions, in an overcrowded cell with no bathroom, no food, no water and no medical attention. The petitioners observed that the Fils-Aime family was bussed to the border -without food, water or bathrooms- and forced to cross the border by fording a river. In the case of Mr. Gelin, the petitioners alleged that his right to humane treatment was violated because he was detained in military facilities, was denied the opportunity to contact family members and was semi-permanently separated from his son. The petitioners alleged that the Sensión family was arrested, transported to the border and expelled to Haiti. As regards the Jean family, officers did not allow Ms. Mesidor to take a shower and Mr. Jean was detained shoeless and in his pajamas.

28. Secondly, the petitioners argued that in some cases, identification documents were confiscated and the safe-conducts granted pursuant to the provisional measures ordered by the Inter-American Court to serve as permits for legal residence or work permits were destroyed, which compounded the alleged victims' suffering.

29. Thirdly, the petitioners claimed that the alleged victims were subjected to degrading treatment; they were forced to leave their families and live in a country where they knew no one, did not know either the language or the culture, did not have the means necessary to survive, and lived in dire poverty. In the expulsions, no consideration was given to each family's circumstances, a fact that, according to the petitioners, caused severe emotional harm. They also asserted that the constant threat of possible re-deportation -assuming they were able to return to the Dominican Republic- inflicted permanent psychological damage on the alleged victims. The petitioners underscored the fact that Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Víctor Jean, Miguel Jean, Victoria Jean and Nathalie Jean were born in the Dominican Republic and had lived there their entire life.

30. They further maintained that the expulsions took a heavy toll on the alleged victims' next of kin left behind in the Dominican Republic, as the separation of the family and the lack of any information as to the whereabouts and circumstances of their deported family member caused severe anguish for the next of kin of Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez, Teresita Méndez, William Gelin, Antonio Sensión, María Esther Medina Matos, Jairo Pérez Medina, and Gimena Pérez Medina.

31. As for the obligation to protect the rights of the child, the petitioners make the case that the Dominican government failed to protect the best interests of the deported children by separating them from their families, failing to separate them from adults while in custody, and failing to take special measures to protect them against discrimination, inasmuch as: three children in the Medina family were forced to walk to the prison and spent the night behind bars; Carolina, who was sick with the flu, received no medical attention; the Fils-Aime children were taken from their home and bussed to the border at night, where they were forced to cross into Haitian territory by fording a river; the Sensión daughters did not receive the special treatment they were due as minors; and at time of his first expulsion, Berson Gelin was just 14 years old.

32. As for the right to freedom of movement and residence, the petitioners argued that collective expulsions are strictly prohibited by the Convention and that the alleged victims were denied the possibility of moving freely through and living in the country where they had been born and/or had established their ties of kinship and residence. They pointed out that in the individual and collective expulsions, the right to due process established by law was not observed and the persons being expelled were not permitted to prove their nationality.

33. Specifically, the petitioners claimed that Dominican immigration officials detained the alleged victims and expelled them from the Dominican Republic in less than 24 hours, denying them individual legal proceedings to review the merits of each case in order to determine their immigration status and/or family ties. The Dominican officials and soldiers utterly ignored the alleged victims' attempts to prove their nationality, which suggests that factors other than "individual considerations" were the basis for the expulsion.

34. As for the right to nationality, the petitioners observed that actions taken by the Dominican authorities had the effect of robbing the alleged victims of their nationality and converting them into stateless persons. They stated that the method of expulsion used by the Dominican Republic allegedly involved arbitrary and indiscriminate destruction of identification documents. The *de facto* consequence of this practice was to unlawfully deprive the following persons of their Dominican nationality: Mr. Tide Méndez, Mr. Gelin (whose safe-conduct was destroyed), the Medina Ferreras and Fils-Aime families and the daughters of Mr. Sensión, who were denied their rights as Dominican citizens and expelled from the country, and the seven minor children of Mr. Fils-Aime, whose birth certifies were denied.

35. As for the rights to judicial guarantees and juridical protection, the petitioners' contention was that although due process must always be guaranteed in deportation proceedings, during the expulsions in the instant case the alleged victims were denied their right to a hearing to prove their legal status or establish how long they had resided in the Dominican Republic. They were also allegedly denied an effective judicial remedy either to challenge the Dominican authorities' decision to expel them or to assert the illegality of their detention.

36. According to the petitioners, the alleged victims were denied the guarantees of due process inasmuch as: i) they were not granted the right to either an initial hearing or a second hearing, as required under Regulation No. 279; ii) they were not brought before a competent authority as the law requires; iii) they were not permitted to introduce evidence or make arguments against their deportation; iv) they had no attorney or any legal representation whatever; v) they were not given the opportunity to have their case reviewed by a court authority a second time or on appeal; vi) no authority issued a legal decision stating the grounds for the expulsions, and vii) no consideration was given to the children's condition as minors, the separation of family members, or the loss of personal effects and family belongings.

37. As for the right to property, the petitioners claimed that the alleged victims' expulsion would have predictable and inevitable consequences: depriving them of the use and

enjoyment of their homes, land, salaries, assets, clothing, food, furnishings and livestock, which the petitioners alleged was a violation of the right to property protected under Article 21 of the Convention.

## **B. The State**

38. The State reasserted that repatriation of aliens who are in Dominican territory unlawfully is its non-renounceable and non-negotiable right, as it is one of the fundamental principles of its sovereignty and does not violate any treaty or convention to which the Dominican State is party. It denied that it was engaging in collective repatriations.

39. The State maintained that the Dominican Republic has become the sole destination of a massive influx of Haitian migrants, as the United States manages to keep the Windward Channel under systematic and effective surveillance, making it virtually impossible for Haitian emigres to reach the southern Florida coastline. However, it also observed that although the State is compelled to maintain a steady pace of repatriation given the extraordinary influx of immigrants it receives, this ought not to be confused with repatriations conducted on a "massive" scale, i.e., large-scale, indiscriminate expulsions. It also denied the facts alleged and asserted that one of the basic conditions necessary to ease the extraordinary migratory pressure from Haiti to the Dominican Republic is that the international community provide tangible cooperation for Haiti's development rather than mere rhetoric.

40. It observed that the Dominican Republic had a legally prescribed repatriation procedure, implemented by the Office of the Director General of Immigration. That procedure guaranteed due process to persons facing repatriation. It also guaranteed case-by-case treatment of the repatriation procedure, which consisted of three phases: detention of the alien, an investigation of the alien and a fair hearing, and final confirmation. According to the State, the second and third phases were conducted by immigration personnel trained by the United Nations Office of the High Commissioner for Refugees (UNHCR), some of whom were conversant in the creole dialect that Haitian persons most commonly speak. It added that a person undergoing a repatriation process was permitted the following: i) to present any documentation he/she had in his/her possession; ii) to communicate with family members, and iii) to get the assistance necessary to gather together his/her personal effects. It added that repatriated persons were seated in buses specifically leased for that purpose, and were accommodated and fed until the process was complete. It concluded that it was therefore impossible for any Haitian citizen who was in the country legally to be repatriated, since any person who was able to show documentary proof that his/her status was legal "was simply not repatriated."

41. It maintained that in an effort to make these procedures as transparent as possible, the Office of the Director General of Immigration had repeatedly extended public invitations to nongovernmental organizations (NGOs) and any other civil society institution to observe the repatriation procedures.

42. It also reported that it held a conference on the Dominican Republic's relations with Haiti in June 1999 and that the governments of the Dominican Republic and Haiti had held talks through the Dominican-Haitian Bilateral Joint Commission created in 1996, which resulted in the approval of a Memorandum of Understanding which the foreign ministers of the two countries signed in June 1998.

43. The State observed that on November 26, 1999, the Foreign Ministers of the two countries inaugurated a technical meeting between the competent Dominican and Haitian immigration authorities. As a result of this meeting, they signed the *"Protocol of Understanding*

*between the Dominican Republic and the Republic of Haiti on the Repatriation Mechanisms,*" which spells out a number of guarantees in cases of repatriation.

44. The State also pointed out that cooperation in the repatriation of Haitians was further strengthened with the signing of a Declaration on the Conditions for Hiring Nationals of Both Countries, on February 23, 2000.

45. The State expressed its determination to continue to strengthen and improve the mechanisms, procedures and institutions involved in repatriation, while correcting any isolated case of excess or violation of any alien's rights, just as it had been doing when irregularities had been discovered; this included prosecution of the offending national authority.

46. With specific reference to the alleged victims in this case, the State denied the petitioners' allegations and asserted that in the detention process, citizens had every right and means to present any type of document that would prove they had legal immigration status in the Dominican Republic. It further asserted that if the person to be repatriated did not have documentation but claimed to have Dominican affiliation, that person would be permitted to give the name of his/her family members and place of residence; if it was then established that the person was making false claims, that person would be permitted to collect his/her personal belongings. It also observed that there was no record that the alleged victims had ever turned to the Dominican courts or any other authority seeking legal protection.

47. Furthermore, in the friendly settlement process, the State indicated that in the case of persons born on Dominican territory who have documentation, "the solution to these cases ought not to be difficult, as anyone in such a situation is protected by the laws that establish the legal principles governing the acquisition of Dominican citizenship." Secondly, in the case of persons born in the Dominican Republic who do not have official documents, the State indicated that the petitioners should have complied with the requirements that domestic law establishes. Finally, with regard to persons born in Haiti, the State asserted that "it cannot be obliged to issue Haitian identification papers, as this is a sovereign act that is the exclusive purview of the Haitian State."

48. During the working meeting held on March 26, 2011, the State provided documentation related to Benito Tide Méndez, William Medina Ferreras, Antonio Sensión and Carmen Méndez. In a communicated of July 26, 2011, the State supplied a copy of the long-form birth certificates of Benito Tide Méndez, William Medina Ferreras and Antonio Sensión.

#### **IV. PROVEN FACTS**

49. The Commission will examine the arguments and evidence supplied by the parties and the information obtained during the hearings and *in loco* observations. It may also take into account other information that is a matter of public knowledge.<sup>7</sup>

50. The Commission believes certain clarifications need to be made regarding the standard of evidence in the present case. The Commission observes that the facts are properly supported by the victims' statements, the existing documentary evidence and the context that the Commission established. It also notes that while the State has contested the petitioners' allegations, it has not provided any direct evidence to refute the information contained in the alleged victims' statements; instead, its arguments rely on the domestic laws in force, without providing any specific information to show that the procedures provided for in those laws were duly observed in the case of the alleged victims.

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<sup>7</sup> Rules of Procedure of the Inter American Commission on Human Rights, Article 43.

51. Since its earliest case law, the Inter-American Court has held that its criteria for assessing evidence are less stringent than those established in domestic law. It has written that in order to determine the international responsibility of a State for violation of human rights, international human rights courts have greater latitude and flexibility in assessing the evidence presented to them regarding the facts of any given case, based on the principles of logic and experience.<sup>8</sup>

52. In addition to direct evidence, be it testimonial, expert or documentary, in the case *sub examine* it is particularly important that the Commission consider all the indirect evidence – presumptions- that emerge from the facts and that, based on its experience, are valid and logical.<sup>9</sup> Similarly, the case law of the organs of the inter-American system for the protection of human rights holds that while they are not documentary evidence *strictu sensu*, newspaper clippings can be taken into account when they report publicly known or notorious facts, statements by officials or the State or when they corroborate the information reported in other documents or testimony taken in the proceeding.<sup>10</sup>

53. The Court has also held that in cases involving highly complex facts, in which the existence of patterns or practices of massive, systematic or structural human rights violations is alleged, it is difficult to strive for a strict determination of the facts. Thus, the litigation submitted to the Court cannot be examined piecemeal or by trying to exclude those contextual elements that could inform the international judge about the historical, material, temporal and spatial circumstances in which the alleged facts occurred. Nor is it necessary to distinguish or categorize each fact alleged, because the dispute submitted can only be settled based on an assessment of all the described circumstances in light of the body of evidence.<sup>11</sup>

54. In the instant case, given the nature of the violations being alleged, the Commission notes that the documentation and other evidence provided to support the facts of the case are primarily in the State's possession and control, and that some of the practices denounced would logically not be a matter of record. Given the circumstances, the Commission will take as proven those facts alleged by the petitioners that are consistent and in agreement with the evidence available and patterns and context that the Commission has confirmed and that the State has not contested by supplying concrete and sufficient evidence to the contrary.

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<sup>8</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 184, citing I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006 Series C No. 154, paragraph 69. See also I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Interpretation of the Judgment on Preliminary Objections, Merits y Reparations (Art. 67 of the American Convention on Human Rights) of November 26, 2003. Series C No. 102, paragraph 42.

<sup>9</sup> I/A Court H.R. *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, paragraph 47; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paragraph 69; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 59, paragraph 62; and *Case of the Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, paragraph 55.

<sup>10</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*, Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, paragraph 51.

<sup>11</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 63, citing I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paragraph 50.

55. Having made this clarification, the Commission will examine the following points under the chapter on "THE FACTS": A) Laws and regulations governing the alleged victims' deportation processes; B) The expulsion of the alleged victims and their situation; C) The situation of the alleged victims subsequent to the expulsions and affected family members; D) The context of massive deportations of Haitians and Dominican-Haitians from the Dominican Republic to Haiti; and E) The difficulties of registering children of Haitian descent born in Dominican territory.

**A. Framework of laws that apply to the alleged victims' deportation processes**

56. The alleged victims were expelled from the Dominican Republic to Haiti between 1994 and 2000. The following are provisions of the laws in force in the Dominican Republic at the time of the facts alleged in this case.

57. Article 11 of the Constitution of the Dominican Republic<sup>12</sup> provided that Dominicans were:

All persons born in the territory of the Republic, with the exception of the legitimate children of diplomats or other people who are "in transit" in the Republic.  
[...]  
Naturalized citizens. The law shall prescribe the conditions and formalities that must be observed for naturalization.

58. The relevant clauses of Article 8 of the Constitution of the Dominican Republic<sup>13</sup> were as follows:

2.b. No one shall be imprisoned or deprived of his liberty except by a reasoned, written order from a competent judicial authority, except in a case of *flagrante delicto*.

2.c. Any person deprived of his liberty without cause, without the legal formalities, or for a cause other than those prescribed by law, shall be immediately released either at his own request or at the request of any other person.

2.d. Any person deprived of his liberty shall be brought before the competent judicial authority within forty-eight hours of his detention; failing that, he shall be released.

2.e. An arrest shall be either nullified or the person arrested shall be taken to prison within forty-eight hours of being brought before the competent judicial authority; within that forty-eight hour period, the interested party shall be notified of the measure ordered in his case.

2.g. Any person who has a detained person in his custody shall be required to present said person as soon as the competent authority so demands. The *Habeas Corpus* Act shall determine the procedure to be followed to rapidly comply with the provisions set forth in letters a), b), c), d), e), f) and g) and shall determine the appropriate sanctions.

2.j. No one shall be judged without being heard or summoned and without following the legally prescribed procedures to ensure an impartial trial and the right of defense. Hearings shall be public, except in those cases that the law establishes, in cases in which the publicity would be detrimental to public law and order or good custom.

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<sup>12</sup> 1994 Constitution of the Dominican Republic. Available [in Spanish] at: <http://pdba.georgetown.edu/Constitutions/DomRep/domrep94.html#mozToclid177135>. Translation ours.

<sup>13</sup> 1994 Constitution of the Dominican Republic. Available [in Spanish] at: <http://pdba.georgetown.edu/Constitutions/DomRep/domrep94.html#mozToclid177135>. Translation ours.

59. Articles 3, 4 and 13 of the Constitution<sup>14</sup> read as follows:

3. The inviolability of the home. No home visit shall be authorized except in the cases that the law determines and in accordance with the formalities that the law prescribes.

4. Freedom of movement, with the restrictions that court-ordered sentences impose or police, immigration and health laws prescribe.

13. The right to property. Therefore, no one shall be deprived of property without justified cause for public utility or social interest, and then only after payment of its fair value, as determined by a judgment delivered by a competent court.

60. Law No. 1683 on Naturalization, from April 16, 1948,<sup>15</sup> read as follows:

Art. 1 (Amended by Law 4063 of the 3355 G.O. 7811).

An alien who has come of age can acquire Dominican nationality after naturalization provided he:

(a) Has obtained a certificate of domicile in the Republic, according to Article 13 of the Civil Code, for at least six months;

(b) Can provide evidence that he has resided for at least two consecutive years in the Republic;

(c) Can provide evidence that he has resided for at least six months in the country, and provided he has founded and managed an industrial or agricultural business, or owns real estate in the Republic.

(d) Has resided for six consecutive months in the country, if he is married to a Dominican woman at the time of application for naturalization;

(e) Has, for at least three months, obtained from the Executive Branch, a certificate of domicile, in accordance with Article 13 of the Civil Code and proves that he cultivates a plot of land of at least thirty hectares.

61. The relevant paragraphs of Immigration Law No. 95 of April 14, 1939,<sup>16</sup> are as follows:

Art. 10.c. paragraph three. – Persons born in the Dominican Republic are considered nationals of the Dominican Republic, whether or not they are nationals of other countries. Therefore, they shall use documents required of nationals of the Dominican Republic. Women who have obtained Dominican nationality by marriage are exempt from this regulation.

Art. 13. a The following aliens shall be arrested and deported by order of the Secretary of State for the Interior and Police or by any other official he designates for that purpose:

1) Any alien who, subsequent to the date of publication of this law, enters the Republic by means of false or deceptive statements or without being inspected and admitted by the immigration authorities at one of the designated points of entry;

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<sup>14</sup> 1994 Constitution of the Dominican Republic. Available [in Spanish] at: <http://pdba.georgetown.edu/Constitutions/DomRep/domrep94.html#mozToCld177135>. Translation ours.

<sup>15</sup> Available [in Spanish] at: <http://www.dgii.gov.do/legislacion/LeyesTributarias/Documents/Ley1683.pdf>.

<sup>16</sup> Published in Official Gazette No. 5299. Available [in Spanish] at: <http://www.acnur.org/biblioteca/pdf/0239.pdf?view=1>.

- 2) Any alien who, subsequent to the publication of this law, enters the Republic without being legally admissible at time of entry;
  - 3) Any alien who is involved in or associated with activities calculated to subvert the Dominican Government or trafficking in narcotics in violation of the law or who is engaged in other activities contrary to public order and safety;
  - 4) Any alien convicted of a crime subsequent to the date on which this law takes effect if said crime was committed within the five-year period following the date on which the law enters into force and is punishable by *trabajos públicos* [construction, maintenance or operation of public works] or confinement;
  - 5) Any alien who engages in prostitution, works in a house of prostitution, or is associated with the running of a house of prostitution or acts as its agent;
  - 6) Any alien who, because of disability or indigence, becomes a burden on society within the five-year period following his entry and is likely to remain so;
  - 7) Any alien who remains in the Republic in violation of any limitation or condition under which he was admitted with non-immigrant status;
  - 8) Any *bracero* who entered the Republic within the 12-month period prior to the date on which this law enters into force and who was not admitted as a permanent resident;
  - 9) Any alien who has a residence permit that predates this law's entry into force and who, upon the expiration of that permit, does not apply to obtain a residence permit, as this law requires;
  - 10) Any alien who entered the Republic prior to the date on which this law entered into force, who does not have a residence permit and who does not apply for a residence permit within three months of this date, as the law requires;
  - 11) Any alien who fails to obtain renewal of his residence permit, as this law requires.
- b) The rules prescribed in clauses 2, 3, 4, 5 and 6 of this article shall not be altered by the fact that the alien has a residence permit. In that case, the permit will be returned and cancelled upon the person's deportation.
  - c) In the cases described in clauses 9, 10 and 11 of this article, if the deportation poses anything other than the usual difficulties, the order for the alien's deportation may be lifted and the alien will be permitted to apply for a residence permit or for renewal thereof.
  - d) Deportation under clause 3 of this article may be ordered at any time following entry, but shall not be ordered under any other clause unless the arrest in the deportation process is made within the five years following the original grounds for deportation.
  - e) (Amended by Law No. 1559 of October 31, 1947. Official Gazette No. 6709). No alien shall be deported without being informed of the specific charges prompting his deportation and without being given a fair chance to refute those charges in accordance with Immigration Law No. 279 of May 12, 1939, except in those cases in which deportation was ordered pursuant to Article 55, paragraph 16 of the Constitution, or in the circumstances specified in Article 10, paragraph 1 and Article 13, paragraph 3 of this law.
  - f) (Amended by Law No. 1559 of October 31, 1947, Official Gazette No. 6706). In cases of deportation, the alien in question may be arrested for up to three months, by order of the Secretary of State for the Interior and Police or the Director General of Immigration. If the deportation cannot be effected within that time frame because a passport or travel document visa cannot be obtained, the alien may be brought before the prosecutor and correctional court with jurisdiction, who may order that the alien be imprisoned for a period of six months

to two years, according to the seriousness of the case. However, if after the proceeding or judgment, the appropriate authority provides the alien with a passport or travel document visa, enabling the alien to leave the country, the prosecutor shall, at the request of the Secretary of State for the Interior and Police or the Director General of Immigration, order his release for that purpose, thereby terminating the proceeding or nullifying the court judgment. The judgments shall not be subject to appeal.

62. Law No. 4658 of March 24, 1957<sup>17</sup> provided the following:

Art. 1.- Notwithstanding the authorities vested in the Secretary of State for the Interior and Police, the Courts of the Republic shall have the authority to order the deportation of any alien who commits any of the offenses mentioned in Article 13 of Immigration Law No. 95 of April 14, 1939, as the principal punishment when the case is brought by the Director of the National Department of Investigations. The Courts of the Republic may also order deportation as an accessory penalty when the alien has committed a crime or offense that the court deems to be so serious as to warrant this punishment.

Art. 2.- When deportation is ordered either as the principal or accessory penalty, the alien may be held under arrest for three months by order of the competent prosecutor. The judgment ordering deportation shall always stipulate that if deportation cannot be carried out within that three-month period because a passport or travel document visa has not been obtained, the alien may be held in prison for anywhere from six months to two years, depending on the seriousness of the case. However, if after the alien is sentenced a passport or travel document visa is provided, enabling his departure from the country, the Prosecutor shall order him released for that purpose.

63. Regulation No. 279 of May 12, 1939,<sup>18</sup> Section 13 on deportation, reads as follows:

Immigration inspectors and officials acting in that capacity shall conduct a thorough investigation of any alien if there are reliable reports or some reason to believe that the alien is in the Republic in violation of the Immigration Law. If the investigation finds that the alien should be deported, the immigration inspector shall request an arrest warrant from the Director General of Immigration. The arrest warrant must state the facts and the specific reasons why the alien would appear to be subject to deportation. If the arrest warrant for a hearing on the charges stated in the arrest warrant\*.

Once the alien has had a hearing, the information regarding the alien shall be entered in form G-1, unless that information was previously taken down. If the alien admits to any charge that would qualify him for deportation, a memorandum shall be prepared for that purpose, which the inspector will sign, as will the alien, if possible. If the alien does not admit to any of the charges stated in the arrest warrant, evidence shall be sought to support the charges; the alien will be summoned again and given another opportunity to make a statement and to introduce evidence to oppose his deportation. In the case of an alien entering the territory of the Republic, he shall have custody of the evidence showing that he entered the country legally; to that end, the alien shall be entitled to make a statement concerning his entry, as demonstrated by any immigration stamp or other notation.

Once the alien has had his hearing, the immigration inspector shall forward the relevant information to the Director General of Immigration for consideration and a decision by the Secretary of State for the Interior and Police. If a deportation order is issued, the alien shall be deported unless the Secretary of State for the Interior and Police decides to give the alien the opportunity to leave the country voluntarily within a specified period and the alien does so. If

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<sup>17</sup> Published in Official Gazette No. 8105. Available [in Spanish] at: <http://www.acnur.org/biblioteca/pdf/0239.pdf?view=1>.

<sup>18</sup> Available [in Spanish] at: <http://www.acnur.org/biblioteca/pdf/0241.pdf?view=1>.

the Secretary of State for the Interior and Police finds that the alien does not deserve to be deported, the deportation process shall be cancelled.

In deportation cases based on articles 10(1) and 13(3) of the Immigration Law, deportation may be ordered by the Secretary of State for the Interior and Police or by the Director General of Immigration, unless the Secretary of State decides otherwise in the case in question; the requirements spelled out in the preceding three paragraphs of this section need not be observed. The alien in violation of the Immigration Law and all law enforcement authorities shall be notified of this order so that it can be properly carried out.

64. Under the "Protocol of Understanding between the Dominican Republic and the Republic of Haiti on Repatriation Mechanisms", the Dominican authorities made the following commitments to the Haitian authorities: a) not to repatriate Haitians at night, specifically between 6:00 p.m. and 8:00 a.m. the next day, or on Sundays and holidays in the two countries, except between 8:00 a.m. and noon; b) avoid separating nuclear families (parents and children who are minors) in repatriations; c) deport Haitians only by way of the following border crossings: Jimani/Malpasse, Dajabon/Ouanaminthe, Elfas Piña/Belladere and Pedernales/ Anse-à-Pietre; d) take concrete measures to ensure that the repatriated persons are able to take their personal effects with them, and not to withhold the repatriated persons' personal documents or papers unless, in the opinion of the Dominican authorities, those documents and papers have legal defects, in which case they shall be retained and sent to the Haitian diplomatic mission in the Dominican Republic; e) provide each repatriated person with a copy of the form containing his or her repatriation order; f) give the Haitian diplomatic or consular authorities accredited in the Dominican Republic the list of persons in the repatriation process sufficiently in advance so that those authorities are able to perform their consular assistance function.<sup>19</sup>

65. At the time the alleged victims were expelled to Haiti, the law in effect upheld the principle of *jus soli* as the basis for conferring Dominican nationality and provided that naturalized Dominican citizenship could be obtained, *inter alia*, if one lived in the country for more than two years.

66. Furthermore, if proceedings were instituted against an alien who was on Dominican soil in violation of the Immigration Law, the laws in effect at that time established a series of procedures and guarantees. The proceeding had to involve: i) a thorough investigation; ii) an arrest warrant from the immigration inspector spelling out the facts and specific reasons why the alien had to be deported; iii) the information of the alien were to be entered in a form when the alien was given his hearing; iv) if the alien denied the charges, further proof had to be produced; v) in a second hearing, the alien had the right to defend himself against the charges, and vi) a decision by the Secretary of State for the Interior and Police ordering deportation.

67. In the case of Haitian citizens, the law provided that : a) repatriations could not be done on certain days and at certain times; b) families were not to be separated; c) the repatriations could only be done by way of certain border crossings, and d) concrete steps had to be taken to enable repatriated persons to collect their documentation and belongings; e) repatriated persons had to be given a copy of the order of repatriation, and f) the competent authorities had to be notified in advance.

68. In 2004, the State adopted a new Immigration No. 285-04.<sup>20</sup> The Committee on the Elimination of Racial Discrimination expressed concern that this new law

<sup>19</sup> Annex 1. The State's reply to the IACHR's request for precautionary measures, December 15, 1999. Information supplied by the State on July 26, 2000. The State's response to the case referral, August 8, 2000.

<sup>20</sup> Available [in Spanish] at: <http://mip.gob.do/Portals/0/docs/Migracion/ley.pdf>

[n]arrows the scope of article 11 of the Dominican Constitution establishing that any person born in the State party is entitled to Dominican citizenship, with the exception of, in particular, children of persons "in transit". The law provides that only children of residents born on Dominican soil are entitled to Dominican nationality, and defines "non-residents" to include, inter alia, undocumented migrants living and working in the State party, and temporary workers, which considerably limits access to citizenship for children of migrants of Haitian origin born in the Dominican Republic, and may lead to situations of statelessness. The Committee is furthermore concerned at the retroactive application of this law. The Committee notes with concern the negative and artificial interpretation of the term "in transit" in the State party's legislation, which has seriously affected the status of many families of Haitian origin who would otherwise be Dominican residents.<sup>21</sup>

69. More recently, In 2010, the State amended its Constitution and now, the right to nationality is enshrined in article 18 paragraph 3, as follows:

3) All persons born in the national territory, with the exception of the children of members of foreign consular and diplomatic missions, aliens in transit or residing illegally in Dominican territory. Person is considered in transit when defined as such in Dominican law.<sup>22</sup>

## **B. Expulsion of the alleged victims and their situation**

### **1. Benito Tide Méndez**

70. Mr. Benito Tide Méndez was born in Batey Siete, Barahona, Dominican Republic, on April 24, 1979. His Dominican identification card bears the number 020-0014175-0.<sup>23</sup>

71. In 1998, when he was 19 years old, Mr. Tide Méndez was stopped by three Dominican immigration officers as he was on his way home, walking down Charles de Gaulle Street in Santo Domingo, the Dominican Republic. When he was stopped, the immigration officers asked him if he was a Haitian, to which he replied that no, he was Dominican. He then showed them his Dominican birth certificate, which one of the officers tore up.<sup>24</sup>

72. Mr. Tide Méndez was forced to board a truck and was taken to Elías Piña military base in the Dominican Republic, along with other persons. There, the officials tried to take the money he had with him, which was his salary from his work in the construction business. Because Mr. Tide Méndez refused to hand over his money, the officers beat him on the shoulder and the left hand with the handle of a *machete*. Mr. Tide Méndez was then taken to the border and forced to cross over into Haiti. As he was crossing the border, someone robbed him of the money he was carrying. Mr. Tide Méndez knew no one in Haiti, so he had to live on the street. As a result of his expulsion, Mr. Tide Méndez lost his job as a construction worker; he also lost his clothing and the other personal effects that he had at his home in Santo Domingo.<sup>25</sup>

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<sup>21</sup> UN, Committee on the Elimination of Racial Discrimination, 52nd session, Consideration of Reports Submitted by States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Dominican Republic. CERD/C/DOM/CO/12, May 16, 2008, paragraph 14.

<sup>22</sup> Available at: <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

<sup>23</sup> **Annex 2.** Photocopy of Benito Tide Méndez' Dominican identification document No. 020-0014175-0. Attachment to the petitioners' observations of January 30, 2002. Annex X of the petitioners' observations on the merits, dated April 16, 2009.

<sup>24</sup> **Annex 3.** Statement made by Benito Tide Méndez in the presence of the Human Rights Clinic of Columbia University School of Law, January 10, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>25</sup> **Annex 3.** Statement made by Benito Tide Méndez in the presence of the Human Rights Clinic of Columbia University School of Law, January 10, 2001. Attachment to the petitioners' observations of January 30, 2002.

73. Two months after his expulsion, Mr. Tide Méndez met Ms. Rosa Félix, whom he know from Batey Siete. She contacted his mother, Mrs. Carmen Méndez. One night, Mr. Tide Méndez and Carmen Méndez crossed over the border into the Dominican Republic walking, by way of the Pedernales border crossing.<sup>26</sup>

74. Upon his return to the Dominican Republic, Mr. Tide Méndez filed an application with the Civil Records Office to get a new copy of his birth certificate. He then went to the Central Board of Elections, where he applied for and obtained his identification card No. 020-0014175-0. In March 2002, Mr. Tide Méndez obtained a safe-conduct as a consequence of the agreement reached in the context of the provisional measures granted by the Inter-American Court.<sup>27</sup>

75. On March 28, 2007, Mr. Tide Méndez attempted to replace his Dominican identification document (which he had lost). Although he gave his name, identification number and a copy of the previous identification document and paid the necessary fee, he was told that he was under investigation and would have to apply with the Central Board of Elections (JCE), which was why they refused to issue a replacement identification document.<sup>28</sup>

76. While case 12.271 was being processed, the State indicated that “according to the investigations conducted, we have been able to establish that [Benito Tide Méndez] is the son of Mrs. Carmen Méndez, identification document No. 020-0009477-7; according to his mother, when he was arrested in Santo Domingo, he did not have documentation; because his father is Haitian and not very fluent in the language, in the repatriation process he was unable to prove his Dominican birth. Accordingly, we have made the necessary arrangements so that, as Dominican law provides, he will be issued the documentation he needs to reside in the country.”<sup>29</sup> Subsequently, in a July 26, 2011 communication, the State provided a copy of the long-form birth certificate of Benito Tide Méndez.

## **2. William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina and Carolina Isabel Medina**

77. Mr. William Medina Ferreras was born in Cabral, Barahona, the Dominican Republic, on November 14, 1966. His Dominican identification document bears number 019-0014832-9.<sup>30</sup> Mr. Medina Ferreras lived in Oviedo, Pedernales, the Dominican Republic, for 22 years, where he worked as a farmer. Mr. Medina Ferreras lived with his family, composed of his partner, Ms. Lilia Jean Pierre,<sup>31</sup> born in Jacmel, Haiti, and their three sons, all born in Dominican territory: Wilda (born

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<sup>26</sup> **Annex 3.** Statement made by Benito Tide Méndez in the presence of the Human Rights Clinic of Columbia University School of Law, January 10, 2001. Attachment to the petitioners’ observations of January 30, 2002.

<sup>27</sup> **Annex 4.** Photocopy of the safe-conduct issued to Benito Tide Méndez. Annex Z of the petitioners’ observations on the merits, dated April 16, 2009.

<sup>28</sup> **Annex 5.** The representatives’ observations on the merits, April 16, 2009, p. 20. The State did not contest that information.

<sup>29</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>30</sup> **Annex 7.** Photocopy of the identification document of William Medina Ferreras. Annex AD to the petitioners’ observations on the merits, April 16, 2009.

<sup>31</sup> **Annex 8.** Electoral identity letter for Lilia Jean No. 00919-321 and Lilian Jean Pierre’s birth certificate No. 67303 from the Republic of Haiti. Attachment to the petitioners’ observations of January 30, 2002.

February 7, 1989),<sup>32</sup> Luis Ney (born June 4, 1990<sup>33</sup>) and Carolina Isabel (born September 21, 1995,<sup>34</sup> and who died in 2004<sup>35</sup>).

78. In November 1999 or in January 2000,<sup>36</sup> at around 3:00 a.m., nine police officers, seven naval officers and the Perdenales chief of immigration, Maribel Mella, beat on the door of the Medina Ferreras home using rifle butts until Mr. Medina Ferreras opened the door. The officials ordered the Medina Ferreras family out of the house. After the family came outside, a soldier asked, "Are there any more blacks there?" The members of the Medina Ferreras family were forced to walk some two kilometers to the Oviedo prison. They reached the prison at 3:30 a.m. and remained there until 9:00 a.m. the following day, in a facility without bathrooms and very poor conditions. During their detention, the members of the Medina Ferreras family were given nothing to eat or drink and received no medical attention. One soldier tore up the photocopies of the Dominican identification document and birth certificate of William Medina Ferreras. Mr. Medina Ferreras subsequently noticed that the officers were boarding the other detainees onto a truck that was completely covered. He managed to persuade the officers to get him and his family to the border "some other way." Mr. Medina Ferreras paid 280 pesos in order to be able to have some of the family belongings that he had to leave behind in the Dominican Republic transported to Haiti.<sup>37</sup>

79. As a result of their expulsion, Mr. Medina Ferreras lost his job and had to leave his home and his belongings, specifically a horse, four cows, forty-three chickens and thirty-six turkeys.<sup>38</sup>

80. In February 2000, Wilda Medina was struck by a vehicle in Anse-à-Pitre and suffered fractures in both legs. The family tried to provide medical assistance through various trips to the Dominican Republic.<sup>39</sup>

81. In March 2002, the Medina Ferreras family obtained safe-conducts as a result of the agreement reached as the provisional measures were being worked out with the Inter-American

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<sup>32</sup> **Annex 9.** Birth certificate for Wilda Medina Ferreras. Attachment to the petitioners' observations of January 30, 2002.

<sup>33</sup> **Annex 10.** Birth certificate for Luis Ney Medina Ferreras. Attachment to the petitioners' observations of January 30, 2002.

<sup>34</sup> **Annex 11.** Birth certificate for Carolina Medina Ferreras. Attachment to the petitioners' observations of January 30, 2002.

<sup>35</sup> **Annex 12.** The representatives' observations on the XLVIII and XLIX reports filed by the Dominican State in connection with compliance with the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, December 16, 2010.

<sup>36</sup> **Annex 13.** Statement given by Lilia Jean Pierre in the presence of the Human Rights Clinic of Columbia University School of Law. Attachment to the petitioners' observations of January 30, 2002.

<sup>37</sup> **Annex 14.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the petitioners' observations of January 30, 2002.

<sup>38</sup> **Annex 15.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Annex AA of the petitioners' observations on the merits, April 16, 2009.

<sup>39</sup> **Annex 15.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Annex AA of the petitioners' observations on the merits, April 16, 2009. **Annex 16.** Bill for the treatment that Wilda Medina received in a hospital in Pedernales, the Dominican Republic, February 4, 2000, and receipt for payment of medical treatment. Annex AF of the petitioners' observations on the merits, April 16, 2009.

Court.<sup>40</sup> Carolina Isabel Medina Ferreras died in Haiti in 2004, because she was ill and did not receive adequate medical treatment.<sup>41</sup>

82. Initially, the State denied William Medina Ferreras' Dominican citizenship, and wrote that "According to what we have been told by Mr. Etanislao Núñez, resident and Mayor of Oviedo, and other persons, WILLIAM MEDINA FERRERAS, arrested in Oviedo and deported to Haiti, is a Haitian citizen and his real name is WILNET YAN; his wife LILIA, also Haitian, was also deported. Consequently, he obtained his identification document No. 019-0014832-9 by fraudulent means."<sup>42</sup> The State subsequently reported that "the information contained in BIRTH CERTIFICATE [...] which corresponds to WILLIAM, named therein and born November 14, 1966, son of ABELARDO MEDINA and CONSUELO FERRERAS [...] is CORRECT...".<sup>43</sup>

**3. Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime and Andren Fils-Aime**

83. Mr. Jeanty Fils-Aime was born in Guayamate, the Dominican Republic. He worked as a farmer for twenty years and lived in La Mercedes, Perdenales, Dominican Republic. His common-law wife, Janise Midi, was born in Haiti. The two had eight children: Nene (born in 1985), Diane (born in 1991), Antonio (born in 1988), Marilobi (born in 1992), Endry (born in 1993), Juan (born in 1997), Andren (born in 1999), and Carolina (born in November 2000). The seven elder children of Mr. Fils-Aime were born in the Dominican Republic. However, Mr. Fils-Aime and his seven elder children do not have documentation proving their Dominican citizenship.<sup>44</sup>

84. At around 1:00 p.m. on November 2, 1999 or November 3, 2000,<sup>45</sup> Mr. Fils-Aime was arrested by Army troops as he was walking home from the market. He was forced to board a public transportation bus that was carrying Haitians and persons of Haitian descent and was headed for Pedernales prison, where it arrived at around 8:00 p.m. There he was able to speak with Maribel Mella, Director of the Immigration Department for the region. Later, the Dominican soldiers took him and other persons to the border, where they were forced to cross the border into Haiti.<sup>46</sup>

85. At approximately 11:00 p.m. that same day, immigration officers, one known as "Guelo", came to the home of the Fils-Aime family in La Mercedes, the Dominican Republic, and

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<sup>40</sup> **Annex 17.** Photocopy of the safe-conducts issued to the Medina Ferreras Family. Annex AG of the representatives' observations on the merits, April 16, 2009.

<sup>41</sup> **Annex 15.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Annex AA of the petitioners' observations on the merits, April 16, 2009.

<sup>42</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>43</sup> **Annex 18.** Certification from the Central Board of Elections, dated March 25, 2011. Attachment to the State's brief of July 26, 2011. Documentation handed over at the working meeting held on March 26, 2011.

<sup>44</sup> **Annex 19.** Sworn statement given by Jeanty Fils-Aime in the presence of the Human Rights Clinic of Columbia University School of Law, April 1, 2000. Attachment to the representatives' observations of January 30, 2002. Annex to the observations on the merits that the petitioners submitted on April 16, 2009.

<sup>45</sup> **Annex 20.** Sworn statement given by Janise Midi in the presence of the Human Rights Clinic of Columbia University School of Law on January 13, 2001. Attachment to the representatives' observations of January 30, 2002. Annex AJ of the petitioners' observations on the merits, April 16, 2009.

<sup>46</sup> **Annex 19.** Sworn statement given by Jeanty Fils-Aime in the presence of the Human Rights Clinic of Columbia University School of Law, April 1, 2000. Attachment to the representatives' observations of January 30, 2002. See also **Annex 21.** List of persons deported who had lived in the Dominican Republic for over 10 years, November 6 to 11, 1999, Case No. 38. Attachment to the report the petitioners filed on March 28, 2000.

told Janise Midi that she would have to go with them to sign certain papers. She was told not to worry about her belongings, because they would be coming home soon. However, the immigration officers forced Ms. Midi and her children to board a truck bound for the Pedernales/ Anse-à-Pitre border crossing, where they forced them to cross into Haiti by way of a gully that was a river bed. The Fils-Aime family did not have access to a bathroom and were not given food or water. Later, Ms. Midi and her children headed for Jacmel, Haiti, where they met up with Mr. Fils-Aime 8 days later.<sup>47</sup> Because of the manner of their expulsion, the Fils-Aime family lost all their personal belongings, which included two beds, eight chairs, their clothing, nineteen pigs, a *burro*, a goat, numerous chickens and the land that they cultivated.<sup>48</sup>

86. In March 2002, the members of the Fils-Aime family obtained safe-conducts as a result of the agreement reached as the provisional measures were being worked out with the Inter-American Court.<sup>49</sup> Mr. Fils-Aime's document was destroyed in 2005 when he presented it to Dominican officials.<sup>50</sup> He died in 2010 from a respiratory illness.<sup>51</sup>

87. With regard to Mr. Jeanty Fils-Aime, the State maintained that "in the community of Las Mercedes de Pedernales, Mr. Emilio Mancebo (a) Milito, a resident of that community, told us that Mr. FANTY [FILS AIME] is Haitian; that he was born in Haiti of Haitian parents and was married to a Haitian woman. They all live in Haiti, specifically in An-San-Pitre. All this was corroborated by Mr. Marino Pérez Mancebo (a) Cigua."<sup>52</sup> The information supplied by the State is based solely on the statements made by residents of Las Mercedes de Pedernales. The State provided no official documentation.

#### 4. Berson Gelin

88. Mr. Berson Gelin was born in Mencía, Pedernales, the Dominican Republic, on January 18, 1981. Mr. Gelin lived in a rental property in La Romana, the Dominican Republic.<sup>53</sup>

89. In 1995, young Gelin, then 14 years old, was detained by immigration officers as he was walking through a neighborhood of Batey Nueve, Barahona, the Dominican Republic. Young Gelin was boarded onto a truck with another 15 or 20 people and taken to a military prison, where he spent the night. From there, all the detainees were taken to the border at the Pedernales/ Anse-à-Pitre crossing, where they were forced to cross over to the Haitian side. Young Gelin spent two

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<sup>47</sup> **Annex 20.** Sworn statement given by Janise Midi in the presence of the Human Rights Clinic of Columbia University School of Law on January 13, 2001. Attachment to the representatives' observations of January 30, 2002. Annex AJ of the petitioners' observations on the merits, April 16, 2009.

<sup>48</sup> **Annex 19.** Sworn statement given by Jeanty Fils-Aime in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the representatives' observations of January 30, 2002.

<sup>49</sup> **Annex 22.** Annex AL to the petitioners' observations on the merits, April 16, 2009.

<sup>50</sup> **Annex 23.** The representatives' observations on the XLVIII and XLIX reports filed by the Dominican State in connection with compliance with the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, October 25, November 4 and December 16, 2005.

<sup>51</sup> **Annex 11.** The representatives' observations on the State's XLVIII report on the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, December 16, 2010.

<sup>52</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>53</sup> **Annex 24.** Statement given by Berson Gelin on April 1, 2000, in the presence of the Human Rights Clinic of Columbia University School of Law. Attachment to the petitioners' observations of January 30, 2002. Annex AN of the representatives' observations on the merits, April 16, 2009.

months in Haiti, until he was able to return to the Dominican Republic aboard a bus carrying sugar cane workers.<sup>54</sup>

90. Around midday on December 5, 1999, as he was leaving home on his way to work, Mr. Gelin was detained by members of the police and Naval troops, and put aboard a bus carrying other people. He was subsequently taken to the border in Jimaní and forced to cross into Haiti.<sup>55</sup>

91. Mr. Gelin had a son called William Gelin, who was born in the Dominican Republic. From 1999 onward, Mr. Gelin was forced to live semi-separated from his son. As a result of his expulsion, Mr. Gelin lost his job, RD\$3000 in cash which was inside his house in the Dominican Republic, and the salary he had coming to him at the time of his expulsion.<sup>56</sup>

92. In March 2002, Mr. Gelin obtained a safe-conduct as a result of the agreement reached as the provisional measures were being worked out with the Inter-American Court.<sup>57</sup> In 2005, however, while on a visit to his son William in Santo Domingo, immigration officers destroyed his safe-conduct.<sup>58</sup> More recently, Mr. Gelin returned to the territory of the Dominican Republic.<sup>59</sup>

93. With respect to Mr. Gelin, the State indicated that “there is no record of him having been deported from the Dominican Republic, so that we suspect that this case is the invention of some NGO in the Dominican Republic. We were particularly struck by one detail in this case. The report specifies that this citizen was detained by police and naval personnel who, according to the report, were under the command of General Pedro De Jesús Candelier Tejada, who is Chief of the National Police. Given his rank, the General does not participate in the detention of Haitian citizens.”<sup>60</sup> The State asserted that Mr. Gelin “is not registered” and provided no additional information on the record of deportations.

##### **5. Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión and Antonio Sensión**

94. Mr. Antonio Sensión was born in Savaneta de Cangrejo, the Dominican Republic, December 24, 1958.<sup>61</sup> His identification document bears the number 001-0592094-6.<sup>62</sup> Mr. Antonio Sensión and his common law wife, Mrs. Ana Virginia Nolasco, born in Cahobas, Haiti, lived in the Dominican Republic for 16 years and had two daughters born in the Dominican Republic: Ana

<sup>54</sup> **Annex 5.** The representatives’ observations on the merits, April 16, 2009.

<sup>55</sup> **Annex 24.** Statement given by Berson Gelin on April 1, 2000, in the presence of the Human Rights Clinic of Columbia University School of Law. Attachment to the petitioners’ observations of January 30, 2002.

<sup>56</sup> **Annex 24.** Statement given by Berson Gelin on April 1, 2000, in the presence of the Human Rights Clinic of Columbia University School of Law. Attachment to the petitioners’ observations of January 30, 2002.

<sup>57</sup> **Annex 25.** Annex AP of the petitioners’ observations on the merits, April 16, 2009.

<sup>58</sup> **Annex 26.** Annex AQ of the petitioners’ observations on the merits, April 16, 2009.

<sup>59</sup> **Annex 11.** The representatives’ observations on the compliance with the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, March 16, 2010.

<sup>60</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>61</sup> **Annex 27.** Judicial Service, Dominican Republic, Judgment No. 117, which orders the Civil Records Office in the Municipality of Sosua “to confirm the BIRTH certificate” of Mr. Antonio Sensión. Annex AX of the petitioners’ observations on the merits, April 16, 2009.

<sup>62</sup> **Annex 28.** Photocopy of the identification document of Mr. Antonio Sensión. Annex AY of the petitioners’ observations on the merits, April 16, 2009. Attachment to the petitioners’ observations of January 30, 2002.

Lidia (born August 3, 1990<sup>63</sup>) and Reyita Antonia (born January 6, 1992<sup>64</sup>). The Sensión family lived in Mata Mamón, San Luis, Santo Domingo, the Dominican Republic, until Mr. Sensión moved to Puerto Plata for work-related reasons.

95. At Christmastime in 1994, Mrs. Ana Virginia Nolasco and her two daughters were changing buses in Sabana Perdida, to visit the family of Mr. Sensión in Villa Altagracia, the Dominican Republic, when Dominican immigration officers detained them. Mrs. Nolasco and her two daughters were put in a truck along with other families and spent two or three days in the truck bound for the Haitian border. Late in the afternoon they were dropped off in a strange town in Haiti, with no money or resources of any kind and knowing no one. Thanks to charity they managed to get money to travel to Las Cahobas, where Mrs. Nolasco's family lived.<sup>65</sup>

96. When Mr. Sensión returned to Mata Mamón, he discovered that the following was missing from his home: 4 chairs, one table, two beds, one television, one radio, one stove, shoes and clothing.<sup>66</sup>

97. Mr. Sensión travelled several times to Haiti in search of his family. In May 1995 he went first to Las Cahobas, Haiti, but was unable to locate any of the members of Mrs. Nolasco's family or to find any information on the whereabouts of his daughters and wife. In 1996, he contacted Dominican immigration officials to ask them about his family's whereabouts, but they told him they did not have any information in that regard. In 1997, he went back to Haiti once more to search for his family. On that trip, he went to Otundino, Haiti, because he remembered that Mrs. Nolasco had mentioned it once. From May 28 to June 2, 2000, Mr. Sensión traveled to Port-au-Prince, Haiti. Because of these trips, Mr. Sensión lost 33 days of work, amounting to RD\$8,778 in lost wages.<sup>67</sup> In 2002, Mr. Sensión found his family in a marketplace in Las Cahobas, Haiti, and returned to the Dominican Republic with his daughters. Mrs. Nolasco managed to return one week later.<sup>68</sup>

98. In March 2002, the Sensión family obtained safe-conducts as a result of the agreement reached as the provisional measures were being worked out with the Inter-American Court.<sup>69</sup>

## 6. Andrea Alezy

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<sup>63</sup> **Annex 29.** Baptismal Certificate of Ana Lidia Sensión of November 20, 1994. Attachment to the petitioners' observations of January 30, 2002.

<sup>64</sup> **Annex 30.** Baptismal Certificate of Reyita Antonia Sensión of November 20, 1994. Attachment to the petitioners' observations of January 30, 2002.

<sup>65</sup> **Annex 31.** Statement given by Antonio Sensión in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. **Annex 32.** Sworn statement given by Antonio Sensión on May 8, 2000, in which he states that "[a]t the end of nineteen hundred ninety-six (1996) his wife, Mrs. Ana Vigil, a Haitian citizen who was undocumented at the time, and his daughters Ana Lidia and Reyita Antonia, the first registered at the Fourth Civil Records Office of the D.N. and the other in Puerta Plata, and baptized by the Catholic Church, were deported and expelled from the Dominican Republic to Haiti." Information supplied by MUDHA on May 18, 2000.

<sup>66</sup> **Annex 31.** Statement given by Antonio Sensión in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>67</sup> **Annex 31.** Statement given by Antonio Sensión in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>68</sup> **Annex 33.** Sworn statement given by Antonio Sensión on March 27, 2007. Annex AU of the petitioners' observations on the merits, April 16, 2009.

<sup>69</sup> **Annex 34.** Annex BA of the petitioners' observations on the merits, April 16, 2009.

99. Mrs. Andrea Alezy was born in Yokay-du-Fond, Haiti, and had lived in the Dominican Republic for 12 years. Her residence was on D Street in Pedernales, where she lived with her two children, ages 4 and 11. The children were born in the Dominican Republic, but not officially registered.<sup>70</sup>

100. At around 7:00 a.m. on January 7, 2000, while Mrs. Alezy was walking through the Pedernales market, she was detained by a group of immigration officers headed by the chief of Pedernales Immigration, Maribel Mella, and subsequently expelled to Haiti. Mrs. Alezy was unable to contact her children and or show any form of identification.<sup>71</sup>

101. Some days later, Mrs. Alezy was able to go through the unofficial border crossing from Anse-à-Pitre, Haiti, to Pedernales, the Dominican Republic, to meet with her children. When she returned, Ms. Alezy noticed that a bed was missing, as were furniture, a television, clothing and a sum of money totaling RD\$40,000.<sup>72</sup>

102. The State observed the following in connection with Andrea Alezy: "As for the alleged Haitian citizen Andrea Alexis, because the report does not indicate the address where she was detained or the address of her residence, we were unable to conduct our investigation; it would be helpful if the party who prepared that report would give us the particulars necessary for us to conduct our inquiries further, as our files contain no record of any deportation under that name."<sup>73</sup>

## 7. Rafaelito Pérez Charles

103. Mr. Rafaelito Pérez Charles was born in Batey Ocho, Barahona, Dominican Republic, on August 18, 1978. His Dominican identification document is No. 020-0014212-1.<sup>74</sup>

104. Around midday on July 24, 1999, as he was waiting for a bus on Avenida Duarte in Santo Domingo on his way home, Mr. Pérez Charles was detained by Dominican immigration officers, who asked him for his identification papers. He answered that he had left them at his home in Barahona. Nevertheless, the immigration officers forced him to board a bus carrying other detained persons.<sup>75</sup>

105. The Dominican authorities transferred Mr. Pérez Charles to the military prison in San Cristóbal, the Dominican Republic. He was given no food or water during the trip. The Dominican

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<sup>70</sup> **Annex 35.** Sworn statement given by Andrea Alezi in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the information submitted by the petitioners on January 30, 2002.

<sup>71</sup> **Annex 35.** Sworn statement given by Andrea Alezi in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the information submitted by the petitioners on January 30, 2002.

<sup>72</sup> **Annex 35.** Sworn statement given by Andrea Alezi in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the information submitted by the petitioners on January 30, 2002.

<sup>73</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>74</sup> **Annex 36.** Photocopy of the identification document of Rafaelito Pérez Charles. Attachment to the representatives' observations on January 30, 2002.

<sup>75</sup> **Annex 37.** Sworn statement given by Rafaelito Pérez Charles in the presence of the Human Rights Clinic of Columbia University School of Law on January 10, 2001. Attachment to the information supplied by the petitioners on January 30, 2002.

authorities later took Mr. Pérez Charles and other detained persons to the Jimani/Malpassee border crossing, where they were forced to cross into Haiti.<sup>76</sup>

106. When Mr. Pérez Charles arrived in Haiti, he met a man who offered to take him back to the Dominican Republic for 50 pesos. Mr. Pérez Charles paid him and returned to Jimaní. From there he walked a distance of 50 or 60 kilometers over a period of four days before reaching his home in Barahona.<sup>77</sup>

107. His expulsion separated Mr. Pérez Charles from his mother and two brothers for five days. He fell ill upon his return to Barahona and lost his job.<sup>78</sup>

108. The State observed the following: "we went to the [indicated] address. According to the mayor of that community, Adolfo Encarnación, and other locals, no one by the name of Rafaelito Pérez Charles had lived in that community for the last 51 years."<sup>79</sup> Subsequently it reported that "the Central Board of Elections of the Dominican Republic certifies that the Rafaelito Pérez Charles who is the bearer of the indicated identification document, is the son of Mr. Rafael Pérez and Mrs Clerineta Charles, identification No. 020-0004895-5...".<sup>80</sup>

#### **8. Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean, Nathalie Jean**

109. Although the Jean family was not mentioned by name in the Admissibility Report on this case, the Commission notes that the information on the situation of these people was supplied to the Commission starting in 2002 and forwarded to the State thereafter. The Commission notes that during the friendly settlement process both parties regarded the Jean family as victims in this case and that the State granted them safe-conducts in the context of the implementation of the provisional measures ordered by the Court, even though the members of the Jean family were not expressly recognized as beneficiaries of such measures.

110. Mr. Jean was born in Jimaní, the Dominican Republic, on April 13, 1958.<sup>81</sup> Mr. Jean was living with his family in Villa Faro, the Dominican Republic. The family was composed of Mrs. Marlene Mesidor, born in Jeremie, Haiti, and their four children: McKenson, Victoria, Miguel and Nathalie, who as of December 1, 2000, were 8, 6, and 6 years old, and four months old,

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<sup>76</sup> **Annex 37.** Sworn statement given by Rafaelito Pérez Charles in the presence of the Human Rights Clinic of Columbia University School of Law on January 10, 2001. Attachment to the information supplied by the petitioners on January 30, 2002.

<sup>77</sup> **Annex 37.** Sworn statement given by Rafaelito Pérez Charles in the presence of the Human Rights Clinic of Columbia University School of Law on January 10, 2001. Attachment to the information supplied by the petitioners on January 30, 2002.

<sup>78</sup> **Annex 37.** Sworn statement given by Rafaelito Pérez Charles in the presence of the Human Rights Clinic of Columbia University School of Law on January 10, 2001. Attachment to the information supplied by the petitioners on January 30, 2002.

<sup>79</sup> **Annex 6.** Report of the Secretariat of State of the Interior and Police. Office of the Director General for Immigration. July 19, 2000, attachment to the brief submitted by the State on August 8, 2000.

<sup>80</sup> **Annex 38.** The Dominican State's thirtieth report on compliance with the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, September 8, 2006.

<sup>81</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

respectively. Victoria, Miguel y Nathalie were born in the San Lorenzo de los Mina Maternal Infant Center, Santo Domingo, Dominican Republic.<sup>82</sup>

111. In 1998, immigration officials began a sweep in Villa Faro, the Dominican Republic, and in the process arrested Mr. Jean and expelled him to Haiti. When he was left on the other side of the border, Mr. Jean boarded a truck carrying migrant workers and returned to the Dominican Republic.<sup>83</sup>

112. On December 1, 2000, at around 7:30 a.m., four uniformed immigration officials announced themselves by beating on the door of Mr. Jean's home. When Mrs. Mesidor, who was pregnant at the time, opened the door, the officials ordered her out of the house. They refused to allow Mrs. Mesidor to bathe and ordered her to board a minibus that was waiting outside.<sup>84</sup>

113. The four children of Mr. Jean and Mrs. Mesidor -McKenson, Victoria, Miguel and Nathalie- were also taken to the minibus. The officers asked if there was someone else inside the home and little Victoria said that her father was under the bed.<sup>85</sup> Mr. Jean asked to be allowed to put his shoes on, but was told no and ordered onto the bus barefoot and in his pajamas.<sup>86</sup>

114. The Jean family was boarded onto a minibus and taken as far as the Jimani/Malpasse border crossing and left on the Haitian side at around 4:00 p.m.<sup>87</sup>

115. Mr. Jean was working in construction and was paid every 15 days. At the time of his arrest, Mr. Jean had 1000 pesos coming to him. When they left the Dominican Republic, the Jean family lost a number of their belongings: a table and chairs, a refrigerator, clothing, beds, a tank of fuel, shelves and a radio.<sup>88</sup>

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<sup>82</sup> **Annex 40.** Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>83</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>84</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>85</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>86</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>87</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>88</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

116. In March 2002, the Jean family received safe-conducts as a result of the agreement reached in working out the provisional measures with the Court. The safe-conducts were renewed in 2010.<sup>89</sup>

**C. Situation of the alleged victims subsequent to the expulsions and affected family members**

117. According to the information supplied by the representatives, in 2007 Mr. Tide Méndez was living with his brother in a humble one-room home in a slum in Santo Domingo, the Dominican Republic. He was working in a market, but his salary was not sufficient to cover his basic needs such as food, transportation and medical care for his family.<sup>90</sup>

118. Following their expulsion, the Medina Ferreras family live in Anse-à-Pitre, Haiti, in a small, two-room cement-block house with a tin sheeting roof. It was one of a cluster of ten houses, without running water and built for refugee families by the Support Group to Repatriates and Refugees (GARR). Mr. Medina Ferreras and Mrs. Jean Pierre have been unable to find work and do not have sufficient resources to buy food; because of financial and language problems, their children have had difficulty getting an education.<sup>91</sup>

119. For their part, the Fils-Aime family live in dire conditions in Anse-à-Pitre, Haiti, in a two-room shack which was one of ten units that the Support Group to Repatriates and Refugees (GARR) had built for refugee families. Mr. Fils-Aime and Mrs. Midi did not have sufficient income to feed their children, who had reportedly dropped out of school for financial reasons.<sup>92</sup>

120. Following his expulsion, Mr. Gelin was living in Anse-à-Pitre, Haiti, with his common-law wife Gillie and their three children: Jameson Gelin, Kenson Gelin and Faica Gelin, in a humble house built by the Support Group to Repatriates and Refugees (GARR).<sup>93</sup> Following an alleged attack on July 6, 2010, Mr. Gelin is said to be living now in Santo Domingo, the Dominican Republic.<sup>94</sup>

121. Mrs. Nolasco and her daughters were living in Mata Mamón, Dominican Republic, in difficult economic circumstances. Mrs. Nolasco was working for a fuel company, but she was not receiving full pay because she did not have a Dominican identification document. Reyita Antonia Sensión had a son on November 27, 2007, but she has been unable to register him. The civil records authorities reportedly have her under investigation and are supposedly demanding that she prove that at the time of her birth, her mother was a legal resident. Reyita Antonia Sensión allegedly had to drop out of school and work as a domestic. Ana Lidia Sensión had a daughter on July 16, 2007, which she, too, has been unable to register. This has made it difficult for her to get medical

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<sup>89</sup> **Annex 41.** Annex AT of the observations on the merits presented by the petitioners on April 16, 2009.

<sup>90</sup> **Annex 5.** The representatives' observations on the merits, April 16, 2009. .

<sup>91</sup> **Annex 5.** The representatives' observations on the merits, April 16, 2009. **Annex 42.** Report presented by the representatives on the Provisional Measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic, February 1, 2012.

<sup>92</sup> **Annex 5.** The representatives' observations on the merits, April 16, 2009. **Annex 42.** Report presented by the representatives on the Provisional Measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic, February 1, 2012.

<sup>93</sup> **Annex 5.** The representatives' observations on the merits, April 16, 2009.

<sup>94</sup> **Annex 43.** The representatives observations' on the compliance with the provisional measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, March 16, 2010. **Annex 42.** Report presented by the representatives on the Provisional Measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic, February 1, 2012.

treatment for her daughter. Like her sister, she also dropped out of school.<sup>95</sup> Mrs. Nolasco is currently living with her daughter Ana Lidia and her granddaughters Ana Dileidy and Analideire in Boca Chica, Santo Domingo del Este. Reyita Sensión lives in Batey Mata Mamtón, Santo Domingo del Norte, with her husband and her son Emiliano.<sup>96</sup>

122. Since the expulsion Mr. Jean and his family were living in Fonds-Parisien, and he was unable to find a job. The family lives in very poor conditions and survives thanks to the food that GARR provides it.<sup>97</sup> In 2011, the family moved back to the bayete of Villa Faro, Dominican Republic, which is where they are currently residing.<sup>98</sup>

123. Finally, from the information supplied by the representatives, the Commission understands that the family members of the alleged victims in this case are as follows: Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez, Teresa Méndez, Carolina Fils-Aime, Kimberly Pérez Medina, William Gelin, Gili Sainlis, Jamson Gelin, Faica Gelin, Kenson Gelin, Ana Dileidy Sensión, Maximiliano Sensión (fallecido), Emiliano Mache Sensión, Analideire Sensión, Jessica Jean, Víctor Manuel Jean, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina and Antonio Sensión.<sup>99</sup>

#### **D. The context of massive deportations of Haitians and Dominican-Haitians from the Dominican Republic to Haiti**

124. Various international organizations and civil society organizations have reported on the policy that the Dominican Republic has pursued at various times in its history and that has resulted in the deportation of thousands of Haitians and Dominican-Haitians. The expulsions of the alleged victims in this case must be examined in light of that policy, as this case and that policy are inextricably related.

125. Anti-Haitianism and the existing tensions over the flow of Haitian immigrants into the Dominican Republic is a function of a variety of factors and historical, political, social and cultural elements. The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Independent Expert on minority issues have maintained that:

[a]nti-Haitian feelings can already be traced back to the Santo Domingo revolt of August 1791, which profoundly shook the slavery system, and the independence of Haiti from France in 1804, which created an extreme and enduring fear and the cultural and political demonization of Haitians in the whole hemisphere. Following Haitian independence, the Spanish ruling elites in Santo Domingo continued to foster the Hispanic identity that had been promoted against the western part of the island by presenting the colony as white, Catholic and of Hispanic roots vis-à-vis Haiti, presented as black, voodoo practitioners and with an

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<sup>95</sup> **Annex 5.** The petitioners' observations on the merits, April 16, 2009.

<sup>96</sup> **Annex 42.** Report presented by the representatives on the Provisional Measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic, February 1, 2012.

<sup>97</sup> **Annex 39.** Statement given by Victor Jean in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002. Statement given by Marlene Mesidor in the presence of the Human Rights Clinic of Columbia University School of Law on January 11, 2001. Attachment to the petitioners' observations of January 30, 2002.

<sup>98</sup> **Annex 42.** Report presented by the representatives on the Provisional Measures ordered by the I/A Court H.R. in the Matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic, February 1, 2012.

<sup>99</sup> **Annex 5.** The petitioners' observations on the merits, April 16, 2009. **Annex 44.** Petitioner's observations of February 21, 2012.

African culture with French influence. These dichotomies are fundamental in the analysis of the depth of the rejection of the African heritage in Dominican society.<sup>100</sup>

126. These tensions have led to massive expulsions and deportations, and different methods have been devised to deny Haitians and Dominicans of Haitian descent birth certificates and other identification documents. Such practices have been described as “institutionalized racism.”<sup>101</sup> Massive expulsions were reported in 1991, 1996, 1997 and 1999 –with annual deportations and expulsions averaging between 24,000 and 30,000 persons<sup>102</sup> and in 2000<sup>103</sup>, 2001<sup>104</sup>, 2005<sup>105</sup> and 2008.<sup>106</sup> The information reported by the State confirms that by the end of the 1990s, 700 Haitian citizens were being deported each month.<sup>107</sup>

127. In 1991, the Commission conducted an *in loco* visit to the Dominican Republic and received numerous complaints about the violence and haste with which the deportations were being conducted; migrant workers were not allowed to take their belongings or collect their pay. Some businesses, especially the sugar mills, were using deportation as a way to avoid paying their workers the salaries they were owed.<sup>108</sup>

128. According to the complaints the Commission received, deportees were held in establishments where they received little or no food while in custody; in some cases, they were beaten by the Dominican authorities. They were never allowed to contact family members to notify

<sup>100</sup> **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 91. Annex B of the petitioners’ observations on the merits, April 16, 2009.

<sup>101</sup> **Annex 46.** VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d’origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33. p. 2. Annex C of the petitioners’ observations on the merits, April 16, 2009. See also, **Annex 47.** FERGUSON, James. *Migration in the Caribbean: Haiti, the Dominican Republic and beyond*. Minority Rights Group International. London, United Kingdom, 2003, p.17. Annex H of the petitioners’ observations on the merits, April 16, 2009.

<sup>102</sup> IACHR, *Annual Report 1991*, Chapter V. **Annex 47.** FERGUSON, James, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond*, Minority Rights Group International, July 2003. Annex H of the petitioners’ observations on the merits, April 16, 2009. **Annex 48.** Human Rights Watch: *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*, April 4, 1992. Annex I of the petitioners’ observations on the merits, April 16, 2009.

<sup>103</sup> **Annex 49.** TAMAYO, Juan. *A Dominican crackdown in illegal immigration keeps desperate Haitians out, expels thousands already in*. Miami Herald. February (2000), p. 1-3. Annex J of the petitioners’ observations on the merits, April 16, 2009. See also, **Annex 50.** Infohaití. *Plus de 3000 haïtiens déportés de la République Dominicaine vers Haiti pendant ces deux derniers semaines*. Annex K of the petitioners’ observations on the merits, April 16, 2009; **Annex 51.** UNHCR and HUMAN RIGHTS WATCH. *Illegal people: Haitians and Dominico-Haitians in the Dominican Republic*. April (2002), p. 12. Annex I of the petitioners’ observations on the merits, April 16, 2009.

<sup>104</sup> **Annex 51.** UNHCR and Human Rights Watch. *Illegal people: Haitians and Dominico-Haitians in the Dominican Republic*. April (2002), p. 15-16. Annex I of the petitioners’ observations on the merits, April 16, 2009. See also, **Annex 52.** Periódico Hoy: *Repatrian Haitianos ilegales con énfasis en pedigüños*. January (2001) Dominican Republic. Annex L of the petitioners’ observations on the merits, April 16, 2009.

<sup>105</sup> **Annex 53.** AMNESTY INTERNATIONAL. *Dominican Republic: A life in transit – The Plight of Haitian Migrants and Dominicans of Haitian Descent*. March (2007), London, p. 15.. Annex F of the petitioners’ observations on the merits, April 16, 2009.

<sup>106</sup> **Annex 54.** *Agencia de Información Fray Tito para América Latina. Más de 1.600 haïtiens fueron deportados de República Dominicana sólo éste año* [More than 1600 Haitians deported from the Dominican Republic this year alone]. Haiti, May (2008). Annex R of the petitioners’ observations on the merits, April 16, 2009.

<sup>107</sup> **Annex 6.** The State’s August 8, 2000 response to the IACHR. The statistics from the Office of the Director General of Immigration for June 2000 show that an average of 717 undocumented persons were repatriated each month.

<sup>108</sup> IACHR, *Report on the situation of human rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc 49, rev. 1, October 7, 1999, paragraph 327.

them that they were being deported. Time and time again, the Commission was told of children being forcibly removed from their homes while their parents were at work. Wives were deported while husbands were not at home. In some cases, the massive expulsions allegedly had the effect of forcibly separating families, affecting the children.<sup>109</sup>

129. Similarly, on the occasion of the 1996 presidential elections, the Commission received a number of complaints to the effect that the Dominican authorities had conducted sweeps, destroying identification documents and the identity papers of Haitian workers and had forced them to return to Haiti. In numerous reported cases, the persons expelled had been born in the Dominican Republic, had lived there for many years and had a constitutional right to Dominican nationality.<sup>110</sup>

130. In June 1997, the Commission made a second *in loco* visit to the Dominican Republic. During that visit, it received multiple complaints concerning the practice of collective expulsions of Haitians and even of Dominicans of Haitian origin. According to the information supplied to the Commission, between January and February of that year the Dominican Government had deported around 25,000 Haitians. In most of these cases, the deportees had been denied the opportunity to prove that they were living in the Dominican Republic legally, how long they had been in the country, that they had family ties with Dominican nationals, or their work status in the country.<sup>111</sup>

131. Later, in its 2002 follow-up report on the situation of human rights in the country, the Commission observed with concern that the practice of mass deportations continued. The report states that on January 24, 2001, the Director General of Migration, Trajano Moreta Cuevas, had said that 14,000 Haitians were repatriated in 2000 alone, and an estimated one million Haitians without documents were currently residing on Dominican soil. Various sources told the Commission that around 9,000 Haitians were deported in 2001. The IACHR also expressed concern over the fact that expulsions were carried out in a violent manner, before Haitians workers could collect their wages and contact their families. The Commission concluded that the expulsions were being carried out in direct contravention of the guidelines set down in the Bi-national Agreement on Conditions of Deportation, adopted in December 1999.<sup>112</sup>

132. More recently, exercising its authorities under Article 41 of the American Convention, the Commission asked the State to provide information on how the procedures followed to expel Haitians and Dominicans of Haitian origin were conducted. As of the date of approval of this report, the State has not supplied that information.

133. For its part, the Inter-American Court has written that “[t]he Dominican Republic has deported Haitians and Dominicans of Haitian origin irrespective of their migratory status in the

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<sup>109</sup> IACHR, *Report on the situation of human rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc 49, rev. 1, October 7, 1999, paragraph 328.

<sup>110</sup> IACHR, *Report on the situation of human rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc 49, rev. 1, October 7, 1999, paragraph 329.

<sup>111</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*. OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, paragraphs 325-327.

<sup>112</sup> **Annex 55.** Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Member States, Dominican Republic, Chapter V, Annual Report 2001, approved by the IACHR at its 114th regular session, February 25 to March 15, 2002, paragraph 89.

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.”<sup>113</sup>

134. The international mechanisms for the protection of human rights have closely monitored the massive deportations of Haitians and Dominican-Haitians from the Dominican Republic to Haiti. The Human Rights Committee expressed concern at the continuing reports of mass expulsions of ethnic Haitians, even when such persons are nationals of the Dominican Republic. It held that the Dominican Republic should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings are covered by the safeguards established in the Covenant on Civil and Political Rights.<sup>114</sup>

135. The UN Committee on the Elimination of Racial Discrimination also expressed concern at: a) information received according to which migrants of Haitian origin, whether documented or undocumented, are allegedly detained and subject to collective deportations (“repatriations”) to Haiti without any guarantee of due process;<sup>115</sup> b) reports alleging that Dominicans of Haitian descent, who are holders of a birth certificate, identity cards and electoral identity documents have had their identity documents confiscated and destroyed, or have been denied copies of these documents on the grounds of their ethnic origin;<sup>116</sup> and c) allegations of discriminatory or vexatious conduct towards dark-skinned persons, both Haitian and Dominican, and those of Haitian origin, by officials working in various national or local authorities.<sup>117</sup>

136. The United Nations Commission on Human Rights observed that:

[i]n the absence of official statistics, the Returnee and Refugee Support Group (GARR) estimates the number of Haitians living in the Dominican Republic who are expelled to Haiti at 10,000 to 30,000 annually. According to the support group, repatriation affects not only long-term residents, who have their family and all their assets in the country, and no longer have any ties to Haiti, but also newcomers and descendants of immigrants who were born in the Dominican Republic. At the time of arrest, many of them cannot communicate with their families, collect anything owing to them or recover their assets. It even happens that their identity cards are confiscated or destroyed, and that the little money they have is taken. It seems that there is no effective remedy and very few pre-deportation hearings. They are first taken to immigration detention centres, and then spend several hours or days waiting for a group to be formed, which is then taken on a bus to the Haitian border, where for the most part they are simply abandoned.<sup>118</sup>

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<sup>113</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 109.10.

<sup>114</sup> **Annex 56**. UN, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee, **CCPR/CO/71/DOM**, April 26, 2001, paragraph 16.

<sup>115</sup> UN, Committee on the Elimination of Racial discrimination, **72<sup>nd</sup>** session, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION. Concluding observations of the Committee on the Elimination of Racial Discrimination. DOMINICAN REPUBLIC, CERD/C/DOM/CO/12, May 16, 2008, paragraph 13.

<sup>116</sup> UN, Committee on the Elimination of Racial discrimination, **72<sup>nd</sup>** session, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION. Concluding observations of the Committee on the Elimination of Racial Discrimination. DOMINICAN REPUBLIC, CERD/C/DOM/CO/12, May 16, 2008, paragraph 16.

<sup>117</sup> UN, Committee on the Elimination of Racial discrimination, **72<sup>nd</sup>** session, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION. Concluding observations of the Committee on the Elimination of Racial Discrimination. DOMINICAN REPUBLIC, CERD/C/DOM/CO/12, May 16, 2008, paragraph 21.

<sup>118</sup> UN, Commission on Human Rights, 62<sup>nd</sup> session, ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS, Situation of human rights in Haiti. Report prepared by the independent expert, Louis Joinet, E/CN.4/2006/115, January 26, 2006, paragraphs 23-26.

137. For her part, the UN's Independent Expert on Minority Issues concluded that:

Haitians in long-term settled communities as well as Dominicans of Haitian descent live and work in fear and conditions of vulnerability, extreme poverty and super-exploitation of their labour. While they are being administratively denied documentation, all their other rights are subject to arbitrary rejection and abuse by low-level officials, police and military who have power, operate with limited instructions and have little accountability.<sup>119</sup>

138. In their 2008 report on a mission to the Dominican Republic, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Independent Expert on Minority Issues observed the following:

[t]here is consistent testimony of indiscriminate and arbitrary deportations, lacking in the protection of due process. Dominican citizens of Haitian descent and long-settled Haitians are as likely as recent migrants to be deported without adequate opportunity to argue any distinctions. Deportations occur so rapidly that family members are not informed. Parents are deported leaving children unaccompanied. Ill-treatment and abuse during deportation is reportedly common. Legitimate identification documents, including cédulas and birth certificates are confiscated by authorities conducting deportation "sweeps" and deportees are generally not given opportunities to secure their housing and property. Accounts are given of deportations being arranged between employers and authorities to enable employers to avoid paying wages. Particular concern was expressed at the practice of collective or mass expulsions.<sup>120</sup>

139. Studies done by civil society organizations concluded that the massive deportations and expulsions done by the government of the Dominican Republic have become chronic policy<sup>121</sup> involving violation of the basic rights of a particular group of persons –Haitian immigrants and Dominican citizens of Haitian descent. It is a policy waged by the State and carried out by the military,<sup>122</sup> mainly outside *bateyes* and in urban areas like Santiago or Santo Domingo,<sup>123</sup> where the persons are apprehended, loaded onto buses or trucks and taken to the Haitian boarder.<sup>124</sup> These deportations or expulsions occur rapidly and the persons being expelled are not given the

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<sup>119</sup> **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 112. Annex B of the petitioners' observations on the merits, April 16, 2009.

<sup>120</sup> **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 79. Annex B of the petitioners' observations on the merits, April 16, 2009.

<sup>121</sup> **Annex 46.** VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d'origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 4. Annex C of the petitioners' observations on the merits, April 16, 2009. See also **Annex 47.** FERGUSON, James. *Migration in the Caribbean: Haiti, the Dominican Republic and beyond.* Minority Rights Group International. London, United Kingdom. 2003, p. 17. Annex H of the petitioners' observations on the merits, April 16, 2009.

<sup>122</sup> **Annex 47.** FERGUSON, James. *Migration in the Caribbean: Haiti, the Dominican Republic and beyond.* Minority Rights Group International. London, United Kingdom. 2003, p. 17. Annex H of the petitioners' observations on the merits, April 16, 2009. **Annex 48.** UNHCR and HUMAN RIGHTS WATCH. *Illegal people: Haitians and Dominico-Haitians in the Dominican Republic.* April (2002), p. 14. Annex I of the petitioners' observations on the merits, April 16, 2009.

<sup>123</sup> **Annex 47.** FERGUSON, James. *Migration in the Caribbean: Haiti, the Dominican Republic and beyond.* Minority Rights Group International. London, United Kingdom. 2003. p. 18. Annex H of the petitioners' observations on the merits, April 16, 2009.

<sup>124</sup> **Annex 51.** UNHCR and HUMAN RIGHTS WATCH. *Illegal people: Haitians and Dominico-Haitians in the Dominican Republic.* April (2002), p. 14 of the petitioners' observations on the merits, April 16, 2009.

opportunity to speak with family members, which often means that children are deported without their parents knowing or vice versa.<sup>125</sup>

140. The reports are all consistent in their assessments of the *modus operandi* through which the Dominican authorities have conducted the collective expulsions of Haitians and Dominicans of Haitian decent in recent decades. Apropos the foregoing, it has been said that the collective expulsions are typically characterized by a lack of due process and judicial oversight;<sup>126</sup> those being deported are not permitted to contact family members and are mistreated and abused by the authorities –who confiscate or destroy their legal identification documents<sup>127</sup> or simply never even ask to see them, even when they may prove legal status within the national territory, whether as residents, tourists, temporary workers or relatives of Dominican citizens.<sup>128</sup>

141. Civil society studies have also made the point that rather than rely on documents, the identity checks that trigger the deportations are based on racial profiling; officials simply observe the way a person walks, how he or she lives and his or her skin color to determine whether the person is Haitian or of Haitian descent.<sup>129</sup>

142. One study found that “quantitative data indicate a considerable diversity exhibited within the population with regard to expellees’ age, occupation and period of residency in the Dominican Republic. This suggests that all Haitians (or those of Haitian appearance) are vulnerable to summary expulsion.”<sup>130</sup> As for the methods used to identify the persons who will be deported, the study reported that

[m]igration officials explained that Haitians who fall into this category, i.e. those not gainfully unemployed, do not enjoy the usual three-stage deportation process. Authorities presume Haitians who are begging are illegal. As one official put it: “[Repatriation] is a process—it’s red

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<sup>125</sup> **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 24. Annex B of the petitioners’ observations on the merits, April 16, 2009.

<sup>126</sup> **Annex 53.** AMNESTY INTERNATIONAL. *Dominican Republic: A life in transit – The Plight of Haitian Migrants and Dominicans of Haitian Descent*. March (2007), London, pp. 7-9, 17. Annex F of the petitioners’ observations on the merits, April 16, 2009.

<sup>127</sup> **Annex 46.** VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d’origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 5. Annex C of the petitioners’ observations on the merits, April 16, 2009. See also, **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 24. Annex B of the petitioners’ observations on the merits, April 16, 2009; **Annex 53.** AMNESTY INTERNATIONAL. *Dominican Republic – A Life in Transit: The Plight of Haitian Migrants and Dominicans of Haitian Descent*. March (2007) London, pp. 7-9. Annex F of the petitioners’ observations on the merits, April 16, 2009.

<sup>128</sup> **Annex 46.** VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d’origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 5. Anexo C of the petitioners’ observations on the merits, April 16, 2009.

<sup>129</sup> **Annex 46.** VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d’origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 6. Annex C of the petitioners’ observations on the merits, April 16, 2009.

<sup>130</sup> **Annex 57.** International Human Rights Law Clinic, Boalt Hall School of Law, University of California at Berkeley, *Unwelcome Guests. A Study of Expulsions of Haitians and Dominicans of Haitian Descent from the Dominican Republic to Haiti*, 2002, p. 37.

tape—so you don't say we arrest them, put them in a truck and take them away. Your identification? You don't have it. You're illegal."<sup>131</sup>

#### **E. Difficulties registering children of Haitian descent born in Dominican territory**

143. Difficulties and obstacles that parents encounter when attempting to register children of Haitian descent born in the Dominican Republic and obtaining the documents necessary to vouch for the fact that they are Dominicans by birth has been monitored by different international organizations. Accordingly, the Commission has maintained that the authorities engaged in a practice designed to keep Haitians and Dominicans of Haitian origin permanently locked in undocumented immigration status, in which the undocumented immigration status of parents was passed along to children, even when those children were born in the Dominican Republic. Specifically, the Commission wrote that

[t]he children do not have documents because their parents have none. It is practically impossible to obtain them, either because the officers of the hospitals or civil registries refuse to issue a birth certificate or because the relevant authorities refuse to enter them in the civil registry. The argument usually given by government officials is that the parents do not possess the document identifying them as temporary workers, placing them in the category of foreigners in transit—even though they have lived in the Dominican Republic for years<sup>132</sup>.

144. As the Inter-American Court wrote, “[l]ate registration is often the only way that Dominican-Haitians have of obtaining an official birth certificate. Many Haitians women 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.”<sup>133</sup>

145. The Court has also observed that “[i]n 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.”<sup>134</sup>

146. 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.” Specifically in relation to birth registration, the Committee 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]

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<sup>131</sup> **Annex 57.** International Human Rights Law Clinic, Boalt Hall School of Law, University of California at Berkeley, *Unwelcome Guests. A Study of Expulsions of Haitians and Dominicans of Haitian Descent from the Dominican Republic to Haiti*, 2002, p. 17.

<sup>132</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*. OEA/Ser.L/V/II.104, Doc. 49 rev. 1, October 7, 1999, paragraph 352.

<sup>133</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 85.

<sup>134</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 109.11.

result of this policy, those children have not been able to enjoy fully their rights, such as to access to health care and education.”<sup>135</sup>

147. Citing the United Nations Commission on Human Rights, the Court has also held that

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 [...].<sup>136</sup>

148. On March 28, 2011, the Dominican State participated in a hearing held by the IACHR, which the State had requested to report on the amendment of the Civil Register in the country. At that hearing the State observed that the registration problem in the country was a long-standing one. Specifically, it commented that although the Civil Register is under the government, it was never administered by civil service personnel; instead, each civil records office was run by a natural person who was responsible for leasing the space for the facility, establishing the procedure and determining the fees.<sup>137</sup>

149. The State also pointed out that the difficulties with the registration process were directly related to the 1990 and 1994 election crises, which triggered demands from the international community for regulation of the registration system. The State reported that through the “Solidarity Program” that the World Bank agreed to help fund, the survey conducted in areas of extreme poverty found that between 22% and 24% of Dominican citizens did not have birth certificates.

150. The State observed that, despite the legislative measures and amendments approved to correct the problem of under-registration and flawed registration, the causes of the problem persisted and somewhere between 10% and 14% of the volumes containing the records were lost because they were in such bad condition.

151. In the case of children, the State reported that the birth certificate was not issued at the hospital and that a survey conducted of schools found that 18,000 children did not have birth certificates.

## **V. THE LAW**

### **A. Preliminary questions**

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<sup>135</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 169, citing 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, paragraphs 22 and 26.

<sup>136</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 170, citing 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, paragraphs 8 to 13.

<sup>137</sup> **Annex 58.** IACHR, Thematic Hearing. Modification of the Civil Register in the Dominican Republic, 141st session, March 28, 2011. Available at: <http://cidh.org/Comunicados/English/2011/CALENDAR141EN.htm>.

152. The Commission notes that since Admissibility Report No. 68/05, the State has reiterated its allegation that the remedies under domestic law were not exhausted. The Commission considers that this case is framed by the State's obligations with respect to its citizens and the principles that immigration policies must observe. Therefore, the Commission will examine the State's allegations and will address the States' obligations with respect to nationality and immigration.

### 1. Exhaustion of the remedies under domestic law

153. It is worth recalling that the issues in this case that are related to the exhaustion of the remedies under domestic law have already been examined when Admissibility Report No. 68/05 was adopted. The Commission would again point out that the petitioners claimed the exceptions provided for in articles 46(2)(a) and 46(2)(b) of the American Convention and the State did not duly contest the exception to the rule requiring exhaustion of local remedies.

### 2. The State's obligations vis-à-vis its nationals and the principles that must be observed in immigration policy

154. The right to nationality recognized by international law must be regarded as the natural condition and inherent right of all human beings; it is the very basis for the exercise of political rights and has an important bearing on the individual's civil capacity.<sup>138</sup> Nationality is the legal link between an individual and a given State.<sup>139</sup> According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.<sup>140</sup>

155. The decision of a State to confer nationality must not be an arbitrary act.<sup>141</sup> Here, the Inter-American Court has written that:

[a]lthough it has traditionally been accepted that the determination and regulation of nationality are the competence of each State, [...] the evolution in this matter shows that international law imposes certain limits on a State's discretionality and that, in the regulation of nationality, it is not only the competence of States, but also the requirements of the integral protection of human rights that intervene.<sup>142</sup>

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<sup>138</sup> I/A Court H.R., *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paragraph 32.

<sup>139</sup> See, *inter alia*, Brownlie Ian, *Principles of Public International Law*, Clarendon Press, Oxford, 1979. pp. 554-559; Nguyen Quoc Dinh, Patrick Daillier, Alain Pellet, *Droit International Public*, L.G.D.J., Paris, 1980, pp. 413-415; Max Sorensen, *Manual de Derecho Internacional Público*, Fondo de Cultura Económica, Mexico, 1973, pp. 453-456. See also I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paragraph 86; I/A Court H.R., *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC=4/84 of January 19, 1984. Series A No. 4, paragraph 32.

<sup>140</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, July 11, 2003, paragraph 46, citing the ICJ, *Case of Nottebohm (Liechtenstein v. Guatemala)*. Judgment of November 18, 1953. *Recueil des Cours* 1955, p. 23.

<sup>141</sup> Nguyen Quoc Dinh, Patrick Daillier, Alain Pellet, *Droit International Public*, L.G.D.J., Paris, 1980, p. 414.

<sup>142</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paragraph 88; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, paragraph 101.

156. On the matter of non-nationals, the Commission has written that each State can practice policies and order methods to control the flow of migrants entering its territory. However, the means that a State can use to exercise this authority must be respectful of human rights.<sup>143</sup>

157. The United Nations' Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance and the Independent Expert on minority issues have held that:

while States may create distinctions in the enjoyment of certain benefits between citizens, non-citizens with lawful status and non-citizens without lawful status, the content of the distinction must comply strictly with human rights norms. Under no circumstances can those distinctions be allowed to create an adverse impact on a certain category of people, by intention or consequence, based on race, colour or national origin.<sup>144</sup>

158. The Commission has written that in the enforcement of immigration laws, the basic right to equal protection before the law and non-discrimination requires that States ensure that their immigration law enforcement policies and practices do not unfairly target certain persons based solely on ethnic or racial characteristics, such as skin color, accent, ethnicity, or a residential area known to be populated by a particular ethnic group. Furthermore, international human rights law not only prohibits policies and practices that are deliberately discriminatory in nature, but also those whose effect is to discriminate against a certain category of persons, even when discriminatory intent cannot be shown.<sup>145</sup>

159. Specifically, the Commission has recognized the particularly serious situation that undocumented migrants face, as their immigration status exposes them to even greater abuse. In fact, the specific circumstances facing migrant workers shows that they are frequently up against a situation of structural vulnerability. Migrants constantly run up against roadblocks, including arbitrary arrest and the lack of due process, collective deportation, discrimination in the conferring of citizenship or in acceding to social services that foreigners have a right to by law, inhumane detention conditions, unlawful harassment on the part of authorities, including police and immigration officers, and an utter inability to defend themselves when exploited by unscrupulous employers.<sup>146</sup>

160. The Commission has also observed how the structural vulnerability of immigrants is compounded when their immigrant status is combined with other risk factors such as race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic status, religion or any other condition.

161. For its part, the Court has written 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

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<sup>143</sup> IACHR, *Report on Immigration in the United States. Detention and Due Process*, OEA/Ser.L/V/II., Doc. 78/10, December 30, 2010, paragraph 169.

<sup>144</sup> **Annex 45.** UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 107. Annex B of the petitioners' observations on the merits, April 16, 2009.

<sup>145</sup> IACHR, *Report on immigration in the United States: detention and due process*, OEA/Ser.L/V/II., Doc. 78/10, December 30, 2010, paragraph 95.

<sup>146</sup> IACHR, *Annual Report of the IACHR, 2000*, Chapter VI, *Special studies. Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*, OEA/Ser.L/V/II.111, doc. 20 rev., April 16, 2001, paragraph 64.

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.<sup>147</sup>

162. As for the gender perspective, the CEDAW Committee has written that “to understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration. The integration of a gender perspective is, therefore, essential to the analysis of the position of female migrants and the development of policies to counter the discrimination, exploitation and abuse” they suffer.<sup>148</sup>

163. On the subject of undocumented women migrant workers, the CEDAW Committee has observed that

[r]egardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. [...] If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. In that regard, States parties should repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin (articles 2 (c), (e) and (f)).<sup>149</sup>

**B. Right to personal liberty (Article 7 of the American Convention), in relation to the obligation to respect rights without discrimination (Article 1(1) of the American Convention)**

164. Article 7 of the American Convention reads as follows:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose

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<sup>147</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 155.

<sup>148</sup> CEDAW, General Recommendation No. 26, paragraph 5.

<sup>149</sup> CEDAW, General Recommendation No. 26, paragraph 26, I)

laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

165. Both the Commission and the Inter-American Court have underscored the fact that no one may be deprived of his liberty except for the reasons or in the cases or circumstances prescribed by law, and any deprivation of liberty must be done in strict accordance with the procedures defined therein.<sup>150</sup> This includes guaranteeing protection against arbitrary arrest and detention, and the requirement that the grounds and procedures for detention and arrest shall be those prescribed by law.<sup>151</sup> It also includes the guarantee of prompt and effective judicial oversight of a detention to protect the welfare of the person detained whenever that person is entirely under the State's control and therefore particularly vulnerable to abuses of authority.<sup>152</sup> They have also observed that in cases where no arrest warrant has been issued, or the arrest does not get prompt judicial oversight by a competent judicial authority, when the person detained does not or cannot fully understand the reason for his arrest or does not have access to legal counsel, and when the family of the detainee is unable to locate him promptly, there is a clear risk not just to the detainee's rights, but also to his personal integrity.<sup>153</sup>

166. The Commission has observed that

[t]he analysis of the compatibility of the deprivation of liberty with the provisions of Article 7(2 and 3) of the American Convention should be done in three phases. The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.<sup>154</sup>

167. The Inter-American Court, for its part, has on several occasions held that Article 7 of the Convention regulates the guarantees necessary to safeguard personal liberty; with specific reference to subparagraphs 2 and 3, it has written the following:

[a]ccording to the first of these regulatory provisions [Article 7(2) of the Convention], no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision [Article 7(2) of the Convention], we have a condition according to which no one shall be subject to arrest or imprisonment for causes or

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<sup>150</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L./V/II.111 doc.21 rev., April 6, 2001, Chapter VII, paragraph 37, citing IACHR, Case 11.245, Report No. 12/96, *Jorge Alberto Giménez* (Argentina), *Annual Report of the IACHR of 1995*; I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997, Series C. No. 35, paragraph 43.

<sup>151</sup> I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997, Series C. No. 35, paragraph 44.

<sup>152</sup> IACHR, Case 11.205, Report No. 2/97, *Jorge Luis Bronstein et al.* (Argentina), Annual Report of the IACHR, 1997, paragraph 11; Case 12.069, Report No. 50/01, *Damion Thomas* (Jamaica), Annual Report of the IACHR 2000, paragraphs 37, 38.

<sup>153</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L./V/II.111 doc.21 rev., April 6, 2001, Chapter VII, paragraph 37.

<sup>154</sup> IACHR, Report No. 53/01 (Merits), Case 11.565, *Ana, Beatriz and Celia González Pérez* (Mexico), April 4, 2001, paragraph 23.

methods that – although qualified as legal – may be considered incompatible with respect for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion.<sup>155</sup>

168. The Commission has also recognized that the State has the authority to deprive individuals of their liberty for strictly necessary reasons having nothing to do with the prosecution and punishment of crimes. It has written that the State has the authority to detain persons for purposes of controlling the entry and residence of aliens in its territory, or to confine persons for reasons of physical or mental health.<sup>156</sup> While deprivations of liberty may be permissible in such situations, the Commission has emphasized that any detention of this kind must be based on established domestic and international law and must be done on the grounds and according to the procedures prescribed in the Constitution or other law and must be demonstrably necessary, fair and not arbitrary. Detention in such circumstances must also be subject to prompt judicial oversight and, when the State justifies continued detention, must be subject to judicial oversight at reasonable intervals.<sup>157</sup>

169. In that regard, the Commission has elaborated upon the principle whereby immigration detention is to be the exception. It wrote that immigration policy must be premised on a presumption of liberty and not on a presumption of detention. Immigration detention is to be the exception and justified by the State as lawful and non- arbitrary.<sup>158</sup>

170. Similarly, the Court held that immigration detention should never have a punitive end and wrote the following:

In a democratic society punitive power is exercised only to the extent that is strictly necessary in order to protect fundamental legal rights from serious attacks that may impair or endanger them. The opposite would result in the abusive exercise of the punitive power of the State. Similarly, the Working Group on Arbitrary Detention sustained that right to personal liberty "requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need."<sup>159</sup>

171. As the Court has held, in order for a deprivation of liberty for immigration-related reasons not to be arbitrary, the detention must be done in accordance with the law, for a legitimate end and be suitable, necessary and proportional. Elaborating, the Court wrote the following:

without prejudice to the lawfulness of the detention, it is necessary to assess, in each case, the compatibility of the legislation with the Convention, understanding that such law and its application must respect the requirements listed below, in order to ensure that this measure is not arbitrary: i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention; ii) that the measures adopted are appropriate to achieve the sought-after

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<sup>155</sup> I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, paragraph 57; *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, paragraph 98.

<sup>156</sup> IACHR, Report No. 51/01 (Admissibility and Merits), Case 9903, *Rafael Ferrer-Mazorra et al.* (United States), April 4, 2001, paragraph 210, citing IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, paragraphs 134-142; ECHR, *Case of Winterwerp*, (1979) E.H.R.R. 387 and *Case of Amuur v. France*, (1996) 2 E.H.R.R. 553, paragraph 53.

<sup>157</sup> IACHR, Report No. 51/01 (Admissibility and Merits), Case 9903, *Rafael Ferrer-Mazorra et al.* (United States), April 4, 2001, paragraph 212. See also, UN, Human Rights Committee *A. v. Australia*, Communication No. 560/1993, CCPR/C/59/D/560/1993, April 30, 1997, paragraph 9.4

<sup>158</sup> IACHR, Admissibility and Merits Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al. (The Mariel Cubans) (United States)*. April 4, 2001, paragraphs 216-219.

<sup>159</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 170. There are citations.

purpose; iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. Hence, the Court has indicated that the right to personal liberty supposes that any limitation of this right must be exceptional; and, iv) that the measures are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought. Any restriction of liberty that is not based on a justification that will allow an assessment of whether it is adapted to the conditions set out above will be arbitrary and will thus violate Article 7(3) of the Convention.<sup>160</sup>

172. On the subject of collective detentions, the Court has held that

[p]rogrammed and collective arrests, which are not well-founded on the individualization of punishable acts and that lack judicial control, are contrary to the presumption of innocence, they wrongfully coerce personal liberty and they transform preventive detention into a discriminatory mechanism, reason for which the State may not perform them under any circumstance.<sup>161</sup>

173. The petitioners claimed that the alleged victims were deprived of their liberty, were not informed of a deportation proceeding against them or of the reasons why they were arrested; nor were the alleged victims immediately brought before a judge or competent authority who could examine the lawfulness of their detention. The State submitted no specific arguments on this point; instead it made reference to the three stages of the current repatriation process.

174. The Commission observes that based on the facts established, State agents, acting in violation of the Constitution of the Dominican Republic and the laws that apply to cases of repatriation, arbitrarily detained Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean. At the time of their arbitrary detention, no warrant from a competent authority had been issued for their arrest and no administrative or judicial proceedings had been instituted against them.

175. Furthermore, based on the information available, when they made the arrests the agents of the State failed to show a warrant for the alleged victims' arrest, did not inform them of the charges against them that were the grounds for their arrest, and did not provide them with any information suggesting that their legal status in the country was being questioned. Similarly, it has also been shown that the alleged victims were deprived of their liberty either on public thoroughfares or at their homes.

176. The Commission has taken as fact that following their detention, the alleged victims were not brought before a judge or any other authority who might corroborate the legality of their detention.

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<sup>160</sup> I/A Court H.R., *Case of Vélez Loo v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraph 166.

<sup>161</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, paragraph 96.

177. Consequently, the IACHR concludes that the State violated the right to personal liberty protected under Article 7 of the Convention, in relation to the obligation established in Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

**C. Right to protection of the family (Article 17 of the American Convention), read in conjunction with the obligation to respect rights without discrimination (Article 1(1) of the American Convention)**

178. Article 17 of the American Convention reads as follows:

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

179. In addition to the protection that the State must provide to the family as the natural and fundamental group unit of society under Article 17 of the American Convention, Article 9 of the Convention on the Rights of the Child provides that measures that separate a child from his family may be ordered in only the most exceptional circumstances and then only upon judicial review.<sup>162</sup>

180. In the Commission's view, the practice of expelling or deporting persons who have family ties in the country from which they are being expelled is one of the situations that most clearly captures the tension between the State sovereign power to determine who can enter and remain in the territory of a State, and the State's obligations to protect the family and children. The States must strike a balance, particularly in situations in which expulsion or deportation can represent an arbitrary interference in family life and affect the best interests of the child.

181. When it addressed this matter, the Commission held that when exercising the right to expel aliens, States must have regard to certain protections which enshrine fundamental values of democratic societies.<sup>163</sup> In that regard, the Commission observed that

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<sup>162</sup> The Dominican Republic ratified the Convention on the Rights of the Child on June 11, 1991. Article 9 of the Convention on the Rights of the Child provides that:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned..

<sup>163</sup> IACHR, Report No. 63/08, Case 12.534, *Andrea Mortlock* (United States), July 25, 2008, paragraph 78.

while the state undoubtedly has the right and duty to maintain public order through the control of entry, residence and expulsion of removable aliens, that right must be balanced against the harm that may result to the rights of the individuals concerned in the particular case. In this regard, the Commission has also received submissions alleging that the right to family life is not sufficiently taken into account in removal proceedings, particularly where the removal of long term permanent residents is at issue. Given the nature of Articles V, VI and VII of the American Declaration, interpreted in relation to Canada's obligations under the Convention on the Rights of the Child, where decision-making involves the potential separation of a family, the resulting interference with family life may only be justified where necessary to meet a pressing need to protect public order, and where the means are proportional to that end. The application of these criteria by various human rights supervisory bodies indicates that this balancing must be made on a case by case basis, and that the reasons justifying interference with family life must be very serious indeed.<sup>164</sup>

182. The Commission has commented that a reasoned judgment must be made that weighs the State's legitimate interest in protecting and advancing the general welfare against the basic rights of non-citizens, such as the right to a family life. As the Commission wrote, "immigration policy must guarantee to all an individual decision with the guarantees of due process; it must respect the right to life, physical and mental integrity, family, and the right of children to obtain special means of protection."<sup>165</sup>

183. With respect to the effects that deportation has on family life, the Commission wrote that the fact that persons subject to deportation proceedings are not permitted to present a reasonable defense in administrative and judicial courts and no account is taken of such humanitarian considerations as the length of time they have resided in the country, their family ties in the country, the potential harm that deportation could mean for that person's next of kin because of the separation it would inevitably occasion, the lack of ties in the country of origin, and other considerations, lead to a violation of rights such as the right to protection against arbitrary interference in the family, the right to protection of the family and protection of children.<sup>166</sup>

184. On this same point, the case law of the European Court has recognized that the deportation of a person from a country in which his next of kin reside can constitute arbitrary interference in that person's right to a family life. The European Court has held that if a deportation can interfere with the family, in a democratic society that measure must be necessary, i.e., dictated by some overriding social need and proportional to the legitimate end being sought. So the first issue to be examined is whether there is a family life. An individual's family life presupposes the existence of a family<sup>167</sup>.

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<sup>164</sup> IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, paragraph 166. Citing, generally, Eur. Ct. H.R., *Berrehab v. the Netherlands*, Ser. A No. 138, 11 E.H.R.R. 322 (1988) (finding that enforcement of national immigration policy is not sufficient to override the need for contact between parent and child); *Moustaquim v. Belgium*, Ser. A No. 193, 13 E.H.R.R. 802 (1991) (holding that the need to protect public security in light of criminal acts committed when applicant was a minor did not override the fact that applicant had resided for almost the entirety of his life in France, and that all of his immediate family were there); see also *Nasri v. France*, Ser. A No. 322-B (1995); *Beldjoudi v. France*, Ser. A No. 234-A (1992); *Chahal v. the United Kingdom*, Reports 1996-V p. 1831 (1996); *Gul v. Switzerland*, 22 E.H.R.R. 93 (1996).

<sup>165</sup> IACHR, Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz et al.* (United States), July 12, 2010, paragraph 50; see, in general, IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000.

<sup>166</sup> IACHR, Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz et al.* (United States), July 12, 2010, paragraph 48.

<sup>167</sup> Corte Europea de Derechos Humanos, *C. Vs. Bélgica*. 24 de junio de 1996, No. 35/1995/541/627, párr. 31; Véase, Corte Europea de Derechos Humanos, *Beldjoudi Vs. Francia*. Sentencia de 26 de marzo de 1992, No. 12083/86, párr. 74; Corte Europea de Derechos Humanos *Nasri Vs. Francia*, Sentencia de 13 de julio de 1995, No. 19465/92, párr. 41; Corte Europea de Derechos Humanos, *Boughanemi Vs. Francia*, Sentencia de 24 de abril de 1996, No. 22070/93, Rep. 1996-II, Fasc. 8, párr. 41; Corte Europea de Derechos Humanos, *Bouchelkia Vs. Francia*, Sentencia de 1 de enero de 1997, No. 230078/93, Rep. 1997-I, fasc. 28, párr. 48; Corte Europea de Derechos Humanos, *Boudjaidii Vs. Francia*, Sentencia de 26

185. The Human Rights Committee has held that under international law a State has the authority to deport a resident non-citizen in furtherance of a legitimate state interest, provided due consideration is given in the deportation proceedings to the deportee's family connections and the suffering that the deportation may cause within the family.<sup>168</sup>

186. For its part, the Inter-American Court has held that

[i]n principle, the family should provide the best protection of children against abuse, abandonment and exploitation. And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus. In this regard, "[r]ecognition of the family as a natural and fundamental component of society," with the right to "protection by society and the State," is a fundamental principle of International Human Rights Law, enshrined in Articles 16(3) of the Universal Declaration, VI of the American Declaration, 23(1) of the International Covenant on Civil and Political Rights and 17(1) of the American Convention.<sup>169</sup>

187. The Inter-American Court also observed that the Riad Guidelines state that

the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children [...] (twelfth paragraph). The State must also safeguard stability of the household, facilitating, through its policies, provision of adequate services for the families,<sup>170</sup> ensuring conditions that enable attainment of a decent life.<sup>171</sup>

188. That Court also held that the right of the family to be protected and to live as a family, recognized in Article 17 of the American Convention, means that the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus.<sup>172</sup>

189. In the instant case, the victims have described the adverse consequences that their uprooting has had on their life plan and family life, their difficulties in finding jobs and the economic

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...continuation

de septiembre de 1997, Rep. 1997-VI, fasc. 51, párr. 39; Corte Europea de Derechos Humanos, *Boujlifa Vs. Francia*, Sentencia de 21 de octubre de 1997, 122/1996/741/940, Rep. 1997-VI, fasc. 54, párr. 42.

<sup>168</sup> Human Rights Committee, *Stewart v. Canada*, Views of December 1996, Communication No. 538/1993, paragraph 12.10; see also Human Rights Committee, *Hendrick Winata and So Lan Li v. Australia*. Views of July 26, 2001, Communication No. 930/2000, paragraph 7.3.

<sup>169</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 66.

<sup>170</sup> Riyadh Guideline No. 13 provides that:

Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

<sup>171</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 67.

<sup>172</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 66; I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, paragraph 141; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, paragraph 157.

means necessary to survive and, in the case of the children, the obstacles they have encountered in pursuing their education. Another consequence of their arbitrary and unlawful expulsion is that the victims are afraid of returning to the Dominican Republic for fear they will be deported again.

190. The Commission considers that in the cases of Benito Tide Méndez, Berson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy and Rafaelito Pérez Charles, their expulsion, *ipso facto*, severed their ties to their nuclear family. In effect, the victims' expulsion left them unable to communicate with their families and broke up the family unit, which took a direct toll on the family dynamic and rolls. The expulsions of Berson Gelin and Andrea Alezy separated them from their children, who were minors at the time; the expulsion of Ana Lidia Sensión and Reyita Antonia Sensión separated them from their father. The Commission has taken as fact that Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión suffered great hardship just to be able to meet their basic needs and neither of the girls was able to continue her education.

191. While the Medina Ferreras family, the Fils-Aime family and the Jean family were expelled with the family unit intact, they found themselves in a foreign country without resources of any kind and without documentation, which had a direct effect on the children's ability to pursue their educations and on the economic and work-related activities of the family unit. In effect, the adult members of the two families were unable to find work to be able to feed and educate their children; for their part, the children were unable to continue their studies, to name just some of the hardships the two families endured.

192. Based on the foregoing, the Commission considers that the State violated the right to protection of the family, recognized in Article 17 of the American Convention, read in conjunction with the obligation to respect rights without discrimination, set forth in Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean, Nathalie Jean Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez y Teresita Méndez, Carolina Fils-Aime, William Gelin, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina, Antonio Sensión, Ana Dileidy Sensión, Maximiliano Sensión, Emiliano Mache Sensión, Analideire Sensión, Gili Sainlis, Jamson Gelin, Faica Gelin, Kenson Gelin, Jessica Jean, Víctor Manuel Jean.

**D. Right to humane treatment (Article 5 of the American Convention), read in conjunction with the obligation to respect rights without discrimination (Article 1(1) of the American Convention)**

193. Article 5 of the American Convention provides that

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

194. The Commission has written that inhuman treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable, and that "treatment or punishment of an individual may be degrading if he is severely

humiliated in front of others or he is compelled to act against his wishes or conscience.”<sup>173</sup> The Commission has also observed that for treatment to be ‘inhuman or degrading’ it has to attain a minimum level of severity. The evaluation of this ‘minimum’ level is relative and depends on the circumstances in each case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and health of the victim,<sup>174</sup> his race, color, nationality, immigration status, and other factors.

195. The Inter-American Court, for its part, has held that degrading treatment is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance.<sup>175</sup> As the Court wrote, the degrading aspect of the treatment is exacerbated by the vulnerability of a person who is unlawfully detained.<sup>176</sup>

196. In general terms, the Court has held that a person who has been illegally detained is in a state of greater vulnerability and therefore exposed to the potential risk that other rights might be violated as well, such as the right to humane treatment and to be treated with respect for one’s dignity.<sup>177</sup>

197. As for the physical integrity of persons deprived of liberty, the Commission has written that

[...] the State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment. [...] All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights.<sup>178</sup>

198. Similarly, the European Court has held that

the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of

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<sup>173</sup> IACHR, Merits Report No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, paragraph 77, citing the European Commission on Human Rights, *The Greek Case*, 1969, 12 *Y.B. Eur. Conv.on H.R.* 12 [hereinafter “the Greek case”] 186. See also, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), paragraph 156.

<sup>174</sup> IACHR, Merits Report No. 35/96, Case 10.832, *Luis Lizardo Cabrera (Dominican Republic)*. February 19, 1998, paragraph. 78, citing European Court of Human Rights, *Ireland v. United Kingdom*, paragraphs 162-163. See also, IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc 5 rev. 1 corr. (2002), paragraph 157.

<sup>175</sup> I/A Court of Human Rights, *Case of Loayza Tamayo v. Peru*. September 19, 1997, Series C N° 33, paragraph 57.

<sup>176</sup> I/A Court of Human Rights, *Case of Loayza Tamayo v. Peru*. September 19, 1997, Series C N° 33, paragraph 57, citing the European Court of Human Rights, *Ribitsch v. Austria*, Judgment of December 4, 1995, Series A No. 336, paragraph 36.

<sup>177</sup> I/A Court H.R., *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, paragraph 119; *Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, paragraph 104; *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paragraph 96. ECHR, *Case of Ireland v. the United Kingdom*. Judgment of January 18, 1978, Series A No. 25. paragraph 167.

<sup>178</sup> IACHR, Report No. 41/99 (Merits), Case 11.491, *Minors in Detention (Honduras)*, March 10, 1999, paragraphs 135 and 136.

suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured [...] <sup>179</sup>.

199. On this specific point, the Inter-American Court has maintained that

detention conditions where prison facilities are overcrowded, inmates are subject to isolation in a small cell, with no ventilation or natural light, without beds for resting and without adequate hygiene, and suffering lack of communication or restrictions to visits, constitute a violation to humane treatment. <sup>180</sup>

200. The Court wrote the following concerning isolation of detained persons:

prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person ... <sup>181</sup>.

201. The United Nations Committee against Torture observed the following with respect to the situation of persons undergoing deportation:

[a] deportation [...] effected under an administrative procedure [...] without the intervention of a judicial authority and without any possibility for the [detainee] to contact his family or his lawyer [...] meant that a detainee's rights had not been respected and [he] had [been] placed in a situation where he was particularly vulnerable to possible abuse. <sup>182</sup>

202. The petitioners asserted that the victims had suffered degrading and inhumane treatment in the form of the discrimination they endured, the confiscation and destruction of their identification documents, and by being driven from their homes and expelled from Dominican territory. The State did not present any rebuttal arguments that went specifically to this point.

203. For a proper analysis, the situation of the victims and that of their family members will be addressed separately.

### 1. Analysis of the direct victims

204. The Commission has established that the victims in this case were unlawfully and arbitrarily arrested and that while in custody they received no food, water or medical attention. Specifically, the Commission observes that Benito Tide Méndez was beaten by State agents; the Medina Ferreras family was forced to walk approximately two kilometers and was held in custody in a place that had no toilets and was in filthy condition; the Fils-Aime family was forced to ford a river

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<sup>179</sup> ECHR, *Case of Mcglinchey and Others v. The United Kingdom*. Judgment of April 29, 2003, paragraph 46.

<sup>180</sup> I/A Court H.R. *Case of García Asto and Ramírez Rojas v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, paragraph 221; *Case of Raxcacó Reyes v. Guatemala*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 133, paragraph 95; *Case of Fermín Ramírez v. Guatemala*. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, paragraph 118. See also, UN, Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Rules 10 and 11.

<sup>181</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph 156.

<sup>182</sup> UN, Committee against Torture, *Josu Arkauz Arana v. France*, Communication No. 63/1997, November 9, 1999, paragraph 11.5.

at night, and Mrs. Nolasco and her daughters were kept aboard a truck for two or three days. The Commission has also taken as fact that the victims were unable to contact their immediate family members or other relatives to advise them of their arrest and expulsion. Mr. Tide Méndez stated that as a result of his expulsion, he was separated from his family and feared that state agents would expel him again, especially because of the petition filed with the inter-American system of human rights; he added that the fear had very severe psychological effects.

205. The Commission notes, too, that during their detention, the victims were subjected to verbal abuse by the State agents, through comments such as "Are there anymore blacks in there?"<sup>183</sup> or "Go back to your country, bastard!"<sup>184</sup> Such treatment, combined with the uncertainty regarding the reasons for the arrest, the fact that they were not brought before a competent authority and their ultimate expulsion had a profound impact on the victims' mental integrity.

206. As for the petitioners' allegations that the victims were subjected to inhuman and degrading treatment as a consequence of the confiscation, withholding and destruction of their identification documents, the Commission takes the following as fact: i) that Mr. Benito Tide Méndez showed his Dominican birth certificate, only to have it destroyed by one of the immigration officers; ii) that a soldier destroyed the photocopies of the Dominican identification document and birth certificate of Mr. William Medina Ferreras when he was taken into custody; iii) that the safe-conducts issued to Mr. Jeanty Fils-Aime and Mr. Berson Gelin pursuant to the provisional measures ordered by the Inter-American Court were destroyed in 2005 when they were shown to Dominican officials.

207. The arbitrary and deliberate destruction of identification documents by State authorities is part of a broader context of discrimination to which Haitians and Dominicans of Haitian descent are subjected in the Dominican Republic. In some cases, identification documents are destroyed in order to strip an individual of his legal status or legal capacity; in other cases, the purpose is to break the bond of nationality that links the individual with the State, in the mistaken belief that if he is undocumented he becomes, *de facto*, deportable. The fact that the confiscation or destruction of identification documents has consequences like those just described inevitably leads to mental or psychological suffering which, given the situation of Haitians and Dominicans of Haitian descent cannot be justified and inflicts terrible humiliation by refusing to recognize them as subjects of laws.

208. The Commission therefore considers that the Dominican authorities' destruction of the identification documents of Benito Tide Méndez, William Medina Ferreras, and the safe-conducts of Jeanty Fils-Aime and Berson Gelin, constitutes inhumane and degrading treatment.

209. Based on the foregoing, the Commission finds that the State violated the right to humane treatment and the prohibition against cruel, inhuman and degrading treatment recognized in Articles 5.1 and 5.2 of the American Convention, read in conjunction with the obligation to respect rights without discrimination, set forth in Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi

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<sup>183</sup> **Annex 12.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Annex AA of the observations on the merits that the petitioners presented on April 16, 2009.

<sup>184</sup> **Annex 16.** Sworn statement given by Janise Midi in the presence of the Human Rights Clinic of Columbia University School of Law on January 13, 2001. Attachment to the representatives' observations of January 30, 2002. Annex AJ of the observations on the merits that the petitioners presented on April 16, 2009.

Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean, Nathalie Jean.

## 2. Analysis regarding the victims' next of kin

210. The Commission observes that the next of kin who remained in the Dominican Republic also suffered the anguish of not knowing the whereabouts of their expelled family members. The effect of the victims' expulsion was to sever family bonds and break up the family unit and adversely affected the normal development of family relations, even for the new members of the family. In some cases, the family was reunited within a matter of days, as happened in the case of Mrs. Alezy; in other cases, the separation lasted as long as 8 years, as in the case of the Sensión family.

211. The European Court held that the right to humane treatment was violated in the case of the mother of a deported child because of the anguish and anxiety she suffered as a result of her son's detention and the authorities' subsequent failure to inform her of the deportation.<sup>185</sup> In another case, the European Court also held that the suffering caused to a mother because of the authorities' refusal to provide detailed information concerning her child's whereabouts after the child was apprehended by police in her presence, constituted a violation of the right to humane treatment.<sup>186</sup>

212. In the particular case of Mrs. Carmen Méndez, she described the suffering she experienced during the period when she had no idea of her son's whereabouts, no idea how he would ever get back if he had never been to Haiti, or whether he was dead or alive; she observed that "those deportations were very aggressive and brutal acts."<sup>187</sup> For his part, Antonio Sensión said that the authorities refused to provide him with any information concerning his family's whereabouts and that he had to make several trips before he was reunited with them; this caused him great anxiety, the loss of several days of work and significant expense.

213. Based on the above considerations, the Commission finds that the State violated the right to human treatment recognized in Article 5 of the American Convention, and the right to protection of the family recognized in Article 17 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez y Teresita Méndez, Carolina Fils-Aime, William Gelin, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina, Antonio Sensión, Ana Dileidy Sensión, Maximiliano Sensión, Emiliano Mache Sensión, Analideire Sensión, Gili Sainlis, Jamson Gelin, Faica Gelin, Kenson Gelin, Jessica Jean, Víctor Manuel Jean.

### E. Right to recognition as a person before the law and the right to nationality (articles 3 and 20 of the American Convention), read in conjunction with the principle of equality before the law (Article 24 of the American Convention) and the obligation to respect rights without discrimination (Article 1(1) of the American Convention)

<sup>185</sup> ECHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*. Ref.: 13178/03. Judgment of October 12, 2006.

<sup>186</sup> ECHR, *Kurt v. Turkey*. Case No. 15/1977/799/1002. Judgment of May 25, 1998, paragraph 134.

<sup>187</sup> **Annex 3.** Statement by Benito Tide Méndez. Annex J of the Addendum to the original petition that the petitioners presented in 2002. Annex V of the observations on the merits that the petitioners presented on April 16, 2009. **Annex 59.** Testimony of Carmen Méndez. Annex V of the observations on the merits that the petitioners presented on April 16, 2009.

214. Article 3 of the American Convention reads as follows:

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

215. Article 20 of the American Convention provides 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.

216. Article 24 of the American Convention reads as follows:

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

217. Article 3 of the American Convention provides that every person has the right to recognition as a person before the law, a fundamental prerequisite for the enjoyment of all other basic freedoms, as it gives every individual standing before the law. The right to recognition as a person before the law has several dimensions: the capacity to exercise and enjoy rights; to undertake obligations and to bring legal action. In the *travaux préparatoires* of the Universal Declaration of Human Rights (hereinafter the "Universal Declaration") it was established that this right guarantees "to every human being the right to exercise rights, to enter into contractual obligations, and to be represented in actions at law."<sup>188</sup> Also, it was written that the phrase *personalité juridique* "covers those fundamental rights relating to the 'legal capacity' (legal status) of a person, which are not explicitly mentioned in the subsequent articles of the Declaration."<sup>189</sup>

218. In effect, Article 3 of the Convention upholds the principle that every person must be recognized as a subject of laws based solely on one's condition as a human being. Here, the Inter-American Court has held that:

every human person is endowed with juridical personality, which imposes limits to State power. The juridical capacity varies in virtue of the juridical condition of each one to undertake certain acts. Yet, although such capacity of exercise varies, all individuals are endowed with juridical personality. Human rights reinforce the universal attribute of the human person, given that to all human beings correspond likewise the juridical personality and the protection of the Law, independently of her existential or juridical condition.<sup>190</sup>

219. As the Court wrote, Article 3 of the Convention must be interpreted as a function of Article XVII of the American Declaration of the Rights and Duties of Man, which reads as follows: "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 juridical personality means that one can be the

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<sup>188</sup> IACHR, Report No. 712/04, Merits, Case 12,527. Renato Ticona Estrada *et al. v. Bolivia*, paragraph 103, citing Richard B. Lillich, "Civil Rights", in Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press Oxford, 1988, p. 131.

<sup>189</sup> IACHR, Report No. 712/04, Case 12,527, Renato Ticona Estrada *et al. v. Bolivia*, paragraph 103, citing Richard B. Lillich, "Civil Rights", in Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press Oxford, 1988, p. 131.

<sup>190</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 34. See also, IACHR, Report No. 712/04, Case No. 12.527 (Merits), *Renato Ticona Estrada et al. (Bolivia)*, October 26, 2006, paragraph 104.

*titulaire* of rights (capacity to enjoy rights) and obligations; violation of the right to legal personality implies a repudiation of any possibility that a person might be the *titulaire* of such rights and obligations.<sup>191</sup>

220. The Commission wrote the following in this regard:

The right to juridical personality is essential to the enjoyment of all basic freedoms, as this right confers recognition as a person before the law. A person can enjoy his lawful rights and duties only if he has the legal capacity to be considered a person or a human being<sup>192</sup>.

221. The Court has written that the right to nationality has a dual aspect:

[t]he right to a nationality provides the individual with a minimum measure of legal protection in international relations, through the link his nationality establishes between him and the State in question; and second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all his political rights as well as of those civil rights that are tied to the nationality of the individual.<sup>193</sup>

222. The Court also wrote that the right to nationality, as the political and legal bond that connects a person to a specific State, allows the individual to acquire and exercise rights<sup>194</sup> and is a fundamental, non-derogable right recognized in the American Convention.<sup>195</sup> Thus, the right to nationality carries with it a corresponding obligation incumbent upon the State with which that bond is established, which is to provide the individual with a minimal measure of legal protection in international relations, and the obligation to protect the individual against arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all his political rights as well as of those civil rights that are tied to the individual's nationality.<sup>196</sup> Specific protections must

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<sup>191</sup> I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, paragraph 179.

<sup>192</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, July 11, 2003, paragraph 176, citing Manfred Nowak, U.N. *Covenant on Civil and Political Rights*: CCPR Commentary, 282.

<sup>193</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 74, paragraph 87; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C N° 52, paragraph 100; *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paragraph 34.

<sup>194</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 137.

<sup>195</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 136; *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paragraph 119; *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 244.

<sup>196</sup> I/A Court H.R., *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4 of January 19, 1984. Series A No. 4, paragraph 34; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, paragraph 100, I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 139.

be accorded to children; for example, they cannot be arbitrarily separated from their families or unlawfully transferred to another State and not returned.<sup>197</sup>

223. The Court has also held that a State still has the authority to determine who its nationals are. However, the discretion with which it exercises that authority is constantly being narrowed as international law evolves, all in order to better protect the individual from the arbitrary excesses of States. Thus, at the current stage of development of international human rights law, that power of the State is limited by, on the one hand, its obligation to provide individuals with the equal and effective protection of the law, without discrimination, and, on the other hand, its duty to prevent, avoid and reduce statelessness.<sup>198</sup>

224. The General Assembly of the Organization of American States noted that the “recognition of the identity of persons is one of the means through which observance of the rights to legal personhood, a name, a nationality, civil registration, and family relationships is facilitated, among other rights recognized in international instruments, such as the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.” It also observed that “non-recognition of identity can mean that a person has no legal proof of his or her existence, which makes it difficult to exercise fully his or her civil, political, economic, social, and cultural rights.” The Inter-American Juridical Committee wrote that “the right to identity is consubstantial to the attributes and human dignity. Consequently it is an enforceable basic human right *erga omnes* as an expression of a collective interest of the overall international community that does not admit derogation or suspension in cases provided in the American Convention on Human Rights.”<sup>199</sup>

225. For its part, the European Commission on Human Rights has written that “[a] State’s denial of citizenship combined with the issuance of an expulsion order may create a presumption that the purpose of the denial was to achieve the expulsion of a citizen.”<sup>200</sup>

226. Finally, on the subject of the right to equality and non-discrimination, the Commission and the Inter-American Court have repeatedly maintained that the right to equality and nondiscrimination is the central, basic axis of the inter-American human rights system.<sup>201</sup> The Commission has observed that there are a number of concepts of the right to equality and non-discrimination.<sup>202</sup> One concept is the prohibition against an arbitrary difference in treatment –with

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<sup>197</sup> Convention on the Rights of the Child, Article 11, and Inter-American Convention on the International Return of Children, Article 4. I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paragraph 128.

<sup>198</sup> See, *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, Convention on the Rights of the Child, Article 7(12), and International Covenant on Civil and Political Rights, Article 24(3).

<sup>199</sup> See, *inter alia*, OAS, “Inter-American Program for a Universal Civil Registry and “the Right to Identity.” Resolution AG/RES. 2286 (XXXVII-O/07) of June 5, 2007; resolution AG/RES. 2362 (XXXVIII-O/08) of June 3, 2008, and resolution AG/RES. 2602 (XL-O/10) of June 8, 2010 on the follow-up of the program. Here, the Inter-American Juridical Committee observed that while the American Convention on Human Rights does not establish a right to identity by that name expressly, as has been pointed out, it does protect the right to a name, the right to nationality and the right to protection of the family. See in this regard, Inter-American Juridical Committee, Opinion “on the scope of the right to identity”, resolution CJI/doc. 276/07 rev. 1 of August 10, 2007, paragraphs. 11.2, 12 and 18.3.3, ratified by resolution CJI/RES.137 (LXXI-O/07) of August 10, 2010.

<sup>200</sup> European Commission on Human Rights, *X v. Federal Republic of Germany*, Appl. 3745/68, 31 Collection of Commission’s Decisions 107, 110.

<sup>201</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 74.

<sup>202</sup> See, *inter alia*, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 80.

difference in treatment understood as distinction, exclusion, restriction or preference<sup>203</sup> while another concerns the obligation to create conditions of real equality for groups that have been historically excluded and are at greater risk of becoming victims of discrimination.<sup>204</sup> The Commission understands that although both views may be present in certain cases, each warrants a different response from the State and different treatment under the American Convention.<sup>205</sup> To this must be added the fact that under the different concepts of the right to equality, a State's actions and omissions may be with respect to rights recognized in the American Convention or they may be with respect to any undertaking of the State that does not affect the enjoyment of Convention-protected rights.<sup>206</sup>

227. The Commission has written the following with respect to the principle prohibiting an arbitrary difference in treatment:

While the doctrine of the inter-American human rights system, like that of other human rights regimes, does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, it requires at base that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought.<sup>207</sup> Distinctions based on grounds explicitly enumerated under pertinent articles of international human rights instruments are subject to a particularly strict level of scrutiny whereby states must provide an especially weighty interest and compelling justification for the distinction.<sup>208</sup>

228. Thus, the IACHR has already held that in order for a restriction based on race or national origin to be justified, it must be based on very compelling reasons and the burden of proof rests with the State. Hence, when a restriction is premised on a "suspect category," the Commission accepts the "reversal of the burden of proof" and the "presumption of invalidity."<sup>209</sup>

229. Strict scrutiny serves to guarantee that the distinction is not based on the prejudices and/or stereotypes that generally surround suspect categories of distinction.<sup>210</sup> In practical terms, this means that when a situation of this nature presents itself, the burden of proof is on the State

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<sup>203</sup> See, *inter alia*, UN, General Comment No. 18, General Comments adopted by the Human Rights Committee, Non-discrimination, 37th session, U.N. Doc. HRI/GEN/1/Rev.7 at 168 (1989), paragraph 7; I/A Court H.R., *Judicial Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraph 92; IACHR, *Fourth Progress Report of the Rapporteurship on the Rights of Migrant Workers and Their Families in the Hemisphere*, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, Annual Report of the IACHR 2002, March 7, 2003, paragraph 87.

<sup>204</sup> See, *inter alia*, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 80.

<sup>205</sup> See, *inter alia*, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 80.

<sup>206</sup> See, *inter alia*, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 80.

<sup>207</sup> See, *inter alia*, IACHR, Report No. 51/01, Case 9903, *Ferrer-Mazorra et al.* (United States), Annual Report of the IACHR 2000, OEA/Ser.L/V/II.111, doc. 20, rev., April 16, 2001, paragraph 238.

<sup>208</sup> See, *inter alia*, IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 338, citing, *inter alia*, Repetto, Inés, Supreme Court of Justice (Argentina), November 8, 1988, Justices Petracchi and Baqué, paragraph 6; *Loving v. Virginia*, 388 US 1, 87 (1967), ECHR, *Abdulaziz v. United Kingdom*, Judgment of May 28, 1985, Series A No. 94, paragraph 79.

<sup>209</sup> See, *inter alia*, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II.doc.68, January 20, 2007, paragraph 87..

<sup>210</sup> See, *inter alia*, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 88.

and the general criteria are evaluated carefully. Thus, it is not sufficient for a State to argue the existence of some legitimate end; instead the purpose that is served by making the distinction must be some overriding or imperative public interest.<sup>211</sup> It is not sufficient that the measure be suitable or that some logical relationship of causality exists between the measure and the end being sought, in the sense that there is no other less restrictive measure.<sup>212</sup> To meet the proportionality test, the State must be able to show that a proper balance of interests has been struck between what has been sacrificed and what has been gained.<sup>213</sup>

230. As for the obligation to create conditions of real equality, the IACHR has indicated that an examination of laws and policies based on the principle of effective equality and non-discrimination also includes the potential discriminatory impact of those measures, even when their formulation seems at first glance neutral or they apply to everyone without distinction.<sup>214</sup>

231. With specific reference to the relationship between the right to equality and non-discrimination and the right to nationality, the Court wrote that there is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination, and this connection must permeate everything the State does. The State cannot act against a certain group of persons, whether for reasons of gender, race, color, language, religion or beliefs, political or any other opinion, national, ethnic or social origin, nationality, age, economic circumstance, property, civil status, birth, or any other condition.<sup>215</sup>

232. For its part, the Committee on the Elimination of Racial Discrimination has written that “deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin is a breach of States’ obligations to ensure non-discriminatory enjoyment of the right to nationality,”<sup>216</sup> and that “in some cases denial of citizenship for long-term or permanent residents could result in

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<sup>211</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraphs 80 and 83; IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 338; IACHR, Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, paragraph 36; IACHR, *Annual Report 1999, Considerations regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI; ECHR, *Salgueiro da Silva Mouta v. Portugal*, Application No. 33290/96, December 21, 1999, paragraph 29; *Belgian Linguistics (Merits)*, Judgment of July 23, 1968, p. 34; *Lustig-Prean y Beckett v. United Kingdom*, Applications Nos. 31417/96 and 32377/96, September 27, 1999, paragraph 80; *Smith and Grady v. United Kingdom*, Applications Nos. 33985/96 y 33986/96, September 27, 1999, paragraph 87.

<sup>212</sup> IACHR, Report No. 38/96, *X and Y* (Argentina), October 15, 1996, paragraph 74; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 83. See also, ECHR, *Karner v. Austria*, Application No. 40016/98, 24 July 2003, paragraph 41; *Salgueiro da Silva Mouta v. Portugal*, Application No. 33290/96, 21 December 1999, paragraph 29; *Belgian Linguistics (Merits)*, Judgment of July 23, 1968, p. 34.

<sup>213</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Karen Atala and Daughters v. Chile*, September 17, 2010, paragraph 89.

<sup>214</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, paragraph 58; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 90; I/A Court H.R. *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 141. CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination. United States, CERD/C/USA/CO/6, May 8, 2008, paragraph 10 (“[T]he Committee notes that indirect, or de facto,– discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”)

<sup>215</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, paragraph 95.

<sup>216</sup> CERD, General Recommendation XXX, *Discrimination against non citizens*, 65th session (2005), paragraph 14.

creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles."<sup>217</sup>

233. Regarding the situation in the Dominican Republic, the United Nations Independent Expert on Minority Issues said that she considered

[...] persons of Haitian heritage living in the Dominican Republic to be persons belonging to a minority group with rights as elaborated in the 1992 Declaration on the Rights of Minorities. They have that status regardless of whether they are duly recognized as citizens by the Dominican Republic or not. It is now recognized that the obligation of States with respect to the rights of minorities is not limited solely to its citizens. Non-citizens, including migrants, may under circumstances such as those in the Dominican Republic make legitimate claims to government to respect and protect their rights as minorities. States owe a duty to respect, protect and promote the full panoply of human rights of all within their territory with only a few limitations attaching to the status of non-citizens (certain political rights, access to public service, consular protection, the right to enter and remain in the country). Of critical importance is the right to non-discrimination on prohibited grounds as it applies to nationality. Once citizenship is acquired, it cannot be arbitrarily withdrawn collectively on the basis of minority status or national origin.<sup>218</sup>

234. The petitioners alleged that the Dominican authorities keep Dominicans of Haitian origin locked in undocumented status by repeatedly refusing to issue their legal documentation; they have also alleged that the actions taken by the Dominican authorities stripped the victims of their nationality, converting them into stateless persons. The State did not present any specific arguments on this point.

235. The situation of Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión Rafaelito Pérez Charles, Miguel Jean, Victoria Jean and Nathalie Jean, who were Dominican nationals and had the appropriate documentation, should be distinguished from that of Jeanty Fils-Aime, Nene Fils-Aime, Fiane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime and Berson Gelin who, although born on Dominican soil –a country that subscribes to the principle of *jus soli*- did not have the documents that certified them to be Dominican nationals.

236. The Commission believes that recognition of a person's standing before the law has a factual aspect, which are the particulars that comprise a person's civil status, such as his name, age, place of birth, parentage, nationality and the like; it also has a legal or juridical aspect, which are the documents that enable one to prove one's name, age, and so forth. In fact, access to basic services like housing, education, access to justice and, in general, the exercise and enjoyment of one's civil, political, social, economic and cultural rights require that persons be able to prove their identity and their legal personality. Renting or purchasing a home, finding a job, or attending school become problematic without the documentation needed to prove one's identity; and without such documents, it would be very difficult indeed to file a complaint with the police, the government or the courts, or to go to a consulate or embassy for some service.

237. Based on the context, the statements made by the victims and the documentation supplied by the State itself, the Commission has taken as fact that Benito Tide Méndez, William

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<sup>217</sup>. CERD, General Recommendation XXX, *Discrimination against non citizens*, 65th session (2005), paragraph 15.

<sup>218</sup> **Annex 45.** UN, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to the Dominican Republic, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, paragraph 103. Annex B of the observations on the merits presented by the petitioners on April 16, 2009.

Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Miguel Jean, Victoria Jean and Nathalie Jean were Dominican nationals and had the necessary documentation to so certify. However, during their arbitrary arrest and expulsion, the victims never had an opportunity to present that documentation; in those cases where the documentation was presented, it was destroyed by the Dominican officials. The Commission observes that the destruction of the victims' identification documents deprived them of the means to prove their physical existence and legal personality. This, combined with the fact that they were expelled to a country with which they had no link whatever, posed additional problems obstructing their ability to apply for new documents to prove their identity. Furthermore, Benito Tide Méndez encountered numerous obstacles and added requirements in his efforts to obtain new documents and was ultimately denied those documents on the grounds that he was under investigation.

238. On the other hand, the Dominican authorities' refusal to register Jeanty Fils-Aime, Nene Fils-Aime, Fiane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin and Víctor Jean shut them out of the State's justice system and institutions by refusing to even recognize their very existence as subjects of law. Their right to be recognized as persons before the law was thus violated.<sup>219</sup>

239. The Commission considers that these practices not only complicate the State's control of immigration, but also violate domestic laws that allow detention to be extended when a person does not have on his person his passport or other document needed to travel. These practices leave the victims in a position of extreme vulnerability and jeopardy, as they are being placed in a position in which they have no way to prove their physical or legal existence; these practices also render the victims unable to exercise their rights and expose them to abuse by authorities of the State and private persons.

240. In the instant case, the State's failure to register children born in Dominican territory and its destruction or refusal to return the victims' legal papers had the effect of denying Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Víctor Jean, Miguel Jean, Victoria Jean and Nathalie Jean their existence in a world of laws. Thus, they were not persons, but instead reduced to mere objects in the eyes of the law. These practices placed the victims in a situation of extreme peril as their effect was to deny the victims their enjoyment and exercise of their rights and the legal standing required in order to turn to the judicial system for protection.

241. As previously observed, States are authorized to regulate the scope and application of rights, including the right to nationality. Nevertheless, the restrictions or requirements established to obtain nationality must be governed by strict principles such as necessity and proportionality; in other words, the restrictions must be calculated to serve a compelling public interest and must be proportional to the interest that necessitates them. These restrictions must also be prescribed by law, are not to be discriminatory and must serve some legitimate end. They cannot result in an arbitrary deprivation of nationality.<sup>220</sup>

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<sup>219</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, June 11, 2003, paragraph 180.

<sup>220</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, June 11, 2003, paragraph 51.

242. The Commission has taken the following as fact: obstacles make it difficult to register children born in the Dominican Republic of Haitian descent; there are problems associated with the interpretation of the clause on aliens "in transit"; the irregular immigration status of parents is passed on to children born on Dominican soil. Registry is necessary to ensure one's recognition as a person before the law and one's enjoyment of the fundamental rights recognized in the Convention.<sup>221</sup> The Commission has previously observed that "[b]irth registration is a fundamental right. It not only gives a child a recognized legal existence and identity, it is the sign that the child 'belongs' to a family, a community and a nation. It shows that a child has a place, and a stake in all three. It opens the door to other rights, such as access to health and education services, offers protection against discrimination and neglect, determines a child's treatment in the justice system, and lasts a lifetime - guaranteeing the individual's right to take their [sic] place in the social and political life of their [sic] country."<sup>222</sup>

243. The Commission recalls the Court's finding to the effect that: a) a person's immigration status cannot be a condition for the State to grant nationality, because immigration status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights; b) a person's immigration status is not transmitted to the children, and c) the fact that a person was 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.<sup>223</sup>

244. Furthermore, with respect to the laws in force in the Dominican Republic, the Court observed that irrespective of the classification used, the time period that the State establishes to qualify a person as being "in transit" must be reasonable and must reflect the fact that an alien who develops ties in a State cannot be equated with a transient person or person in transit.<sup>224</sup>

245. The Commission observes that from the established context and the laws and practices of the Dominican Republic at the time of the events, Haitian immigrants had to contend with a number of obstacles preventing them from legalizing their status in the country and registering their children born on Dominican soil. The Commission considers that despite the fact that the State follows the principle of *ius soli*, the impediments to conferring nationality upon persons born on Dominican soil constitute an arbitrary deprivation of nationality which fosters the detention and possible deportation of Dominican nationals –which is expressly prohibited under Article 22(5) of the American Convention- and exposes the victims to extreme peril and vulnerability.

246. The Commission notes that the State has not supplied any information that denies the practice of destroying documents or the obstacles to registering children of Haitian descent born in Dominican territory. The Commission also observes that the State has not supplied information regarding the criteria that the authorities use to detain persons taken into custody during roundups or sweeps or immigration control operations; nor does it indicate that it has done an in-depth

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<sup>221</sup>UN, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: Nicaragua. CRC/C/15/Add.36 (Ninth Session, 1995), paragraph 16.

<sup>222</sup> IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, July 11, 2003, paragraph 179. See, also, IACHR, *Report on the situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc 49, rev. 1, October 7, 1999, paragraphs 363 and 364.

<sup>223</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 156.

<sup>224</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 157.

examination of the situation of each of the victims, and does not specify what determining factors were used as justification to deprive or deny the victims in this case of their Dominican nationality.

247. Given the foregoing, and because documents proving nationality were either destroyed by agents of the State or could not be presented, Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Miguel Jean, Victoria Jean and Nathalie Jean were *de facto* arbitrarily deprived of their nationality. On the other hand, Jeanty Fils-Aime, Nene Fils-Aime, Fiane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin and Víctor Jean were adversely affected by a State policy that made it difficult to register children of Haitian descent born on Dominican soil. As a result of these circumstances, and despite the fact that they were Dominican nationals, these victims were expelled from Dominican territory and prevented from returning to arrange for documents to replace their original identification documents.

248. In conclusion, the Commission observes that by virtue of Dominican law and through the practices in which the State engages, Dominicans of Haitian descent are being arbitrarily deprived of their nationality because of obstacles calculated to prevent them from being registered or because the documents certifying their Dominican citizenship are being destroyed. This is a widespread practice targeted specifically at persons of Haitian origin or descent and persons whose skin color is darker. The Commission again makes the point that race and national origin are “suspect categories” of distinction and therefore subject to stricter control and scrutiny.

249. In this case, while domestic law does not contain express provisions prejudicial to Haitian persons and Dominicans of Haitian descent, it is also true that the way in which the law is interpreted and applied has a discriminatory impact against this element of the population. Furthermore, in response to these allegations and considering the standard of proof explained above, the State has failed to show that the State authorities are not taking skin color or presumed national origin into account when decisions are made concerning the conferral of nationality.

250. Based on the foregoing, the Commission concludes that the State violated the right to legal personality and the right to nationality recognized in articles 3 and 20 of the American Convention, read in conjunction with the obligation to respect rights without discrimination and the principle of equality and non-discrimination, established in articles 1(1) and 24 of the Convention, to the detriment of Benito Tide Méndez, William Medina Ferreras, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Jeanty Fils-Aime, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Juan Fils-Aime, Andren Fils-Aime, Berson Gelin, Víctor Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

**F. Freedom of movement and residence (Article 22 of the American Convention), read in conjunction with the principle of equality before the law (Article 24 of the American Convention) and the obligation to respect rights without discrimination (Article 1(1) of the American Convention)**

251. The relevant parts of Article 22 of the American Convention read as follows:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
9. The collective expulsion of aliens is prohibited.

252. The right to residence, the rule prohibiting the exile of nationals from their own State and the prohibition of the collective expulsion of aliens are established in the Universal Declaration of Human Rights,<sup>225</sup> in the American Declaration of the Rights and Duties of Man,<sup>226</sup> in the International Covenant on Civil and Political Rights,<sup>227</sup> in Protocol 4 of the European Convention on Human Rights,<sup>228</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>229</sup> and elsewhere.

253. The Commission has maintained that collective expulsions are manifestly contrary to international law.<sup>230</sup> The Rapporteurship on the Rights of Migrant Workers and Their Families has written that although the international instruments do not contain a specific definition of 'collective expulsion', it argues that expulsions become collective when the decision to expel is not based on individual cases but on group considerations, even if the group in question is not large. Therefore, given the prohibition established in Article 22(9) of the Convention, States have an obligation to examine, justify and decide each expulsion or deportation on an individual, case-by-case basis.

254. The Commission has also held that collective expulsions involve multiple violations of the human rights of immigrant persons. The summary manner in which collective expulsions are conducted is such that Dominican nationals, residents or persons in need of international protection –many of whom are children- also end up being expelled. Given these circumstances, the Commission observes that the practice of large-scale expulsions is not just a violation of the prohibition against collective expulsions of aliens (Article 22(9) of the American Convention), but could also be violations of the following: i) the right of every person who is lawfully in the territory of a State to move about in it and to reside in it subject to the provisions of the law (Article 22(1) of the American Convention); ii) the right of every person not to be expelled from the territory of the state of which he is a national or be deprived of the right to enter it (Article 22(5) of the American Convention); iii) the right of aliens who are lawfully within the territory of a state to be expelled from it only pursuant to a decision reached in accordance with the law (Article 22(6) of the American Convention);<sup>231</sup> iv) the right to seek and receive asylum and the principle and right of *non-refoulement* (articles 22(7) and 22(8) of the Convention); v) the right to due process (Article 8(1)); vi) the right of access to judicial remedies and guarantees (Article 25);<sup>232</sup> vii) the right to a

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<sup>225</sup> Universal Declaration of Human Rights, articles 9, 13.1 and 13.2.

<sup>226</sup> American Declaration of the Rights and Duties of Man, Article VIII.

<sup>227</sup> International Covenant on Civil and Political Rights, articles 12 and 13.

<sup>228</sup> European Convention on Human Rights. Protocol 4, articles 2, 3 and 4.

<sup>229</sup> International Convention on the Elimination of All Forms of Racial Discrimination, articles 5 and 12.

<sup>230</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2000, paragraph 97.5.

<sup>231</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1999: Progress Report of the Office of the Rapporteur on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.106 Doc. 3, April 13, 2000, paragraph 9.

<sup>232</sup> IACHR, *Annual Report 1991, Chapter V, Situation of Haitians in the Dominican Republic*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992.

family life and protection of the family (Article 17)<sup>233</sup>; viii) the right to a private life (Article 11(2)), and ix) the rights of the child (Article 19).

255. The International Law Commission wrote that collective expulsions occur in the absence of a procedure to identify the distinctive, specific reasons for expulsion on a case by case basis, so that “the prohibition of collective expulsion could be violated by expelling a small group of aliens (e.g. two or more) who did not receive individual consideration of their case.”<sup>234</sup>

256. The European Court of Human Rights has held that collective expulsion “is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group”<sup>235</sup> and concluded that the rule prohibiting collective expulsions is violated when “at no stage in the period between the service of the notice on the aliens to attend the police station and their expulsion did the procedure afford sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account.”<sup>236</sup>

257. The European Court also held that a transfer of persons carried out without the authorities examining each applicant’s individual situation or conducting any procedure to identify each one of the persons being transferred constituted a collective expulsion and was thus a breach of Article 4 of Protocol No. 4.<sup>237</sup>

258. Article 12(5) of the African Charter on Human and Peoples’ Rights provides that the mass expulsion of non-nationals shall be that which is aimed at national, racial, ethnic or religious groups. Here, the African Commission on Human and Peoples’ Rights has repeatedly held that “[m]ass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations, constitute special violation of human rights.”<sup>238</sup> The African Commission has also written that mass expulsion can involve violations of other rights recognized and guaranteed in the African Charter, such as the right to family protection, the right to property, the right to work, the right to education and the principle of equal protection of the law and non-discrimination when the victims have been expelled because of their origin, and the right to appeal to other competent national bodies against acts that violate their fundamental rights.<sup>239</sup>

259. The Human Rights Committee has expressed concern over the continuing reports of massive deportations of persons of ethnic Haitian origin, even those who are nationals of the

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<sup>233</sup> IACHR, *Annual Report 1991, Chapter V, Situation of Haitians in the Dominican Republic*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992.

<sup>234</sup> UN, International Law Commission, *Expulsion of Aliens*, Memorandum by the Secretariat, paragraph 990, U.N. Doc. A/CN.4/565 (August 2006).

<sup>235</sup> ECHR, *Conka v. Belgium*, Judgment of February 5, 2002, paragraph 59.

<sup>236</sup> ECHR, *Conka v. Belgium*, Judgment of February 5, 2002, paragraph 63.

<sup>237</sup> ECHR [Grand Chamber], *Hirsi Jamaa and Others v. Italy*. Judgment of February 23, 2012, Application No. 27765/09, paragraph 185.

<sup>238</sup> ACHPR, *Institute for Human Rights and Development (IHRDA) v. Republic of Angola*. Communication No. 292/2004, May 7 to 22, 2008, paragraph 69; ACHPR, *Recontre Africaine pour la Defence des Droits de l’Homme (RADDH) v. Zambia*. Communication No. 71/92, October 1996, paragraph 19; ACHPR, *African Institute for Human Rights and Development (AIHRD) (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea*. Communication No. 249/2002, November 23 to December 7, 2004, paragraph 69; ACHPR, *Organisation Mondiale Contre la Torture (OMCT) and Others v. Rwanda*. Communications No. 27/89, 46/91, 49/91, 99/93, October 1996.

<sup>239</sup> ACHPR, *Union Inter-Africaine des Droits de l’Homme (UIADH) and Others v. Angola*. Communication No. 159/1996, November 11, 1997, paragraphs 17-19.

Dominican Republic. It wrote that mass expulsion of non-nationals was in breach of the Covenant on Civil and Political Rights and that the Dominican State had an obligation to ensure all Dominican citizens the right not to be expelled from their country and to provide all those undergoing deportation proceedings the guarantees established in the Covenant.<sup>240</sup>

260. As for the guarantee of equality before the law and the prohibition of discrimination, the Commission feels compelled to point out that while States have the right to control their borders, to determine the requirements for entering and remaining within Dominican territory, and the grounds for expelling aliens from their territory, and in general, to establish their immigration policy, exercising these prerogatives requires of the States that the policies, laws and practices they implement in the area of immigration respect and guarantee the human rights of all immigrant persons, which are rights and freedoms they have by virtue of the human dignity and that the States have recognized in the human rights treaties they have signed.<sup>241</sup>

261. The Commission recalls that when immigration laws are enforced, the fundamental right to equal protection by the law and non-discrimination require that a State's policies and practices not unfairly target certain individuals based solely on their ethnic or racial characteristics, such as skin color, accent, ethnic origin or area known to be home to a particular ethnic population.<sup>242</sup> Referring specifically to the Dominican Republic, the Inter-American Commission wrote that

[around 2000] there was a climate of racism, racial discrimination and anti-Haitian practices in the Dominican Republic. Against that backdrop, Haitian immigrants have been the victims of a whole array of abuses by the authorities, from assassinations, abusive treatment, massive expulsions, exploitation, and deplorable living conditions". [...] Finally, the Commission took as fact that the Dominican authorities conducted the expulsions of Haitians or persons of Haitian origin with violence and in haste, without affording them any judicial guarantees, without giving them the opportunity to prove that they were legal residents in the country and without giving them equal access to effective remedies.<sup>243</sup>

262. The Commission has defined the practice of "*racial profiling*" or establishment of racial profiles as a "repressive tactic [...] adopted for supposed reasons of public safety and protection and is motivated by stereotypes based on race, color, ethnicity, language, descent,

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<sup>240</sup> UN, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: *Dominican Republic. 04/26/2001.CCPR/CO/71/DOM*, April 26, 2001, paragraph 16.

<sup>241</sup> See, in general, IACHR, *Annual Report 1991, Chapter V, Situation of Haitians in the Dominican Republic*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992; IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, paragraph 166; IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Special Rapporteurship on Migrant Workers and Their Families in the Hemisphere*. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2000, paragraph 6; IACHR, *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 377; IACHR, *Report on Immigration in the United States: Detention and Due Process*. OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, paragraph 32; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12.688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic)*. February 11, 2011, paragraph 208. See also in this regard, I/A Court H.R., *Case of Vélez Loo v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraphs 97 and 169.

<sup>242</sup> IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12.688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic)*. February 11, 2011, paragraph 205.

<sup>243</sup> IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic)*, February 11, 2011, paragraph 203, citing IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104, doc. 49 rev.1, October 7, 1999, paragraph 317. See also, Human Rights Watch, "*Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*," Vol. 14, No. 1(B), April 2002.

religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions",<sup>244</sup> and deemed that this practice was a violation of the principle of equal protection recognized in Article 24 of the American Convention.<sup>245</sup>

263. The United Nations Human Rights Committee held that identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. The Committee added that "to act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination."<sup>246</sup> It concluded, therefore, that this constituted a violation of the victim's right to equality before the law and nondiscrimination.<sup>247</sup>

264. The Committee on the Elimination of Racial Discrimination wrote the following concerning authorities' use of racial profiles: "States parties should take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion."<sup>248</sup> The Committee has expressed concern over identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighbourhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party. For that reason, the Committee has urged States that engage in practices of this kind to take effective measures to eradicate the practice of identity checks based on ethnic and racial profiles.<sup>249</sup>

265. The petitioners argued that the Convention expressly prohibits collective expulsions and that the victims were denied any possibility of moving about the very country in which they were born and/or had created their family ties and established their residency. They also argued that the expulsions to which the victims were subjected were based on race and conducted using "racial profiles that were premised on the victim's presumed nationality" and that were, by their very nature, discriminatory. The State, for its part, maintained that the need to keep repatriation moving at a steady pace ought not to be confused with "massive" repatriations that are by definition indiscriminate. However, it did not provide any specific evidence relating to the processes involved in repatriating the victims.

266. The Commission has taken as fact that the victims in this case were expelled from the territory of the Dominican Republic to Haitian territory within less than 24 hours, thereby

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<sup>244</sup> IACHR, Report No. 26/09 (Admissibility and Merits), Case No. 12.440, *Wallace de Almeida* (Brazil), March 20, 2009, paragraph 143.

<sup>245</sup> IACHR, Report No. 26/09 (Admissibility and Merits), Case No. 12.440, *Wallace de Almeida* (Brazil), March 20, 2009, paragraph 152.

<sup>246</sup> Human Rights Committee, *Rosalind Williams Lecraft v. Spain*. Views of July 27, 2009, Communication No. 1493/2006, paragraph 7.2.

<sup>247</sup> Human Rights Committee, *Rosalind Williams Lecraft v. Spain*. Views of July 27, 2009, Communication No. 1493/2006, paragraph 8.

<sup>248</sup> Committee on the Elimination of Racial Discrimination, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*. A/60/18, 2005, paragraph 20.

<sup>249</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations: Spain*. 78<sup>th</sup> session, CERD/C/ESP/CO/18-2, March 10, 2011, paragraph 11.

precluding any possibility that the Dominican authorities would do an objective and reasonable analysis of each victim's particular circumstance. The Commission has also taken as fact that the expulsions affected nationals and aliens alike, both documented and undocumented, who had established permanent residency in the Dominican Republic, where they had close ties of family and work. Furthermore, according to the information available, the victims were expelled amid a cold atmosphere of collective and massive expulsions of persons.

267. The Commission has established that the immigration control operations or sweeps that lead to the detention and subsequent deportation of Haitians and Dominicans of Haitian descent in the Dominican Republic are conducted as follows: a) Dominican authorities (whether they be immigration agents, police or military) arrest Haitians, Dominicans of Haitian descent or those whom they regard as Haitians based on the darker skin color, the physical features or the command of the language of the persons being detained; b) the detentions are based on a presumption that the persons detained are Haitians whose immigration status is irregular and the persons taken into custody are prevented from proving whether they are Dominican nationals or are living in Dominican territory legally; and c) in many cases, the Dominican authorities retain or destroy these individuals' identification documents on the assumption that they are not genuine.

268. The Commission observes that the practice of sweeps and the policy of repatriations are not used in the case of all undocumented immigrants or all persons within Dominican territory unlawfully; instead they are specifically targeted at Haitians, persons of Haitian descent or persons regarded "as Haitians". In effect, according to the facts established in this case, the phenotypic features and skin color are determining factors when selecting the persons who will be detained and ultimately expelled.

269. In the present case, the methods used to conduct the sweeps or immigration control operations in which Haitians and Dominicans of Haitian origin were detained and subsequently expelled by the Dominican authorities reveal a pattern of discrimination practiced by State institutions against these people.

270. To understand why the human rights of Haitians and Dominicans of Haitian origin are being systematically violated in the Dominican Republic, one has to consider the link between the detention and expulsion of these persons and the discrimination that perpetuates these practices. The selective detentions and collective and summary expulsions of Haitians and Dominicans of Haitian origin in the Dominican Republic can be attributed to the discriminatory attitudes and use of racial profiles by Dominican state officials.

271. The Commission must again make the point that "race" is a "suspect category" of distinction and therefore subject to stricter scrutiny. Even so, the State makes a general argument to the effect that "there is no possibility that a Haitian citizen who is in the country lawfully would be repatriated." However, it did not advance any justification for the discriminatory impact of its immigration policy.

272. The Commission notes that if proper procedure is followed, before deciding to repatriate an alien the authorities must determine what his immigration status was when he was living in the territory of the State. Such a procedure invariably necessitates an in-depth examination of each alien's particular situation in order to establish his identity, nationality, length of residency, family and social ties in the country and other information. For example, Article 11(d) of Immigration Law No. 95 provided that deportation would not be effected "unless the arrest in the deportation process was made within five years from the date on which the deportation case was opened."

273. While the State denied the allegations pertaining to collective expulsions, it did not provide any information to show that it had conducted a detailed analysis of each victim's particular circumstance. The above reasoning is confirmed by the fact that these operations netted Dominican nationals and aliens, documented and undocumented alike; the procedure was the same irrespective of who the victims were.

274. Based on the foregoing, the Commission concludes that the State violated the right to freedom of movement and residence, the prohibition of expulsion of nationals, and the prohibition of collective expulsions of aliens recognized in Article 22.1, 22.5, and 22.9 of the American Convention, read in conjunction with the principle of equality and non-discrimination and the obligation to respect rights without discrimination, established in articles 24 and 1(1) of the Convention, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marlobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

**G. Right to a fair trial and the right to judicial protection (articles 8 and 25 of the American Convention) in relation to the obligation to respect rights without discrimination (Article 1(1) of the American Convention)**

275. The relevant paragraphs of Article 8 of the American Convention provide the following:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defense;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - h. the right to appeal the judgment to a higher court.

276. Article 25 of the American Convention reads as follows:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

277. With respect to Article 8, the Inter-American Court has held that “[i]n the Spanish text of the Convention, the title of this provision, whose interpretation has been specifically requested, is “Judicial Guarantees.”\* This title may lead to confusion because the provision does not recognize any judicial guarantees, strictly speaking. Article 8 does not contain a specific judicial remedy, but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees under the Convention.”<sup>250</sup>

278. The Court has also written that although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters.<sup>251</sup>

279. As for the scope of the right to judicial protection, both the Commission and the Court have repeatedly held that States have an obligation to provide an effective remedy to all persons within their jurisdiction against violations of their fundamental rights and that the Convention provides that the guarantee recognized therein applies not just to the rights contained in the Convention, but also to those recognized in the constitution or laws.<sup>252</sup> The Court has also written that “for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.”<sup>253</sup> According to the *jurisprudence constante* of the Court, any remedy that is illusory due to the general conditions of the country or the specific circumstances of a given case cannot be deemed to be an effective remedy.<sup>254</sup>

280. Similarly, the Court has held that Article 25(1) of the Convention establishes the States’ obligation to offer an effective judicial remedy to all persons within their jurisdiction against acts that violate those persons’ fundamental rights. The existence of this guarantee “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.”<sup>255</sup>

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\* “Right to a Fair Trial” in the English text.

<sup>250</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 27.

<sup>251</sup> I/A Court H.R., *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paragraph 70.

<sup>252</sup> I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, paragraph 122; *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paragraph 128; *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paragraph 167.

<sup>253</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24; *Case of the “Five Pensioners” v. Peru*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, paragraph 136.

<sup>254</sup> I/A Court H.R., *Case of Baldeón García V. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, paragraph 145, *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, paragraph 111.

<sup>255</sup> I/A Court H.R., *Case of Castillo Páez v. Peru*. Merits. Judgment of November 3, 1997. Series C No. 34, paragraph 82; *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paragraph 131; *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 183, paragraph 78.

281. With specific reference to alien deportation proceedings, the Commission has held that the affected persons must have the right to a hearing and adequate opportunity to exercise their right of defense. While this may not require the presence of all the guarantees necessary for a fair criminal trial, a minimum threshold of due process guarantees must be afforded. The Commission's understanding is that these include the right to be assisted by counsel, if one so desires, or by a representative in whom one has confidence, with sufficient time to determine what the charges are and a reasonable time period in which to prepare and formally file the response and to find and offer evidence in one's defense.<sup>256</sup> Hearings are to be public to the extent that the due process guarantees and justice so require, which invariably includes the need to keep the public's trust and avoid any possibility of a miscarriage of justice in those proceedings.<sup>257</sup>

282. With respect to the right to appeal in these cases, the Commission has held, citing the European Court of Human Rights, that because of the nature of the factual determinations, the possible effects of such determinations and the irreversibility in case a deportation is decided, unfavorable decisions on a claim for recognition of refugee status should be subject to review with automatic suspensive effect.<sup>258</sup>

283. The Commission has also written that similar minimum guarantees of justice must be observed in cases involving the administrative detention of aliens undergoing deportation proceedings. These guarantees require, *inter alia*, that the decision-maker meets prevailing standards of independence and impartiality, that the detainee is given an opportunity to introduce evidence and to know and refute the claims of the opposing party, and that the detainee is given an opportunity to be represented by counsel or other representative. Such requirements will not be considered fulfilled where, for example, authorities fail to define in sufficient detail or otherwise properly justify the grounds upon which an individual has been deprived of his or her liberty or where they place the onus on the detainee to justify his or her release.<sup>259</sup>

284. The Commission also concluded that proceedings involving the detention, status or removal of aliens from a state's territory by exclusion, expulsion or extradition require individualized and careful assessment and is subject to the same basic and non-derogable procedural protections applicable in proceedings of a criminal nature.<sup>260</sup>

285. The organs of the inter-American human rights system have affirmed the obligation of States to act with due diligence when human rights violations occur. This duty involves four

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<sup>256</sup> IACHR, Report No. 34/98 (Admissibility), Case 11.610, *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz* (Mexico), May 5, 1998, paragraphs 70, 71. See also, International Covenant on Civil and Political Rights, Article 13 ("An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.")

<sup>257</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 403.

<sup>258</sup> IACHR, Case 12.474, Report 136/11 (Merits), *Members of the Pacheco Tineo Family* (Bolivia), October 31 2011, para. 142, citing European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011. para. 293.

<sup>259</sup> IACHR, Case 9903, Report No. 51/01 (Admissibility and Merits), *Rafael Ferrer-Mazorra et al.* (United States), April 4, 2001, paragraphs 213-231. See also, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 406.

<sup>260</sup> IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, paragraph 409.

obligations: prevention, investigation, punishment and reparation for the human rights violations. The Court has written that:

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>261</sup>

286. The States' obligation to act with due diligence includes providing access to suitable and effective judicial remedies when human rights are violated.<sup>262</sup> The Inter-American Court has held that any person whose human rights have been violated has the right "to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention."<sup>263</sup> The Inter-American Court has also written that "the power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin that everything possible be done to know the truth of what happened and that the possible responsible parties be punished."<sup>264</sup>

287. The petitioners alleged that the victims did not have a forum to which they could turn to prove their legal status or establish how long they had resided in the Dominican Republic. Nor did they have the guarantees of due process. Domestic law did not afford them an effective judicial recourse that would have enabled them to challenge the Dominican authorities' decision to expel them or question the legality of their detention. The State, for its part, relied on the repatriation procedure in effect, without considering each victim's specific situation.

288. The Commission observes that the State has not presented any evidence to corroborate the fact that the repatriation procedure in effect at the time of the events was actually followed in the case of the victims. The Commission observes that the situation of the victims was not thoroughly investigated; no arrest warrants were issued stating the specific facts and reasons for their deportation; no evidence was offered to show that deportation was called for; the victims never had an opportunity to make a statement or to challenge the evidence against them, nor was their situation brought to the attention of the Secretary of State for the Interior and the Police so that the latter might issue the necessary deportation order. Furthermore, contrary to the terms of the State's *Protocol of Understanding* with Haiti, the victims were expelled at night; in some cases the expulsion meant separation of nuclear families; no specific measures were taken to ensure that the victims had possession of their personal effects; the identification papers of some victims were destroyed, they were not given a copy of the individual form containing the repatriation order nor were the Haitian diplomatic and consular authorities in the Dominican Republic given advance notice.

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<sup>261</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C No. 4, paragraph 166.

<sup>262</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

<sup>263</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*, Merits. Judgment of March 14, 2001, Series C No. 75, paragraph 48.

<sup>264</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 382, citing the *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraph 289, and others.

289. In this case, the Commission takes as fact that the victims had neither adequate time or means of defense to prove their nationality or their legal status in the Dominican Republic; they were not provided with legal assistance and not given the opportunity to challenge the deportation decision; there was no order from a competent, independent and impartial authority deciding the victims' deportation.

290. The Commission has no information indicating what specific recourse the victims could have availed themselves of to protect their rights. Furthermore, there were significant obstacles to access to justice in this case: geography made access to a competent judge or court difficult, and there was no way to prove one's identity or the violations being alleged.

291. In this regard, Mr. Medina Ferreras maintained that even though he and his sons were born in the Dominican Republic, he was unable to demand his rights in the courts of the Dominican Republic as he would be mistreated and the Dominican officials routinely discriminate against persons of Haitian descent.<sup>265</sup> For his part, Mr. Fils Aime said he had no chance of demanding his rights in a court of law in the Dominican Republic, because Dominican officials treated him and other Dominico-Haitians like animals.<sup>266</sup> Similarly, Mr. Gelin stated that he could not assert his rights in a Dominican court because the officials abused Haitians and persons of Haitian descent.<sup>267</sup> Mrs. Alezy said that "she ha[d] no chance of claiming her rights in a Dominican court, because the Dominican Republic does not recognize the rights of persons born in Haiti; she cannot demand her rights in a Haitian court either."<sup>268</sup>

292. Expelling the victims meant that they were ousted from the territory of the Dominican Republic and left in the territory of another country; no public record was made of their expulsion. The Commission concluded *supra* that as a consequence of the expulsions, the victims were left with no means to prove either their physical or legal existence. With no way to prove their identity and legal status, the victims were prevented from returning legally to Dominican territory; they had no way to prove their situation to the representation of the Dominican Republic in Haiti. Furthermore, the victims had no way to seek judicial protection from the Haitian courts. Given the circumstances, the Commission finds that the victims did not have a access to a simple and rapid recourse to challenge the violation of their human rights and observes that State did not initiate a serious, impartial and effective investigation to establish the facts and to determine the possible perpetrators.

293. Given the foregoing, the Commission considers that the State violated the rights to a fair trial and to judicial protection, recognized in articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita

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<sup>265</sup> **Annex 15.** Sworn statement given by William Medina Ferreras in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the petitioners' observations of January 30, 2002

<sup>266</sup> **Anexo 19.** Declaración jurada de Jeanty Fils-Aime ante la Clínica de Derechos Humanos de la Facultad de Derecho de la Universidad de Columbia de 1 de abril de 2000. Anexo a las observaciones de los representantes de 30 de enero de 2002

<sup>267</sup> **Annex 24.** Statement given by Berson Gelin on April 1, 2000, in the presence of the Human Rights Clinic of Columbia University School of Law. Attachment to the petitioners' observations of January 30, 2002

<sup>268</sup> **Annex 35.** Sworn statement given by Andrea Alezi in the presence of the Human Rights Clinic of Columbia University School of Law on April 1, 2000. Attachment to the information submitted by the petitioners on January 30, 2002.

Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

**H. Rights of the child (Article 19 of the American Convention) in relation to the obligation to ensure the Convention-protected rights without discrimination (Article 1(1) thereof)**

294. Article 19 of the American Convention provides 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.

295. As for the interpretation of the obligations emanating from Article 19 of the Convention, the Commission has written that:

Under the international law on the interpretation of treaties, the American Convention and the CRC are part of a body of related norms or corpus juris for the protection of the rights of children and adolescents. That corpus juris must be taken into account when interpreting Article 19 of the American Convention 13 and Article VII of the American Declaration, which guarantee children's rights to special measures of protection on the part of their family, society and the State. The concept of a corpus juris on the subject of children is an acknowledgement of the existence of a body of basic rules whose purpose is to guarantee the human rights of children and adolescents. The Inter-American Commission referred to this concept in the following terms: For an interpretation of a State's obligations vis-à-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere.<sup>269</sup>

296. The existence of a universal principle of protection of children has been recognized internationally, given their position of "disadvantage and greater vulnerability" vis-à-vis other sectors of the population and given their specific needs.<sup>270</sup> The commitment to protect children is guaranteed in a number of international instruments that establish special protection for them as children. These include the Protocol of San Salvador,<sup>271</sup> the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and others.<sup>272</sup>

297. Given the special situation of children, under the American Convention States have an obligation to provide special protection to children, one that transcends the general obligation to

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<sup>269</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 78, July 13, 2011, paragraphs 15- 16, citing IACHR Report No. 41/99, Case 11.491, Admissibility and Merits, Minors in Detention, Honduras, March 10, 1999, paragraph 72.

<sup>270</sup> I/A Court H.R.. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, p. 12.

<sup>271</sup> Protocol of San Salvador, Article 16.

<sup>272</sup> The Convention on the Rights of the Child and the Declaration of the Rights of the Child also provide that in all actions concerning children, the best interests of the child shall be the primary consideration. See Art. 3. Other provisions of the Convention make specific reference to the rights to be registered and to nationality (Art. 7), identity, name and family (Art. 8); Article 2 provides that children are not to be subject to discrimination or punishment based on their parents' status. . Doc. G.A. Res. 44/25, Annex, 44 U.N. GAOR Suppl. (no. 49) en 167, U.N. Doc. A/44/49 (1989), (in force since September 2, 1990). See also the United Nations' International Covenant on Civil and Political Rights, Article 24.

respect rights, set forth in Article 1(1) of that instrument, and which is a non-derogable right under Article 27 of the Convention.<sup>273</sup> Therefore, the international standards<sup>274</sup> and Article 19 of the Convention require that special measures be taken with respect to children.

298. Here, the Commission has written that:

[r]espect for the rights of the child is a fundamental value in a society that aspires to practicing social justice and observing human rights. This means offering children the care and protection that were the basic standards that long ago shaped the theory and legal concept of what such rights should embody. Today, respect for the rights of the child also means recognizing, observing and guaranteeing the child's individual legal personality, as the *titulaire* of rights and obligations.<sup>275</sup>

299. Time and time again, the Commission has made the point that States have an obligation to provide children with special care and attention.<sup>276</sup> This protection has multiple dimensions, including non-discrimination, the guarantee of a child's survival and growth and development, and the child's right to an adequate standard of living.<sup>277</sup> The Commission has observed that the State has a special duty to protect children and to ensure that, whenever state authorities take actions that might in any way affect a child, special care is taken to guarantee the child's rights and welfare.<sup>278</sup>

300. The Court, for its part, wrote that the ultimate objective of protection of children in international instruments is the harmonious development of their personality and the enjoyment of their recognized rights. It is the responsibility of the State to specify the measures it will adopt to foster this development within its own sphere of competence and to support the family in performing its natural function of providing protection to the children who are members of the family.<sup>279</sup>

301. The Court also wrote that cases in which the victims of the human rights violations are children are especially serious, as they have special rights deriving from their condition; those

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<sup>273</sup> In General Comment No. 17 on the rights of the child recognized in Article 24 of the International Covenant on Civil and Political Rights, the Committee for the Covenant observed that Article 24 recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. It also wrote that the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. General Comment No. 17, approved at the Committee's 35th session, held in 1989.

<sup>274</sup> In this regard, the Declaration of the Rights of the Child, adopted by the General Assembly in resolution 1386 (XIV) on November 20, 1959, establishes Principle 2 to the effect that: The child shall enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."

<sup>275</sup> IACHR, *Third Report on the Situation of Human rights in Colombia*, OEA/Ser.L/V/II.102, Doc 9, rev. 1, February 26, 1999, paragraphs 14 and 15.

<sup>276</sup> IACHR, Report No. 100/00, Case 11.599, *Marcos Aurelio de Oliveira* (Brazil), February 24, 2000, paragraph 38.

<sup>277</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paragraph 196.

<sup>278</sup> IACHR, Report No. 38/96, Case 10.506, *X and Y* (Argentina), October 15, 1996, paragraph 103.

<sup>279</sup> UN, Human Rights Committee, General Comment No. 17, General comments adopted by the Human Rights Committee, Article 24 – Rights of the Child, 35<sup>th</sup> session, U.N. Doc. HRI/GEN/1/Rev.7 at 165 (1989), p. 2. See also I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 53.

rights are matched by specific obligations on the part of the family, society, and the State.<sup>280</sup> The Court wrote that in order to properly protect children's, their characteristics must be taken into consideration, as must the need to foster their development; children must be afforded the conditions necessary to live and develop their aptitudes and to enable them to realize their full potential.<sup>281</sup> It also wrote that Article 19 of the Convention must be construed as an added right which the Convention establishes for those who, because of their physical and emotional development, require special protection.<sup>282</sup>

302. The Court concluded that education and care for the health of children require various measures of protection and are the key pillars to ensuring that they enjoy a decent life since, given their immaturity and vulnerability, they often lack adequate means to effectively defend their rights.<sup>283</sup>

303. On the question of separating children from their families, the Court held that

while children are the *titulaire* of human rights, they exercise those rights progressively, as they develop and grow into a greater degree of personal autonomy;<sup>284</sup> in early childhood their rights are exercised by way of family members. Consequently, separating a child from his or her family necessarily means a diminishment in the child's exercise of his/her liberty.<sup>285</sup>

304. In line with this, the Convention on the Rights of the Child stipulates that children have multiple rights that must be ensured by States without discrimination (article 2). It also establishes that in all actions concerning children, the best interests of the child shall be a primary consideration (article 3). Furthermore, the Convention provides, *inter alia*: (i) the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents (article 7), (ii) the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference (article 8) and (iii) the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (article 12).

305. In relation to the principle of the best interest of the child, the Court also held that this overriding principle should be interpreted as a requirement incumbent upon States to satisfy all

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<sup>280</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 54; *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paragraph 244; *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C. No. 134, paragraph 152; *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 33.

<sup>281</sup> I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 56; *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, paragraph 163.

<sup>282</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, paragraph 147; *Case of Servellón García v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C. No. 152, paragraph 113.

<sup>283</sup> I/A Court H.R. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 86.

<sup>284</sup> UN, Committee on the Rights of the Child. General Comment No. 7, Implementing child rights in early childhood, 40th session (2006), U.N. Doc. CRC/C/GC/7/Rev.1 (2006), paragraph 17.

<sup>285</sup> I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paragraph 129.

rights of the child. All other rights protected under the Convention must be interpreted with this principle in mind when the case is one involving a minor.<sup>286</sup>

306. With respect to the right to identity and the interpretation of the provisions of the Convention on the Rights of the Child, the Inter-American Court held

the Court has recognized that the right to identity is not expressly provided for in the American Convention. However, Article 29(c) of this instrument establishes that “[n]o provision of this Convention shall be interpreted as [...] precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government.” In this regard, the Court has used the “Norms on Interpretation” of this article to clarify the content of certain provisions of the Convention so that an important source of reference regarding Article 29(c) of the American Convention and the corpus juris of international human rights law, is the Convention on the Rights of the Child, an international instrument that expressly recognizes the right to identity. Its Article 8(1) indicates that “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as acknowledged by law without unlawful interference.” From the regulation of the norm contained in the Convention on Rights of the Child, it can be deduced that identity is a right that encompasses several elements, including nationality, name and family relationships, included in the said article in a descriptive but not restrictive manner. In the same way, the Inter-American Juridical Committee has underlined that the “right to identity is consubstantial to human attributes and dignity,” and an autonomous right, possessing “a central nucleus of clearly identifiable elements that include the right to a name, the right to nationality, and the right to family relationships.” In fact, “it is a fundamental human right opposable erga omnes as an expression of a collective interest of the international community as a whole, which admits neither annulment nor suspension in the cases established in the American Convention.”<sup>287</sup>

307. In particular, as regards the content of this right, the Commission maintained that “international human rights law recognizes the existence of a right to an identity that is associated with other rights, such as the right to a name, to nationality, to a family, and to maintain family relations, all of which are included in the American Convention”.<sup>288</sup>

308. The Court, for its part, concluded that “the right to identity can be conceptualized, in general, as a collection of attributes and characteristics that allow for the individualization of a person in society. In that sense, it includes several other rights according to the subject of the rights in question and the circumstances of the case.” Thus, personal identity is intimately linked to the person in his or her specific individuality and private life, both of which are based on an historical and biological experience, as well as the way in which each individual relates with others through the development of social and family ties. Moreover, it is important to stress that, although identity has special importance during childhood as it is essential for the development of a person, the truth is that the right to identity is not exclusive to children, because it is constantly evolving and the interest of individuals in maintaining their identity and preserving it does not diminish with the passage of time. In addition, the right to identity can be affected by numerous situations or contexts that can take place from childhood to adulthood.”<sup>289</sup>

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<sup>286</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 134.

<sup>287</sup> I/A Court H.R., *Case of Contreras et. al vs. El Salvador*. Merits, Reparations and Costs. Judgement of August 31, 2011. Series C. No. 232, para. 112.

<sup>288</sup> IACHR, Application before the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et. al vs. El Salvador, June 28, 2010, para. 217.

<sup>289</sup> I/A Court H.R., *Case of Contreras et. al vs. El Salvador*. Merits, Reparations and Costs. Judgement of August 31, 2011. Series C. No. 232, para. 113.

309. Regarding the right of the children to be heard, the Court held that the right to judicial guarantees enshrined in article 8.1 of the American Convention must be interpreted in the light of the right to be heard enshrined in article 12 of the Convention on the Rights of the Child<sup>290</sup> and citing the Committee on the Rights of the Child, the Court indicated that an adequate application of the principle of the best interest of the child enshrined in article 3 is not possible unless elements of the right to be heard enshrined in article 12 are respected; and that the principle of the best interest of the child enshrined in article 3 reinforces the functionality of the right to be heard enshrined in article 12 to facilitate the essential role of the children in all the decisions that affect their lives."<sup>291</sup>

310. In addition, the Court stated that

law operators, whether in the administrative or the judicial sphere, must take into account the specific conditions of the child and their best interest to agree on its participation, as appropriate, in the determination of his or her rights. This consideration will seek greater access to the minor, to the extent possible, to the examination of his or her own case[...] Additionally, the Court considers that children should be informed of their rights to be heard directly or through a representative, if desired.<sup>292</sup>

311. The Court also noted that according to what has been established by the Committee on the Rights of the Child, the right to be heard not only covers the right of every child to express their views freely in all matters affecting them, but also the subsequent right that those views are properly taken into account, depending on the age and maturity of the child. In the opinion of the Court, that means not just listen to the child but that his or her views must be seriously considered.<sup>293</sup>

312. Similarly, the Committee on the Rights of the Child recommended the State of Dominican Republic to adopt a procedure to acquire nationality which is applied to all children born in the Dominican Republic in a nondiscriminatory manner and to make sure that no child becomes stateless<sup>294</sup> as well as to ensure that children are heard in all administrative and judicial proceedings which affect them and to make aware and train adults in family, school and community as well as in

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<sup>290</sup> The Court held that in order to determine the scope of the terms described in article 12 of the Convention on the Rights of the Child, the Committee on the Rights of the Child established certain specifications, namely: (i) one cannot begin with the assumption that a child is incapable of expressing her or his own views, (ii) it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter, (iii) the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard, (iv) the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views, (v) the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process, (vi) maturity should be measured in relation to the capacity of a child to express her or his views on issues in a reasonable and independent manner. I/A Court H.R., Case of Atala Riffo and Daughters vs. Chile. Merits, Reparations and Costs. Sentence of February 24, 2012. Series C N° 239, para. 239, citing Committee on the Rights of the Child, General Comment N° 12, paras. 20, 21, 22, 25, 28, 30.

<sup>291</sup> UN, Committee on the Rights of the Child, General Comment N° 12, para. 74.

<sup>292</sup> I/A Court H.R., Case of Atala Riffo and Daughters vs. Chile. Merits, Reparations and Costs. Sentence of February 24, 2012. Series C N° 239, para. 199.

<sup>293</sup> I/A Court H.R., Case of Atala Riffo and Daughters vs. Chile. Merits, Reparations and Costs. Sentence of February 24, 2012. Series C N° 239, para.200, citing Committee on the Rights of the Child, General Comment N° 12, para. 15.

<sup>294</sup> UN, Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations : Dominican Republic, 11 February 2008, CRC/C/DOM/CO/2, para. 40.

all institutions for children to respect the views of children and their participation in all matters affecting them.<sup>295</sup>

313. The Commission has maintained that irrespective of the immigration status of a migrant child or adolescent, States must gear the measures they adopt with a view to preserving the principle of family unity. States ought not to resort to the institutionalization of children who are immigrants, asylum seekers or seeking complementary protection or who are stateless children as a means of preserving family unity; instead, the principle whereby a child is detained only as a measure of last resort should also serve to protect the other members of the child's family.

314. The Commission has learned that all too often, the States' response to these children's cases is to keep them in custody; the best they can hope for is that they are kept in custody alongside their families. In other cases, children held in custody are even separated from their families. The United Nations Special Rapporteur on the Human Rights of Migrants has observed that: "the ideal utilization of a rights-based approach would imply adopting alternative measures for the entire family; States should therefore develop policies for placing the entire family in alternative locations to closed detention centres."<sup>296</sup>

315. The Commission shares the position that various international organizations have taken to the effect that migrant children –whether accompanied by their families, unaccompanied or separated from their families- should not, as a general rule, be detained. Where detention is exceptionally justified, it shall never be solely on the basis of the child being unaccompanied or separated, or on his/her migratory or residence status, or lack thereof.<sup>297</sup> In all cases, the guarantees of due process must be strictly observed, as must all other applicable guarantees under the international law of human rights.<sup>298</sup>

316. The petitioners maintained that the Dominican government failed to protect the best interests of the child by not adopting special measures in this regard. The State did not submit any arguments on this specific point.

317. The Commission took as fact that 13/17 children - Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Ana Lidia Sensión, Reyita Antonia Sensión, Berson Gelin, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean - were arrested and expelled to Haiti. The Commission observes that Berson Gelin was unaccompanied by any adult when he was expelled and that Ana Lidia Sensión and Reyita Antonia Sensión were separated from their father.

318. The Commission also observes that the children were not identified at the time of their arrest; no measures were taken to separate them from the adults in custody nor to ensure their right to be heard in relation to such matters; and they were given neither food nor water. The

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<sup>295</sup> UN, Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations : Dominican Republic, 11 February 2008, CRC/C/DOM/CO/2, para. 33.

<sup>296</sup> United Nations, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, A/HRC/11/7, May 14, 2009, paragraph 62.

<sup>297</sup> Committee on the Rights of the Child, General Comment No. 6. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, September 1, 2005, paragraph 61. Report of the Working Group on Arbitrary Detention, September 1, 2005, paragraph 61. Report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers, E/CN.4/1999/63/Add.3, p. 37.

<sup>298</sup> I/A Court H.R., Advisory Opinion OC-18/03, *Judicial Condition and Rights of Undocumented Migrants*, September 17, 2003, paragraph 119 and others.

Commission must again make the point that the expulsions had a harmful effect on the family dynamic and meant that children had to cope with special problems in order to remain in school, and had other difficulties to contend with as well.

319. The Commission notes also that although Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime and Berson Gelin were born in Dominican territory, they not have official documentation proving their citizenship. Furthermore, although Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Victoria Jean, Miguel Jean and Nathalie Jean had documentation that proved their Dominican citizenship, they were denied the opportunity to prove that fact to the competent authorities. The Commission has already established that these practices affected the right to nationality and the right family relations to the detriment of these children, and therefore concludes that these violations also affected their right to identity, according to the standards listed above.

320. The Commission observes that this case involves a sequence of events that begins with the refusal to register births, which makes it impossible to prove citizenship and avail oneself of basic services like health and education; the sequence continues with the ever-present threat of being arbitrarily detained and expelled from the country of which these children are nationals, without taking account of their particular needs as children and adversely affecting the normal development of their personal and family life plan. The sequence ends when they find themselves unable to avail themselves of judicial remedies for the protection of their rights. Also, no measures are taken to prevent the violence and discrimination committed against girls.

321. Given these circumstances, the Commission finds that the Dominican State failed to comply with its international obligations by not taking the measures necessary to take the best interests of the child into account, to ensure their right to be heard, to protect their right to identity and failing to ensure that the children within its territory are protected. The State also failed to provide these children with an environment that would protect them from violence and abuse and did not afford them access to essential goods and services to the point that its failing adversely affected the full development of their personality and their life plan.

322. The Commission therefore concludes that the State violated the rights of the child protected under Article 19 of the American Convention, in relation to the obligation to respect rights without discrimination, set forth in Article 1(1) thereof, to the detriment of Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Nene Fils-Aime, Antonio Fils-Aime, Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Ana Lidia Sensión, Reyita Antonia Sensión, Berson Gelin, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

**I. Right to property (Article 21 of the American Convention), in relation to the obligation to ensure rights without discrimination (Article 1(1) of the American Convention)**

323. While in its admissibility report the Commission did not address the alleged violation of Article 21, the facts that substantiate those allegations are an integral part of the case. Furthermore, from the outset the petitioners submitted specific allegations in that regard, which is why the State was in a position to refute those arguments. Given the foregoing and from the analysis of the case file, the body of evidence and the context of the case, the Commission is able to issue its finding on the alleged violations of the right to property.

324. The Commission notes that from their initial observations and throughout the merits phase of the proceedings, the petitioners made allegations regarding violation of the victims' right to property. Specifically, the petitioners asserted that the predictable and inevitable consequence of

the victims' expulsion was to deprive them of the use and enjoyment of their homes, lands, wages, assets, clothing, food, furniture and livestock. The State did not make any specific arguments on this point.

325. Article 21 of the American Convention reads as follows:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

326. The Court reasoned that, like the other fundamental rights, effective protection of the right to property requires ensuring that the right to the use and enjoyment of property is guaranteed in law and other instruments, and that there is a simple and rapid recourse to a competent court for protection against acts that violate that right.<sup>299</sup> While the use and enjoyment of property can be subordinated to the general welfare, any measure of that kind must be adopted by law and dictated by necessity; as happens with all rights protected in the hemisphere, that measure must be determined by the just demands of the general welfare and the advancement of democracy.<sup>300</sup> By analogy, while persons may be deprived of the property by the State, this can only be done for reasons of public utility or social interest and according to the cases and in the manner prescribed by law, and upon payment of just compensation.<sup>301</sup>

327. The Court has also written that the right to private property must be understood within the context of a democratic society where in order for the public welfare and the collective rights to prevail there must be proportional measures that guarantee individual rights. The social role of property is a fundamental element for its functioning and for this reason, the State, in order to guarantee other fundamental rights of vital relevance in a specific society, can limit or restrict the right to private property, always respecting the premises contained in Article 21 of the Convention and the general principles of international law.<sup>302</sup>

328. The Court has also held that not every cause for restricting or denying the right to property must be specified by law; instead the law and its enforcement must be respectful of the essential content of the right to property. This right presupposes that any curtailment must be the exception. From the principle of exception it follows that any restrictive measure must be necessary to achieve a legitimate objective in a democratic society,<sup>303</sup> consistent with the object and purpose of the American Convention.<sup>304</sup>

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<sup>299</sup> I/A Court H.R., *Case of Awas Tingni v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, paragraphs 111-115.

<sup>300</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 44.

<sup>301</sup> I/A Court H.R., *Case of Awas Tingni vs. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, paragraph 143.

<sup>302</sup> I/A Court H.R., *Case of Salvador Chiriboga v. Ecuador*, Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 60.

<sup>303</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 170, paragraph 93. See also, *The Term "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. paragraph 28.

<sup>304</sup> I/A Court H.R., *Case of Salvador Chiriboga v. Ecuador*, Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 65.

329. The Commission notes that the victims in the present case were documented and undocumented Dominican citizens and documented and undocumented aliens. Whatever their status, all the victims had lived in the Dominican Republic for several years and it was their principal place of residence and business. Specifically, the victims had household furnishings, personal effects, clothing, livestock, cash savings or unpaid wages.

330. The Commission observes that the confiscation of personal effects in deportation cases was not permitted under Dominican law and that despite the domestic laws in force, the victims did not have an opportunity to retrieve their personal effects and cash at the time of their expulsion.

331. Given these circumstances, the Commission finds that the victims' expulsion meant the automatic and *de facto* loss of all those effects that were left behind in Dominican territory, which is an unlawful deprivation of their property for which they received no compensation.

332. The Commission therefore considers that the State violated the right to property protected under Article 21 of the American Convention, in relation to the obligation to respect rights without discrimination, set forth in Article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean.

## VI. CONCLUSIONS

333. Based on the preceding examination, the Commission concludes that the State of the Dominican Republic is responsible for violation of the rights to juridical personality, humane treatment, personal liberty, a fair trial, protection of the family, rights of the child, nationality, property, freedom of movement and residence, equality and nondiscrimination, and juridical protection, recognized in articles 3, 5, 7, 8, 17, 19, 20, 21, 22.1, 22.5, 22.9, 24 and 25 of the American Convention, in relation to article 1(1) thereof, to the detriment of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aime, Janise Midi, Nene Fils-Aime, Diane Fils-Aime, Antonio Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Berson Gelin, Ana Virginia Nolaco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, McKenson Jean, Victoria Jean, Miguel Jean and Nathalie Jean. The Commission also concludes that the State violated the right to humane treatment, protected under Article 5 of the American Convention, and the right to protection of the family, recognized in Article 17 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez y Teresita Méndez, Carolina Fils-Aime, William Gelin, María Esther Medina Matos, Jairo Pérez Medina, Gimena Pérez Medina and Antonio Sensión, Jessica Jean, Víctor Manuel Jean.

334. Moreover, the Commission considers that, to date of the approval of the present report, it does not have sufficient elements to rule on possible violations of article 7 of the Convention of Belém do Pará.

## VII. RECOMMENDATIONS

335. Based on the foregoing considerations,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IS RECOMMENDING TO THE STATE OF THE DOMINICAN REPUBLIC THAT:**

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

2. It take the measures necessary to:

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

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

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

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

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

5. Adopt measures of non-repetition

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

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

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

7. Ensure that the Dominican authorities who perform immigration-related functions receive intensive training in human rights to guarantee that, in performing their functions, they are

respectful of and protect the basic human rights of all persons, without discrimination by reason of race, color, language, national or ethnic origin, or any other social condition.

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

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