

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

OF MAY 31, 2012

CASE OF NADEGE DORZEMA *ET AL.* v. THE DOMINICAN REPUBLIC

HAVING SEEN:

1. The brief submitting the case presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on February 11, 2011, wherein it provided three expert reports, wherein the purpose of the reports was indicated but the experts were not, and wherein it also requested the transfer, where applicable, of the expert opinion rendered by anthropologist Samuel Martínez in the *Case of Yean and Bosico v. the Dominican Republic*.

2. The note of February 14, 2011, wherein the Secretariat of the Inter-American Court (hereinafter "the Secretariat") reported that it was waiting for the Inter-American Commission to send the entire case file and corresponding annexes, as well as for it to present the information regarding the identity and the *curriculum vitae* of the three expert witnesses that were not identified in the brief submitting the case (*supra* Having Seen clause 1).

3. The brief of March 3, 2011, wherein the Inter-American Commission transmitted the list of annexes that were cited in the report on the merits, and where it identified and forwarded the *curriculum vitae* of the three expert witnesses proposed beforehand. (*supra* Having Seen clause 1).

4. The brief of pleadings, motions, and arguments (hereinafter "the brief of pleadings and motions") filed by the representatives of the alleged victims¹ (hereinafter "the representatives") on July 27, 2011, wherein they offered six statements and one expert report. Moreover, they filed the request of the alleged victims to have the benefit of using the Victim's Legal Assistance Fund of the Inter-American Court (hereinafter "the Victim's Assistance Fund," or "Assistance Fund") to

¹ The alleged victims in this case appointed as representatives the Grupo de Apoyo a los Repatriados y Refugiados [Support Group for Repatriates and Refugees], Centro Cultural Dominicano Haitiano [Dominican Haitian Cultural Center], as well as the International Clinic for the Defense of Human Rights of the *Université du Québec à Montréal*.

cover the costs related to the production of evidence during the processing of the case before the Court.

5. The brief of October 28, 2011, wherein the representatives provided a document with answers and clarifications regarding the evidence previously provided, as well as provided specific annexes and the Spanish version of some documents that were in different languages.

6. The Order of the President of the Court of December 1, 2011, (hereinafter "the Order of the President"), which declared admissible the request of the victims to use the Victim's Legal Assistance Fund and specified what would be covered by this benefit.

7. The notes of the Secretariat of February 23, 2012, wherein the parties were informed that the answer brief to the brief submitting the case and the brief containing motions and pleadings, filed by the State on February 14, 2012, had been declared inadmissible by the Court as it had not been filed within the period established in Article 41(1) of the Rules of Procedure of the Court² (hereinafter also "the Rules of Procedure").

8. The notes of the Secretariat of April 20, 2012, wherein, following instructions by the President and in conformity with Article 46(1) of the Rules of Procedure of the Court, a request was made for the representatives and the Commission to forward, by no later than May 4, 2012, their respective final lists of proposed declarants (hereinafter "the final list"), and that based on the principle of procedural fairness, that they indicate which of these declarants would render statements or expert reports before a notary public.

9. The briefs of May 4, 2012, wherein the Inter-American Commission, the State and the representatives forwarded, respectively, their final lists. The representatives noted that three of the alleged victims would be able to render statements before a notary public, and that two of the alleged victims and one witness would render their statements during the public hearing. The Commission confirmed the expert evidence previously offered and requested that the three expert witnesses render statements during the public hearing. Moreover, by way of a note from the Secretariat of May 9, 2012, it was noted that the final list submitted by the State would not be admitted nor processed, because the Plenary of the Court determined the inadmissibility of the brief answering the application as it was time-barred. (*supra* Having Seen clause 7).

10. The notes of the Secretariat of May 9, 2012, wherein it transmitted a final list to the parties and informed them that they had until May 15, 2012, to present any observations deemed pertinent.

11. The brief of May 14, 2012, wherein the Commission reported that it did not have any observations to make. Moreover, neither the representatives nor the State made observations.

² Rules of Procedure approved by the Court in its LXXXV Regular Period of Sessions held on November 16 to 28, 2009.

CONSIDERING THAT:

1. The offering and admission of evidence, as well as the summons of the alleged victims and expert witnesses, are regulated by Articles 35(1)(f), 40(2)(c), 41(1)(c), 46, 50, and 57 of the Rules of Procedure of the Court.

2. The Commission offered three expert reports as evidence; the representatives offered the statements of five alleged victims and one witness, as well as an expert report. The evidence was noted at the due procedural moment, except that of the State as it did not file its answer within the period established for it to have done so. (*supra* Having Seen clause 1, 3, and 7).

3. The Court guaranteed the parties the right to defense regarding the evidence submitted in the briefs submitting the case and the brief containing pleadings and motions, as well as the final lists (*supra* Having Seen clause 10), without their being objections or challenges.

4. In regard to the statements offered by the representatives that were not contested, this Presidency considered it convenient to collect them, in order for the Court to assess them during the appropriate procedural opportunity. The purpose and manner of these statements will be established in the operative part of this Order. (*infra* Operative Paragraphs 1 and 5).

5. On the other hand, in the brief containing pleadings and motions, the representatives offered the expert statement of Mr. Louis Coté, but at the same time, they adjoined a copy of this statement as an annex to their brief. As a consequence, the expert statement of Mr. Coté is documentary evidence, which will be assessed at the due opportunity, within the context of the existent body of evidence and pursuant to the rules of sound judgment.

6. In addition, in this Order, the President will examine in a particular manner: a) the admissibility of the expert evidence offered by the Inter-American Commission; b) the manner of the statements and expert reports to be rendered, c) the application of the Victim's Legal Assistance Fund, and d) the final oral and written arguments and observations.

A. Expert evidence offered by the Inter-American Commission

7. Pursuant to that established in Article 35(1)(f) of the Rules of Procedure, "the possible appointment of expert witnesses" can be carried out by the Inter-American Commission "when the Inter-American public order is affected in a significant manner," whose basis and purpose must be appropriately supported. The meaning of this provision makes the appointment of experts by the Commission an exceptional occurrence, subject to the requirement that is not met by the mere fact that the evidence sought to be produced have a relationship with an alleged violation of a human right. The "Inter-American public order [must] be affected in a significant manner," after which it corresponds to the Commission to support the situation.³

³ Cf. *Case of Pedro Miguel Vera Vera et al. V. Ecuador*. Order of the President of the Inter-American Court of Human Rights of December 23, 2010, Considering clause 9, and *Case of the El Mozote and Nearby Places v. El Salvador*. Order of the President of the Inter-American Court of Human Rights of March 22, 2012, Considering clause 17.

8. The Inter-American Commission offered as expert evidence the expert reports of: a) Cristóbal Rodríguez, for him to render a statement on “the intervention of the Dominican military justice system in the investigation and prosecution of crimes that are not committed on duty [or] that could constitute human rights violations[,] as well as the constitutional and legal regulations regarding the scope of the application of military justice in the Dominican Republic”; b) Gay McDougall, for him to render a statement on “the treatment of Haitian migrants on Dominican territory, and on the minimum guarantees that pursuant to international human rights must govern in all criminal or other type of procedures that involve the determination of the migrant status of a person or that can result in a sanction as a consequence of this status,” and c) Doudou Diène, for **her/him** to render a statement on “the structural discrimination in the Dominican Republic against Haitian persons or persons of Haitian origin, the excessive use of force by State agents against Haitian persons or persons of Haitian origins, as well as the absence of effective answers by the judiciary regarding this problem.” (*supra* Having Seen clause 1 and 3).

9. The State and the representatives did not present objections to the three expert witness reports offered by the Commission.

10. In its brief of May 4, 2012, the Commission forwarded its final list of declarants, wherein it stated that the expert opinion of Mr. Cristóbal Rodríguez offered more elements in regard to standards regarding the military forum, as well as the unsuitability of the military forum to hear cases regarding human rights violations allegedly perpetrated by State agents. Moreover, it noted that the expert opinion of Mrs. Gay McDougall offered the Court information on the international standards on human rights regarding guarantees in proceedings that involve the determination of a person's migrant status, elements that would allow the Court to define the corresponding standards. Lastly, it noted that the expert opinion of Mrs. Doudou Diène offered more elements in regard to international standards on human rights regarding structural discrimination, and would explain the factors that affect discrimination in Dominican institutions and authority regarding Haitian persons or persons of Haitian origin..

11. In regard to the expert opinion of Mr. Rodríguez, the court considers that from the information provided by the Commission the purpose of this opinion is related to the Inter-American public order. Notwithstanding the aforementioned, given the vast amount of jurisprudence of the Court on the matter, it is not necessary, at this moment, to require the expert opinion of Mr. Rodríguez.

12. In regards to the proposed expert opinions of Mrs. McDougall and Mr. Diène, the President deems that the proposed evidence can contribute to strengthening the Inter-American System of Human Rights capacities of protection regarding racial discrimination and the rights of migrants that are subjected to any State proceeding, who situation and the establishment of the migratory status involves the possibility of punishment by the State, which transcends this forum of the particular interest of the parties in a specific proceeding and creates a relevant harm in the spectrum of the Inter-American public order of human rights. Notwithstanding the aforementioned this Presidency will make use of its power to determine the purpose and objectives of the expert opinions, in such a way that it will carry out the necessary modifications in favor of the Inter-American public interest.

13. Given the previously exposed reasons, the President deems it pertinent that the Court receive the expert report of Mrs. McDougall and Mr. Diène. The value of these expert opinions will be assessed at the due opportunity, within the context of the existing body of evidence, and pursuant to the rules of sound judgment. The purpose and manner of these expert opinions will be determined in the operative part of this Order (*infra* operative paragraph 5).

B. Manner of the statements and the expert reports

14. It is necessary to assure the broadest presentation of facts and arguments of the parties in all that is relevant in order to resolve that which was contested, guaranteeing the parties both their right to the defense of their respected positions as well as the possibility of appropriately tending to the cases subject to the consideration of the Court, taking into account that this number has increased considerably and increases in a constant manner. Moreover, it is necessary that a reasonable period for the durations of the proceeding be warranted, as required by the effective access to justice. Given the foregoing, it is necessary to receive the greatest number of possible testimonies and expert reports rendered before a notary public, and to hear at the public hearing the alleged victims and expert witness whose direct statements are truly indispensable, taking into consideration the circumstances of the case and the purpose of the statements and expert reports.

1. Statements to be rendered before a notary public

15. Taking into account that stipulated in Article 50(1) of the Rules of Procedure, that indicated by the Commission and the representatives in their final list of declarants, and the purpose of the statements offered, as well as the purpose of procedural fairness, the President deems it convenient to receive, by way of statements rendered before a notary public, the statements of Joseph Pierre, Sonide Nora, Joseph Desravine, and Pedro Ureña, proposed by the representatives. The President recalls that Article 50(5) of the Rules of Procedure of the Court establishes the possibility that the State provide a list of questions to ask these individuals summoned to render statements before a notary public.

16. In the application of that provided in the regulatory provision mentioned above, the President will grant an opportunity for the State to present, if it so desires, the questions it deems pertinent to the declarants stated in the previous paragraph. Upon rendering their statements before a notary public, the declarants must answer these questions, unless the President decides otherwise. The corresponding periods will be specified, *infra*, in operative paragraphs 2 and 4 of this Order. The aforementioned statements will be forwarded to the State and to the Commission. In turn, the State may present the observations it deems pertinent in a period established in the operative part of this Order. (*infra* operative paragraph 4). The probative value of these statements will be determined in due course by the State, which will take into account the points of view, if any, expressed by the State in exercising its right of defense, within the context of the existing body of evidence as the rules of sound judgment.

2. Statements and expert reports to be received at the public hearing

17. The orders in this case are ready for the opening of the oral proceedings on the merits, and possible reparations and costs, to which the President considers it

appropriate to convene a public hearing to hear the statements of Noclair Florvilien and Joshua Maxime proposed by representatives, as well as the expert opinions of Doudou Diene and Gay McDougall, proposed by the Commission.

3. Incorporation of the expert opinion rendered in the case of Yean and Bosico V. the Dominican Republic

18. In its brief submitting the case, the Commission requested that the expert opinion given by Mr. Samuel Martinez in the *Case of Yean and Bosico v. Dominican Republic* be incorporated into the case file, where pertinent (*supra* Having Seen clause 1). The State and the representatives had no observations. In view of this, the President considers that the anthropological expert opinion can provide the Court with more elements in regard to the context of people of Haitian origin in the Dominican Republic. In this regard, it provides that this expert opinion be incorporated into this case, in order for it to be analyzed, where it so corresponds, in the context of the existing body of evidence under the rules of sound judgment. While it is documentary evidence, the State and the representatives may refer to this expert opinion in their final arguments.

C. Application of the Victim's Legal Assistance Fund

19. In the Order adopted by the President on December 1, 2011 (*supra* Having Seen clause 6), the decision was made to declare admissible the request filed by the alleged victims, by way of their representatives, to benefit from the Assistance Fund of the Court, so as to grant the financial assistance necessary for the presentation of a maximum of three statements, whether by *affidavit* or at the public hearing, and the attendance of one of the representatives.

20. Having determined that the statements provided by the representatives will be received by the Court and the means by which they will be carried out, it is now necessary to specify the amount, allocation, and specific purpose of such assistance.

21. In this regard, the President provides that the financial assistance will be allocated to cover the travel and accommodation expenses necessary for Messrs. Noclair Florvilien and Joshua Maxime, and a representative to appear before the Court and to render their statements at the public hearing to be held in the city of San Jose, Costa Rica. Moreover, financial assistance will be provided to cover the costs of formalization and delivery of a statement rendered by *affidavit*, as determined by the alleged victims or their representatives, according to the provisions of operative paragraph 1 of this Order. The representatives shall report to the Court the name of the declarant whose *affidavit* will be covered by the Assistance Fund, and submit a cost estimate for the formalization of the sworn statement in Haiti or the Dominican Republic and its delivery, within the period of time established in the operative paragraphs of this Order. As for the three people summoned to the public hearing, the Court will take the pertinent and necessary steps to cover travel, accommodation and meals for those declarants with funds from the Victim's Assistance Fund.

22. Pursuant to the requirement of Article of the Rules of Procedure for the Operation of the Assistance Fund (hereinafter "Rules of Procedure of the Assistance Fund"), it provides that the Secretariat will open a case file on expenses in order to keep an accounting and document each of the expenditures that will be made in regard to the Fund.

23. Finally, the President recalled that, under Article 5 of the Rules of Procedure of the Fund, the respondent State shall be promptly informed of the expenditures made pursuant to the Assistance Fund, for it to submit any observations, if it so desires, within a period established for this purpose.

D. Final oral and written arguments and observations

24. The representatives and the State may submit to the Court their final oral arguments on the merits and possible reparations and costs in this case, respectively, following the statements and expert reports. As stated in Article 51(8) of the Rules of Procedure, after conclusion of the arguments presented by the Inter-American Commission, it will present its final oral observations.

25. According to Article 56 of the Rules of Procedure, the alleged victims or their representatives, the State, and the Commission may submit their final written arguments and final written observations, respectively, in relation to the merits and possible reparations and costs, within the period established in operative paragraph 12 of this Order.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Pursuant to Articles 24(1) and 25(2) of the Statute of the Court and to Articles 4, 15(1), 26, 31(2), 35(1), 40(2), 41(1), 45, 46, 50 to 56, 58, and 60 of the Rules of Procedure of the Court, and in exercise of its powers in regard to the Victim's Legal Assistance Fund of the Court,

DECIDES TO:

1. Require, for the reasons stated in this Order (*supra* Considering clauses 15 and 16), pursuant to the principle of procedural fairness and in exercise of its power established in Article 50(1) of the Rules of Procedure of the Court, that the following persons render their statements before a notary public:

A) Alleged victims proposed by the representatives

- 1) Joseph Pierre, survivor, who will render a statement on the alleged persecution, massacre, detention, and expulsion;
- 2) Sonide Nora, survivor, who will render a statement on the alleged persecution and massacre, and
- 3) Joseph Desravine, survivor, who will render a statement on the alleged persecution and massacre.

B) Witness proposed by the representatives

- 1) Pedro Ureña, journalist, who will render a statement on the scene of the alleged massacre, the investigation, and the judicial proceeding.
2. Require the State to forward, where deemed relevant, in a non-extendable period that will expire on June 8, 2012, the questions it considered pertinent to ask the declarants indicated in operative paragraph 1 of this Order, by way of the Inter-American Court. The statements required in operative paragraph 1 must be filed by no later than June 20, 2012.
3. Require the representatives to coordinate and conduct the necessary steps so that, upon receipt of the State's questions, the proposed declarants include their answers in the statements they will render before a notary public, in accordance with the considering paragraph 16 of this Order.
4. Provide that, upon receipt of the statements required in operative paragraph 1, the Secretariat of the Inter-American Court provide these to the parties and the Commission, together with the expert report incorporated into this case (*supra* Considering clause 18). The State and the representatives may submit their observations to these statements and expert opinion by no later than with the final written arguments.
5. Summon the Dominican Republic, the representatives, and the Inter-American Commission to a public hearing that will be held during the 95th Regular Period of Sessions at the seat of the Court on June 21, 2012, as of 3:00 p.m., and on June 22, 2012, as of 9:00 a.m., to hear the final oral arguments and observations, respectively, on the merits and possible reparations and costs, as well as the statements of the following persons:

A) Alleged victims proposed by the representatives

- 1) Noclair Florvilien, survivor, who will render a statement on the alleged persecution and massacre, and
- 2) Josue Maxime, survivor, who will render a statement on the alleged persecution and massacre.

B) Expert witnesses proposed by the Commission

- 1) Doudou Diène, former Special Rapporteur of the United Nations on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, who will render an expert report on racial, structural, and institutional discrimination of migrant persons, the excessive use of force, and the appropriate responses of State agents and of the judiciary when faced with the situations such as the one in this case, and
- 2) Gay McDougall, Independent Expert of the United Nations on Minority Issues, who will render an expert report on the minimum guarantees that pursuant to international standards on human rights must govern all criminal or other type of proceeding that involves the determination of the migratory status of a person or that may result in a punishment as a consequence of this status.

6. Require the Republic of Haiti and the Dominican Republic to facilitate the exit and entry from their territory of the declarants, if they reside or are within their territory, who have been cited in this Order to render a statement in the public hearing on merits and possible reparations and costs in this case, pursuant to that provided in Article 26(1) of the Rules of Procedure of the Court.

7. Require the Inter-American Commission and the representatives to communicate this Order to the persons they have proposed and that have been summoned to render statements, pursuant to that provided in Article 50(2) and 50(4) of the Rules of Procedure.

8. Inform the Inter-American Commission and the representatives that they must cover the costs incurred in providing or rendering the evidence they proposed, pursuant to that provided in Article 60 of the Rules of Procedure, without detriment to that provided in considering paragraph 21 of this Order. Moreover, require the representatives to inform the Court of the name of the declarant whose *affidavit* will be covered by the Assistance Fund, and forward the cost estimate of a sworn statement in Haiti and in the Dominican Republic and its delivery, by no later than June 8, 2012.

9. Require the Commission and the representatives to inform those persons summoned to render their statements before the Court that, pursuant to Article 54 of the Rules of Procedure, the Court will make known to the State the cases in which persons required to appear or render statements before the Court did not appear or refused to render a deposition without legitimate reasons or that, in the opinion of the Court, have violated the sworn declaration or oath, for the purposes established in the corresponding national legislation.

10. Inform the representatives, the State, and the Inter-American Commission that, upon conclusion of the rendering of statements in the public hearing, the parties can present their final oral arguments and observations before the Court, respectively, on the merits and possible reparations and costs in this case.

11. Provide that the Secretariat of the Court, pursuant to that provided in Article 55(3) of the Rules of Procedure, after the public hearing, provide the Inter-American Commission, the representatives, and the State, as briefly as possible, the link with the recording of the public hearing on the merits and possible reparations and costs in this case.

12. Inform the representatives, the State, and the Inter-American Commission that they all have until July 23, 2012 to present their final written arguments and final written observations, respectively, in relation to the merits and possible reparations and costs in this case. This period is non-extendable.

13. Provide, pursuant to Article 4 of the Rules of Procedure on the Operation of the Victim's Legal Assistance Fund, that the Secretariat of the Court open a case file on expenses, where each of the expenditures made in relation to the Victim's Legal Assistance Fund will be documented.

14. Provide that the Secretariat of the Inter-American Court provide legal notice of this Order to the Inter-American Commission on Human Rights, the representatives of the alleged victims, and the Dominican Republic.

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary