INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF EXPELLED DOMINICANS AND HAITIANS *v.* DOMINICAN REPUBLIC

JUDGMENT OF AUGUST 28, 2014
(*Preliminary objections, merits, reparations and costs*)

In the case of *Expelled Dominicans and Haitians,*[*]

the Inter-American Court of Human Rights (hereinafter also "the Inter-American Court" or "the Court"), composed of the following judges:[**]

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary;

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this Judgment, structured as follows:

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[*] The case was processed before the Inter-American Commission on Human Rights, as well as during the proceedings on the contentious case before the Inter-American Court of Human Rights, under the heading of "*Benito Tide et al. v. Dominican Republic.*" By a decision of the Court, this Judgment is delivered under the heading *Case of Expelled Dominicans and Haitians v. Dominican Republic.*

[**] On August 20, 2014, Judge García-Sayán excused himself from taking part in all the activities of the Court while he is a candidate for the post of Secretary General of the Organization of American States (OAS), and, on the same date, the President of the Court accepted his excuse; consequently Judge García-Sayán did not take part in the deliberation of this Judgment. In addition, Judge Alberto Pérez Pérez was unable to participate in the deliberation of this Judgment for reasons beyond his control.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *Submission of the case and synopsis:* On July 12, 2012, in accordance with Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court case 12,271 against the State of the Dominican Republic (hereinafter "the State" or "the Dominican Republic"). According to the Commission, the case relates to the "arbitrary detention and summary expulsion from the territory of the Dominican Republic" of the presumed victims who are Haitians and Dominicans of Haitian descent, including children (*infra* para. 3.c.i), without following the expulsion procedure set out in domestic law. In addition, the Commission considered "that a series of obstacles prevented Haitian immigrants from registering their children born in Dominican territory," and persons of Haitian descent born in the Dominican Republic from obtaining Dominican nationality.

2. According to the Commission the case "occurred in a tense climate of mass collective expulsions of individuals that involved Dominicans and aliens alike, both documented and undocumented, who had established permanent residence in the Dominican Republic, where they had close family and work-related ties." In addition, among other considerations, the Commission referred to: (a) "impediments to granting nationality to persons born in Dominican territory, despite the fact that the State follows the principle of *ius soli*"; (b) that "the State failed to submit information demonstrating that the repatriation procedure in effect at the time of these events had been applied to the [presumed] victims," and (c) that the presumed victims "were not provided with legal assistance, and did not have the opportunity to appeal the deportation decision; furthermore, there no order from a competent, independent, and impartial authority ruling on their deportation." In addition, "the State did not indicate a specific remedy the [presumed] victims could have accessed to protect their rights." Also, according to the Commission, "during their arbitrary detention and expulsion, [they] did not have the opportunity to present their documentation and, in those cases where it was presented, it was destroyed by the Dominican officials," which meant that the presumed victims "were deprived of the ability to demonstrate their physical existence and juridical personality." In addition, "during their detention, the [presumed] victims did not receive water, food, or medical assistance, and their expulsion led to the uprooting and breakdown of family structures and affected the normal development of familial relations, even for new members of the family."

3. *Processing before the Commission.* The case was processed before the Inter-American Commission as follows:

a) *Petition.* The initial petition, dated November 12, 1999, was presented by the International Human Rights Law Clinic at the University of California, Berkeley, School of Law, Boalt Hall, the Center for Justice and International Law (hereinafter "CEJIL"), and the National Coalition for Haitian Rights (hereinafter "NCHR").[1] On May 8, 2000, the Commission opened case 12,271. On January 30, 2002, the representatives presented an *addendum* to the petition in favor of 28 persons, in order to litigate the

[1] In a brief of November 17, 1999, the then petitioners asked the Inter-American Commission to grant precautionary measures "to protect the Dominicans of Haitians descent and the Haitians who lived and worked in the Dominican Republic from arbitrary expulsions and deportations perpetrated by the Dominican Government." On November 22, 1999, the Commission asked the State to adopt precautionary measures.

case. During the merits stage, the presumed victims were represented by CEJIL, the Human Rights Clinic at Columbia University School of Law (hereinafter also "the Human Rights Clinic" or "Columbia University"), the Repatriates and Refugees Support Group (hereinafter also "GARR"), and the Movement of Dominican-Haitian Women (hereinafter "MUDHA").

b) *Admissibility report.* On October 13, 2005, the Commission approved Admissibility report No. 68/05 (hereinafter "the Admissibility report").[2]

c) *Merits report.* On March 29, 2012, the Commission issued Merits report No. 64/12, under Article 50 of the American Convention (hereinafter "the Merits report").

i) *Conclusions.* The Commission concluded that the Dominican Republic was responsible for the violation of:

> The rights to juridical personality, personal integrity, personal liberty, judicial guarantees, protection of the family, rights of the child, nationality, property, freedom of movement and residence, equality and nondiscrimination, and judicial 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, [respectively,] in relation to Article 1(1) [of this instrument], to the detriment of Benito Tide Méndez, Willia[n] Medina Ferreras,[3] Lilia Jean Pierre,[4] [Aw]ilda Medina,[5] Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé,[6] Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Marilobi Fils-Aimé, Endry Fils-Aimé, Andren Fils-Aimé, Juan Fils-Aimé, Ber[s]son Gelin,[7] Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Andrea Alezy, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, M[ar]kenson Jean,[8] Victoria Jean, Miguel Jean and Nat[…]alie Jean.[9] The Commission also conclude[d] that the State had violated the right to personal integrity, protected under Article 5 of the Convention […] and the right to protection of the family, recognized in Article 17 of the American Convention, in relation to [its] Article 1(1) […], to the detriment of "Carmen Méndez, Aíta Méndez, Domingo Méndez, Rosa Méndez, José Méndez, Teresita Méndez, Carolina Fils-Aimé, María Esthe[l] [Matos] Medina […],[10] Jairo Pérez Medina, Gimena Pérez Medina, Antonio

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[2] The Commission declared the petition admissible with regard to Articles 3, 5, 7, 8, 17, 19, 20, 22, 24 and 25, in relation to Article 1(1) of the Convention, as well as to Article 7 of the Convention of Belém do Pará, and considered that "Benito Tide Méndez, Antonio Sensión, Andrea Alezi, J[e]anty Fils-Aimé, Willia[n] Medina Ferreras, Rafaelito Pérez Charles and Bers[s]on Gelin" were the possible victims.

[3] Although the Commission referred to "William Medina Ferreras" in the Merits report, for the effects of this Judgment he will be referred to as "Willian Medina Ferreras" (hereinafter also "Willian Medina," "Willian" or "Mr. Medina Ferreras"), as indicated below (*infra* para. 83).

[4] Although the State raised doubts about the name of this person, the Court, in keeping with its decision in this regard (*infra* para. 83), will refer to her as Lilia Jean Pierre.

[5] Although the Commission referred to "Wilda Medina" in the Merits report, for the effects of this Judgment she will be referred to as "Awilda Medina Pérez" (hereinafter also "Awilda Medina" or "Awilda"), as indicated below (*infra* para. 83).

[6] Although the State raised doubts about the name of this person, the Court, in keeping with its decision in this regard (*infra* para. 86), will refer to him as Jeanty Fils-Aimé (hereinafter also "Mr. Fils-Aimé" or "Jeanty").

[7] Although the Commission referred to "Berson Gelin" in the Merits report, for the effects of this Judgment, the Court will refer to him as "Bersson Gelin" (hereinafter also "Mr. Gelin"), based on the documentation provided that substantiates his name (*infra* para. 86).

[8] Although, the Commission referred to "Mckenson Jean" in the Merits report, for the effects of this Judgment, the Court will refer to him as "Markenson Jean" (hereinafter also "Markenson"), as indicated below (*infra* footnote 56).

[9] Although, the Commission referred to "Nathalie Jean" in the Merits report, for the effects of this Judgment, the Court will refer to her as "Natalie Jean" (hereinafter also "Natalie"), because this is how her name appears in her safe-conduct (*infra* para. 222 and footnote 264), a document issued by the State.

[10] Although the Commission referred to "María Esther Medina Matos" in the Merits report, for the effects of this Judgment, the Court will refer to her as "María Esthel Matos Medina," as indicated below (*infra* para. 95).

Sensión, Ana Dileidy Sensión, Maximiliano Sensión, Emiliano Mache Sensión, Analideire Sensión, [Julie Sainlice],[11] Jamson Gelim, Faica Gelim, Kenson Gelim, Jessica Jean and Victor Manuel Jean."

ii) *Recommendations.* The Inter-American Commission recommended that the State:

1. Permit all the victims who are still in Haitian territory to return to the territory of the Dominican Republic.
2. Take the measures necessary to:
   (a) recognize the Dominican nationality 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 replace or provide all the necessary documentation certifying them as Dominican nationals.
   (b) provide Nene Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Marilobi Fils-Aimé, Endry Fils-Aimé, Andren Fils-Aimé, Juan Fils-Aimé, Berson Gelin and Victor Jean with the necessary documentation certifying that they were born in Dominican territory, and facilitate the procedures required to recognize their Dominican nationality.
   (c) ensure that Lilia Jean Pierre, Janise Midi, Carolina Fils-Aimé, Ana Virginia Nolasco, Andrea Alezy, Marlene Mesidor and McKenson Jean, Haitian nationals, are able to remain legally in Dominican territory with their families.
3. Pay integral compensation to the victims, or their heirs where appropriate; the compensation should cover pecuniary and non-pecuniary damage and the property the victims had to leave behind in the Dominican Republic when they were expelled.
4. Publicly acknowledge the violations declared in this case, using appropriate means of dissemination.
5. Adopt measures of non-repetition that:
   (a) ensure the cessation of the practice of collective expulsions and deportations, and adapt repatriation procedures to the international human rights standards established in the merits report; in particular, ensuring the principle of equality and non-discrimination, and observing the State's specific obligations in relation to children and women.
   (b) include a review of domestic legislation on registration and the 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 racial characteristics or national origin, taking into account the principle of *ius soli* accepted by the State, the State obligation to prevent statelessness and relevant standards of international human rights law.
6. Implement effective measures to eradicate the practice of sweeps or immigration control operations based on racial profiling.
7. Ensure that the Dominican authorities who perform immigration-related functions receive intensive training in human rights to guarantee that, in the performance of their functions, they respect and protect the fundamental rights of everyone, 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 that are proved and establish the pertinent sanctions.
9. Establish effective judicial remedies for cases of human rights violations committed in the course of expulsion or deportation procedures.

4. *Notification of the State.* The Merits report was notified to the Dominican Republic in a communication of April 12, 2012, and it was given two months to report on compliance with the recommendations. The Commission indicated that this period elapsed without the State complying with the recommendations; therefore, it submitted the case to the Court due to the need to obtain justice and fair reparation.

5. *Submission to the Court.* On July 12, 2012, the Commission submitted to the Court's jurisdiction the facts and human rights violations described in the Merits report "that have continued since [Dominican Republic] accepted the contentious jurisdiction of the Court on March 25, 1999." The Inter-American Commission appointed Commissioner Rosa María Ortiz, and its Deputy Executive Secretary, Elizabeth Abi-Mershed, as delegates, and Isabel Madariaga Cuneo and Tatiana Gos, Executive Secretariat lawyers, as legal advisers.

[11] Although the Commission referred to "Gili Sainlis" in the Merits report, for the effects of this Judgment, the Court will refer to her as "Julie Sainlice" because, at the Court's request, the representatives clarified her name on August 28, 2013.

6. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the violation of Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child), 20 (Right to Nationality), 21 (Right to Property), 22(1), 22(5) and 22(9) (Freedom of Movement and Residence), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of this instrument. In addition, the Commission asked the Court to order the State to adopt specific measures of reparation.

II
PROCEEDINGS BEFORE THE COURT

7. *Notification of the State and the representatives.* The Commission's submission of the case was notified to the State and to the representatives on August 28, 2012.

8. *Brief with motions, arguments and evidence.* On October 30, 2012, MUDHA, the Human Rights Clinic, GARR and CEJIL (hereinafter "the representatives")[12] presented their brief with motions, arguments and evidence (hereinafter "motions and arguments brief") to the Court, under Articles 25 and 40 of the Rules of Procedure. The representatives agreed in substance with the Commission's arguments, and asked the Court to declare the international responsibility of the State for the violation of the same articles alleged by the Commission and also asked that the Court declare the violation of Articles 11 (Right to Privacy), 18 (Right to a Name) and 2 (Domestic Legal Effects) of the American Convention. Lastly, they asked the Court to order the State to adopt diverse measures of reparation and to reimburse certain costs and expenses. In addition, they asked for access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter also "the Victims' Legal Assistance Fund," "the Assistance Fund" or "the Fund") "to cover some specific expenses related to the production of evidence during the proceedings before the Court."

9. *The State's answering brief.* On February 10, 2013, the State presented to the Court its brief filing preliminary objections, answering the submission of the case and with observations on the motions and arguments brief (hereinafter "the answering brief"). The State raised the following preliminary objections: (a) "Inadmissibility [of the case] owing to failure to exhaust domestic remedies"; (b) "Partial inadmissibility of the case owing to lack of competence *ratione temporis* to examine part of the factual framework [of the case]," and (c) "Partial inadmissibility [of the case] *ratione personae* in relation to the members of the Jean family." Furthermore, it referred to two "preliminary issues," which it did not submit as preliminary objections, namely: (a) "some petitioners not qualified to be considered presumed victims in this case," and (b) "the acts alleged by the representatives that were not substantiated by the Commission within its factual framework." In this brief, the State, *inter alia*, referred to the representatives' request to access the Assistance Fund. On October 1, 2012, the State advised that it had appointed Néstor Cerón Suero as Agent, and Santo Miguel Román as Deputy Agent, and had also designated four legal advisers: José Marcos Iglesias Iñigo, Gina Salime Frías Pichardo, Marino Vinicio Castillo Hernández and José Casado-Liberato.

[12] In the communication of August 21, 2012, they advised the Court that the said organizations would act before the Court "as representatives in the said case" of the "Medina Ferreras, Jean Mesidor, Sensión Nolasco, Fils-Aimé, Gelin and Pérez Charles" families. They added that they had "lost contact with Andrea Alezy for several years, and this prevented them from presenting a document accrediting that they represented her, so that they [would] not submit arguments with regard to her." They indicated that CEJIL was the common intervener.

10. *Access to the Legal Assistance Fund.* In an Order of March 1, 2013, the President of the Court (hereinafter also "the President") declared admissible the request presented by the presumed victims, through their representatives, to access the Victims' Legal Assistance Fund.[13]

11. *Preliminary objections.* In briefs received on July 5, 2013, the representatives and the Commission presented their observations on the preliminary objections filed by the State and asked the Court to reject them. In addition, they indicated that the State's arguments were not "preliminary issues."

12. *Public hearing.* In an Order of September 6, 2013,[14] the President summoned the parties to a public hearing and required, among other matters, that several statements be submitted by affidavit[15] (*infra* para. 111). The public hearing took place on October 8 and 9, 2013, during the Court's forty-eighth special session, held in Mexico City, Mexico[16] (hereinafter "the public hearing"). During this hearing, the Court received the statements of one presumed victim and one expert witness offered by the Commission, two expert witnesses offered by the representatives, and two expert witnesses offered by the State, as well as the final oral observations and arguments of the Inter-American Commission, the representatives, and the State, respectively. Also, during this hearing, the Court required the parties to submit specific documentation and clarifications on matters relating to the application of certain laws and regulations, legal deportation procedures, and details of the alleged violations. Furthermore, the State showed a video with regard to one presumed victim.

13. *Supervening facts.* The parties cited the following: (a) on October 2, 2013, the representatives advised that the Constitutional Court of the Dominican Republic had handed down judgment TC/0168/13 on September 23, 2013 (hereinafter also "judgment TC/0168/13"), in which "it ruled on the application of article 11 of the Dominican Constitution, applicable to this case." In view of the fact that this occurred after the presentation of the motions and arguments brief, and that "it is closely related to the facts of this case," they asked that "the judgment in question be admitted as supervening evidence"; (b) on May 22, 2014, the representatives advised that Victoria Jean had died on April 20, 2014, and (c) on June 9, 2014, the State advised that it had issued Decree

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[13] *Cf.* Order of the President of the Court of March 1, 2013. Case of Tide Méndez et al. v. Dominican Republic. Victims' Legal Assistance Fund. Available at: http://joomla.corteidh.or.cr:8080/joomla/es/jurisprudencia-oc-avanzado/38-jurisprudencia/1983-resolucion-del-presidente-de-la-corte-interamericana-de-derechos-humanos-caso-tide-mendez-y-otros-vs-republica-dominicana-fondo-de-asistencia-legal-de-victimas-de-1-de-marzo-de-2013

[14] *Cf.* Order of the President of the Court of September 6, 2013. Available at: http://joomla.corteidh.or.cr:8080/joomla/component/content/article/38-Jurisprudencia/2081-corte-idh-caso-tide-mendez-y-otros-vs-republica-dominicana-resolucion-del-presidente-de-la-corte-interamericana-de-derechos-humanos-de-06-de-septiembre-de-2013. By an Order of the President of the Court of September 11, 2013, it was decided to amend the sixty-fifth *considerandum* and twelfth operative paragraph of the Order of the President of the Court of September 6, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/mendez_fv_13_2.pdf

[15] *Cf.* Order of the President of the Court of September 6, 2013. Following the request of the State, the representatives and the Commission, the time limit for the parties and the Commission to present the affidavits required in the said order, which had originally been set at September 25, 2013, was extended until October 1, 2013.

[16] There appeared at this hearing: (a) for the Inter-American Commission: Felipe González, Commissioner, Elizabeth Abi-Mershed, Deputy Executive Secretary, Silvia Serrano Guzmán and Jorge Humberto Meza, advisers; (b) for the representatives of the presumed victims: Jenny Morón, Cristina Francisco Luis and Leonardo Rosario Pimentel (MUDHA); Francisco Quintana, Gisela de León and Carlos Zazueta (CEJIL); Lisane André (GARR), and Paola García Rey (Columbia University), and (c) for the State: Santo Miguel Román, Deputy Director, General Directorate of Immigration, attached to the Ministry of the Interior and Police, Deputy Agent; Fernando Pérez Memén, Ambassador Extraordinary and Plenipotentiary of the Dominican Republic to the United Mexican States; José Casado-Liberato, Lawyer-Human Rights Analyst for OAS Affairs, Adviser, and Paola Torres de la Cruz, Minister Counsellor of the Embassy of the Dominican Republic in Mexico.

No. 327-13 of November 29, 2013, and Law No. 169-14 of May 23, 2014, and asked that they be incorporated into the case file because it considered that they were supervening facts.

14. *Amici curiae.* The Court received *amici curiae* briefs from various institutions: (1) the Human Rights Clinic of the University of Texas School of Law; (2) the Public Actions Group (GAP), the Jurisprudence Faculty of the Universidad del Rosario, Colombia, and the Pro Bono Foundation, Colombia; (3) the RFK International Strategic Litigation Unit; (4) the Centro de Estudios Legales y Sociales (CELS) Argentina, the Iniciativa Frontera Norte de Mexico (IFNM) and the Fundar Centro de Análisis e Investigación, Mexico; (5) the Human Rights Clinic of Santa Clara University Law School; (6) the Latin American Council of Students of International and Comparative Law, Dominican Republic Chapter (hereinafter "COLADIC-RD"); (7) the International Human Rights Law Clinic of the University of Virginia School of Law; (8) the International Human Rights Clinic of the Inter-American University of Puerto Rico Law School and the Caribbean Institute for Human Rights; (9) the Human Rights Clinic of the University of Miami School of Law, and (10) the Pedro Francisco Bonó Center, the Centro de Formación y Acción Social Agraria (CEFASA), Solidaridad Fronteriza, the Jesuit Migration Service Network, Dominican Republic, and the National Director of the Social Sector of the Company of Jesus in the Dominican Republic, Mario Serrano Marte. In addition Paola Pelletier Quiñones presented an *amicus curie.*

15. Regarding the *amici curiae* presented by the Human Rights Clinic of the University of Virginia, and by the International Human Rights Clinic and Law School of the Inter-American University of Puerto Rico and the Caribbean Human Rights Institute, the State asked that both *amici curiae* be declared inadmissible and excluded from the deliberations on the case, asserting that it had been proved that the content of the former had been guided, coordinated and revised by CEJIL, which was a party to this international litigation and, with regard to the latter, that Mrs. Martínez-Orabona, was not someone who was "unrelated to the proceedings," so that the brief did not qualify as an *amici curiae*, under Article 2(3) of the Rules of Procedure. The Court points out that, under Article 2(3) of the Rules of Procedure, the person presenting an *amicus* should be a person or institution that is unrelated to the litigation and proceedings before the Court, who submits arguments on the facts contained in the submission of the case, or legal considerations on the subject-matter of the proceedings. In other words, the person should not be a procedural party to the litigation, and the document is presented in order to clarify to the Court some factual or legal matters related to the case being processed by the Court; therefore, it cannot be understood as a motion or pleading that the Court must assess in order to decide the case, and an *amicus curiae* brief may never be assessed as an actual probative element.[17] Hence, the State's request that they be excluded from the deliberations is inadmissible. Consequently, the Court admits the said *amici curiae*, in keeping with the preceding considerations.

16. Regarding the *amici curiae* presented by COLADIC-RD and by the Bonó Center and their attachments, the State argued that "the rules of procedure do not establish that those who participate in the proceedings as *amici curiae* may submit documents of any kind, rather they must present legal arguments." The Court underlines that Article 44(1) of the Rules of Procedure which refers to submission of *amici curiae*, establishes that "[a]ny person or institution seeking to act as *amicus curiae* may submit a brief to the Court, together with its annexes, by any of the means established in Article 28(1) of the […] Rules of Procedure." Consequently, the Court considers that the State's observations are inadmissible, and admits the said documents.

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[17] *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 10.

17. *Final written arguments and observations.* On November 9, 2013, the representatives forwarded their final written arguments (hereinafter also "final arguments") together with various annexes, and the Commission submitted its final written observations. The State presented its final written arguments, together with several annexes, on November 10, 2013, through *Dropbox.*[18]

18. *Observations on the documents annexed to the final written arguments*. The briefs with final arguments and observations were forwarded to the parties and to the Inter-American Commission on December 17, 2013, and the President granted the parties and the Commission until January 6, 2014, to present any observations they deemed pertinent on the information and annexes forwarded by the representatives and the State, as applicable. On January 6, 2014, the representatives presented their observations and, after the extension requested by the State had been granted, the latter presented its observations on January 17, 2014. The Inter-American Commission did not present observations.

19. *Helpful evidence*. On February 6, 2014, the Secretariat of the Court (hereinafter also "the Secretariat"), on the instructions of the President, asked the State, under Article 58(b) of the Rules of Procedure, to provide information concerning Willian Medina Ferreras. The State presented the information on March 3[19] and 16, 2014. On April 10 and 14, 2014, respectively, the representatives and the Commission presented their observations. On April 15, 2014, the Secretariat forwarded the documentation to the parties and to the Commission and advised the representatives that their "petitions, together with the admissibility and pertinence of the documentation submitted w[ould] be determined at the appropriate time." In addition, the Commission was informed that the admissibility of the observations would be determined opportunely (*infra* para. 144).

20. In its communications of March 3 and 16, 2014, the State informed the Court that it had instituted certain proceedings in the domestic jurisdiction concerning the situation of Willian Medina and his children, Awilda Medina, Luis Ney Medina (hereinafter also "Luis Ney") and Carolina Isabel Medina (hereinafter also "Carolina Isabel"), who is deceased. On May 7, 2014, the Secretariat, on the instructions of the President and under Article 58(b) of the Rules of Procedure, asked the State to provide helpful evidence by forwarding, by May 22, 2014, at the latest, a full and true copy of all the administrative and judicial procedures and proceedings, including those in the criminal jurisdiction, concerning Willian Medina Ferreras, and Awilda, Luis Ney and Carolina Isabel, and the representatives to provide the identify cards of two presumed victims and, as appropriate, the pertinent explanations. The State responded on May 28 and 29, 2014 (*infra* para. 145). On May 30, 2014, the State was asked to provide clarifications by June 3, 2014, at the very latest;[20] however, the clarifications were not presented within this time frame, but rather on June 13, 2014. As regards this documentation sent on June 13, 2014, the State was informed

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[18] In their presentations, the representatives and the State responded to the requests made by the Court during the public hearing for helpful information, documentation and explanations (*supra* para. 12 and *infra* para. 134).

[19] The documentation presented by the State on March 3, 2014, included two documents "apparently of a notarial nature that [were] incomplete"; therefore, the State was asked to forward the Court a complete copy of the documents, or else the pertinent clarifications. After the Secretariat of the Court had reiterated the request to the State on March 14, 2014, the latter responded to the request on March 16, 2014.

[20] Specifically: (a) to clarify whether it had sent the complete case file and, if not, to send a complete and updated copy of the file, and (b) to confirm whether other administrative or judicial procedures or proceedings, including of a criminal nature, were open in relation to the identity and voter registration cards and/or birth certificates of the persons identified as Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Medina and, as appropriate, to forward the Court a complete and updated copy of the said proceedings.

that, since it had been presented belatedly, its admissibility would be determined at the appropriate time (*infra* para. 145). The representatives, on June 17, 2014, and the Commission, on June 24, 2014, presented their observations within the respective time frame.

21. *Disbursements in application of the Assistance Fund.* On January 31, 2014, the Secretariat, on the instructions of the President, forwarded information to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case and, as established in article 5 of the Court's Rules for the Operation of the Fund, granted it a time frame for presenting any observations it deemed pertinent. However, the State did not present observations.

22. *Provisional measures.* On May 30, 2000, the Commission requested provisional measures in favor of Haitians and Dominicans of Haitian origin who risked being "expelled" or "deported" collectively, in relation to case No. 12,271. In orders of August 18, September 14 and November 12, 2000, May 26, 2001, October 5, 2005, and February 2, 2006, the Court required the adoption of measures in favor of Benito Tide Méndez (hereinafter also "Benito Tide" or "Mr. Tide"), Antonio Sensión, Andrea Alezy, Jeanty[21] Fils-Aimé, Willian Medina Ferreras, Bersson Gelin and Rafaelito Pérez Charles, who were named as presumed victims in the Merits report of this case (*supra* para. 3.c.i). The Court required the State to adopt, immediately, all necessary measures to protect the life and personal integrity of the beneficiaries. Furthermore, it required the State to abstain from deporting or expelling Benito Tide Méndez and Antonio Sensión from its territory; to permit the immediate return to its territory of Jeanty Fils-Aimé and Willian Medina Ferreras, and the family reunification of Antonio Sensión and Andrea Alezy with their underage children in the Dominican Republic, and also to collaborate with Antonio Sensión to obtain information on the whereabouts of his family members in the State of Haiti (hereinafter also "Haiti" o "Republic of Haiti") or in the Dominican Republic. It also required the adoption of measures in favor of the priest Pedro Ruquoy and of Solain Pie or Solain Pierre or Solange Pierre and her four children. Subsequently, the Court ordered the lifting of the provisional measures in favor of Benito Tide and Andrea Alezy at the request of the representatives themselves, and also those in favor of Jeanty Fils-Aimé and Solain Pie or Solain Pierre or Solange Pierre due to their decease. Moreover, owing to the particular situation of the beneficiaries, in the different Orders, the Court gradually lifted the measures because the situation of extreme gravity and urgency to avoid irreparable damage to these persons no longer persisted. Lastly, in its Order of September 7, 2012, the Court decided "[t]o lift the provisional measures" with regard to all those who had been beneficiaries, because they did not meet the requirements established in Articles 63(2) of the Convention and 27 of the Rules of Procedure, and to archive the respective file.

III
COMPETENCE

23. The Inter-American Court is competent to hear this case pursuant to Article 62(3) of the Convention, because the Dominican Republic has been a State Party to the American Convention since April 19, 1978, and accepted the contentious jurisdiction of the Court on March 25, 1999. The State's objections to the Court's competence *ratione temporis* in relation to some of the facts of this case will be examined in the following chapter.

IV

[21] Although when processing the provisional measures and in the said Order he was identified as "Janty Fils-Aimé," the Commission identified him as "Jeanty Fils-Aimé" in the Merits report; hence, for the effects of this Judgment he will be referred to thus (*supra* footnote 6 and *infra* para. 86).

PRELIMINARY OBJECTIONS

24. The State filed three preliminary objections concerning: (a) the alleged failure to exhaust domestic remedies; (b) the Court's alleged lack of competence *ratione temporis* in relation to certain facts and acts, and (c) the aforementioned partial lack of competence *ratione personae* "in relation to the members of the Jean family."

A) Preliminary objection of failure to exhaust domestic remedies

A.1. Arguments of the parties and of the Commission

25. The State argued: (a) that the process before the Commission failed to comply with the appropriate procedure in relation to the State's argument of failure to exhaust domestic remedies, and (b) the existence of effective domestic remedies that had not been exhausted, and mentioned the existence of the remedy of *amparo.*[22]

26. In this regard, the State asserted that the Commission had "received the petition on November 12, 1999," and that, in a brief of "August 8, 2000,"[23] presented in the context of the processing of the provisional measures,[24] the State had advised the Commission that "the remedies of the domestic jurisdiction ha[d] not been exhausted […] and presented a certification in this regard." Furthermore, in its answering brief, the State clarified that *amparo* "was the effective domestic remedy."[25] In addition, it indicated in this brief that "the Supreme Court of Justice […] recognized and regulated the action for *amparo*, based on the impact of Article 25 of the American Convention on the domestic jurisdiction,"[26] and that "the National Congress [had] enacted Law No. 437-06, of November 30, 2006, establishing the remedy of *amparo.*" The State added that, in its Admissibility report and also in its Merits report, the Commission had affirmed that "the State had not filed the objection of [failure to] exhaust domestic remedies." It also

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[22] It should be mentioned that, in its final written arguments, the State affirmed that it "reiterate[d] that the domestic remedies available at the time of the presumed facts and/or acts described in the factual framework of the case were: **(I)** the application for *habeas corpus* to counter any infringement of the right to personal liberty; **(II)** the application for *amparo* to safeguard any fundamental right other than personal liberty, and **(III)** the remedies of the contentious-administrative jurisdiction to counter the alleged acts and decisions of the agents of the General Directorate of Immigration. However, and consistent […] with [its] procedural position, the State only present[ed] arguments in relation to the availability and effectiveness of the application for *amparo* in the instant case, and the failure to exhaust this substantiates this objection" (*bold type in the original text*). Based on the State's observations, the Court will only analyze the arguments relating to the "application for *amparo,"* in relation to the said preliminary objection of failure to exhaust domestic remedies.

[23] Secretariat of State for Foreign Affairs of the Dominican Republic. The State's brief of December 15, 1999, answering the request for precautionary measures sent by the Commission. The State's brief of August 8, 2000, answering the transfer of case, Note No. DEI.-99-1367 of December 7, 1999 (file of annexes to the Merits report, annex 1, fs. 6 to 25).

[24] This document was in the case file processed before the Commission, which the latter forward to the Court. The State explained that, "during the first public hearing held by the Court […] to examine [the provisional measures related to the case, it had] deposited a brief dated August 8, 2000, in which it clarified" – referring to the requirement of prior exhaustion of domestic remedies – that the Supreme Court of Justice had "recognize[d], in a judgment delivered on February 24, 1999, the remedy of *amparo* based on the American Convention." It indicated that, on that occasion, the Commission had advised the Court "that it should not refer to the said brief, […] because it would be dealt with within the contentious procedure instituted before [the Commission."

[25] It also indicated that "[t]he procedure on provisional measures and that on a contentious case […] are of a different juridical and procedural nature."

[26] The State, in its answering brief, advised that the judgment of the Supreme Court of Justice had been delivered on February 24, 1999. It also argued that, more recently, "within the framework of the 2010 amendment of the Constitution, the Legislature had enacted the Organic Law of the Constitutional Court and Constitutional Proceedings No. 137-11 on June 13, 2011 [… in which] it authorized new types of *amparo* remedies, such as the *amparo* on compliance, collective *amparo*, and electoral *amparo*."

indicated that "at no time prior to the [Merits report] did the Commission inform the State that the petitioners had argued the exceptions established in Articles 46(2)(a) and 46(2)(b) of the Convention, so that this is a new argument in the proceedings." Lastly, in its final written arguments, the State indicated that, in their observations on the preliminary objections, the Commission and the representatives "recognized expressly that the State had indicated at the appropriate procedural moment that the effective remedy available was the application for *amparo*."

27. The State concluded that it had not tacitly waived the filing of the preliminary objection, and "that the Commission failed to observe its own rules of procedure when it admitted the petition lodged in this case, without evaluating [with due rigor, whether the representatives of the [presumed] victims had filed and also exhausted the domestic remedies."

28. The Commission observed that the Dominican Republic was referring to a brief presented to this Court in a proceeding other than the processing of the contentious case, and that "the fact that, in a communication to the Court, it had indicated in general terms that the issues raised by the State corresponded to the analysis of the contentious case did not exempt the State from presenting the objection of failure to exhaust domestic remedies expressly before the Commission, accompanied by the necessary information." During the public hearing it added that "[t]he State […] merely cited the existence of the remedy of *amparo* without specifying how it could have been filed by the victims who had actually been deported in the circumstances described."

29. The representatives stated that, in the said brief of August 8, 2000, the State "did not indicate the appropriate remedy that allegedly had not been exhausted, nor did it mention whether it was available, suitable and effective"; hence, the argument was not made appropriately and, in any case, that brief had been presented "in a different proceeding to this one and, therefore, the argument should not be taken into account." They added that "the exception to the exhaustion of domestic remedies contained in Article 46(2)(b) of the Convention […] is applicable to this case, because the [presumed] victims were formally and physically prevented from access to the remedies under domestic law," as they had been expelled or deported without a court order, so that there was no judicial decision that they could contest and, added to this, outside Dominican territory they did not have access to an effective remedy.

A.2. Considerations of the Court

30. Article 46(1)(a) of the Convention establishes that, for a petition or communication lodged before the Commission to be admissible, it is necessary that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This rule was conceived in the interests of the State to allow it to resolve the dispute in the domestic sphere before being faced with international proceedings.[27] This means that not only must these remedies exist formally, but they must also be adequate and effective,[28] as a result of the exceptions established in Article

[27] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 61*; Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2011. Series C No. 228, para. 27*, and Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 15.

[28] This means, on the one hand, that the function of the remedy in question, "within the domestic legal system, must be appropriate to protect the juridical situation infringed. Numerous remedies exist under every domestic legal system, but they are not all applicable in every circumstance. If, in a specific case, the remedy is not appropriate, it is evident that it is not necessary to exhaust it." "Furthermore, a remedy must be effective; in other words, it must be able to produce the result for which it was conceived." *Cf. Case of Velásquez Rodríguez v.*

46(2) of the Convention.[29] Since the State has alleged the failure to exhaust domestic remedies, it should have indicated, at the appropriate opportunity, the remedies that must be exhausted and their effectiveness. It is not the task of the Court, or of the Commission, to identify *ex officio* the domestic remedies that remain to be exhausted, and it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.[30] This reveals that when the State refers to the existence of a domestic remedy that has not been exhausted, this must not only be indicated opportunely, but also precisely, identifying the remedy in question and also how, in the specific case, it would be adequate and effective to protect the persons in the situation denounced.

31. In the procedure prior to the decision on the admissibility of this case, the Commission made no distinction between the proceedings on the admissibility of the case and the processing of precautionary and provisional measures; moreover, the Admissibility report does not reveal any background information for the decision other than the processing of the said measures. In addition, the brief of August 8, 2000, on which the State substantiates its arguments, is part of "the whole case filed before the Commission," copy of which was forwarded to the Court, as indicated in the brief submitting the case. Also, the Commission mentioned that the said brief "w[ould] be duly dealt with during the contentious procedure before the Commission."[31] Consequently, even though the parties and the Commission are in agreement in indicating that the processing of provisional measures is different from that of the contentious case (*supra* paras. 28 and 29, and *infra* footnote 42), which, in general, is in keeping with the Court's case law,[32] in the specific circumstances of this case, this, in itself, is insufficient to conclude that the State did not present the objection of failure to exhaust domestic remedies opportunely.

32. Thus, the Court notes that, in its brief of August 8, 2000, the State alleged that the presumed victims had not exhausted the domestic proceedings and indicated that the available remedy was the application for *amparo*. Nevertheless, apart from this mention on that occasion, the Dominican Republic did not explain the supposed suitability and effectiveness of the remedy of *amparo* in light of the facts of this case.

Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64 and 66*, and Case of Memolí v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 46.

[29] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 63, *and Case of Memolí v. Argentina*, para. 46.

[30] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 23*, and Case of Liakat Ali Alibux v. Suriname,* para. 16.

[31] The Commission made this assertion when presenting observations on the said brief of August 8, 2000, during the processing of the provisional measures. As in the case of this brief, the Commission's observations were forwarded to the Court during the processing of the contentious case before the Court, because they are included in the file of the contentious processing of the case before the Commission that was provided to the Court *(cf.* file before the Commission, fs. 835 to 837).

[32] The Court has stated that "the purpose of the proceedings on [provisional measures is] accessory, precautionary and protective in nature; it is different from the purpose of a contentious case, in both the procedural aspects and the assessment of the evidence and in the implications of the decisions. Consequently, although the arguments, factual grounds and probative elements aired during the provisional measures may be closely related to the facts of the […] case, they are not automatically considered as such or as supervening facts" (*cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 58). Despite this, the Court has considered circumstances in which the beneficiaries of the provisional measures, and the presumed victims of a contentious case were the same and, also, in which the purpose of such measures also coincides to a certain extent with the merits of the dispute. In this context, the Court has indicated that, "as appropriate, and insofar as they have been opportunely, specifically and duly mentioned and identified by the parties in relation to their arguments" it could "consider part of the body of evidence" "the briefs and documentation presented in the proceedings on provisional measures" (*cf. Case of Uzcategui et al. v. Venezuela. Merits and reparations.* Judgment of September 3, 2012. Series C No. 249, para. 33).

33. Also, neither in this brief nor subsequently, did the State affirm that expulsion proceedings had been instituted, in relation to the facts concerning the presumed victims. This is consistent with the State's denial that these acts of expulsion or deportation really occurred. Contrary to the Dominican Republic, the representatives and the Commission alleged that the expulsions or deportations did happen, and that they were carried out without a proper expulsion procedure that would have allowed the presumed victims who, according to the alleged facts were summarily deported to Haiti, to file an effective remedy. This Court considers that it is not possible to examine the alleged preliminary objection of failure to exhaust domestic remedies in relation to the remedy of *amparo*, because the dispute described cannot be decided in a preliminary way, but are related to the merits of the matter.[33]

34. Based on the above, the Court rejects the preliminary objection of failure to exhaust domestic remedies filed by the State.

B) Objection of the Court's lack of competence ratione temporis

B.1. Arguments of the parties and of the Commission

35. The State, in its answering brief, argued that it "accepted the contentious jurisdiction of the Court on March 25, 1999," and that:

> This act […] took place at least **one (1) year after** the presumed expulsion of Benito Tide Méndez, **four (4) years after** the alleged first deportation of Bers[s]on Gelin, **almost five (5) years after** the supposed expulsion of […] Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión and Antonio Sensión and **at least one (1) year after** the presumed first deportation of Victor Jean, Marlene Mesidor, M[ar]Kenson Jean, Miguel Jean and Natalie Jean (bold type in the original text).

36. The State also pointed out that, in their motions and arguments brief, the representatives had explicitly indicated that they were not submitting the facts relating to the expulsion of Benito Tide to the Court because these occurred in 1998. The State also indicated that "[i]t is not true" that, as affirmed by the representatives, the presumed victims, members of the Sensión family, have remained separated from their loved ones for eight years. It added that "Antonio Sensión, Ana Lidia Sensión and Reyita Antonia Sensión possess their Dominican identity and voter registration cards," and that Ana Virginia Nolasco (hereinafter also "Mrs. Nolasco" or "Ana Virginia") "has been able to reside and move around [Dominican Republic] owing to the legal effects of the safe-conducts granted by the [State] in 2002, renewed in 2012 and in force [until February 10, 2013]."

37. The State asserted that "not only is the exceptional derogation of the principle of the non-retroactivity of treaties inapplicable to this case but, furthermore, the factual framework of the application only alleges the occurrence of acts of an instantaneous nature that began to be executed and that concluded before March 25, 1999."

38. The Commission argued that the "human rights violations established in this case remain unpunished." It added that "acts and omissions of the State that occurred after [the acceptance of the Court's jurisdiction] establish the continuing violation of the right to nationality and the arbitrary interference in family life." It linked the impossibility of some presumed victims to return to the Dominican Republic to structural conditions of discrimination that make them afraid to go back, and indicated that this situation

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[33] The Court has decided similarly in previous cases: *cf*. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 94, and *Case of Liakat Ali Alibux v. Suriname,* para. 21.

continued after the expulsions. It affirmed, in its brief with observations on the preliminary objections, that the "effects" of the expulsion of Mrs. Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión "extended" after March 25, 1999, because the "family reunification" and the return to Dominican territory was in 2002. However, during the public hearing, it did not refer to "effects," but rather to "continuance," indicating that "the deportations were the start of implementation, but the structural conditions continued after the acceptance of jurisdiction." It also stated on that occasion that "the fact that a factual situation begins to be implemented before the acceptance of […] jurisdiction, does not remove the individuals from the Court's protection in case of subsequent acts or omissions. [… S]ubsequent acts exist that constitute autonomous violations."

39. The representatives agreed, in substance, with the Commission. However, they indicated that they were "not submitting the facts relating to the expulsion of Benito Tide Méndez to the Court's consideration, because they took place in 1998," and clarified that these alleged acts "did not continue once [the] Court had acquired competence." In addition, like the Commission, they referred to both the "continuance" of the acts and to their "effects." Thus, on the one hand, they indicated, in relation to Mrs. Nolasco, Ana Lidia and Reyita Antonia Sensión, that the facts, "although they began to occur before March 25, 1999, continued to occur up until 2002." In addition, they alleged that, "in the case of the Sensión family, […] the effects of the expulsion remained over time, in the sense that Mrs. Sensión and her daughters were unable to return to the Dominican Republic for […] eight years and remained separated from Mr. Sensión for all that time; thus […] there was a continuing violation […] of the rights of the family." Unlike the Commission, the representatives did not refer to the alleged impunity in relation to the objection of lack of temporal competence.

B.2. Considerations of the Court

40. The State deposited the document ratifying the American Convention before the General Secretariat of the Organization of American States on April 19, 1978, and the treaty entered into force on July 18 that year. The State accepted the jurisdiction of the Court on March 25, 1999. Based on this, and on the principle of non-retroactivity, codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court is able to examine the acts or facts which took place after the acceptance of its competence, even those that began before that date, but execution of which is continuing or permanent.[34]

41. Having established the above, the Court must analyze the Commission's observation regarding the "impunity" in which the alleged human rights violations remain, even those relating to expulsions or deportations that took place before March 25, 1999. In this regard, the Court has indicated that:

> Even when a State obligation refers to acts that took place before the date of the acceptance of the respective jurisdiction, the Court is able to analyze whether or not that obligation was met by the State as of that date. In other words, the Court may make the said examination to the extent that this is feasible based on independent acts that occurred within the temporal limit of its competence.[35]

42. The Court notes that the Commission did not identify independent acts that occurred after March 25, 1999, but rather referred, in general, to case law on "the State obligation to act with due diligence in the face of human rights violations," including the duty to

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[34] *Cf. Case of Blake v. Guatemala. Preliminary objections.* Judgment of July 2, 1996. Series C No. 27, para. 40, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 32.

[35] *Case of García Lucero et al. v. Chile. Preliminary objection, merits and reparations.* Judgment of August 28, 2013. Series C No. 267, para. 30.

"investigate," and did not provide any grounds other than this background information. In particular, it did not explain why, under the applicable domestic or international law, the State had a duty to investigate the alleged facts in this case. In addition, it did not indicate that there had been, either before or after March 25, 1999, proceedings relating to the investigation of the facts, or claims made requiring this, or any other act or fact related to it. Consequently, when determining its temporal competence, the Court is unable to consider the alleged "impunity" of the facts of the case. Since this is true of all the alleged acts of expulsion, both those had took place prior to March 25, 1999, and those that occurred subsequently, the Court will not take into account the alleged "impunity" when examining the merits of the violations alleged in relation to acts for which it has competence.

43. Having established the foregoing, it should be noted that the alleged expulsions in this case are acts whose execution concluded with their implementation; that is, with the implementation, ordered and imposed by State authorities or officials, of the removal of the person in question from the State's territory. The aftereffects of such acts do not constitute their continuing nature, and therefore the Court cannot examine them,[36] unless they are independent acts that constitute the violation of other treaty-based rights.

44. Consequently, the Court will not examine the following facts and effects, because they fall outside its temporal competence and, furthermore, they were not submitted to its consideration:

a) The facts relating to the alleged expulsion of Benito Tide Méndez from Dominican territory in 1998, and its effects;[37]

b) The facts relating to the alleged expulsion of Bersson Gelin in 1995, or its effects;

c) The facts relating to the detention and expulsion of Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión in 1994,[38] and

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[36] *Cf.* similarly, *Case of Alfonso Martin del Campo Dodd v. Mexico. Preliminary objections.* Judgment of September 3, 2004. Series C No. 113, para. 78, and *Case of García Lucero et al. v. Chile,* para. 36.

[37] Despite the foregoing, in its Merits report, the Commission indicated among the facts the steps that Mr. Tide had taken in 2007 to replace his Dominican identity card, and related this to the alleged violation of the right to juridical personality and to equality before the law. The Court would have temporal competence to examine these facts. However, for reasons of procedural economy it should be noted that there is no evidence of this fact, which the Commission asserted based on the "observations on the merits of the case presented [to the Commission] by the representatives [that] were not contested by the State." In addition, it emerges *prima facie* that these facts, taken in isolation, only describe steps taken by Mr. Tide (the completion of which is not recorded), so that they do not prove infringements of treaty-based rights. In fact, they indicate that Benito Tide Méndez "had lost" his "Dominican identity card"; that "he tried to replace" it, and that Dominican authorities "refused" to do this, because they told him that he must "go to the Central Electoral Board" because "he was being investigated." In this regard, the Commission considered that "the steps taken [by Benito Tide Méndez] in order to recover his documentation encountered several obstacles and additional requirements, and he was allegedly refused the documentation owing to an investigation that was underway." Hence, the Commission did not assert conclusively, but only potentially, that the "documentation" "had allegedly been refused," and did not provide explanations, other than those described, as to why the supposed "obstacles and additional requirements," or the said "investigation" would, in themselves, give rise to violations of treaty-based rights. The Court considers that the facts described and the considerations, isolated from other facts concerning Benito Tide Méndez that the Court is unable to analyze owing to the limits to its temporal competence, reveal *a priori* that it is not possible to infer violations of the American Convention; accordingly, it is not necessary to analyze these circumstances. Thus, the Court is unable to examine any presumed act or fact relating to Benito Tide. This means that the Court cannot rule on the members of Mr. Tide's family, because the allegations with regard to them are based on a connection to the supposed acts that concern him.

[38] It is relevant to establish that the Court will not examine the allegations relating to the presumed impossibility of Ana Lidia Sensión and Reyita Antonia Sensión to present their personal documentation to the authorities, or the supposed destruction of this documentation. In this regard, it should be explained that, in the Merits report, the Commission determined that Ana Lidia Sensión and Reyita Antonia Sensión, "during their arbitrary detention and expulsion, […] were not given the opportunity to present [their] documentation [or this]

d) The alleged facts relating to the expulsion of Victor Jean in 1998.

45. To the contrary, the Court is competent to rule on facts that, as indicated in the Merits report, occurred after March 25, 1999.

46. Hence, the Court will examine the facts that took place following the acceptance of its contentious jurisdiction by the Dominican Republic that are independent facts that may constitute autonomous violations.[39]

47. Consequently, the Court admits partially the preliminary objection of lack of temporal competence, in the terms described above.

48. However, according to Article 42(1) of the Rules of Procedure, "[p]reliminary objections may only be filed in the [answering] brief." Therefore, the State's presentation in its final written arguments of an objection of lack of competence *ratione temporis* in relation to the Medina and Fils-Aimé families is time-barred.[40] Nevertheless, it will be taken into account, as pertinent, when examining the merits of the case.[41]

C. Objection of the Court's lack of competence ratione personae

C.1. Arguments of the parties and the Commission

49. The State noted that Victor Jean, and the members of his family, "Marlene Mesidor, Ma[r]kenson Jean, Victoria Jean, Miguel Jean, Nat[…]alie Jean, Jessica Jean and Victor Manuel Jean," were not "identified by the Inter-American Commission in the Admissibility report.[42] It asked that the Court "declare the application inadmissible *ratione personae"* with regard to them. It asserted that the presentation of the members of the Jean family as presumed victims "violates the State's right of defense and the principle of procedural equality, because the State did not have the corresponding procedural opportunity to defend itself in the case [of] the Jean family." It added that the State should have the

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was destroyed by the Dominican officials" and, on this basis, "conclude[d] that the State violated the[ir] rights to juridical personality and to nationality." When submitting the case to the Court, the Commission asked that the Court declare the violation of these rights to the detriment of the said persons. However, at the same time, the Commission indicated that it submitted the case to the Court only with regard to "the [alleged] acts and human rights violations committed by the State […] that have continued since the acceptance of the Court's contentious jurisdiction on March 25, 1999." Therefore, since the said destruction of documents or the impossibility of presenting them occurred before March 25, 1999, these facts fall outside the Court's temporal competence and were not submitted to its consideration.

39 *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections.* Judgment of November 23, 2004. Series C No. 118, para. 84, and *Case of García Lucero et al. v. Chile*, para. 35.

40 The State explained that, since the most recent temporal reference was only made during the public hearing, it had not presented the objection in its answering brief and, therefore, presented the objection in its final written arguments, an occasion that, according to the State, is the "opportune procedural moment […] according to Article 57(2) of the Court's Rules of Procedure."

41 The Court also notes that the State did not affirm that the respective facts, as described in the Merits report, were outside the Court's temporal competence. The Court will consider the facts that fall within the factual framework of the case, within the limits of its temporal competence, and based on the relevant evidence.

42 The State alleged, referring to the Merits report, that, in order to consider the said persons as victims, the Commission had taken into account the State's position during the friendly settlement process and the provisional measures (paragraph 109 of the Merits report asserts 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." The State rejected this, indicating that: (a) although the friendly settlement procedure and the proceedings of a contentious case may intersect, their juridical and their procedural nature are distinct, as indicated by the Convention." Regarding the former, it asserted that, in paragraph 124 of its judgment in the case of *Abrill Alosilla,* the Court had stated: "not every position taken […] before the Commission gives rise to […] an acknowledgement of facts or of responsibility."

opportunity to resolve the alleged violations in the domestic sphere, and that the Commission should have notified it of the Jean family's request to be included.

50. The representatives alleged that, based on "consistent case law of the Court since [the judgment of November 20, 2007, in the case of *García Prieto et al. v. El Salvador,*" "[t]he opportune procedural moment to identify the [presumed] victims in the proceedings before the Court is the Merits report." In addition, they noted that "the first mention of [the members of] the Jean family as victims […] was [in the brief dated] January 29, 2002, in an addendum to the initial petition lodged before the Commission." They also listed various presentations and actions, in the context of the process before the Commission, in which, following the issue of the Admissibility report, reference had been made to the members of the Jean family, or on which the State had not made any relevant observations (*infra* para. 55). They inferred from this that "[t]he State had 10 years and numerous procedural opportunities to comment on the situation of the Jean family and to present the arguments and evidence to defend itself and, nevertheless, did not do so."

51. The Commission stated that "the explanation for the inclusion of the Jean family is found in the Merits report" and that "the individualization made in [the report] is consistent with the indications of the Inter-American Court since 2007, to the effect that the persons considered victims must be identified in the merits report of the Commission." According to the Commission, this "is supported by the fact that the Commission determines the factual basis of the case at the merits stage and not in the admissibility stage, which is based on a *prima facie* standard of assessment." In addition, it clarified that:

> The reference to the friendly settlement procedure does not mean that the merits report accords legal effect to questions debated during the procedure; [but rather] it relates to safeguarding the State's right of defense […], taking into account that, since 2002, the State was aware that the petitioners considered this family a victim.

C.2. Considerations of the Court

52. The Court considers it pertinent to indicate that the Commission did not identify the members of the Jean family in the Admissibility report, even though the representatives had presented "additional information" to the Commission on January 30, 2002, in which they referred to these persons. The omission consisted in: (a) the failure to mention their names expressly, and (b) the absence of any reference to the facts relating to the members of this family. However, in the Merits report, the Commission "concluded that the State […] is responsible for the violation of [certain] rights, […] to the detriment of, [*inter alia*], Victor Jean, Marlene Mesidor, M[ar]Kenson Jean, Victoria Jean, Miguel Jean, Natalie Jean[,…] Jessica Jean [and] Victor Manuel Jean" and, in its paragraphs 109 to 116, indicated the facts relating to the members of the Jean family.[43]

53. Under Article 35(1) of the Rules of Procedure of the Court and its consistent case law, the presumed victims must be identified in the merits report issued pursuant Article 50 of the Convention.[44] In the instant case, the Commission identified the members of the Jean family in the Merits report and thus complied with this regulatory provision.

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[43] Thus, the Commission provided information on the composition of the family and the events that occurred in 1998 and on December 1, 2000, which, allegedly, resulted in the expulsion of Victor Jean from Dominican territory and, on the second occasion, the expulsion of the members of his family also. In addition, reference is made to financial losses of Victor Jean and the members of his family and to the safe-conducts granted to the members of this family in March 2002.

[44] *Cf. Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 65, and *Case of Chaparro Álvarez and Lapo Íñiguez v.*

54. Despite the foregoing, the State filed this objection owing to the difference between the Admissibility report and the Merits report and the alleged violation of its "right of defense" and to "procedural equality," in relation to the inclusion of the members of the Jean family as presumed victims in the second document.

55. The Merits report of this case indicates that, "[a]lthough the Jean family was not mentioned by name in the Admissibility Report […], 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." Indeed, the Court has verified that, on several occasions before and after the issue of the Admissibility report on October 13, 2005, information was presented on the members of the Jean family of which the State was aware.[45]

56. The Court notes that, during the processing of the case before the Commission prior to the issue of the Merits report, the State was able to present its exculpatory arguments on this aspect. The State has not indicated any reason or proved why, in the instant case, the failure to identify the members of the Jean family and the respective facts in the Admissibility report would prejudice its ability to defend itself, or that this had not been rectified by the subsequent opportunities it has had to submit its exculpatory arguments.

57. Based on the above, the Court rejects the objection filed by the State.

V
PRELIMINARY ISSUES

58. The State presented two preliminary issues that relate to: (a) some petitioners were disqualified from being considered presumed victims in this case, and (b) the inadmissibility *ratione materiae* [….] of the presumed facts and acts alleged by the representatives that were not recognized by the Commission [….] in its factual framework." The issues raised by the State will be analyzed as follows: (A) Determination of the presumed victims, and (B) Factual framework.

A) Determination of the presumed victims

59. The Court will now describe and analyze the aspects grouped by the State into a "preliminary issue" concerning whether certain persons qualified as presumed victims; in other words, concerning the possibility of examining the alleged violation of treaty-based rights with regard to these persons. Notwithstanding the fact that, as indicated by the Commission and the representatives this "preliminary issue" relates in part to factual determinations *(infra* para. 69), for reasons of procedural economy and greater clarity,

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Ecuador. *Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 224. These judgments were adopted by this Court during the same session. This criterion has been ratified when applying the Court's new Rules of Procedure: *cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, footnote 214, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 29.

[45] After the issue of the Admissibility report on March 31, 2006, the representatives presented a communication to the Commission in which they stated that "the family of Victor Jean is not expressly mentioned as a victim in the Admissibility report." That communication was forwarded to the State on May 8, 2006, and the Commission asked it "to present any observations it deemed opportune." There is no record that the State responded to this request. Later, a series of steps were taken corresponding to measures to achieve a friendly settlement; in addition, the representatives presented observations on the merits of the matter, and requested that the Commission issue the merits report. They also forwarded a list of victims, including the members of the Jean family. Furthermore, the State mentioned some members of the Jean family during the friendly settlement process when requesting certain information.

the Court considers it appropriate to deal with these arguments of the State before examining the facts of the case and their legal effects. This is in order to determine, first, the persons regarding whom it will analyze whether their rights have been violated. For the same reasons and purpose, the Court will also include in this evaluation an examination of information and arguments that, even though the State did not relate them to the "preliminary issue" that it raised, are closely related to the identification of the presumed victims in this case. In doing so, the Court will abide by the criteria established for the assessment of evidence, which is indicated below (*infra* paras. 193 to 198).

A.1. Arguments of the parties and the Commission

60. The State, in its answering brief, asserted that the Court could only consider the following as presumed victims: "Willia[n] Medina Ferreras"; "[Aw]ilda Medina"; "Luis Ney Medina"; "Carolina Isabel Medina"; "Jeanty Fils-Aimé (deceased)"; "Janise Midi"; "Diane Fils-Aimé"; "Antonio Fils-Aimé"; "Marilobi Fils-Aimé"; "Endry Fils-Aimé"; "Andrén Fils-Aimé"; "Carolina Fils-Aimé"; "Bers[s]on Gelin" and "Rafaelito Pérez Charles." In this brief, it filed an "objection that [certain] persons were not qualified to be considered presumed victims" as a "preliminary issue." The State also referred to Benito Tide and to the members of his family, and also to the members of the Jean family.[46] In addition, in raised questions regarding the following persons, who it grouped by family:

> [A] **Medina family:** (**1**) Lilia Jean Pierre [and] (**2**) Kimberly Medina Ferreras
> [B] **Fils-Aimé family:** (**1**) Juan Fils-Aimé and (**2**) Nené Fils-Aimé
> [C] **Gelin family:** (**1**) [Julie Sainlice,] (**2**) Jamson Gelin, (**3**) Faica Gelin, (**4**) Kenson Gelin, [and] (**5**) William Gelin
> [D] **Sensión Family:** (**1**) Antonio Sensión, (**2**) Ana Virginia Nolasco, (**3**) Ana Lidia Sensión, (**4**) Reyita Antonia Sensión, (**5**) Ana Dileidy Sensión, (**6**) Maximiliano Sensión, (**7**) Emiliano Mache Sensión, [and] (**8**) Analideire Sensión
> [E] **Andrea Alezy**, and
> [F] **Pérez Charles family:** (**1**) María Esther [Matos Medina], (**2**) Jairo Pérez Medina, and (**3**) Gimena Pérez Medina (*bold in the original text*).

61. The State also presented information and concerns regarding the identity or relationship of some of the persons who, in its answering brief, it had indicated that they could be considered presumed victims. These persons are: Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, and Jeanty Fils-Aimé, according to the names that have been established (*infra* paras. 83 and 86). In addition, in its final written arguments, on the basis of arguments relating to the statements made before the Court after it had presented its answering brief, it objected to Marilobi, Andren and Carolina, all surnamed Fils-Aimé. The case file before the Court also contains documents in which the State presented information and arguments on data related to the identity of Jeanty Fils-Aimé, Bersson Gelin and Rafaelito Pérez Charles (hereinafter also "Mr. Pérez Charles"),[47] which the Court finds it desirable to deal with prior to analyzing the merits of the case. The State's arguments and information are described below (grouped by the family of the persons to whom the said concerns refer).

62. *Medina family*. The State indicated that, in the case of Lilia Jean Pierre, the Commission had founded "its application" on "presumed sworn statements of Willia[n]

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[46] Regarding the members of the Jean family, in the "preliminary issue," the State repeated substantially the same arguments as it had submitted with regard to the objection *ratione personae* that it had filed *(supra* para. 49). In this regard, the Court has already taken the respective decision (*supra* paras. 52 to 57). Nevertheless, it will include other considerations on members of the Jean family in this section (*infra* para. 93).

[47] *Cf.* The State's thirtieth report on compliance with the provisional measures ordered by the Court in the Matter of Haitians and Dominicans of Haitian origin in the Dominican Republic of September 8, 2006, and the attached documents (file of annexes to the Merits report annex 38, fs. 302 to 345).

Medina Ferreras and Lilia Jean Pierre herself" (annexes 13 and 14 to the Merits report), and that Mr. Medina Ferreras indicated that his wife was "Lilia Pérez" and she was 36 years old in 2000, rather than 29 years of age, as can be inferred from Lilia Jean Pierre's statement. Therefore, "there are strong […] reasons to presume that [the person] who Mr. Medina referred to […] is not [the person] that the Commission presented as a presumed victim." The State indicated these objections while arguing also that the documents containing the said statements have not been authenticated (*infra* paras. 121 and 124). Similarly, it affirmed that, in his statement before the Court, Willian Medina Ferreras reiterated that his wife's name was "Lilia Pérez," who was Haitian, and that the extract from the birth certificate of Awilda Medina, provided by the representatives on October 6, 2013, indicates that her mother is "Liliana Pérez," a Dominican national. The State indicated also that Kimberly Medina Ferreras was not named as a victim by either the Commission or the representatives.

63. Regarding *Willian Medina Ferreras*, the State questioned his identity. Thus, it affirmed that, although it is true that the proof of identity submitted to the Court was a State document, "it is no less true that the State has advised, since 2000, that according to its investigation, this was a case of identity theft" and the investigations had not continued "out of respect" for the Court, in view of the provisional measures that were in force (*supra* para. 22). Moreover, during the public hearing, the Dominican Republic stated that, according to photographs shown to him at that time, the person identifying himself as Willian Medina Ferreras did not recognize his siblings and, according to a video shown as part of the State's arguments, supposed members of his family did not recognize him (*infra* para. 128). It asked that the Court "exclude […] Willia[n] Medina Ferreras […] from the case file, […] because there is a strong probability that he is not the same person as the one referred to by the representatives[. …] Rather, […] the person who appeared at the public hearing […] was really Wilnet Yan, a Haitian national." At the Court's request, on March 3, 2014, the State presented information on the measures taken by the Central Electoral Board that also involved Awilda Medina, Luis Ney Medina and Carolina Isabel Medina subsequently (*supra* para. 20 and *infra* paras. 140 to 144 and 206 to 208).[48]

64. *Fils-Aimé family.* The State also indicated that while the Commission had named "Juan" Fils-Aimé, who was allegedly born in 1997, as a presumed victim, the representatives referred to "Juana" Fils-Aimé who, according to the power of attorney granted, was born in 1989. Accordingly, according to the State, this is not the same person. As regards Nené Fils-Aimé (hereinafter also "Nené"), it alleged that the representatives had not presented the respective power of attorney. In addition, in its final written arguments, the State indicated that "[a]ccording to the statement of [Janise Midi (hereinafter also "Mrs. Midi")], Nené Fils-Aim[é] was born in Haiti," contrary to the assertions of the Commission and the representatives.[49] At that time, the State also requested the "exclusion from the case file" of Marilobi Fils-Aimé (hereinafter also "Marilobi") and Andren Fils-Aimé (hereinafter also "Andren"), and Carolina Fils-Aimé (hereinafter also "Carolina") because, according to the State, the statement given by Janise Midi before the Court reveals that the first two were not in the house when the supposed deportation took place, because they no longer lived there, and that Carolina was born after this alleged incident. The case file also contains documentation in which the State asserted that the supposed Dominican identity card of the person indicated in

[48] Minutes No. 23-2013 of the Central Electoral Board, "Minutes of the regular meeting of the registrars' committee held on October 18, 2013" (file of preliminary objections, merits and reparations, fs. 3478 to 3490).

[49] The State clarified that the Commission "indicated that '[t]he seven oldest children of [Mr.] Fils-Aimé were born in the Dominican Republic,' which necessarily includes Nené Fils-Aimé, because he is the oldest of them. The representatives of the presumed victims made a similar affirmation."

the Merits report as Jeanty Fils-Aimé is not registered, and referred to statements by individuals who have said that the real name of the person indicated is "Yantil" or "Fanty" and that he is Haitian.[50]

65. *Gelin family.* The State alleged that the representatives had waived the possibility of presenting arguments in favor of Julie Sainlice,[51] Jamson Gelin, Faica Gelin and Kenson Gelin, because their situation related to the life of Bersson Gelin and his family in Haiti, and had no causal nexus with the supposed facts of the case; in addition, the State had obligations with regard to individuals in its territory, and could not "assess facts or acts […] that occurred outside [this]." It also asserted that the power of attorney granted by Bersson Gelin "does not include [Willian Gelin] as a beneficiary of the legal defense and request for reparations" and that, even though Julie Sainlice granted a power of attorney on May 9, 2012, neither the Commission nor the representatives named this person as a presumed victim. Also, in relation to the person who was identified as Bersson Gelin in the Merits report, a document exists in which the State affirmed that his supposed Dominican identity card was not registered.[52]

66. *Sensión Family.* Regarding Antonio Sensión, Reyita Antonia Sensión Nolasco (hereinafter also "Reyita Antonia Sensión" or "Reyita Antonia"), Ana Lidia Sensión Nolasco (hereinafter also "Ana Lidia Sensión" or "Ana Lidia") *and* Ana Virginia Nolasco, the State asserted that the signature of Antonio Sensión on the power of attorney that he granted does not coincide with the signatures on the three sworn statements provided by the Commission and, also, that the power of attorney does not bear the signature or seal of the notary public. It also questioned Ana Virginia Nolasco, alleging that Antonio Sensión refers to his wife as "Ana Virgil" in his statements of May 8, 2001, and March 27, 2007, but the Commission, in the brief submitting the case and in the Merits report, and the representatives in their motions and arguments brief, refer to Ana Virginia Nolasco. Furthermore, the State indicated that the representatives had waived the possibility of presenting arguments in favor of Ana Dileidy, Maximiliano, Emiliano and Analideire, all surnamed Sensión; moreover, as Maximiliano was deceased, and "since he has been established as an indirect victim," his "eventual right to reparations has ceased."

67. *Pérez Charles family.* The State affirmed that, according to the official records, María Esthel Matos Medina, who the Merits report refers to as "María Esther Medina Matos," is not the mother of Rafaelito Pérez Charles. However, the representatives indicated that Clesineta Charles[53] agreed to register Rafaelito as her son due to problems experienced by Mrs. Matos Medina who, according to the representatives, is his real mother. However, this statement alone does not disprove the legal presumption *juris et de jure* provided by Rafaelito's birth certificate. Regarding Jairo and Gimena, both surnamed Pérez Medina, the State indicated that doubts exist about their relationship to Mr. Pérez Charles, because this has not been proved. The State indicated, on the one hand, that it has not been alleged or proved that they are the children of Rafael Pérez, father of Rafaelito Pérez Charles and, on the other hand, that, since Mrs. Matos Medina is not the mother of the latter, the maternal surname is different.

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[50] The State's thirtieth report on compliance with the provisional measures mentions that Jeanty Fils-Aimé is "Yantil" or "Fanty."

[51] During the public hearing, the State added that its arguments were not altered by the representatives' explanation about the name of the person identified in the Merits report as "Gili Sainlis" who, according to this explanation, is Julie Sainlice (*supra* footnote 11).

[52] The State's thirtieth report on compliance with the provisional measures.

[53] Although the representatives referred to "Clerineta Charles" in the motions and arguments brief, for the effects of this Judgment, the Court will refer to her as "Clesineta Charles," because this is the name that appears on the birth certificate of Rafaelito Pérez Charles (*infra* para. 95).

68. Lastly, the State affirmed that the representatives had indicated their "express waiver of representing [Andrea Alezy] in this case."

69. The representatives and the Commission indicated that the "preliminary issue" presented by the State was, to the contrary, a question relating to the merits of the case that concerned the assessment of the evidence. Nevertheless, the representatives and, to a lesser extent, the Commission, referred to some aspects of the State's arguments.

70. Regarding the Medina family, the representatives asserted that the difference in name between Lilia Jean Pierre and Lilia Pérez is due to the fact that Haitians living in the Dominican Republic tend to "latinize" their names.

71. In relation to Willian Medina Ferreras, both the representatives and the Commission indicated that the photographs and video on which the State based its arguments (*infra* paras. 127 and 128) are not admissible, because their presentation was time-barred. The representatives also asserted that the principle of estoppel is applicable, because the State, during the processing of the case before the Commission and in its answering brief, had indicated that the presumed victim is Willian Medina Ferreras. In addition, the representatives, in their written arguments, indicated that Willian Medina Ferreras was being investigated on the basis of his statements before the Court; that is, in violation of Article 53 of the Rules of Procedure.[54] However, it then stated that, "the State opened the new investigation on September 26, 2013, in other words 12 days before this hearing was held before the Court." They also recalled that the State had "accepted" that "Willia[n] Medina Ferreras, Awilda Medina [and] Luis Ney Medina […] are Dominican citizens."[55]

72. Regarding the person identified as "Juan Fils-Aimé" in the Merits report, the representatives clarified that she is, in fact, "Juana Fils-Aimé." Nevertheless, they indicated that "based on the statement of Janise Midi […] before the Court, [they] consider that [Juana Fils-Aimé] should not be considered a victim […], because she was not living with the Fils-Aimé family at the time of their expulsion."

73. They also stated that they had lost contact with Andrea Alezy and that they would not present arguments with regard to her.

74. As for the person identified as "Ana Virginia Nolasco" in the Merits report, the representatives explained that "her correct name in her mother tongue, Creole, is Ana Virgil Nolasco, and her latinized name […] is Ana Virginia Nolasco."

75. They also indicated, regarding the State's objection to "María Esthel Matos Medina," that "Mrs. [Matos] Medina [is] the person with whom Rafaelito has ties of affection and, therefore, it was she whose 'right to physical and moral integrity' was affected 'owing to suffering […] as a result of […] the violations perpetrated […].' Thus, it is irrelevant that she does not appear as his mother in the birth records."

76. The representatives also forwarded the Haitian identity documents of Bersson Gelin and Jeanty Fils-Aimé that it had at that time. They repeated that Bersson Gelin was born

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[54] In addition, in their brief of April 10, 2014, they "advised the Court that the State ha[d] filed a criminal complaint against Mr. Medina Ferreras on March 4, 2014," and that "Willia[n] Medina Ferreras ha[d] forwarded [them] the notification of the institution of an action to annul his birth certificate, considering that the data provided was false." A copy of this was forwarded to the Court.

[55] *Cf.* Report of the Dominican Government of July 6, 2012, on the measures adopted to comply with the Commission's recommendations (file before the Commission, fs. 2165 to 2170).

in the Dominican Republic and that "the State has denied him access to his identity card," and that, "when [Mr. Gelin] found himself in a situation of extreme vulnerability in Haiti, he was obliged to obtain Haitian identity documents to survive outside his country of birth." They added that Jeanty Fils-Aimé was born in the Dominican Republic, and that "the Dominican State refused to acknowledge his nationality by granting him his identity card as part of the State practices described in the motions and arguments brief." Lastly, they asked that, notwithstanding the Haitian identity documents, the "State provide the corresponding Dominican documentation."

A.2. Considerations of the Court

77. The Court notes that some of the arguments contesting the status of certain persons as presumed victims refer to questions relating to their identity (*supra* paras. 61 to 67), such as the name, the relationship, or the place of birth. The domestic authorities must determine this information, and also resolve eventual challenges to their decisions. The Court, within the framework of its competence and functions requires, pursuant to Article 35 of the Rules of Procedure, that the presumed victims be identified, without prejudice to the exceptions established in paragraph 2 of this article, which do not apply in the instant case.

78. In view of the situation described, and based on the arguments of the parties and the Commission, the corresponding body of evidence, as well as in light of the particularities of this case, the Court, notwithstanding any considerations that may be made subsequently when examining the merits of the case, determines that the following are presumed victims: Victor Jean, Marlene Mesidor, Markenson Jean,[56] Victoria Jean, Miguel Jean, Natalie Jean, Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, William Gelin, Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión and Rafaelito Pérez Charles. The other persons named in the Merits report will not be considered presumed victims (*infra* paras. 92 to 95). Furthermore, the Court is unable to rule on supposed facts and violations to treaty-based rights to the detriment of Benito Tide and the members of his family, and of Andrea Alezy, as explained below (*infra* para. 96). The Court finds it pertinent to make the following clarifications in relation to all the foregoing.

A.2.1. Persons identified with different names

79. Regarding Lilia Jean Pierre, the Court notes that the State partially founded its argument on information that emerged from statements presented by the Human Rights Clinic (*infra* para. 124) concerning the person who, in the Merits report, is identified as Lilia Jean Pierre. The Court observes that this is consistent with the statement of Willian Medina Ferreras who affirmed that his wife is called "Lilia Pérez," a Haitian national, and the statement of Awilda Medina, who indicated that her mother is "Lilia Pérez also known as Lilia Pierre" and that she was born in Haiti. The Court also notes that the extract from Awilda Medina's birth certificate indicates that her mother is "Liliana Pérez."[57] In addition,

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[56] The Court, for the effects of this Judgment, will refer to him as Markenson Jean, placing on record that this name refers to the person who, in the Merits report, was identified as "McKenson Jean." This is because "Markenson Jean" is the name revealed by different documents, including official ones (*cf.* Birth certificate of Markenson Jean issued by the Republic of Haiti (file of annexes to the motions and arguments brief, annex B08, f. 3527), and Affidavit made by Markenson Jean on September 29, 2013 (file of preliminary objections, merits and reparations, f. 1730).

[57] *Cf.* Extract from the birth certificate of Awilda Medina, issued by the National Civil Registry Directorate, Central Electoral Board on October 17, 1999 (file of annexes to the motions and arguments brief, annex B02, f.

the case file contains the Haitian electoral identity document of "Lilia Jean" and the birth certificate of the same country for "Lilia Jean Pierre."[58]

80. The State also argued that there was a difference between the name of "Ana Virginia Nolasco," that appears in the Merits report, and the name of "Ana Virgil" that Antonio Sensión mentioned in certain statements. Despite this, the Court takes note of the representatives' explanation that the "correct name" of Mrs. Nolasco in Creole is "Ana Virgil," which Antonio Sensión also indicated in his statement before the Court.

81. Lastly, a similar situation occurred with "William Medina Ferreras" and "Wilda Medina." The birth certificate of Willian Medina Ferreras has been provided to the Court,[59] and although the latter is named "Wilda Medina" in the Merits report, the Court has been provided with documentation that substantiates that her name is Awilda Medina Pérez (*infra* footnote 183).

82. Taking into account the evidence provided to the Court in the form of documents substantiating identity and birth, and in accordance with the criteria concerning evidence that are applicable to the case (*infra* para. 193 to 198), this Court considers that the State's arguments and the differences that exist in the said documents are insufficient to find that the persons named in the Merits report have not been duly identified, or to determine that they lack the family ties indicated, consequently, limiting their consideration as presumed victims. Moreover, it is understood that, as the representatives have indicated, Haitians living in the Dominican Republic tend to adopt the Spanish form of their names.

83. Based on the above, the Court determines that, for the effects of this Judgment, it will understand that the persons identified in the Merits report with other names – as in the case of Lilia Jean Pierre, who is also known as "Lilia Jean" or "Lilia Pierre" or "Lilia Pérez" or "Liliana Pérez"; of Ana Virginia Nolasco, whose name in Creole is "Ana Virgil," and of those who, according to the documentation presented, have accredited that their names are Willian Medina Ferreras and Awilda Medina Pérez, who the Merits report refers to as "William Medina Ferreras" and "Wilda Medina" – are the same persons, respectively, and hereinafter the first names indicated in each case will be used.

A.2.2. Persons whose place of birth could not be determined

84. With regard to those who were identified in the Merits report as Jeanty Fils-Aimé, born in "Dominican Republic" and Bersson Gelin, born "in Mencía, Pedernales, Dominican Republic," the documentation issued by the State[60] casts doubts on these data, indicating that [neither Jeanty nor Bersson] were […] registered […] with those names […] in [its] database, because the identity card number does not correspond […] to that of an identity document, either [to the] previous or [to the] actual identity cards."[61] Although Mr. Fils-

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3495), and sheet with general information on Awilda Medina Pérez, issued by the Central Electoral Board, based on its master list of those registered, on July 4, 2012 (file before the Commission, annex 3, f. 2183).

58 *Cf.* Electoral identity document and Haitian birth certificate of Lilia Jean Pierre (file of annexes to the Merits report, annex 8, fs. 158 and 159).

59 *Cf.* Birth certificate of Willian Medina Ferreras, issued by the Central Electoral Board on January 14, 1994 (file of annexes to the Merits report, annex 38, f. 342).

60 The State's thirtieth report on compliance with the provisional measures.

61 Note 34,143, signed by the President of the Central Electoral Board on September 22, 2006, attached to the State's thirtieth report on compliance with the provisional measures.

Aimé stated that he was born in the Dominican Republic,[62] the State attached copies of the sworn statements of six individuals who indicated that the name of "Jeanty Fils-Aimé" is "Yantil" or "Fanty" and that he is a Haitian national. The State added that, the affidavit prepared by Bersson Gelin and presented to the Court records that he "identifie[d] himself with [a] Haitian identity document," and stated that "[a]lthough [he] was born in the Dominican Republic, [he has] a Haitian birth certificate." Consequently, the Secretariat, on the instructions of the President, requested helpful evidence and, in response, on May 22, 2014, the representatives presented copies of the Haitian identification documents of Jeanty Fils-Aimé (with that name) and of Bersson Gelin indicating that they were born in the Haitian town of Anse-à-Pitres.

85. Regarding Nené Fils-Aimé, the Commission and the representatives stated that he was born in Dominican territory and that he is the son of Jeanty Fils-Aimé and Janise Midi; whereas the State asserted, as it did with regard to other members of the Fils-Aimé family, that his birth was not registered. Also, Janise Midi stated that Nené Fils-Aimé is the son of Jeanty Fils-Aimé, but is not her son, and that she believed that he was born in Haiti.[63] In addition, in her affidavit presented to the Court, Janise Midi stated that her children "Endry, Antonio and Diane were born in the Dominican Republic." She added that, when she was in Haiti, she "registered [her] children in Haiti, because they needed documents in order to attend school." In this regard the State indicated that "this is proof […] that the members of the Fils-Aimé family have Haitian documents, based on their Haitian nationality."

86. The representatives alleged "the difficulties and obstacles faced by persons of Haitian descent born in Dominican territory to obtain documents accrediting their nationality." However, the Court considers that this assertion is unrelated to the issue of Haitian documents and, therefore, cannot consider it proved that the persons identified as Jeanty Fils-Aimé, Bersson Gelin and Nené Fils-Aimé have Dominican documentation, or that they were born in Dominican territory. Also, the Court cannot consider proved that Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé were born in Dominican territory. The Court places on record that it will use the name Bersson Gelin for the person who the Merits report identified as "Berson Gelin," and "Jeanty Fils-Aimé" for the person who the representatives in their motions and arguments brief and the Commission in the Merits report identified with that name.

87. The Court considers that the impossibility of determining the country of birth of these persons does not prevent them from continuing to be presumed victims in this case. Moreover, it will not consider that the place or birth or nationality of any of these persons has been proved and, with regard to Nené Fils-Aimé, neither has his maternal filiation (*infra* para. 209)

A.2.3. Absence of powers of attorney in favor of the representatives

88. The State raised other questions related to the presumed lack of representation of William Gelin and Nené Fils-Aimé, owing to the alleged absence of powers of attorney in favor of the representatives. The Court considers that the alleged absence of powers of attorney refers to the legal representation of these persons and not to their status as presumed victims. Moreover, the Court has indicated "the consistent practice of this Court with regard to the rules of representation has been flexible" and that "it is not essential

[62] *Cf.* Statement made by Jeanty Fils-Aimé to Columbia University on April 1, 2000 (file of annexes to the Merits report, Annex 19, fs. 212 to 219), and Affidavit made by Janise Midi on September 24, 2013 (file of preliminary objections, merits and reparations, f.1711).

[63] *Cf.* Affidavit made by Janise Midi.

that the powers of attorney granted by the presumed victims in order to be represented in the proceedings before the Court meet the same formalities as those required by the domestic law of the defendant State."[64] In this context, the State's arguments are not sufficient to consider that these persons are inadequately represented. This conclusion is supported by the fact that there has been continuity in the measures taken by the representative organizations starting with the processing of the case before the Commission. Indeed, all the representative organizations acted as petitioners during the merits stage before the Commission, and there is no record that any of the presumed victims indicated their inconformity throughout the years that the proceedings lasted.[65] In addition, Nené Fils-Aimé and William Gelin are next of kin of persons who did grant power of attorney; the former is the son of Jeanty Fils-Aimé and the latter of Bersson Gelin. Therefore the Court rejects the said reservations and determines that they are not sufficient to question their status as presumed victims.

A.2.4. Questions raised about identity

89. The State, during the public hearing and subsequently, questioned the identity of the person identified as Willian Medina and presented information in this regard, as well as that of Awilda, Luis Ney and Carolina Isabel, all surnamed Medina (*supra* para. 63). Nevertheless, in its answering brief, the State had asserted that Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina should be considered presumed victims (*supra* para. 60) and that the first three "are Dominican citizens as revealed by the corresponding entries in the Civil Registry," and the Court will understand this to be so. However, in the case of Willian Medina, the State based some of its arguments on what happened during the public hearing following the presentation of a video, and on the fact that it had opened administrative and judicial proceedings to cancel Mr. Medina's electoral identity document and the birth declarations of his children Awilda, Luis Ney and Carolina Isabel (*infra* paras. 128, 207 and 208).

90. Similarly, in a document forwarded to the Court for the first time during the processing of the provisional measures, and also presented by the Commission in annex to the Merits report, the State asserted that it had reached the "conclusion" of "identity theft in the case of Rafaelito Pérez Charles."

91. This Court emphasizes that there is no record that the above-mentioned proceedings, or others, have concluded, or that the competent authority has reached a final decision establishing that the identity of these persons is different from the one that appears in the documents issued by the State. Consequently, the Court does not have any evidence that warrants disagreeing with the information indicated in the State's documentation. Thus, the Court rejects the State's arguments and, for the effects of this Judgment, will consider the persons identified as Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles as presumed victims, with those names.

A.2.5. Persons who will not be considered presumed victims

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[64] *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 33; *Case of Loayza Tamayo v. Peru. Reparations and costs.* Judgment of November 27, 1998. Series C No. 42, para. 98, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 54.

[65] As explained in the Merits report, CEJIL also acted as petitioner at the admissibility stage, together with entities who did not act at the merits stage: "the International Human Rights Law Clinic at the University of California, Berkeley, School of Law, Boalt Hall, […] and the National Coalition for Haitian Rights (NCHR)."

92. The Court notes that the State questioned the status as presumed victims of Marilobi and Andren, both surnamed Fils-Aimé, based on the statement of Janise Midi, and also of Juana (or Juan) (*supra* para. 64). As the State has indicated, it is true that, in her statement, Mrs. Midi failed to mention explicitly that Marilobi and Andren were present when the agents came to the house; she also failed to mention Juana (or Juan). However, she did state that, at that time, she "had three children with [her] husband. A son of [her] husband, called [Nené], and [the] children [(of her husband and herself)] Endry, Antonio and Diane, lived with them at the time." Regarding Juan Fils-Aimé, the representatives affirmed that, based on Janise Midi's statement, this person should not be considered a victim in the case. Accordingly, the Court considers that it is not possible to infer from the said statement that Marilobi, Andren and Juana (or Juan) surnamed Fils-Aimé[66] were in the house at the time of the events; thus, there is no factual support to consider them presumed victims.

93. In addition, some individuals indicated as presumed victims were born on Haitian territory after the dates indicated for the expulsions in this case, or their ties to the persons who are alleged to have been expelled or deported were established after those dates. In this regard, the Commission alleged in the Merits report that the expulsions affected "even the new members of the families" and, according to the Commission, this resulted in violations to their human rights. This is the case of Carolina Fils-Aimé, who was born on November 15, 2000, whose status as a presumed victims was contested by the State for this reason (*supra* para. 64); and also of those who, in the Merits report, were referred to as "Gili Sainlis" (*supra* footnote 11), Jamson, Faica and Kenson, all surnamed Gelin, regarding whom it was merely indicated that they are the companion and children, respectively, with whom Bersson Gelin lives in Haiti "following [his] expulsion." This is also revealed by the arguments of the representatives. It is also the case of Ana Dileidy and Analía,[67] both surnamed Sensión, daughters of Ana Lidia Sensión, who were born in 2007 and 2009, respectively, and of Maximiliano Sensión and Emiliano Mache, sons of Reyita Antonia Sensión, who were born following their expulsion and after Antonio Sensión had found the members of his family (*infra* para. 218).[68] In addition, the persons identified as Jessica and Victor Manuel, both surnamed Jean, were born in September 2003 and on January 16, 2005, respectively.[69] The Court considers it evident that the State actions

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66 Janise Midi's statement contradicts Jeanty Fils-Aimé's affirmation in his 2002 statement, when he said that his wife and his "seven" children had been detained (file of annexes to the Merits report, annex 19, f. 212). In view of the contradiction between the two statements, and considering the above-mentioned position of the representatives, the Court considers it appropriate to abide by Mrs. Midi's statement rather than that of Jeanty Fils-Aimé, because Mrs. Midi's statement was presented in the context of these proceedings before the Court and made by affidavit (*infra* para. 111).

67 The Merits report mentions this person as "Analideire." However, the birth registration indicates "Analía"; therefore the Court will use the latter name, placing on record that this refers to the person who was referred to as "Analideire" in the Merits report (*cf.* Certification of birth registration of Analía Sensión, daughter of Ana Lidia Sensión, issued by the National Civil Registry Directorate, attached to the Central Electoral Board on February 16, 2010 (file of annexes to the motions and arguments brief, annex B17, f. 3552).

68 Although there is no official information on the date of birth of Maximiliano Sensión and Emiliano Mache Sensión, sons of Ana Reyita, the representatives advised that "Emiliano Mache Sensión […] was born on November 27, 2007," and that Maximiliano Sensión was the "youngest son" of Reyita Antonia Sensión. In addition, the Court has been advised that Maximiliano is deceased (*cf.* Affidavit made by Antonio Sensión on September 29, 2013, file of preliminary objections, merits and reparations, f. 1772).

69 Affidavit made by Marlene Mesidor on September 29, 2013 (file of preliminary objections, merits and reparations, fs. 1735 and 1736). The Merits report merely indicates that "the family members of the presumed victims in this case are […] Jessica Jean and Victor Manuel Jean" and, in this regard, cites the "Observations on the merits of the case presented by the petitioners on April 16, 2009" (file of annexes to the Merits report, annex 5, fs. 36 to 119). This document indicates that "Victor Manuel (born on January 16, 2005,) [and] the child Jessica[,] were born in Santo Domingo, Dominican Republic." Regarding these persons, in the Merits Report, the Commission considered that Articles 5 and 17 of the Convention had been violated to their detriment without providing any specific legal or factual grounds. The representatives did not present any specific arguments on Victor Manuel Jean and Jessica Jean either.

alleged to have violated treaty-based rights and related to the presumed expulsions could not have affected these persons. Therefore, given that the arguments concerning these persons relate to the said expulsions [or, in the case of Victor Manuel Jean and Jessica Jean, the events that occurred are not mentioned], the Court will not examine the facts in relation to them.

94. The Court also notes that, as the State indicated, Kimberly Medina Ferreras was not presented as a presumed victim by either the Commission or the representatives; hence the Court will not consider her as such.

95. Lastly, in relation to the person identified in the Merits report as "María Esther Medina Matos," and "María Esthel Matos Medina" according to documentation issued by the State's entities,[70] as the State asserted, this person does not appear as the mother of Rafaelito Pérez Charles in the respective legal document.[71] As the representatives have accepted (*supra* para. 75), and also Rafaelito Pérez Charles himself in his statement, these documents record that Rafaelito's mother is a person named "Cle[s]ineta" Charles, who was not mentioned as a victim in the Merits report. Although the Court take note of the representatives' explanation about the "ties of affection" that exists between María Esthel Matos Medina and Rafaelito Pérez Charles, the facts presented by the Merits report do not refer to these ties of affection, but rather indicate Mrs. "Matos Medina" as the "mother" of Rafaelito Pérez Charles, a circumstance that the Court is unable to consider proved. Consequently, the Court will not consider María Esthel Matos Medina one of the presumed victims in this case. Furthermore, based on its arguments (*supra* para. 67), the State is right that the connection of the persons identified in the Merits report as Jairo Pérez Medina and Gimena Pérez Medina to Rafaelito Pérez Charles has not been proved, so that they will not be considered presumed victims.

96. Regarding the person identified in the Merits report as Andrea Alezy, the representatives and the State agree that the former waived the possibility of presenting arguments with regard to her. Even though the Merits report indicates that this person is a victim, in view of the failure to provide the Court with any probative elements concerning her, the Court is prevented from examining the respective facts. Therefore, the Court will not rule on Andrea Alezy. In addition, the Court has already established that the alleged expulsion of Benito Tide falls outside its competence (*supra* para. 44). This prevents the Court from ruling on supposed facts and violations of rights with regard to Benito Tide, and also in relation to the members of his family named in the Merits report: Carmen, Aíta, Domingo, Rosa, José and Teresita, all surnamed Méndez. Moreover, in the brief submitting the case, the Commission did not ask the Court to declare violations of treaty-based rights to the detriment of these family members.

B) The factual framework

B.1. Arguments of the parties and the Commission

97. The State alleged that some of the facts alleged by the representatives were not included in the Merits report and, therefore, asked that the Court declare their

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[70] *Cf.* Sheet with general information on María Esthel Matos Medina, issued by the Central Electoral Board, based on its master list of those registered, on June 21, 2006, and birth certificate of María Esthel Matos Medina, issued by the Central Electoral Board on August 9, 1997 (file of annexes to the Merits report, annex 38, fs. 330 and 331).

[71] *Cf.* Birth certificate of Rafaelito Pérez Charles issued by the Central Electoral Board on June 13, 1997 (file of annexes to the Merits report, annex 38, f. 328).

"inadmissibility *ratione materiae.*"[72] The respective arguments, grouped by "family" for greater clarity, are indicated below.

98. Regarding the *Medina family,* the State alleged that the following circumstances exceed the factual framework: (a) the "new" expulsion of Willian Medina Ferreras: the Commission had indicated a single expulsion of the members of the family in November 1999 or January 2000; however, the representatives alleged two expulsions, one of Mr. Medina alone, in November 1999, and the other, on January 6, 2000, of all the members of his family; (b) that, on January 6, 2000, an immigration agent took Mrs. Jean Pierre by the arm and shouted "walk" and that the Director of Immigration told her "go back to your country, blackie"; (c) that the members of the Medina Jean family were transported from the place in which they were apprehended in a military truck with 20 other individuals, in the custody of armed guards; (d) the alleged emotional harm caused by the death of the minor Carolina Isabel Medina; (e) that Mr. Medina Ferreras was an agricultural worker, and (f) that the value of the belongings that Willian Medina Ferreras allegedly lost was RD$50,000.00 (fifty thousand pesos).

99. With regard to the *Fils-Aimé family*, the State understood that the reference to the following facts exceeded the factual framework: (a) that, when Jeanty Fils-Aimé was deported on November 3, 1999, he was taken to the Pedernales Army Garrison; the Merits report indicated that he was taken to the Pedernales public prison; (b) that Jeanty Fils-Aimé had heard the words "get out, scum!" when he alighted from the bus that took him to the border; (c) that the bus that supposedly transported Janise Midi and her children to the border carried another 100 persons, and (d) that "[t]he supposed lot cultivated by the members of the Fils-Aimé Midi family represented fifty thousand pesos (RD$50,000)."

100. As regards the *Gelin family*, it argued that the following circumstances did not form part of the factual framework: (a) the alleged actions of 10 to 20 soldiers led by General Pedro de Jesús Candelier in the supposed deportation of Mr. Gelin on December 5, 1999, and (b) that the said soldiers did not verify Mr. Gelin's identity documents and did not allow him to advise his family.

101. In relation to the *Sensión Family*, the State questioned the presumed inclusion in the case of the following facts: (a) Ana Lidia Sensión's assertion that she had been taken to the border in 1994, in "a long truck with bars that was full of people, even women with babies"; (b) the valuation at RD$35,000 (thirty-five thousand pesos) of the household goods supposedly lost owing to Antonio Sensión's visits to Haiti, and (c) the details given by the representatives about the supposed actual situation of Mr. Sensión.

102. Lastly, the State included similar considerations on certain facts relating to the Jean family: (a) the expulsion of Victor Jean and Marlene Mesidor in 1991: the Commission had only referred to two expulsions, in 1998 and in 2000, and the representatives added one in 1991, and (b) the details provided by the representatives concerning the situation of the Jean Mesidor family following the expulsion to Haiti in 2000, as well as those relating to their actual situation.

103. The representatives indicated that "each of [the facts that were supposedly inadmissible, according to the State] result from facts included in the Merits report and merely explain or clarify them."

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[72] The State cited, as grounds for its position, the Court's decision on merits in the case of *Vélez Loor v. Panama.*

104. The Commission alleged that the State's arguments were not preliminary in nature, because deciding them involved aspects related to the merits of the case.

B.2. Considerations of the Court

105. The Court has established that the factual framework of the proceedings before it is constituted by the facts contained in the Merits report submitted to its consideration. Consequently, it is not admissible for the parties to allege new facts that are distinct from those included in the said report, without prejudice to describing facts that explain, clarify or reject the facts mentioned in the report and submitted to the Court's consideration (also called "complementary facts").[73] The exception to this principle are facts that can be classified as supervening and, provided they are connected to the facts of the case, these may be forwarded to the Court at any stage of the proceedings prior to the delivery of the judgment.[74]

106. The Court has also considered that it does not have to rule on the factual framework of the case in a preliminary manner, because the analysis of this corresponds to the merits of the case.[75]

107. Based on the foregoing, in this case the State's arguments must be rejected as preliminary issues. When the facts of the case are determined based on the factual framework established in the Merits report and the existing evidence, the factual elements questioned by the State may explain or clarify those facts. The Court will also decide whether it is admissible to examine certain facts in the corresponding sections.

108. Consequently, it is not incumbent on the Court to make a preliminary ruling on the matters raised by the State**.**

VI
EVIDENCE

109. Based on the provisions of Articles 50, 57 and 58 of the Rules of Procedure, the Court will determine the admissibility of the documentary evidence forwarded by the parties on different procedural occasions, the statements and testimony provided by affidavit and during the public hearing, and the helpful evidence requested by the Court. It will also decide on the incorporation of evidence *ex officio*, and the admission of the evidence on supervening facts.

110. Regarding reception of evidence, the Court has established that the proceedings before it are not subject to the same formalities as domestic judicial proceedings, and that the incorporation of certain elements of the body of evidence must be made paying special attention to the circumstances of the specific case, and bearing in mind the limits imposed by respect for legal certainty and the procedural equality of the parties.[76]

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[73] *Cf. Case of "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Norín Catrimán et al. v. Chile (Leaders, members and activist of the Mapuche Indigenous People),* para. 39.

[74] *Mutatis mutandi, Case of "Five Pensioners" v. Peru*, para. 154*; Case of Pacheco Tineo v. Bolivia*, para. 21, and *Case of J. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 27.

[75] *Cf. Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013. Series C No. 260 para. 25, and *Case of Pacheco Tineo v. Bolivia*, para. 24.

[76] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 65, and *Case of Gutiérrez and Family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, para. 79.

A) Documentary, testimonial and expert evidence

111. The Court received different documents presented as evidence by the Inter-American Commission, the representatives, and the State, attached to their main briefs (*supra* paras. 1, 8 and 9). The Court also received the affidavits made by the presumed victims Awilda Medina, Markenson Jean, Marlene Mesidor, Antonio Sensión, Ana Lidia Sensión Nolasco, Rafaelito Pérez Charles, Janise Midi and Bersson Gelin, proposed by the representatives, as well as of the witness Carmen Maribel Ferreras Mella, proposed by the State, and of the expert witnesses Cristóbal Rodríguez Gómez, and Rosa del Rosario Lara, proposed by the representatives, and Fernando Ignacio Ferrán Brú (hereinafter also "expert witness Fernando I. Ferrán Brú", or "Mr. Ferrán Brú" or "expert witness Ferrán Brú") and Manuel Núñez Asencio (hereinafter also "expert witness Núñez Asencio"), proposed by the State. As for the evidence provided during the public hearing, the Court received the statements of the presumed victim Willian Medina Ferreras, proposed by the representatives, and of the expert witnesses Pablo Ceriani Cernadas, proposed by the Commission, Bridget Frances Wooding (hereinafter also "Bridget Wooding" or "expert witness Bridget Wooding") and Carlos Enrique Quesada Quesada (hereinafter also "Carlos Quesada Quesada" or "Carlos Quesada"), proposed by the representatives, and Juan Bautista Tavarez Gómez and Cecilio Esmeraldo Gómez Pérez (hereinafter also "Cecilio Gómez Pérez" or "expert witness Gómez Pérez"), proposed by the State.[77]

112. On October 1, 2013, the representatives advised that Tahira Vargas had serious health problems that meant she was unable to provide her expert opinion; they therefore waived her presentation.

B) Admission of the documentary evidence

113. In this case, as in others, the Court admits those documents forwarded by the parties and the Commission at the appropriate procedural opportunity, that were not contested or opposed and the authenticity of which was not challenged, to the extent that they are pertinent and useful to determine the facts and their eventual legal consequences.[78] However, the Court will now make some clarifications and decide the discrepancies that have been expressed concerning the admissibility of certain documents.

114. *Newspaper articles.*[79] The Court has considered that newspaper articles may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case. The Court decides to admit those documents that are complete or that, at least, allow their source and date of publication to the verified.[80]

115. *Documents indicated by the parties and the Commission by means of Internet links.* The parties and the Commission have indicated several documents by means of Internet links. The Court has established that if a party or the Commission provides, at least the direct Internet link to the document that it cites as evidence, and it is possible to access it,

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[77] The purpose of all these statements was established in the Order of the President of the Court of September 6, 2013, *supra* para. 12.

[78] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 140, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs.* Judgment of May 29, 2014. Series C No. 279, para. 54.

[79] The parties and the Commission presented numerous newspaper articles.

[80] *Cf. Case of Velásquez Rodríguez. Merits*, para. 146, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 58.

neither legal certainty nor procedural equality is affected, because the Court, the other parties and the Commission can find it immediately.[81] In the instant case, neither the parties nor the Commission opposed or made observations on the content and authenticity of such documents, with the exception of the representatives' observations on the attachments to the final arguments in relation to some documents listed by the State (*infra* para. 136). Consequently, the said documents that were not opposed or the subject of observations are admitted.

116. *Opinions provided to the Court in other cases.* The Commission, in its brief submitting the case, asked for "the transfer of the pertinent parts of the expert opinion […] of Samuel Martínez […] in the case of the *Yean and Bosico Girls v. Dominican Republic*, and of Gabriela [Elena] Rodríguez Pizzaro in the case of *Vélez Loor v. Panama.*" In the Order of September 6, 2013 (*supra* para. 12), it was determined that the opinions of Mr. Martínez and Mrs. Rodríguez Pizarro would be "incorporated […] merely as documentary evidence, and for the Court to determine their admissibility […] at the opportune procedural moment."[82] Regarding the former, which was provided by affidavit, the State argued that the opinion had "been relevant to the facts and/or acts involved" in the case of the *Yean and Bosico Yean v. Dominican Republic*, "which differed materially and procedurally" from the instant case. With regard to the latter, the State indicated its limited applicability to the case. The Court notes that the observations on the opinions of Samuel Martínez and Mrs. Rodríguez Pizarro refer to their probative value and not to their admissibility. Hence, the Court admits them as documentary evidence in this case.

117. *Expert opinion provided by Julia Harrington Reddy.* This expert opinion was presented by affidavit on October 1, 2013, in English. Under Article 28(1) of the Rules of Procedure, the Court considers that, since the Spanish version of the opinion was presented on October 21, 2013, within the 21-day period established to forward the originals or a complete set of attachments, this opinion is admissible.

118. *Expert opinion provided by Fernando I. Ferrán Brú*. Mr. Ferrán Brú, in his expert opinion sent on October 1, 2013, announced that he would present as annexes two books: "*El Batey. Estudio socioeconómico de los bateyes del Consejo Estatal del Azúcar*" by Frank Moya Pons, and "*Pelo bueno pelo malo. Estudio Antropológico de los Salones de Belleza en la República Dominicana*" by Gerald F. Murray and Marina Ortiz, and these were received on October 6, 2013; that is, four days after the time limit established for the presentation of the opinions. The Court considers that, since these books were presented within the 21-day period established to forward the originals or a complete set of attachments, as established in Article 28(1) of the Rules of Procedure, they are admissible.

119. *Documents attached to the expert opinions.* With regard to the documents presented by the expert witnesses Juan Bautista Tavarez Gómez,[83] Bridget Wooding, and Cecilio

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[81] *Cf. Case of Escué Zapata v. Colombia*. *Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, *and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 59.

[82] Regarding the expert opinion of Samuel Martínez, its purpose was "racial relations and discrimination against Haitians and their children in the Dominican Republic; the State's policy in relation to the recognition of the rights to nationality and to education to members of these communities, and the impact of these policies on the full enjoyment of the rights of Haitians and Dominico-Haitians in the Dominican Republic" (*Case of the Yean and Bosico Girls v. Dominican Republic*. Order of the President of the Court of January 31, 2005, first operative paragraph). That of Gabriela Elena Rodríguez Pizarro concerns "the basic guarantees that, according to international human rights standards, must govern any criminal or other type of proceedings that involve[the determination of the immigration status of a person or that may result in a sanction as a result of this status" (*Case of Vélez Loor v. Panama*, para. 73.3).

[83] The Court considers it relevant to place on record, in relation to the documentation presented by expert witness Juan Bautista Tavarez Gómez, that the purpose established for his expert opinion was the "domestic legal

Gómez Pérez when providing their opinions during the public hearing, this Court admits them to the extent that they relate to the purpose established for the expert opinion (*supra* para. 12).

120. *Expert opinion provided by Rosa del Rosario Lara.* Regarding expert witness Rosa del Rosario Lara, the Dominican Republic affirmed that, when answering one of the State's questions, she had indicated that she "worked as an 'expert in psychology [for …] MUDHA,'" which the State had "been unaware of prior to the notification of the expert opinion by affidavit." It therefore "proceed[ed] to recuse her pursuant to Article 48(1)(c) of the Rules of Procedure." Regarding the "recusal" of expert witness Rosa del Rosario Lara, this is not admissible as such, because it was time-barred under the provisions of Article 48(2) of the Rules of Procedure. Despite this, in this case, the Court will take the State's observations into account when assessing the expert opinion.[84]

121. *Objection to documentary evidence provided by the presumed victims contained in documents prepared by the Human Rights Clinic at Columbia University School of Law.* The State argued that the said documents contained "shortcomings that jeopardize the authenticity of the document," and contested them based on one or several of the following alleged shortcomings, as applicable: (a) absence of notarization; (b) lack of stamps or seals; (c) absence of the signature of the deponents, or of fingerprints in the case of those unable to write; (d) the signature "*de orden (D/o*)" of "the person who presumably appears as a witness"; (e) the lack of witnesses; (f) elaboration in English; (g) "computer transcription [of the supposed statement, while] the attached power of attorney that was granted and the record of the said statements are [handwritten]; (h) failure of the deponents to initial all the pages of the documents; (i) alleged illegibility of "supposed" handwritten statements; (j) failure to number various pages; (k) presence of deletions and crossings-out, and (l) the signature of the deponent is different from that on other statements by the same person. The State also argued that the testimony of Carmen Méndez (a document that was forwarded by the Commission as annex 59 to the Merits report) "lacks probative value" because "it is not notarized; it is not signed by the deponent and it does not bear her fingerprint […]; it does not bear a single stamp, [and it] has not been witnessed." The State also alleged that the "authenticity" of four "documents supposedly containing sworn statements" is "jeopardized" because "they lack the signature, stamp and protocol number of the presumed notary public." These documents are annexed to the State's report No. 30 on the provisional measures of August 25, 2000, which was also presented as annex 38 to the Merits report.

122. In this regard, the representatives stated that "[the] Court should take into account the specific circumstances of the [case]," because "following the [alleged] expulsions" the presumed victims "were placed in […] circumstances of extreme poverty, so that they live in very remote places, some […] in Haiti, near the border with the Dominican Republic, and others in places that are difficult to access in the Dominican capital, which made it problematic to collect the statements of the [presumed] victims and to notarize them." The representatives added that they had made every effort to verify the truth of these documents, and had attached a transcript of the handwritten statements to them. In addition, it indicated that "most of the [presumed] victims are illiterate, so that it is understandable that their signature would be different in the different documents."

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regime relating to the functioning of the Civil Registry Office" and related aspects, and did not include facts of the case, or those directly related to the presumed victims. Therefore, the said document will be assessed exclusively as regard the purpose required of the opinion.

[84] The Court places on record that the Dominican Republic made observations on the affidavit made by Gabriela Rodríguez Pizarro, and the expert opinion of Cristóbal Rodríguez Gómez, without objecting to them.

123. As regards the supposed statements of Carmen Méndez (undated), of Andrea Alezy on April 1, 2000, and of Bersson Gelin, which appears in the document entitled "*Declaración de Bers[s]on Geli[n], traducción al español de la parte en inglés de la declaración tomada por el señor Michael Granne el 12 de julio de 2001*" [Statement of Bers[s]on Geli[n], translation into Spanish of the part in English of the statement taken by Michael Granne on July 12, 2001], these are unsigned, so that the Court has insufficient evidence to determine with certainty in each case who made the statements that appear in these documents. With regard to the supposed statement of Antonio Sensión of May 8, 2000, and the four supposed "sworn statements" that are in annex 38 of the Merits report,[85] the Court has verified that, although these documents bear the signature of the deponent and of witnesses, each document records that the statements were made before notary public, but they are not signed or authenticated by the latter. In view of its previous considerations, and taking into account the observations of the State, the Court finds that it is unable to admit this documentation.[86]

124. In addition, with regard to the statements of: Rafaelito Pérez Charles of January 10, 2001; Benito Tide of January 10, 2001;[87] Antonio Sensión of January 11, 2001, and March 27, 2007; Ana Lidia Sensión of March 27, 2007; Willian Medina Ferreras of April 1, 2000; Jeanty Fils-Aimé of April 1, 2000; Bersson Gelin of April 1, 2000; Marlene Mesidor of January 11, 2001; Lilia Jean Pierre of January 13, 2001; Janise Midi of January 13, 2001, and Victor Jean of January 11, 2001, the Court considers that the statements of the presumed victims constitute documentary evidence and do not call for the formalities of affidavits or statements made before a judicial authority; furthermore they are not sworn statements. In addition transcripts were presented of the handwritten statements of Willian Medina Ferreras, Jeanty Fils-Aimé, Bersson Gelin and Marlene Mesidor. Based on the State's observations, and since those documents do not require the formalities of domestic law, the Court admits the said statements as documentary evidence.

125. *Objections to a list of deported persons who lived in the Dominican Republic presented by the Commission in annex 21 of the Merits report and attached to the Commission's Report on the Situation of Human Rights in the Dominican Republic of October 7, 1999.* The State alleged that the first document "lacks any probative value because only the General Directorate of Immigration [(hereinafter also "the DGM")] has legal competence to present official statistics in this regard." In addition, it indicated that the Inter-American Commission's report on the situation of human rights in the Dominican Republic of October 7, 1999, cited by the Commission and the representatives, "refers to presumed acts and facts that would have taken place before the acceptances of the Court's contentious jurisdiction, so that [the Court] lacks temporal competence to examine them, or even to analyze them in the elaboration of the supposed historical context to this case." In addition, the State "indicate[d] that, in this report, the Inter-American Commission recognized that 'the problems that affect the full observance of rights are not the result of a State policy aimed at violating those rights.'" The Dominican Republic's arguments concerning the first document are not related to its admissibility as evidence, but rather to its probative value. As to the argument that the Inter-American Commission's report of October 7, 1999, refers to acts that occurred prior to the Court's competence, in its case law, the Court has considered historical background material that

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[85] Statements allegedly provided by Carmen Méndez, María Esthel Matos Medina, Adolfo Encarnación, Saint Foir José Louis and Eristen González González.

[86] *Cf. Case of Juan Humberto* Sánchez *v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, paras. 50 and 55.

[87] Although Benito Tide's statement is admissible, the Court notes that it refers to facts that it will not analyze (*supra* para. 44).

is relevant to the specific case;[88] thus the said report of the Inter-American Commission (*infra* footnote 132), which is also a public document that has been referred to by the representatives in the case *sub judice* and regarding which the State has been able to comment, is admissible as evidence in this sense. Consequently, the Court incorporates both these documents.

126. *Evidence of supervening facts.* Under Article 57(2) of the Rules of Procedure, the Court admits as evidence of supervening facts (*supra* para. 13 and *infra* para. 146), the documents containing the following: judgment TC/0168/13, Decree No. 327-13, Law No. 169-14, and Decree No. 250-14. It also admits other documents presented by the parties under this heading that will be described below.

127. *Photographs.* During the public hearing, the State presented, for the first time, several photographs that, according to the State, corresponded to several siblings and to the father of Willian Medina, which it showed to Mr. Medina Ferreras, questioning him about them.[89] The Court recalls that evidence must be presented in keeping with Article 57(2) of the Rules of Procedure. In this case, the State did not justify its presentation outside the appropriate procedural moment, so that the Court considers its presentation time-barred, and it cannot be admitted as evidence.

128. *Video.* During the public hearing on October 8 and 9, 2013 (*supra* para. 12), the State showed a video concerning Willian Medina Ferreras in which someone, who says he is an official of the Central Electoral Board, appears interviewing several individuals who state that they are descendants of the alleged parents of Mr. Medina Ferreras. In this regard, the State indicated that the presentation consisted of two videos which were both shown. One was recorded "on September 26, 2013," in "the sector of La Ciénaga, Santo Domingo, National District," and the other was recorded "one day later," on September 27, "in the city of Barahona, in the province of the same name." According to the State, "these videos were recorded because the [alleged] identity theft of Wilnet Yan, or Willia[n] Medina Ferreras, as he called himself, had been discovered a few days before the hearing." The State also affirmed that the videos were prepared for the proceedings before the Inter-American Court, "merely and exclusively as part of the oral arguments," and that, "in principle, they d[id] not form part" of any domestic proceedings. Nevertheless, contrary to this, the State provided information on domestic proceedings dating from at least September 12, 2013, that included the interviews shown in the video (*infra* paras. 207 and 208), and indicated that "the investigation consisted in comparing the birth certificates of the real children of Abelardo Medina and Consuelo Ferreras with that of Mr. Willia[n] Medina Ferreras." Lastly, it asked that the video "be […] incorporated into the body of evidence" of the case.

129. Both the representatives and the Commission objected to the presentation of the video. The former considered that it "was evidence that did not form part of the body of

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[88] *Cf. Case of the Moiwaina Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 145, paras. 43 and 86.1 to 86.20, and *Case of García Lucero et al. v. Chile*, paras. 35 and 55.

[89] The Court notes that one of the photographs, corresponding to Abelardo Medina, appears in a document of June 28, 2006, entitled "Printout of the citizens' data," issued by the Central Electoral Board, based on its master list of those registered, and that this document was presented by the Commission as part of Annex 38 of the Merits report. However, this photograph is in a different format from the ones presented by the State during the hearing, because the one that appears in Annex 38 presented by the Commission is in a reduced format and incorporated into a page of a document that includes other information. This document does not include, in any format, the other photographs used by the Dominican Republic during the hearing. Therefore, the fact that the photograph of Abelardo Medina appears in the said document does not change the consideration that the photographs shown to Mr. Medina Ferreras during the public hearing were presented for the first time during that procedure.

evidence [in the] proceedings." They added that, in their opinion, "the presentation of the video during the time allocated to the State's final arguments constitute[d] a grave violation of the [Court's] Rules of Procedure and severely affect[ed] the right of defense and procedural equality."

130. As regard the Commission, during the public hearing, Commissioner Felipe González submitted considerations with which the representatives "fully agreed," stating that:

> The procedure for the admission of evidence in the hearings before the Inter-American Court includes a series of steps that […] the State has not respected, because […] [the video] was never proposed as part of the evidence, and it could not be contested by the representatives of the [presumed] victims, or eventually by the Inter-American Commission. In the future, not only in this case, this mechanism could be used by any of the parties to introduce additional evidence that has not received the corresponding authorization of the Court.

131. The State, during the meeting held prior to the public hearing,[90] asked to be allowed to transmit a video during its final oral arguments and, as in other cases, the Court authorized this, in the understanding that it was a visual aid to these arguments. The video was shown during the public hearing. However, owing to the dispute that arose between the parties and the Commission, and the objections of the representatives and the Commission, at that time the President of the Court indicated "that the Court had understood that the video was part of the State's oral arguments, without this meaning that it was tacitly accepting it as evidence."

132. Evidence must be presented by the parties and the Commission at the pertinent procedural moment and, to the contrary, its presentation must be duly justified, as established in Article 57(2) of the Rules of Procedure. In the case of the presentation of the video during the public hearing, the State sought to incorporate it into the proceedings as evidence, without justifying its presentation based on the regulatory provisions; the Court therefore finds that it is time-barred. In any case, the State did not justify why the video could not have been made before the presentation of the answering brief, and the Court notes that, as the State itself indicated, the interviews contained in the video were conducted before the public hearing. Consequently, the video cannot be admitted as evidence in these proceedings and, therefore, will not be included in the body of evidence. Accordingly, the presumed victim's answers to the questions posed by the State on the basis of the said video will not be included in the body of evidence, and the arguments based on the video will not be taken into account.

133. *Judgment provided by the State following the public hearing.* During the hearing, the State asked to be "authorized to submit [… ten] judgments handed down by different [domestic] courts with regard to *amparo,*" and then forwarded copies of nine judgment to the Court, indicating an Internet link to access the tenth, on October 20, 2014. The Court has verified that the said documentation was issued prior to the presentation of the answering brief and that its late submission was not justified by *force majeure* or serious impediment. The State requested the Court to authorize the incorporation of these documents "as supervening evidence to ensure the State's right of defense in view of a new allegation by the representatives that the application for *amparo* was not effective until the promulgation of Law No. 437-03 of 2006, presented in their brief with observations on the preliminary objections." The Court notes that, in its answering brief, the State argued the effectiveness of remedies of *amparo* and, on that occasion, in order to substantiate its arguments, failed to submit any evidence. Consequently, the Court

[90] It is the Court's consistent practice to invite the Commission and the parties to a meeting before the public hearing to deal with and clarify the procedural aspects of the hearing.

decides not to admit this documentation, because its presentation does not meet the requirements of Article 57(2) of the Rules of Procedure.

134. *Documents presented with the final written arguments.*[91] The State and the representatives presented documents with their final written arguments, and the Court will only admit those that were sent in order to respond to the questions asked by the judges during the hearing, with the exception of those that the Court refers to below.

135. *Observations of the State on the annexes presented with the representatives' final arguments.* On January 17, 2014, the State presented its observations on the documents attached to the representatives' final written arguments (*supra* para. 18). On that occasion, the State also included other observations on one presumed victim and on the representatives' final written arguments that were not admissible because the State's brief was not a new opportunity to present allegations. Therefore, the Court will only consider the State's observations on the documents presented by the representatives with their final written arguments that had not been incorporated into the proceedings previously[92] and, with regard to these documents, will examine the objections raised by the Dominican Republic. Regarding some expense vouchers, the State's objections will be analyzed below (*infra* para. 139). In addition, as regards the "Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic [(advance or unedited version)], of the Committee on the Elimination of Racial Discrimination," it asked the Court to declare this document inadmissible, "because it was submitted outside the time frame established in Article 40[.2.b)] of the Rules of Procedure [and] did not qualify as supervening evidence under Article 57[.2] of the Rules of Procedure," because the representatives had not justified its presentation. In this regard, the representatives asked the Court to include this document in the case file as supervening "evidence," because it had been issued after the presentation of the motions and arguments brief on October 30, 2012. Based on the arguments of the parties and having verified that this report were issued by the said Committee after the presentation of the motions and arguments brief, the Court incorporates it into the body of evidence, as supervening evidence.

136. *The representatives' observations on the annexes presented with the final arguments of the State.* In their observations, the representatives alleged that the State, in its final arguments, had listed a series of documents related to the judgment issued by the Constitutional Court on September 23, 2013, which were not presented although, in some cases, an electronic link where they could be found was indicated. Consequently, they indicated that "those documents that were announced, but not presented and no link to a website was given where they could be located, cannot be considered part of the body of evidence." They added, with regard to the documents that could be located, because the link had been indicated, that "they merely reflect the State's position with regard to the

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[91] The Court recalls that the final arguments are essentially an opportunity to systematize factual and legal arguments presented at the appropriate moment, and not a stage to present new facts and/or additional legal arguments, because the other parties would be unable to respond to them. Consequently, the Court stipulates that it will only consider in its decision the final written arguments that are strictly related to the evidence and legal arguments that have already been provided at the appropriate procedural moment, or to the helpful evidence requested by a judge or the Court and, if applicable, to the exceptions established in Article 57 of the Rules of Procedure, which, if necessary, will be indicated in this Judgment in the corresponding section. To the contrary, any new pleading presented in the final written arguments will be inadmissible, as time-barred, save for the exceptions under Article 43 of the Rules of Procedure.

[92] The documents provided by the representatives with their final written arguments included the following, as identified by the representatives: (a) "[c]opy of the photograph of Abelardo Medina shown to Willian Medina during the public hearing," and (b) "[h]istorical documents provided by [expert witness] Bridget Wooding." These documents had already been incorporated into the proceedings; thus the State had been able to refer to them in its final arguments.

said judgment; they do not prove that this judgment did not have discriminatory bias and, in particular, do not show that [their clients] are not in real danger of being stripped of their nationality because they are of Haitian descent." The Court considers that the representatives' arguments concerning some of the documents relate to their content and not to their admissibility. Consequently, it admits those documents for which the State indicated a link to a website and which the representatives and the Commission have been able to access.

137. The representatives also referred to the "documentation [presented by the State] that sought to question the identity of Willian Medina Ferreras" and affirmed that it "supported what [they] had indicated in [their] final [written] arguments with regard to the reprisals taken […] against [Mr. Medina] owing to his participation in these proceedings." They added that "the documents are merely newspaper articles that replicate the State's position before the Court." Lastly, they asked the Court to "take into account [their] observations when assessing the evidence proposed by the State." The Court considers that the representatives' observations do not compromise the admissibility of the documents, and determines that they are admissible.

138. With regard to the 40 case files relating to the deportation of individuals other than the presumed victims in this case, the representatives argued that the procedural moment to submit evidence had precluded, and the State had "not justified" its "late presentation," because the files had been "produced prior to the presentation of the answering brief" and, therefore, could not be considered supervening evidence. They also indicated that the State sought to justify their presentation by a question posed by Judge Ferrer Mac-Gregor Poisot concerning "the existence of documents recording expulsions from the Dominican Republic," and this documentation "was not a record of such actions," but rather "deportation requests relating to individuals other than the [presumed] victims in this case." They also asked that the political map of the Dominican Republic provided by the State should not be admitted, because it was presented late, and was not relevant to this litigation. The Court considers that the presentation of the said case files responds to the request, because they are related to procedures concerning the expulsion of individuals from the Dominican Republic, and that the political map of the Dominican Republic is public knowledge; consequently, it admits this documentation.

139. *Vouchers for litigation expenses of the representatives in this case presented with their final arguments.* The State objected to some of the documents remitted, and this will be taken into account when examining this item in the chapter on reparations. In this regard, the Court will only consider those expenses that refer to costs and expenses that were incurred after the presentation of the motions and arguments brief (*infra* paras. 494 to 500).

140. *Helpful evidence requested by the Court*. In answer to a request by the Court,[93] on March 3, 2014, the State clarified that "when it asserted in its answering brief […] that

[93] The Court asked the State, pursuant to Article 58(b) of the Rules of Procedure, to provide information on certain assertions included its answering brief and in its final written arguments. In the former, it had indicated that certain "initial investigations" conducted in 2000, based on actions of the DGM, indicated that Willian Medina Ferreras was really called Wilnet Van (*sic*). In this regard, the State had indicated that, although the DGM, in a certification of July 19, 2000, had recorded the "deportation" of Mr. Medina Ferreras, in reality that was Wilnet Van (*sic*). In this regard, the State had affirmed that "[t]he corresponding correction was made subsequently." In addition, in its final written arguments, the State mentioned a document indicating that Willian Medina had obtained his identity card fraudulently, and that, according to unconcluded "investigations" by the State, "this was a case of identity theft." Consequently, the State was asked to indicate "specifically and precisely": (a) "the 'correction' made in relation to the 'certification' issued by the DGM and, if appropriate, to forward the Court a true copy of the document with the record or declaration" and (b) to "indicate whether the assertion made in the brief of July 19, 2000, that 'identity card No. 019-0014832-9 [was] obtained fraudulently' was supported by an

'the initial investigations indicated that the real identity of Mr. Medina Ferreras' was Wilnet Yan, but that 'this was subsequently amended as necessary,' it referred to a change in the line of investigation." According to the State the Directorate General of Immigration (DGM) "was investigating the presumed deportation of Willia[n] Medina Ferreras, but on finding that there was no record of the deportation of anyone with that name, it understood that two different persons were referred to"; this explains "the said assertion in the State's answering brief." The State added that "in view of what took place during the public hearing of the case, the initial line of investigation was revalidated" and "the Central Electoral Board […] resumed the initial DGM investigation and concluded that [the] original line of investigation was correct." Accordingly, the Central Electoral Board "provisionally suspended the corresponding birth certificate," and "the Legal Office of [the Board] was instructed to require the annulment of the birth declaration, [and] the identity and voter registration cards were cancelled." In addition, the State indicated that the assertion of "identity theft" was based on the DGM investigation, and that the case file before the Court included the "notarized statements" in which several individuals "testified" that they knew "Winet Yan." The State added that "the inquiries" made in 2000 "did not continue for the [following] reasons […]; (a) strict compliance with the provisional measures, and (b) a circumstantial change in the line of investigation." Together with these explanations, the State forwarded a series of documents in which the actions taken since September 12, 2013, were recorded (*infra* paras. 207 and 208).

141. In their observations on the State's brief, the representatives indicated that the "subsequent correction that the State refer[red] to in its answer […] (para. 21.1.5), should be analyzed taking into account [the whole] content of the document to which this assertion relates," and that "paragraph 21.1.5 [of that document], which indicates that '[t]his was subsequently corrected as necessary' cannot be interpreted in a way that is contrary to the State's recognition of the juridical personality and nationality of Mr. Medina Ferreras." They added that "the arguments presented by the State in relation to the 'subsequent correction' of the 'certification' issued by the DGM lack a factual basis or coherence with the evidence provided. The State is trying to justify its change in the line of the investigation by "what took place during the public hearing,'" but it has been "proved that the date on which the State opened the new investigation was September 26, 2013; in other words, 12 days before […] the said hearing before the Court." They added that "the State was unable to provide the document recording the 'correction' of the 'certification' issued by the DGM" and that:

> The valid documents with legal effects, including all the documents presented to the [Commission] and the [Court], such as the birth certificates, the certifications issued by the National Civil Registry Directorate, and the full records (*in extenso*) issued by the Internal Director of the Civil Registry, only indicate that the sole correction made by the State was to recognize the juridical personality and nationality of Willian Medina Ferreras.

They added that "[t]here is no formal record or declaration of […] fraud, especially one that was valid and gave rise to legal effects, or that had been issued by a competent authority, to justify this action." Regarding the "circumstantial change in the line of investigation, [they considered "that it was the State itself that created the evidence supporting this 'change in the line of investigation' with elements under its control."

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official record or statement of this fraud with legally validity and effects […] issued by the competent authority and, if so, to forward the Court a true copy of the document with this record or statement." In this regard, the State was asked to "describe the 'investigations' that were conducted in 2000 and how they made it possible, since they were not concluded, to determine the 'identity theft.' Likewise, the State was asked to provide information on whether the determination was supported by or derived from an official record or declaration of this 'identity theft' with legal validity and effects, issued by the competent authority. If so, the State was asked to send the Court a true copy of the document supporting this record or declaration."

142. The representatives argued that the Court, "when assessing the incorporation of the evidence into the proceedings, in addition to verifying strict compliance with its Rules of Procedure, […] should take into account whether the party presenting it was acting in good faith." They added that the Court "should assess whether, owing to [its] actions, the State was really trying to clarify the facts based on the discovery of new facts, or whether, to the contrary, it was seeking to discredit the victims or their representatives or the Court itself." The representatives presented several documents as annexes to their brief.

143. Meanwhile, in its observations the Commission considered that:

> The information provided by the State does not answer the specific questions raised by the Court and, to the contrary, many aspects of this information are inconsistent with and contradict other official documents and the numerous acknowledgements made by the State throughout the years that the case was being processed before the Commission […] in relation to the Dominican nationality of Mr. Medina Ferreras.

144. Regarding the State's explanations concerning the Court's request for helpful evidence, as well as the observations of the representatives and the Commission on the State's brief, the Court admits them insofar as they are related to the request. The documentation presented by the State did not include any document relating to the "correction" made to the "certification" issued by the DGM, or a formal record or declaration that was valid and gave rise to legal effects of the alleged fraud committed when obtaining the identity card, or to the investigations conducted in 2000 or to a formal record or declaration of the supposed "identity theft"; although, as already mentioned, the State did indicate that the DGM had made a series of inquiries and that the documentation appeared in "annex 6 to the brief submitting the case." Instead, the State forwarded several documents issued between October 2013 and February 2014, and a report on the current investigations[94] relating to Willian Medina Ferreras and his three children. In other words, the State did not present the documents requested, but forwarded other documents instead. Nevertheless, the Court notes that these documents refer to actions that occurred following the presentation of the answering brief (*supra* para. 9), so that, even though the State did not indicate expressly that the documents related to supervening events, they refer to supervening facts. Consequently, the documents presented by the State are admissible, pursuant to Article 57(2) of the Rules of Procedure. For their part, the representatives forwarded various documents, all of which were already included in the body of evidence, except for the documents contained in annexes 9, 10, 13, 14 and 15.[95] Having examined them, the Court considers that annexes 9 and 10

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[94] Namely: Communication No. RE/14, of February 13, 2014, issued by the National Directorate of the Electoral Roll of the Central Electoral Board; Communication No. RE/295, of December 27, 2013, issued by the National Directorate of the Electoral Roll of the Central Electoral Board; Minutes No. 23-2013, of October 18, 2013, issued by the Registrar's Committee of the Central Electoral Board; Report on the investigation into the birth declaration in the name of Willian Medina Ferreras of October 10, 2013, issued by Inspectorate of the Central Electoral Board, together with the communication forwarding this to the president of the Central Electoral Board of October 15, 2013, with the document attached; Certification of February 19, 2014, issued by the Secretary General of the Central Electoral Board, certifying Minutes No. 23-2013, of October 18, 2013, issued by the Registrars' Committee of the Central Electoral Board; Communication No. 482/2013, of November 21, 2013, concerning the instructions of the National Director of the Civil Registry relating to the decisions taken in the said Minutes No. 23-2013 by the full Central Electoral Board; Communication No. 058-2014, of February 11, 2014, concerning the instructions of the Legal Adviser with regard to the decisions taken in relation to the said Minutes No. 23-2013 of the full Central Electoral Board; Certified copies of the information of the Central Electoral Board, based on its master list of those registered, on the following individuals: (1) Willian Medina Ferreras; (2) Yaribe Medina Ramírez; (3) Luis Medina Ferreras; (4) Mario Medina Cuello; (5) Briseida Medina Ferreras, and (6) Argentina Medina Ferreras de Medina. According to the State "the latter document [was] forwarded so that the Court could verify that, contrary to the birth declaration of the said Willian Medina Ferreras, all the other birth declarations bear the signature of Abelardo Medina".

[95] Namely: Annex 9, Affidavit of Jorge Castillo Ferreras, prepared before the notary José Miguel Pérez Heredia in Pedernales on March 10, 2014; Annex 10, Affidavit of Alfredo Castillo Ferreras, prepared before the notary José Miguel Pérez Heredia in Pedernales on March 10, 2014; Annex 13, *Diario 7días.com*, "*JCE Querella*

contain statements made by relatives of Mr. Medina Ferreras that are unrelated to the Court's request; hence, it considers that their presentation is time-barred. Consequently, the Court does not admit the representatives' annexes 9 and 10 because it did not request them as helpful evidence, and their presentation was time-barred. Regarding annexes 13, 14 and 15, they refer to judicial proceedings opened following the submission of the motions and arguments brief. Therefore they are admissible under the said Article 57(2).

145. In addition, on May 7, 2014, the parties were asked to forward different documents.[96] On May 22, 2014, the representatives forwarded information and the documentation requested, which this Court admits. Meanwhile, the State, in relation to the proceedings held with regard to the members of the Medina family, only presented, on May 28 and 29, 2014, a copy "of the complaint and identification of the complainant of March 4, 2014, filed by the Central Electoral Board against […] Willia[n] Medina Ferreras." The State was asked to provide several clarifications, and these were submitted 10 days after the expiry of the non-extendible time limit granted (*supra* para. 20). The representatives and the Commission presented observations and the former contested the admissibility of the documentation (*supra* para. 20). Based on the assertions of the representatives and given that its submission was 10 days after the respective non-extendible time limit had expired, the Court considers that this documentation is inadmissible because its presentation was time-barred.

146. *Evidence obtained ex officio.* Under Article 58(a) of it Rules of Procedure "[t]he Court may, at any stage of the proceedings: (a) Obtain, on its own motion, any evidence it considers helpful and necessary." The Court considers that the following documents are helpful and necessary for the analysis of this case, and therefore incorporates them into the body of evidence *ex officio,* in application of the said regulatory provision: (a) Preliminary observations from the IACHR's Visit to the Dominican Republic, corresponding to the annex to the Press Release of December 6, 2013;[97] (b) Committee on the Elimination of Racial Discrimination: Thirteenth and fourteenth periodic reports of the Dominican Republic of March 7, 2012, and Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic of April 19, 2013;[98] (c) 2005 Human Development Report of the Dominican Republic, prepared by the Human Development Office of the United Nations Development Programme;[99] (d) First National Survey on

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contra William Medina Ferreras," March 4, 2014; Annex 14, *Listín Diario*, "*JCE se querella contra hombre demandó a RD*," March 5, 2014, and Annex 15, request to annul birth certificate due to fraudulent information provided, record No. 162/2014.

[96] The representatives were asked to forward, by May 22, 2014, at the latest, "copies of the identity cards" of two of the presumed victims or, if not, to "provide the corresponding explanations." The State was asked to send, by the same date at the latest, "a true and full copy of [certain] administrative or judicial procedures or proceedings."

[97] Inter-American Commission on Human Rights, Annex to the Press Release, Preliminary observations from the visit of the IACHRs Visit to the Dominican Republic, December 6, 2013. Available at http://www.oas.org/es/cidh/prensa/comunicados/2013/097A.asp.

[98] Committee on the Elimination of Racial Discrimination, Thirteenth and fourteenth periodic reports due in 2010 of the Dominican Republic, Doc. CERD/C/DOM/13-14, March 7, 2012. Available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.DOM.13-14_en.doc.

United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February-1 March 2012) on 19 April 2013, CERD/C/DOM/CO/13-14. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fDOM%2fCO%2f13-14&Lang=en (admitted as supervening evidence (*supra* para. 135).

[99] Human Development Report, Dominican Republic, Human Development Office of the United Nations Development Programme, 2005, p. 152. Available at: http://odh.pnud.org.do/sites/odh.onu.org.do/files/0620Capitulo20Naciones.pdf

Immigrants in the Dominican Republic of April 2013;[100] (e) National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 – Dominican Republic and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 – Dominican Republic;[101] (f) "Repatriations in the Dominican Republic," document issued by the Human Rights Observatory, *Centro Bonó*;[102] (g) copy of Decree No. 250-14, regulating Law 169-14,[103] and (h) World Bank Report "Dominican Republic – Poverty assessment: poverty in a high-growth economy 1986-2000."[104] In addition, since they are well-known public facts, the Court will take the following laws into consideration: the 1955 Constitution of the Dominican Republic, the 1966 Constitution of the Dominican Republic, the 1957 Constitution of Haiti, and Haiti's Nationality Decree of November 6, 1984.

C) Admission of the statements of the presumed victims and of the testimonial and expert evidence

147. With regard to the statements of the presumed victims, the witness, and the expert witnesses provided by affidavit and during the public hearing, the Court finds them pertinent only insofar as they are in keeping with the purpose defined by the President of the Court in the order requiring them (*supra* para. 12).

C.1. Considerations on the statements of the presumed victims

148. *The State's observations on the statements of the presumed victims in its final written arguments.* The State, when referring to the statements of the presumed victims alleged: (a) that the statements of Willian Medina Ferreras and Awilda Medina Ferreras were prepared outside the time frame established in Article 41(1) of the Rules of Procedure, and it was not until the final written arguments that it was able to rule on their oral statement and affidavit. Consequently, on that occasion, based on the content of these statements, it presented a "preliminary objection on the Court's lack of competence *ratione temporis*." Secondly, if the objection was rejected, it asked that "Willia[n] Medina Ferreras and [Aw]ilda Medina Ferreras be excluded from the file" of the case, because "there was a high probability that they were not the same persons as those referred to by the representatives" and, otherwise, "that "the affidavit of [Aw]ilda Medina be excluded and also the statement made during the hearing of the person who calls himself Willia[n] Medina Ferreras, because […] it has been proved that the presumed victims has committed perjury, which has perverted the truth of all his statements and, consequently,

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[100] First National Survey of Immigrants in the Dominican Republic (ENI-2012) Santo Domingo, Dominican Republic, Abril 2013. Available at: http://media.onu.org.do/ONU_DO_web/596/sala_prensa_publicaciones/docs/0565341001372885891.pdf

[101] United Nations, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Dominican Republic, UN Doc A/HRC/WG.6/6/DOM/1, 27 August 2009. Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/151/40/PDF/G0915140.pdf?OpenElement and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Dominican Republic, A/HRC/WG.6/6/DOM/3, of 27 July 2009, Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/146/89/PDF/G0914689.pdf?OpenElement

[102] Centro Bonó, Action and reflection mechanism. Human Rights Observatory, January-June 2012, Repatriaciones en República Dominicana. Available at http://bono.org.do/wp-content/uploads/2011/11/ODH12-13definitivo.pdf.

[103] The State forwarded this decree to the Court on August 13, 2014, but without indicating that it was forwarding it to the Court in relation to the processing of the instant case.

[104] World Bank, Report No. 21306-RD, "Dominican Republic – Poverty assessment: poverty in a high-growth economy 1986-2000", December 17, 2001. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/04/05/000094946_02032804010356/Rendered/PDF/multi0page.pdf

has deprived them of any probative value"; (b) "contradictions" in the affidavit prepared by Janice Midi on September 24, 2013, and filed for the first time a preliminary objection of the Court's lack of competence *ratione temporis* to examine the presumed facts and acts established in the factual framework with regard to the "Fils-Aimé Midi family." Secondly, if the objection was rejected, it requested the "exclusion from the case file of […] Marilobi Fils-Aimé, Andren Fils-Aimé, Carolina Fils-Aimé, […] Juan Fils-Aimé and Nené Fils-Aimé" and "reiterate[d] its request to close the case with regard to this family"; (c) regarding the statements of Antonio Sensión and Ana Lidia Sensión of September 29, 2013, it repeated its position that the Court "lacks competence *ratione temporis* to examine the factual framework of the presumed violations to the detriment of the members of the [Sensión] family, and formally requested that both affidavits be excluded from the case file"; (d) considerations concerning the affidavits of Bersson Gelin of September 24, 2013, and of Rafaelito Pérez Charles and Marlene Mesidor of September 29, 2013, without contesting their admissibility, and (e) that the affidavit of September 29, 2013, with the statement of Markenson Jean "indirectly introduces the statements of Miguel Jean, Victoria Jean and Natalie Jean, which is inadmissible"; hence it asked that "the reference to those persons be excluded when examining the affidavit."

149. As already indicated, the preliminary objections filed by the State in its final written arguments are inadmissible, pursuant to Article 42(1) of the Court's Rules of Procedure (*supra* para. 48). As regards the State's requests to "exclude from the case file" Willian Medina Ferreras, Awilda Medina Ferreras, Marilobi Fils-Aimé, Andren Fils-Aimé, Carolina Fils-Aimé and Juan Fils-Aimé and Nené Fils-Aimé, the Court refers back to the respective decisions already taken with regard to these individuals in the Court's considerations with regard to the preliminary objections and in the section on the determination of the presumed victims (*supra* paras. 78, 83 to 87, 92 and 93). In the case of Bersson Gelin, Rafaelito Pérez Charles, Markenson Jean and Marlene Mesidor, the State's observations refer to the probative value of their statements and are therefore not directly linked to the admissibility of the evidence. As for the other observations presented in its final arguments relating to the statements of Willian Medina Ferreras and Awilda Medina, the State indicated various "contradictions" in the statements; also, that they had committed "perjury" and that the statements were "completely invalid." In this regard, the Court also considers that the State was referring to assessments of the statements and not to their admissibility. Regarding the statements of Antonio Sensión and Ana Lidia Sensión, the State based its arguments on a preliminary objection (*supra* paras. 35 to 37) and did not contest their admissibility as evidence. Consequently, the Court admits the respective statements.

C.2. Considerations on the expert evidence

150. *The State's observations on the expert opinions in its final written arguments.* Regarding the expert opinion of Carlos Quesada, the State affirmed that "the content [of this expert opinion] had been totally discredited and was devoid of any persuasive power" and, in response to a question posed by one of the judges, according to the State, "he lied." In the expert opinion of Bridget Wooding, the State also contested the content included under the sub-headings: "(1) The Hatillo and Palma incidents and their aftereffects (2005), pp. 6-8; and (2) The immigration system, pp. 8-12," considering that they did not correspond to the purpose of her expert opinion.[105] The Court notes that the State's observations with regard to the expert opinion of Carlos Quesada relate to opinions on the significance of its content, and not on its admissibility. Regarding the comments on the expert opinion of Bridget Wooding, the Court will consider the content of the expert

[105] In addition, with regard to the expert opinions provided during the public hearing, the State submitted considerations on the expert opinion of Pablo Ceriani Cernadas, without contesting it.

opinion insofar as it is in keeping with the purpose for which it was requested (*supra* para. 12).

151. In view of the State's observations, the Court will consider the content of the expert opinions to the extent that they are in keeping with the purpose for which they were requested. Lastly, the Court considers that these observations by the State do not affect the admissibility of the expert opinions, and therefore admits them.

152. It should also be placed on record that the State referred to the power of attorney of Victor Jean, Marlene Mesidor and Markenson Jean and argued that Victor Jean had placed his fingerprint on the power and that, "his signature appears on the alleged sworn statement of January 11, 2001"; accordingly, it considered that one of the two documents was "false." In addition, the State affirmed that the power of attorney "had not been notarized, so that it lacked authentication," and that this irregularity encompasses the "deponents that have supposedly endorsed it: Marlene Mesidor and Markenson […] Jean." Given the contradiction, it asked that "both documents be excluded from the body of evidence." Regarding the said power of attorney, the Court has mentioned similar considerations as those made by the State under the alleged "Absence of powers of attorney in favor of the representatives" (*supra* para. 88). In relation to the State's comments on the statement of January 11, 2001, this Court refers back to its previous considerations in this regard (*supra* para. 124).

VII
FACTS

A) Context

153. The Commission and the representatives have argued, linking it to the facts of this case, the existence of a context of discrimination against the Haitian population and those of Haitian descent in the Dominican Republic. They also indicated that this includes the practice of collective expulsions and, with regard to individuals of Haitian descent born in Dominican territory, the denial of access to personal identification documents. The State rejected these accusations. Based on the arguments of the parties and the Commission, and their alleged relevance with regard to the facts of the case, the Court deems it pertinent to examine the said context.

154. The Court recalls that, in the exercise of its contentious jurisdiction, it has examined different historical, social and political contexts that have allowed it to situate the facts that were alleged to have violated the American Convention within the context of the specific circumstances in which they occurred. In addition, in some cases, the context made it possible to characterize the facts as part of a systematic pattern of human rights violations[106] and/or was taken into account to determine the international responsibility of the State.[107] Bearing in mind the pertinent aspects of this case, the Court will refer to: (a) the socio-economic situation of Haitians and those of Haitian descent in the Dominican Republic and the alleged discriminatory concept held of them;[108] (b) the problem that has

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[106] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* paras. 126, 147 and 148, and Case of *J. v. Peru*, para. 53.

[107] *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, paras. 61 and 62, and *Case of Veliz Franco v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 65.

[108] The Commission has referred to the existence in the Dominican Republic of "[a]nti-Haitianism and […] tensions […] over the flow of Haitian immigrants into [that country]." The representatives have said that "[t]he phenomenon of discrimination against Haitians or those of Haitian descent is deeply-rooted in Dominican society, mainly against those whose traits reveal African descent." The State denied these accusations (*infra* para. 159).

been described for Dominicans of Haitian descent to obtain identity documents,[109] and (c) the alleged existence of a systematic practice of collective expulsions[110] of Haitians and Dominicans of Haitian descent.[111] The Court will consider the information provided on the background to these practices, and their application during the period over which it is alleged that the facts of this case occurred.

A.1. The socio-economic situation of Haitians and those of Haitian descent and the alleged discriminatory concept held of them

A.1.1 The socio-economic situations of Haitians and those of Haitian descent in the Dominican Republic

155. The Court has verified previously that the first major migratory flows of Haitians towards the Dominican Republic occurred during the first third of the twentieth century, when around 100,000 people went to work in the Dominican sugar plantations that were initially controlled by private corporations and then most of them passed into the control of the State Sugar Council. Many Haitian migrants went to live permanently in the Dominican Republic, established a family in this country, and now live with their children and grandchildren (second and third generation Dominicans of Haitian descent), who were born and have lived in the Dominican Republic.[112] Regarding the second half of the twentieth century, expert witness Manuel Núñez Asencio stated that "from the 1950s to the 1980s, […] most of the Haitian immigrants [went to the Dominican Republic] to work in agriculture, mainly in the sugar plantations.[113]

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[109] The Commission indicated that "mechanisms to deny documentation to Haitians and Dominicans of Haitian descent […] have been verified." The representatives alluded to the "difficulties and obstacles faced by those of Haitian descent born in Dominican territory to obtain documents proving their nationality." The State, before the Court, referred to laws that regulate birth registration in the Dominican Republic. Regarding "supposed obstacles that [some of the presumed victims have allegedly faced] to register, although belatedly, the births of [those] born in Dominican territory, [… it] recall[ed] that Law No. 659, of July 17, 1944, established the procedure to be following in order to register late declarations." It also mentioned that "Law No. 182 of November 7, 1980, […] established that Registry Office officials would receive late declarations of the birth of children […] up to 10 years of age, without charge, for one year as of promulgation of the law," and also indicated "Law No. 13-93 of June 22, 1993, which […] increased the time limit for the immediate registration of births from 60 to 90 days, and granted a grace period of one year for late declarations to all children of less than 15 years of age, without charge." Lastly, it indicated that "the Executive had promulgated Law No. 218-07 of August 14, 2008, granting an amnesty for late birth declarations, which accorded a grace period for the late registration of children of up to 16 years of age even for a three-year period."

[110] For practical effects, without this implying a ruling on the validity or grounds of the definitions adopted in the domestic and international sphere for terms such as "deportation" or "expulsion," this Judgment will use the term "expulsion" since this is the word used in Article 22 of the American Convention. In this regard, the Court, in *Advisory Opinion OC-21/14* adopted a functional definition according to which it "understands expulsion as any decision, order, procedure or proceeding by or before the competent administrative or judicial organ, irrespective of the name given in national law, related to the obligatory departure of a person from the receiving State, which results in the person abandoning the territory of this State or being transferred beyond its borders. Thus, when referring to expulsion, this also includes what in specific or domestic terms may consist in deportation." (*Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 269). This definition is also applicable to the expulsion of nationals referred to in Article 22(5) of the Convention.

[111] The Commission stated that "situations of mass expulsion or deportation have been verified." The representatives alleged that, since the beginning of the 1990s, Haitian immigrants and numerous Dominicans of Haitian descent had been victims of collective expulsions and deportations." The State contested these assertions (*infra* para. 167).

[112] *Case of the Yean and Bosico Girls v. Dominican Republic*. *Preliminary objections, merits, reparations and costs. Judgment of* September 8, 2005, Series C No. 130, para. 109.1, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012, Series C No. 251, para. 38.

[113] Expert witness Manuel Núñez Asencio explained that "[t]his was possible owing to the agreement of November 14, 1966, on the hiring in Haiti and entry into the Dominican Republic of temporary unskilled labor and, prior to this, the bi-national agreement on Haitian temporary unskilled labor of January 5, 1952." He added

156. The Haitian temporary agricultural workers (*braceros*) who came to the Dominican Republic and all the members of their families who accompanied them were lodged in barracks, in settlements known as "*bateyes*." Over time, the character of the *bateyes* changed and they became permanent communities, because the sugar corporations hired a certain number of agricultural workers on a permanent basis so that they could work year long, and other workers, including Dominican men and women, went to live in them. The *bateyes* became the home of first, second, and even third-generation families of Haitian descent.[114] However, according to documents published around the time of the events, it was common that individuals and sectors of the country's population assumed that all the workers in the sugar cane plantations and all those who lived in *bateyes* were Haitians.[115] The Court has verified, based on documents published in 1996, 2001 and 2002, that basic public services in the *bateyes* were limited and the conditions of the highways were very poor, which meant that during the rainy season communication between the *bateyes* and the town could be cut off for several days.[116] Similarly, information covering the years 1986 to 2000 indicates that the rates of poverty and extreme poverty were much higher in the *bateyes* than the national average in the Dominican Republic.[117] Regarding more recent times, in 2013, the Inter-American Commission has stated that, during a visit, it verified the conditions of poverty, exclusion and discrimination endured by the inhabitants of the *bateyes*. It indicated that poverty affected the Dominicans of Haitian descent disproportionately, and that this was related to the obstacles they faced to access their identity documents[118] (*infra* paras. 163 to 166).

157. Expert witness Manuel Núñez Asencio explained that "[w]ith the decline in the sugar industry, the system […] gradually collapsed"; that, "in the 1990s, […] the Dominican Republic applied regulations reducing rates for construction workers, and this became a disincentive for Dominican workers, […] opening up a niche for the Haitians,"[119] and that, during that decade, as well as "in the [twenty-first] century, irregular Haitian migration [towards the Dominican Republic] has continued." In 2000, Haitians and individuals born in Dominican territory of Haitian descent represented approximately 6% of the population of the Dominican Republic; this group is, in turn, divided into four sub-groups: "temporary workers, undocumented Haitians living permanently in the Dominican Republic, the children of Haitian immigrants born in the Dominican Republic, and political refugees."[120]

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that this agreement "established the temporary nature of the work" and that "the Haitian State assumed the responsibility for registering the children of temporary workers who were in the Dominican Republic as its nationals." Expert opinion provided by Manuel Núñez Asencio by affidavit on September 30, 2013 (file of preliminary objections, merits and reparations, tome III, fs. 1677 to 1696).

114 Amnesty International, A life in transit - The plight of Haitian migrants and Dominicans of Haitian Descent, AMR 27/001/2007 (file of annexes to the Merits report, annex 53, fs. 561 to 596). Similarly, expert witness Manuel Núñez Asencio, indicated that "[t]here are more than 500 *bateyes* in the Dominican Republic, basically villages with a Haitian population without any kind of documentation" (expert opinion provided by Manuel Núñez Asencio, provided by affidavit).

115 *Human Rights Watch*, Illegal People: Haitians and Dominico-Haitians in the Dominican Republic, April 4, 2002, p.10 (file of annexes to the motions and arguments brief, annex A01, fs. 2596 to 2629).

116 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 109.2.

117 World Bank, Report No. 21306-RD, "Dominican Republic – Poverty assessment: poverty in a high-growth economy 1986-2000."

118 Inter-American Commission on Human Rights, Annex to the Press Release, Preliminary observations from the visit of the IACHRs Visit to the Dominican Republic, December 6, 2013.

119 The expert witness added, citing Labor Ministry documents from 2012, that "53% of construction workers are Haitians, compared to 47% Dominicans. On banana export plantations 63% of the workers are Haitians, compared to 37% Dominicans. *Cf.* Expert opinion provided by Manuel Núñez Asencio by affidavit.

120 National Coalition for Haitian Rights *"Beyond the Bateyes,"* August 1995 (file of annexes to the notions and arguments brief, annex A02, fs. 2631 to 2677). In his testimony, Samuel Martínez asserted that "[f]or

The Court has noted that, in recent times, according to different estimates, the population of Haitians and Dominicans of Haitian descent who live in the Dominican Republic is from 900,000 to 1.2 million.[121]

158. The Court, in a previous judgment in a case the facts of which took place starting in June 2000, noted that many of the Haitians in the Dominican Republic "live in conditions of poverty [and] marginality resulting from their legal status and lack of opportunities."[122] The Court has also noted that the United Nations Development Programme has indicated that the Haitians "live in very precarious conditions and extreme poverty."[123]

A.1.2. The alleged discriminatory concept in relation to Haitians and those of Haitian descent in the Dominican Republic

159. During the public hearing in this case, the State indicated that "it cannot be thought that […] a country such as the Dominican Republic, […] 80% of whose population is of African descent, is a country that discriminates against its own ethnic origins […]; there is not a single piece of factual evidence that this kind of discrimination exists." Nevertheless, the Dominican Republic presented information to the Committee on the Elimination of Racial Discrimination for the period from April 2008 to September 2011, and alleged that "the Dominican Republic inherited a culture with a history of slavery and racially discriminatory practices [… and that] the failure of a long line of Dominican

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generations, undocumented immigrants and workers hired from the rural areas of Haiti provided the labor force for the sugar harvest in the Dominican Republic and, in recent decades, dozens of thousands of Haitian men and women have taken on the most lowly jobs in other sectors of the Dominican economy." He also indicated that "[t]here is no contradiction between […] a 'tendency to return' and the observation […] that most of the Haitians who live on the Dominican side of the border have lived there for many years and have put down roots. […] Even though most of the immigrants have tried to return to Haiti as soon as possible, over the years, a population of several hundreds of thousands has gradually accumulated on the Dominican side. […] Even though there is a significant flow of Haitians returning to Haiti, most of the emigrants who set up home in the Dominican Republic end up losing contact with their families in Haiti and seldom return." (*Cf.* Testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic*, on February 14, 2005. File of preliminary objections, merits and reparations, fs. 938 to 964).

121 *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012, Series C No. 251, para. 39, and United Nations, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Dominican Republic, para. 6. The absence of official figures has been mentioned as one of the main problems to examine the phenomenon of discrimination in the Dominican Republic; various organizations have noted the absolute refusal of the Dominican Republic to accept that there is discrimination against the Haitian population and Dominicans of Haitian descent. The report of the Special Rapporteur and the independent expert indicates that the "the absence of a policy framework that expressly relates to people of African descent and the lack of disaggregated quantitative and qualitative data on the economic, social and political representation of Dominicans of African descent within society was considered as a major problem and a major challenge in combating racism and racial discrimination." United Nations, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Dième, and the independent expert on minority issues, Gay McDougall, Mission to the Dominican Republic, A/HRC/7/19/Add.5 and A/HRC/7/23/Add.4, 18 March 2008, para. 35 (file of annexes to the Merits report, annex 45, fs. 421 to 456). In its 2007 report to the Committee on the Elimination of Racial Discrimination, the Government of the Dominican Republic stated that approximately one million Haitians lived in the country (United Nations, Committee on the Elimination of Racial Discrimination, Ninth periodic report of the Dominican Republic to the Committee on the Elimination of Racial Discrimination, CERD/C/DOM/12, 8 June 2007, para. 3 (file of annexes to the motions and arguments brief, annex A04, fs. 3083 to 3090). Expert witness Samuel Martínez stated that the figure of "a million or more Haitians" in the Dominican Republic "could be considered plausible if all the children and grandchildren of Haitian citizens are included in the total for the 'Haitian' population" (testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic*). Expert witness Núñez Asencio, citing a 2013 document: "First National Survey of Immigrants in the Dominican Republic" (SD, 2013, ONE, European Union, UNHCR, UN), indicated that "the Haitian population [in the Dominican Republic is] in excess of 668,144 persons" (expert opinion provided by Manuel Núñez Asencio by affidavit).

122 *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 39.

123 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 109.3.

Administrations to remedy the damage caused […] apparently permitted the […] proliferation of racism."[124] Furthermore, in observations on this report, this Committee stated that persons of African origin "are one of the poorest population groups among the poor" in the Dominican Republic, and expressed its concern owing to what, in its considerations, it referred to as "structural and widespread racism within Dominican society, and in particular discrimination based on colour or national origin."[125] Furthermore, several international agencies have referred to the problem of discrimination against the Haitian population and those of Haitian descent in the Dominican Republic. The Office of the United Nations Development Programme has indicated that Haitians in the Dominican Republic "must face a political and social attitude that is generally hostile."[126] In this regard, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the independent expert on minority issues have underscored information from the Dominican Republic's past indicating racial discrimination towards Haitians.[127] It has also been mentioned that this problem was also ongoing even around the time of the facts of this case.[128]

160. The said Special Rapporteur and the independent expert found that the dominant perception among most Dominicans is that their mulatto skin tones distinguish them from darker-skinned Dominicans and Haitians. In this regard, they noted the use of the term "black" as an insult in the Dominican Republic, added to references made to "blacks" as being ignorant or unhygienic, or the frequent association of "blacks" with both illegal status and criminality. According to these experts, in the Dominican Republic the term "black" and, by extension, traits or elements related to African descent are associated with Haitians, whether or not they are documented, such as the Dominicans of Haitian

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[124] United Nations, Committee on the Elimination of Racial Discrimination, Reports submitted by States parties under article 9 of the Convention, Thirteenth and fourteenth periodic reports due in 2010, Dominican Republic, para. 31. The representatives attached to their final written arguments the "*Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic*" CERD/C/DOM/CO/13-14, of March 1, 2013 (file of preliminary objections, merits and reparations, fs. 3147 to 3155). In his testimony, Samuel Martínez affirmed that "[m]any Dominicans have attitudes towards Haitians that are openly in contrast to the open welcome that they have offered to other immigrant groups." He also observed that "the very concept of Dominican national identity is formulated in terms of race; the Dominicans, implicitly and explicitly, consider the Haitians to be 'real blacks'" (*cf.* Testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic*). For his part, expert witness Manuel Núñez Asencio explained that "[t]he Dominican has his own connection to his African origins that are very different from those that have predominated in Haiti. The supposition that Haitians and Dominicans have a common black culture is false. Race does not determine culture." Expert opinion provided by Manuel Núñez Asencio by affidavit.

[125] United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, paras. 8 and 15

[126] *Case of the Yean and Bosico Girls Vs Dominican Republic*, para. 109.3.

[127] Thus, they indicated that, from 1930 to 1961 [Dominican Republic] was governed by Rafael Leónidas Trujillo, and that over this period adopted a policy of racism and promoted a European and Hispanic identity, built around the development of "anti-Haitian" sentiments and the use of violence against Haitians (United Nations, 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, Report on the Mission to the Dominican Republic, A/HRC/7/19/Add.5 para. 7. Without denying this information, expert witness Fernando I Ferrán Brú highlighted that the Dominican Republic "has had at least five presidents of Haitian descent," and that, "since the fall of Trujillo, the ongoing tendency […] has been to elucidate any incident that involves excesses that prejudice the protection of human rights for racist or any other reasons of anyone, whether Dominican or foreign" (*Cf.* Expert opinion provided by Fernando Ignacio Ferrán Brú by affidavit on September 30, 2013, file of preliminary objections, merits and reparations, fs. 1498 to 1676).

[128] Thus, in 2002, *Human Rights Watch*, indicated that "In light of this troubled history [between Haiti and Dominican Republic] – and of distorted versions of it disseminated through the schools and through state-controlled media since the time of Trujillo – some Dominicans are still quick to perceive a Haitian threat to the territorial integrity of their country," and "racial prejudice in the Dominican Republic runs deep." (*Cf. Human Rights Watch,* Illegal People: Haitians and Dominico-Haitians in the Dominican Republic, p. 8.)

descent.[129] Similarly, in 2005, the Human Development Office of the United Nations Development Programme (UNDP) issued a National Human Development Report on the Dominican Republic in which it stated that:

> [As a result of migration and the transformation of the economic model,] the [Dominican] national identity and regional identities are undergoing profound changes […]. These processes are influenced by aspects [such as] the Haitian immigration, which can be represented by the following equivalent: Haitian – cheap labor – rejected negritude – an element that can be expelled.[130]

For its part, in 1999, the Inter-American Commission reported, based on pre-1983 sources,[131] that "historically it has been denounced that Haitian workers who cross the border to work in the sugarcane harvest […] have been the victims of a whole array of abuse by the authorities, from assassinations, abusive treatment, mass expulsions, exploitation, deplorable living conditions, and the failure to recognize their labor rights."[132]

161. On other aspects, the evidence provided to the Court reveals that, in the Dominican Republic, Haitians or those of Haitian descent enjoy their own cultural life, religious freedom, and access to services provided by the State or public entities, such as health care, education, and justice, although this is not a restrictive assertion. Thus, for example, expert witness Ferrán Brú stated the following:

> In 2011, at least 12,000 Haitians were enrolled in Dominican universities and, of these, many attend the Universidad Autónoma de Santo Domingo. The State allows different radio stations to broadcast in Creole and French. Religious ceremonies take place that are non-Christian, although they are syncretic, in other words *gagá* and voodoo rites, in which Haitians and Dominicans take part indiscriminately. There are no cultural or, in particular state, prohibitions against people speaking Haitian Creole, and there is no law that, by its application, makes a distinction among Dominicans based on their racial characteristics. To the contrary, acts of discrimination are penalized.

Also, expert witness Bridget Frances Wooding admitted that "Haitian immigrants" have "access to services," in relation to "health care, […] education [and] justice."

162. Nevertheless, some factors that are relevant owing to their relationship to the facts of this case should be examined in greater detail: the alleged difficulties for Haitians or those of Haitian descent to register births and to obtain documents, as well as the alleged existence, in such cases, of systematic practices of collective expulsions of Haitians and persons of Haitian descent. These aspects are examined below.

A.2. The alleged problem for Haitians and Dominicans of Haitian descent to obtain official documents

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[129] United Nations, 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, Mission to the Dominican Republic, A/HRC/7/19/Add.5, p. 2 and paras. 7, 37 and 46.

[130] National Human Development Report on the Dominican Republic, Human Development Office of the United Nations Development Programme, 2005, p. 152.

[131] The Commission cited: "ILO Report, 1983; Manuel Mandruga, *Trabajadores Haitianos en la República Dominicana,*" in "1991 Annual Report of the Commission, OEA. Ser.L/V/II. 81, doc. 6, rev. 1, of February 14, 1992. In general, it indicated that its report was "the result of information and opinions […] that the Commission had gathered before, during and after the on-site observation mission carried out in June 1997." (Inter-American Commission on Human Rights, Report on the situation of human rights in the Dominican Republic, October 7, 1999. OAS/Ser.L/V/II.104, para. 317. Available at http://www.cidh.org/countryrep/Rep.Dominicana99sp/indice.htm).

[132] Inter-American Commission on Human Rights, Report on the situation of human rights in the Dominican Republic, October 7, 1999. OAS/Ser.L/V/II.104, para. 317.

163. The President of the Dominican Republic, in the statement of reasons for Law No. 169-14 of May 23, 2014 (*infra* para. 180), asserted that "Dominican Republic has a long history of shortcomings with regard to the registration, documentation and identification of both nationals and aliens" and that "many people are born on national territory who are not duly registered and therefore lack a juridical identity, which] reveals an unacceptable institutional weakness." Similarly, based on different sources of information published between 1991 and 2005, the Court has noted that the birth of most children of Haitians and Dominicans of Haitian descent born in Dominican territory was not registered, at least around the time of birth.[133] In addition, these shortcomings are also mentioned in the *consideranda* of Law No. 169-14, as well as in judgment TC/0168/13 of the Constitutional Court. Similarly, the connection between these difficulties and what expert witness Ferrán Brú referred to as the "irregular conditions of the Dominican Civil Registry" should be noted. Although he did not indicate that the problem affects those of Haitian descent exclusively, he stated that "the indiscriminate flow of Haitians towards [the Dominican Republic,] together with [these conditions of irregularity] lead to chaos." He also affirmed the existence of "pernicious effects of the irregularities of [the said] Civil Registry," concluding that "the purging of the Dominican civil registers has been a necessary process."[134]

164. In February 2005, Samuel Martínez stated that:

> Dominican law and the interpretation that the highest civil registry authorities have made of its requirements for citizenship support the presumption of the exclusion of Haitians [*sic*] from citizenship at the level of the local civil registers. […] The official refusal to grant citizenship to children of Haitian immigrants born in the Dominican Republic has created a broad category of *de facto* stateless persons.[135]

165. In view of the foregoing, one of the main difficulties faced by children of Haitian descent when trying to obtain Dominican nationality is obtaining a certificate of their birth in Dominican territory from a Civil Registry Office. Thus, added to the statement of reasons for Law No. 169-14 (*supra* para. 163), the Court has observed, based on information from 1991 to 2005, that mothers usually give birth to their children at home, in view of the difficulty to travel from the *bateyes* to the hospitals in the towns, their limited financial resources, and the fear of meeting hospital officials, police agents, or officials from the local municipality and being expelled.[136] However, these are not the only problems. Thus, the Court notes that it has been reported that there have been cases in which the Dominican public authorities have made it difficult to obtain the birth certificates of children of Haitian descent,[137] and that parents who are Haitian immigrants or

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133 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 109.10. In this regard, the *National Coalition for Haitian Rights* has described the fear of being deported usually felt by the parents of children of Haitian descent if they go to register their children, and indicated that frequently the parents do not have identity documents even though they have lived in the Dominican Republic for numerous years. The widely-held opinion is that the identity cards of Haitians are false. Similarly, Samuel Martínez stated that "late civil registration is frequently the only mechanisms that the Dominico-Haitians have to obtain an official certification that they were born in the Dominican Republic. Many Haitians decide to give birth to their children at home instead of going to a health clinic, for lack of money, difficulties in finding adequate transport from the remote rural settlements, or fear that the hospital staff or the police agents will denounce them as illegal residents. In recent years, hospital staff have refused birth certificates even to Haitians born in hospitals" (*cf.* Testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic*).

134 Expert opinion provided by Fernando Ignacio Ferrán Brú by affidavit.

135 *Cf.* Testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic.*

136 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 109.10 and footnote 47. Expert witness Samuel Martínez testified similarly (*Cf.* Testimony of Samuel Martínez in the case of the *Yean and Bosico Girls v. Dominican Republic*).

137 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 109.11.

Dominicans of Haitian descent usually face discriminatory practices in the offices of the Civil Registry,[138] which prevent them from registering the birth of their children. Suspicions about the authenticity of the documents presented for the registration, disparaging comments and disdainful attitudes are obstacles faced by most Haitian parents, or those who are considered Haitian.[139]

166. The difficulties do not end once personal or identity documents have been obtained, but extend to the use of these documents – and this is not a recent problem. In this regard, in 2008, the Committee on the Elimination of Racial Discrimination issued its concluding observations on the reports submitted by the Dominican Republic in 2000, 2002, 2004 and 2006 and expressed its concern about the numerous cases of Dominicans of Haitian descent whose birth certificates, identity cards and electoral identity documents had been confiscated and destroyed, or issue of duplicates had been refused owing to their ethnic origin.[140]. Similarly, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the independent expert on minority issues stressed that, without exception, the individuals of Haitian descent born in the Dominican Republic who they interviewed during their visit to the Dominican Republic from 23 to 29 October 2007, reported that, because of their color or their Haitian looks or name, it is virtually impossible to obtain identity documents or even copies or renewals of previously issued documents. The Special Rapporteur and the independent expert also underlined that without identity documents verifying their lawful presence in the country they are left vulnerable to deportation or expulsion to Haiti.[141]

A.3. The alleged existence of a systematic practice of collective expulsions of Haitians and Dominicans of Haitian descent

167. Although the State indicated that it "did not carry out collective or mass deportations of Haitians,"[142] this Court has previously established that: (a) the Dominican Republic has carried out expulsions of Haitians and Dominicans of Haitian descent irrespective of their migratory status in the country; (b) in the case of these expulsions, decisions were taken without a prior investigation procedure, and (c) in some cases in the 1990s the expulsions

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138 First National Survey on Immigrants in the Dominican Republic, p. 19.

139 Amnesty International, A life in transit - The plight of Haitian migrants and Dominicans of Haitian Descent.

140 United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, para. 19.

141 United Nations, 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, para. 55.

142 The State added that this "was supported […] by official statistics on repatriations," and that it had "never repatriated a Dominican who had been detained and who, during the verification process, had been able to document his status as a national." Regarding the said official data, the State did not present official documents with details of the said statistical information, but referred to a brief of July 19, 2000, which the Dominican Republic had presented to the Court in the context of the provisional measures, and which the Commission had included as an annex to the Merits report. In this brief it had referred to a specific period of some months (although it did not specify which months), and indicated that "the statistics for repatriations of illegal Haitians towards their country of origin carried out by the General Directorate of Immigration for June [2000], show an average of 717 persons repatriated each month; repatriations never amounted to 1,000 persons in any of these months" (file of annexes to the Merits report, annex 6, fs. 121 to 154). The State also presented files on expulsion proceedings for both Haitians and individuals from other countries (*supra* para. 138). In any case, the Court notes that the information provided by the State refers to expulsions recorded and carried out under legal procedures. Other probative elements, as well as aspects established in previous case law of this Court reveal expulsions that, owing to the method used, were not necessarily recorded. Consequently, the information provided by the State does not preclude the Court from taking these other previous probative elements and information into account.

involved many thousands of persons.[143] In this regard, it has been pointed out that, during that decade, the Dominican Republic expelled to Haiti thousands of Haitians and an unknown number of Dominicans of Haitian descent. On several occasions, "the Dominican authorities have conducted mass expulsions of Haitians and Dominico-Haitians, rounding up thousands of people in a period of weeks or months and forcibly expelling them from the country."[144] In its 1991 Annual Report published in February 1992, the Inter-American Commission reported that "starting on June 18, 1991, the Dominican Government has conducted mass expulsions of Haitians, involving many thousands to date [and, in this regard,] practices of the Dominican Government and its agents have been reported that violate the Convention." Also, in 2009, the Office of the United Nations High Commissioner for Human Rights underlined information indicating that "between 20,000 and 30,000 immigrants are expelled each year with no chance to appeal as a result of systematic discrimination because of race, skin colour, language and nationality, despite the fact that many have valid work permits and visas and some are in fact Dominicans with no family ties in Haiti." Moreover, the representatives have provided documents which mention that the last "wave" of mass expulsions took place in 1991, 1996, 1997 and 1999, when deportations of 35,000, 5,000, 25,000 and 20,000 Haitians respectively were recorded.[145]

168. Meanwhile, the State "affirm[ed] that a national immigration policy based on racial profiling or skin color would be inoperable, because the Haitian physiognomy is very similar to [that of] a large part of the Dominican population." In this regard, the Court notes that several international organizations have indicated otherwise, and have referred to the alleged racism not only on the strict basis of phenotypic traits that reveal African descent, but also on the basis of perceptions relating to the general aspect of those with dark skins. According to the report of the United Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the independent expert on minority issues, "anti-Haitianism," which has a strong racial component, has played a very important role in the expulsion process.[146] Thus, they indicated that "These procedures were noted to be particularly targeting those who are presumed to be "Haitians", a determination that would be mainly based on skin colour, without distinguishing between Haitians, Dominicans of Haitian descent and black

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143 *Case of the Yean and Bosico Girls Vs Dominican Republic*, para. 109.10. Expert witness Bridget Wooding referred to "several peaks" of "mass expulsions" during the 1990s, stating, in particular, that "there were numerous abuses in a single month'; for example, in November 1999, 20,000 persons were expelled" (*cf.* Expert opinion provided by Bridget Frances Wooding before the Court during the public hearing).

144 Human Rights Watch indicated in its report that "[o]fficial statistics indicate that the government returned 14,639 Haitians in 2000, 17,524 in 1999, and 13,733 in 1998" (Human Rights Watch, Illegal People: Haitians and Dominico-Haitians in the Dominican Republic, p. 17). In this regard, expert witness Bridget Wooding, referring to the "predominant migratory model" since "at least the 1960s," asserted that this is a "model known as 'mass regulative deportations'," which is a category for sociological analysis. She explained that this signified that "there is no effective regulation at the point of entry [of migrants into the State's territory] and yet the authorities, the State, try to regulate through a process of mass regulative deportations" (*cf.* Expert opinion provided by Bridget Wooding during the public hearing).

145 *Cf.* 1991 Annual Report of the Inter-American Commission on Human Rights; United Nations, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Dominican Republic, A/HRC/WG.6/6/DOM/3, of 27 July 2009, Available at: http://daccess-ddsny.un.org/doc/UNDOC/GEN/G09/146/92/PDF/G0914692.pdf? OpenElement, and Minority Rights Group International, "Migration in the Caribbean: Haiti, the Dominican Republic and Beyond," James Ferguson, July 2003 (file of annexes to the motions and arguments brief, annex A06, fs. 3099 to 3143).

146 United Nations, 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, para. 91. According to these sources "ill-treatment and abuse during deportation is common." The authorities who conduct deportation 'sweeps' confiscate legitimate identification documents, including identity cards and birth certificates.

Dominicans with no ties at all with Haiti."[147] The Special Rapporteur and the independent expert heard statements by Haitians and Dominicans of Haitian descent indicating that "[…] "the most important passport is skin colour. Those with light skin rarely have a problem. Those who are black and look poor face problems all the time, no matter whether Haitian or Dominican. If you are black, you are Haitian."[148] The Committee on the Elimination of Racial Discrimination has also expressed its concern regarding the detention of documented and undocumented migrants of Haitian origin, and their collective deportations to Haiti, without any guarantees of due process.[149] Meanwhile, the Inter-American Commission has advised that it has received reports that, before they are removed from Dominican territory, deportees are held in establishments in which they receive little or no food during their time of confinement and, in some case, have been beaten by Dominican authorities.[150] The Commission has also stated that the expulsions conducted by the Dominican Republic were based on identity control on the basis of the racial profile of those detained, and that the Dominican authorities merely observe the way of walking, the lifestyle and the color of the skin, which they consider to be darker, to determine whether individuals are Haitians or descendants of Haitians.[151]

169. The specific characteristics of these expulsions have been described. For example, it has been pointed out that, even when they are decided on an individual basis, they are carried out with such haste that individuals are not given the chance to contact family members or contest the expulsion order. The mass expulsions have frequently been conducted in overcrowded buses; these bus journeys create unsafe conditions that, at times, have resulted in serious injuries.[152]. Those expelled from Dominican Republic are given no opportunity to contact their families, retrieve their belongings, collect their paychecks, or in any way prepare for departure. Dropped off at the border and told to walk to the other side, they typically arrive in Haiti with little or no money, indeed, often with nothing more than the clothes on their back. They may have to beg for food and for a place to sleep.[153]

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147 United Nations, 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, para. 44.

148 United Nations, 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, para. 44. The Special Rapporteur and the independent expert were informed of cases where black aliens, with no ties at all with the Dominican Republic or Haiti, but happening to be in the border area had also been threatened, just because of the color of their skin, with deportation to Haiti.

149 United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination on the ninth periodic report of the Dominican Republic, para. 13. CERD/C/DOM/CO/12, 8 June 2007, para. 13 (file of annexes to the motions and arguments brief, annex A04, fs. 3083 to 3090).

150 Inter-American Commission on Human Rights, Report on the situation of human rights in the Dominican Republic, October 7, 1999, para. 328.

151 In this regard, even though he did not present information that would confirm or deny a practice of immigration control based on racial profiles, expert witness Fernando I. Ferrán Brú stated that "it must be recognized that, owing to the geographical situation [of the country], most of those entering [the Dominican Republic] come from Haiti, whose population has predominantly black phenotypic traits. Since Haitian migration to Dominican territory is massive, and most immigrants arrive clandestinely and without documents, it is logical that the immigration authorities focus on that group of foreign immigrants. […] *Contrario sensu,* it would be impractical for the State's immigration policy to address its efforts to limit illegal and undocumented immigration towards groups with phenotypic traits of Orientals or white Caucasians" (*cf.* Expert opinion provided by Fernando Ignacio Ferrán Brú by affidavit).

152 Amnesty International, A life in transit - The plight of Haitian migrants and Dominicans of Haitian Descent. Expert witness Bridget Wooding stated that, during the expulsions, "there is no due process, those who are going to be expelled are not allowed a hearing. People can be taken from their homes in the middle of the night, without a court order" (*cf*. Expert opinion provided by Bridget Wooding during the public hearing).

153 *Human Rights Watch*, Illegal People: Haitians and Dominico-Haitians in the Dominican Republic, p. 11

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170. With regard to the foregoing, the Court notes that the State's arguments[154] are insufficient to disprove the facts that this Court has verified previously in other cases, or the documents and expert opinions included in these proceedings before the Court. Moreover, as indicated (*supra* paras. 159 and 163), the State itself has confirmed some aspects of the alleged context before international organizations or in domestic legislation.

171. Based on the above, the Court observes that, at the time of the events of this case, a situation existed in the Dominican Republic in which Haitians and persons born in Dominican territory of Haitian descent, who were usually undocumented and living in poverty, frequently suffered abuse or discrimination, including from the authorities, which exacerbated their situation of vulnerability. This was also linked to the difficulty of the members of the Haitian population or those of Haitian descent to obtain personal identification documents. The Court also notes the existence in the Dominican Republic at the time of the events of this case, during the 1990s, of a systematic pattern of expulsions of Haitians and persons of Haitian descent, including through collective actions or procedures that did not involve an individualized analysis, that were based on a discriminatory concept.

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[154] As previously indicated, Dominican Republic stated that a large percentage of its population are of African descent and that their physiognomy is very similar to that of many members of the Haitian population; thus "it cannot be believed" that it would "discriminate against its own ethnic group" and that there is no evidence of such discrimination. The State also denied, based on "official statistics on repatriations," that it had carried out "mass [or] collective deportations." The Court has already examined these arguments (*supra* paras. 159, 167 and 168). Nevertheless, the Court wishes to place on record other similar assertions by the State. The Dominican Republic has affirmed that it had "never [expelled] a Dominican who had been detained and who, during the verification procedure, has produced documents to prove his status as a national." It also "refute[d] the presumed pattern of immigration control operations or 'sweeps' leading to the arrest and subsequent deportation of Haitians and Dominicans of Haitian origin," indicating that "at the time of the supposed facts and acts, it applied a three-stage procedure, consisting of: (a) arrest and identification; (b) investigation and filtering, and (c) verification and confirmation." In addition, "regarding the supposed deportations during the 1990s and 2000s," it stated that "Dominican Republic and Haiti had signed a bi-national agreement, [on the] hiring of temporary workers for the sugar harvest, and when this agreement ended, these workers were supposed to return to their country, and those are the supposed deportations; those are the inflated numbers." Regarding these assertions, the Court refers to its previous considerations (*supra* para. 167 and footnote 142). The State also asserted that "the number of Haitians, undocumented or in an irregular migratory situation, who are deported, as well as those who are simply returned at the border, bears no relationship of any kind to the number of Haitians who enter the country"; however, this assertion does not contradict the Court's considerations on the contextual situation (*infra* para. 171). The Dominican Republic also pointed out that the Court, in the fifth *considerandum* of its Order on provisional measures related to this case of August 18, 2000 (*supra* para. 22), indicated that "it ha[d] not been proved […] that the Dominican Republic ha[d] a State policy of mass expulsions and deportations in violation of the express provisions of the Convention." In this regard, the Court notes that the Court's observations, within the limited and specific framework of the procedure on provisional measures, was not based on the examination of evidence and arguments inherent in a contentious case, because this was not appropriate given the nature of the said procedure. Rather, as stated in the fifth *considerandum* of the said Order, the Court only took into account the information that had been provided to it during "the public hearing of August 8, 2000, [and in] the briefs [that had been] presented to [the Court]." Lastly, it is pertinent to refer to assertions made by the State in relation to the arguments concerning the existence of discrimination towards Haitians or those of Haitian descent. Dominican Republic stated that "there is no structural, and especially institutional, discrimination towards immigrants who are Haitian or of Haitian descent," and that "Dominican society is not racist and, above all, not xenophobic." In addition, it asked, rhetorically, "how can a State be accused of racial discrimination that […] provides immigrants with health care, education and access to the courts." It also stated that "[t]he State authorities, particularly those of the Judiciary, do not discriminate against Haitians, irrespective of their migratory status, or against Dominicans of Haitian descent." Furthermore, it pointed out that, in its 1999 "Report on the situation of human rights in the Dominican Republic," the Commission had indicated that "the problems that affect the full observance of human rights in the Dominican Republic do not respond to a state policy aimed at violating those rights." Without this implying a ruling on the truth or inexactitude of the State's assertions, the Court considers it sufficient to note that the Dominican Republic's assertions do not contradict the Court's observations on the contextual situation (*supra* para. 161 and *infra* para. 171).

A.4. Pertinent domestic legal framework

172. In this case it is pertinent to refer to certain domestic laws.

A.4.1. Laws on Dominican nationality

A.4.1.1. Laws in force at the time of the facts

173. The Constitution of the Dominican Republic in force at the time of the facts was the 1994 Constitution, promulgated on August 14, 1994.[155] Acquisition of nationality was regulated in article 11 of the Constitution. This established the principle of *ius soli* in order to obtain nationality, with two constitutional exceptions relating to the children of diplomats, and to persons in transit in the country (*infra* para. 280).

174. The 1994 Constitution was in force when some of the presumed victims were born[156] and, in some cases, previous Constitutions such as the Constitutions of 1955[157] and 1966[158] (*supra* para. 146), which included the rule in similar wording.[159]

175. Article 10(c) of Immigration Law No. 95 of April 14, 1939,[160] in force at the time of the facts, established that "[p]ersons born in the Dominican Republic are considered nationals of the Dominican Republic, whether or not they are nationals of other countries" (*infra* footnote 330).

176. Section V of Immigration Regulations No. 279 of May 12, 1939,[161] in force at the time of the facts, defines "transients" as aliens who try to enter the Republic with the main purpose of continuing across the country towards another country, and establishes a limit of 10 days to this end.[162]

A.4.1.2. Innovations in legislation and jurisprudence after 2004

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155 Constitution of the Dominican Republic promulgated on August 14, 1994, and published in Official Gazette of the Dominican Republic No. 9890 on August 20, 1994 (file of annexes to the answering brief, fs. 5174 to 5215).

156 Namely: Luis Ney Medina, Carolina Isabel Medina, Miguel Jean, Victoria Jean and Natalie Jean.

157 Namely: Antonio Sensión and Victor Jean.

158 Namely: Awilda Medina, Willian Medina, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Bersson Gelin, and Markenson Jean, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé.

159 1955 Constitution, Article 12(2), and 1966 Constitution, Article 11(1) (*infra* para. 280 and footnote 330).

160 Immigration Law No. 95 of April 14, 1939, published in Official Gazette No. 5299, in force since June 1, 1939 (file of annexes to the motions and arguments brief, annex 14, fs. 3286 to 3296 and file of annexes to the answering brief, fs. 5689 to 5698).

161 Immigration Regulations No. 279 of May 12, 1939, enacted in conformity with Immigration Law No. 95 (file of annexes to the motions and arguments brief, fs. 3308 to 3318). It should be noted that the representatives and the State refer to the same regulations, but present different versions of the document. In the version provided by the representatives the implementing regulations are entitled "Migration Regulations," and in the one presented by the State, they are entitled "Immigration Regulations" (file of annexes to the answering brief, fs. 6045 to 6056). In this Judgment they will be referred to as "Migration Regulations."

162 Expert witness Cristóbal Rodríguez Gómez stated that the "new" Migration Law was promulgated on August 15, 2004, however, its implementing regulations were only adopted recently, "merely a few months ago" (at the time of his opinion), which meant that, "in many cases, immigration issues […] were managed on the basis of the implementing regulations for a law that had been repealed: the 1939 Law (expert opinion of Cristóbal Rodríguez Gómez provided by affidavit on October 1, 2013, file of preliminary objections, merits and reparations, fs. 1723 to 1729).

177. On August 27, 2004, General Migration Law No. 285-04[163] was published, repealing Immigration Law No. 95 of 1939. Also, the Central Electoral Board issued Circular No. 017 on March 29, 2007,[164] and, on December 10, 2007, adopted Resolution 12-2007.[165] These norms will be examined below (*infra* paras. 326 to 329).

178. On January 26, 2010, the amendment to the Constitution of the Dominican Republic was published.[166] It included a third exception to the acquisition of Dominican nationality by *ius soli* in its article 18(3), which stipulated that persons born on national territory of aliens "who are in transit or who are residing illegally in Dominican territory" will not be Dominican.

179. Judgment TC/0168/13 of the Constitutional Court of September 23, 2013,[167] when ruling on the appeal filed by a woman born in the Dominican Republic in 1984 of Haitian parents against the refusal of the Central Electoral Board to issue her Dominican identity and voter registration cards, interpreted the exception contained in the 1966 Constitution (in force at the date of her birth, art. 11(1)), regarding children born in the country of foreign parents in transit. It considered that the appellant's case corresponded to the constitutional exception to the principle of *ius soli*, because her parents were Haitian citizens who, at the time of her birth, did not possess identity cards, and must be considered as "temporary unskilled workers" (*jornaleros*), a group that Immigration Law No. 95 of 1939 included in the category of "non-immigrant aliens." According to the Constitutional Court, the category of "aliens in transit" that had appeared in all the Dominican constitutions since 1929 corresponded to all four groups called "non-immigrant foreign workers."[168] In this regard, the broader category of "aliens in transit" should not be confused with that of "transient aliens," which is merely the second of the said four groups of persons who compose the category of "non-immigrant foreign workers" ("persons who cross the territory of the Republic towards another country"). In addition, of the four groups included in the concept of "aliens in transit" under article 11(1) of the 1966 Constitution, the Constitutional Court referred to the specific situation of aliens who remain in the country without a legal residence permit or those who have entered the country illegally: "[i]n this regard, such persons may not claim that their children born in the country have the right to obtain Dominican nationality under the said article 11(1) of the 1966 Constitution, because it is juridically inadmissible to found the inception of a right on a *de facto* illegal situation."[169] In short, since it has not been proved that at least one of the parents was legally resident in the Dominican Republic at the time of the birth of their daughter or following this, in the Constitutional Court's opinion, the appellant did not comply with the requirements established in the said article 11(1) of the 1966

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163 General Migration Law No. 285-04 of August 15, 2004, published in Official Gazette No. 10291 of August 27, 2004 (file of annexes to the motions and arguments brief, annex A18, fs. 3324 to 3364 and file of annexes to the 5-answering brief, fs. 5928 to 5969). In addition, Implementation Regulations No. 631-11 were issued, which are the regulations for the implementation of General Migration Law No. 285-04 (file of annexes to the motions and arguments brief, annex 24, fs. 3404 to 3475).

164 Circular No. 017 of March 29, 2007, issued by the Central Electoral Board (file of annexes to the motions and arguments brief, annex A20, fs. 160 and 161).

165 Resolution No. 12-2007 of December 10, 2007, issued by the Central Electoral Board (file of annexes to the motions and arguments brief, annex A21, fs. 3377 to 3381).

166 Constitution of the Dominican Republic of January 26, 2010, published in Official Gazette No. 10561 (file of annexes to the answering brief, fs. 5289 to 5389).

167 Judgment of the Constitutional Court TC/0168/13 of September 23, 2013 (file of preliminary objections, merits and reparations, fs. 2654 to 2800). Presented by the representatives as a "supervening fact" on October 2, 2013.

168 According to the text of article 3 of Immigration Law No. 95 of 1939.

169 The Constitutional Court referred to the judgment of the Supreme Court of Justice of December 14, 2005.

Constitution concerning acquisition of Dominican nationality. The Constitutional Court ordered, *inter alia*, "[a] thorough audit of the birth records of the Office of the Civil Registry of the Dominican Republic from June 21, 1929, to date […] in order to identify and make a list, either on paper and/or by computer of all the aliens registered in the birth records of the Civil Registry Office of the Dominican Republic." Relevant aspects of this decision will be examined below (*infra* sections C.5.2 and C.5.3 of Chapter VIII).

180. On November 29, 2013, Decree No. 327-13[170] was issued. According to its article 1, its purpose was to institute the "National Plan to regularize aliens in an irregular migratory situation in the Dominican Republic." Also, on May 23, 2014, Law No. 169-14[171] was enacted, and its preambular paragraphs indicate that it is founded on the provisions of judgment TC/0168/13 and establish the "regulariza[tion] of the civil registry records." These norms will be examined below (*infra* para. 320 to 325). On July 23, 2014, Decree No. 250-14 was issued, regulating Law No. 169-14; it refers to the procedure for "immigration registration and regularization of the children of foreign parents in an irregular migratory situation who, having been born on the territory of the Dominican Republic, do not appear registered in the records of the Office of the Civil Registry." It granted persons "subject to the sphere of implementation of the regulation to benefit from […] Law 169-14" a 90-day period to submit their application.[172]

A.4.2. Legal framework applicable to deprivation of liberty and to expulsion or deportation procedures

181. Article 8(2) of the 1994 Constitution, in force at the time of the facts, established the different criteria to be taken into account for deprivation of liberty (*infra* para. 365).

182. Article 1 of Law No. 5353 on *Habeas Corpus* of October 22, 1914,[173] in force at the time of the facts, stipulated that:

> Anyone who has been deprived of his liberty for any reason in the Dominican Republic has the right, either at his own request or that of any other person, unless he has been detained based on a ruling of a competent judge or court, to a writ of *habeas corpus* in order to determine the reasons for his imprisonment or deprivation of liberty and so that, in the appropriate cases, his liberty is restored.
> The writ of *habeas corpus* may be requested, issued and delivered at any time; but the case will not be examined until a working day or a day specially authorized to this end.

183. Furthermore, article 2 of Law No. 5353 established that the application for the writ "must be made in writing, signed by the person whose liberty is at issue, or on his behalf by another person, and must be presented to any of the judges [of the categories listed in article 2]" and, pursuant to article 3 of this law, should include the following elements:

> a) Statement that the person in whose favor the writ is requested is imprisoned or deprived of his liberty; the location of the prison, arrest or detention; the name or title of the official, employee or person who imprisoned him or deprived him of liberty; that of the prison guard, employee, officials, agent or officers who are in charge of the prison, barracks or place where he is imprisoned, detained or arrested.

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170 Decree No. 327-13 of November 29, 2013 (file of preliminary objections, merits and reparations, fs. 3776 to 3794). Presented by the State as a "supervening fact" on June 9, 2014 (*supra* para. 13).

171 Law No. 169-14 of May 23, 2014 (file of preliminary objections, merits and reparations, fs. 3799 to 3808). Presented by the State as a "supervening fact" on June 9, 2014 (*supra* para. 13).

172 On August 13, 2014, Dominican Republic forwarded the implementing regulations to Law No. 169-14 (Decree No. 250-14) to the Court, without referring to this case (*supra* para. 146).

173 Law No. 5353 on *Habeas Corpus* of October 22, 1914 (file of annexes to the answering brief, fs. 5679 to 5688).

b) Statement that this person has not been arrested, detained or imprisoned by a ruling of a competent judge or court.
c) The reason or pretext for the imprisonment, detention, arrest or deprivation of liberty.
d) If the imprisonment or deprivation of liberty is based on a court order, judicial decision or decree, a copy of this shall be attached to the request, unless the applicant guarantees that, owing to the transfer or the concealment of the person imprisoned or deprived of liberty, prior to the application, this copy cannot be requested, or that this was requested and was a refused.
e) If it is alleged that the imprisonment or deprivation of liberty is unlawful, the applicant shall indicate the grounds of the alleged unlawfulness.
If the applicant is unaware of any of the circumstances indicated in this article, he must also expressly indicate this.

184. Article 4 of this law indicated that: "[t]he judge or court authorized to examine the writ, shall grant it promptly, provided that the application is in keeping with this law is presented."

185. Lastly, article 7 of the *Habeas Corpus* Act also establishes that: "[w]hen a judge has evidence that any person within his jurisdiction is illegally detained or deprived of liberty, he shall issue a writ of *habeas corpus* to assist that person, even though the latter has not applied for this."

186. Article 13 of Immigration Law No. 95 of April 14, 1939, set out the reasons for which aliens could be "arrested and deported by order of the Secretary of State for Internal Affairs and Police, or another official appointed by the Secretary of State to this end."

187. Also, paragraph (f) of that article established the conditions for detention prior to deportation:

In cases of deportation, the alien in question may be arrested for up to three months by order of the Secretary of State for Internal Affairs and Police or the Director General of Immigration. If the deportation cannot be implemented within this period because a passport, or visa for a travel document, has not been obtained, the alien may be referred to the prosecutor and the authorized correctional court will order by a judgment that he remain in prison for six months to two years, according to the gravity of the case. However, if, following the proceedings or the judgment, the alien obtains a passport, or visa for the travel document, from the corresponding authority, making it possible for him to leave the country, the prosecutor shall release him for this purpose at the request of the Secretary of State for Internal Affairs and Police or of the Director General of Immigration, and the proceedings shall be dismissed or the ruling annulled. There shall be no appeal against the rulings.

188. Similarly, Law No. 4658 of March 24, 1957,[174] established:

Art. 1. Notwithstanding the attributes that correspond to the Secretary of State for Internal Affairs and Police, the courts of the Republic may order the deportation of any alien who commits one of the offenses established in article 13 of Immigration Law No. 95 of April 14, 1939, as the main penalty, when the case is filed by the Director of the National Investigations Department. The courts of the Republic may also order deportation as a supplementary punishment when the alien has committed a crime or offense the gravity of which, in the opinion of the respective Court, warrants this punishment.
Art. 2. When deportation has been ordered, as either the main penalty or a supplementary punishment, the alien may be arrested for up to three months by order of the competent prosecutor. The judgment ordering the deportation shall always establish that, if the deportation cannot be implemented during that time because a passport, or a visa for a travel document, has not been obtained, the alien shall remain in prison for from six months to two years, according to the gravity of the case. However, if following the judgment, the alien obtains a passport or visa for the travel document, making it possible for him to leave the country, the prosecutor shall release him for this purpose.

[174] Law No. 4658 of March 24, 1957, published in Official Gazette No. 8105. Both the Commission in its Merits report and the representatives in their motions and arguments brief, fs. 27 and 186, respectively, mentioned a link to this document.

189. In addition, section XIII of Immigration Regulations No. 279 of May 12, 1939, on deportation, stipulated:

> Immigration inspectors and officials who act in this capacity shall conduct a complete investigation of any alien, whenever there are reliable reports or there is any reason to believe that the alien is in the Republic in violation of the Immigration Law. If the investigation reveals that the alien should be deported, the Immigration Inspector will request the General Directorate of Immigration for an arrest warrant. The request for the warrant must indicate the facts and specific reasons why the alien should be deported. [...]
>
> The information regarding the alien shall be recorded on form G-1, when he is heard, unless it has been recorded previously. If the alien accepts any of the charges that make him liable to deportation, a memorandum to this end shall be prepared and shall be signed by the Inspector and also the alien, if possible. If the alien does not accept any of the charges in the arrest warrant, evidence to support the charges shall be sought, the alien shall be summoned again, and be given another opportunity to make a statement, as well as to introduce evidence contesting his deportation. In cases relating to the entry of an alien into the Republic, the alien shall have the burden of proof to demonstrate that he entered legally and, to this end, the alien shall have the right to an arrival declaration, as appears in any record of the Immigration Department.
>
> After the hearing, the relevant information shall be sent by the Immigration Inspector to the Director General of Immigration for consideration and a decision by the Secretary of State for Internal Affairs and Police. If a deportation order is issued, the alien shall be deported, unless the Secretary of State for Internal Affairs and Police decides to grant him the opportunity to leave the country voluntarily within a certain period, and the alien does this. If the Secretary of State for Internal Affairs and Police finds that the alien should not be deported, the proceedings shall be annulled.
>
> In cases of deportation under articles 10(1) and 13(3) of the Immigration Law, the deportation may be decided by the Secretary of State for Internal Affairs and Police or by the Director General of Immigration, unless otherwise decided by the Secretary of State in the case in question without the need for the requirements indicated in the three preceding paragraphs of this section. The corresponding order shall be communicated to the alien who has violated the Immigration Law and to all the police authorities to ensure its implementation.

190. Meanwhile, the Memorandum of Understanding on repatriation mechanisms signed by the Dominican Republic and the Republic of Haiti on December 2, 1999,[175] also applicable at the time of the facts, established the following:

> The Haitian Government recognizes that the Dominican Government has the legitimate right to repatriate Haitian citizens who are in Dominican territory illegally and, to this end, both parties agree the following to improve the procedure for these repatriations:
> a) The Dominican immigration authorities undertake not to carry out repatriations during night hours; that is, between 6:00 p.m. and 8:00 a.m., also, they will not carry out repatriations on Sundays and the official holidays of the two countries, except between 8:00 a.m. and 12:00 m.
> b) The Dominican immigration authorities shall avoid the separation of family units (parents and underage children) in the repatriation procedures.
> c) The Dominican immigration authorities undertake to carry out any repatriations to Haitian territory exclusively through the border posts of Jimaní/Malpasse, Dajabón/Ouanaminthe, Elías Piña/Belladere, and Pedernales/Anse-à-Pitres. For its part, the Haitian Government undertakes to reinforce and/or establish immigration inspection posts at these border points that will receive those repatriated.
> d) The Dominican immigration authorities recognize the inherent human rights of those repatriated and shall adopt specific measures to ensure that they are accompanied by their personal effects, and shall not retain their personal documents, unless, in the opinion of these authorities, they reveal legal defects, in which case they shall be retained and subsequently forwarded to the Haitian diplomatic mission in the Dominican Republic.
> e) The Dominican immigration authorities shall hand every person repatriated a copy of the individual form with the order for his repatriation.
> f) The Dominican immigration authorities undertake to inform the Haitian diplomatic or consular authorities accredited in Dominican territory, with reasonable advance notice, of the list of persons in the process of being repatriated. These authorities may exercise their function of

[175] Memorandum of Understanding on repatriation mechanisms signed by the Dominican Republic and the Republic of Haiti on December 2, 1999 (file of annexes to the motions and arguments brief, annex A17, fs. 3320 to 3322 and file of annexes to the answering brief, fs. 5676 to 5678).

consular assistance.
g) The Haitian authorities shall proceed to establish immigration control posts along the Dominico-Haitian border to avoid the illegal flow of its citizens towards the Dominican Republic.
h) The Haitian Government undertakes to increase its efforts to furnish its nationals with Haitian identity documents in the context of the potential migratory flow towards the Dominican Republic.

191. Lastly, the respective part of Law No. 1494 of August 9, 1947, which institutes the contentious-administrative jurisdiction[176] in force at the time of the facts, established:

> Art. 1. Anyone, whether natural or juridical, with a legitimate interest, may file the contentious-administrative remedy established below in the cases, manner and within the time frames established in this law: (1) against the judgments of any contentious-administrative court of first instance or a court that is essentially of this nature, and (2) against illegal administrative acts, regulations and decrees, that meet the following requirements:
> a) That they are acts against which all hierarchical claims within the administration or the autonomous administrative bodies have been exhausted;
> b) That they emanate from the administration or from the autonomous administrative bodies in the exercise of their authority regulated by laws, regulations or decrees;
> c) That they violate a right, of an administrative nature, established previously in favor of the appellant by law, regulation or decree, or an administrative contract;
> d) That they constitute an excessive or distorted exercise of their own legitimate purpose, or of discretional authority conferred by laws, regulations or decrees.
> [...]
>
> Art. 9. The time limit for filing an appeal before the Secretaries of State or before the autonomous administrative bodies against the decision of a contentious-administrative nature issued by the directors, administrators or heads of the offices that are subordinate to them, is 10 days from the date of the receipt by the party concerned of the communication that must be transmitted by the said directors, administrators or heads by special delivery registered mail.
> Paragraph I. The time limit to appeal before the Superior Administrative Court is 15 days as of the day on which the appellant has received the judgment of the contentious-administrative court of first instance, in the case of an appeal, or of the day on which he has received notification of the act appealed, or the day of the official publication of the act appealed by the authority that issued it, or the day the time limit set in article 2 of this law expires, in the case of an appeal due to delay.

B) Facts of the case

B.1. Introduction

192. The Court will now refer to the facts relating to the presumed victims in this case who were determined in paragraph 78 of this Judgment. In view of the fact that, in this case, the dispute focuses mainly on the alleged situation concerning the identity of some presumed victims, their nationality, and whether or not they have been expelled, in the following section, the Court will describe the identity and what happened to the members of each family, taking into consideration, on the one hand, the official documents forwarded or other sources such as the statements of the presumed victims themselves, as well as the arguments of the parties and of the Commission, and on the other hand, the findings in the chapter on evidence, and in the chapter on the preliminary issues in relation to the determination of the presumed victims.

193. In this regard, the Court considers it relevant to recall its case law regarding the criteria applicable to the assessment of the evidence. Since its first contentious case, the Court has indicated that, for an international court, the criteria used to assess the evidence are different from those used by domestic legal systems, and has asserted that it

[176] Law No. 1494 of August 9, 1947, published in Official Gazette No. 6673 (file of annexes to the answering brief, fs. 5751 to 5765).

is able to evaluate the evidence freely,[177] abiding by the principle of sound judicial discretion.

194. In view of its particularities of this case, especially the situation of poverty and insecurity of the presumed victims, it is pertinent to apply special standards in the assessment of the evidence, because it has been argued that the characteristics of the factual circumstances have resulted in the absence of documentation or registration. Thus, for example, it has been argued that some presumed victims were born in Dominican territory and that they do not have personal identification documentation, and that others were expelled from the country without the legal procedure being followed. Thus, although the lack of personal documentation or records of administrative or judicial proceedings would normally indicate that the alleged facts did not occur, this cannot be considered to be so in this case, because this absence of documentation or records is part of the factual framework submitted to the Court's consideration and is consistent with the proven context, which also included a systematic pattern of expulsions, even by means of collective deportations or proceedings that did not entail an individualized analysis (*supra* paras. 171).

195. Inasmuch as the facts related by the presumed victims are inserted in that context, the said expulsions were not documented and this omission can be attributed to the State authorities. Similarly, the difficulties encountered to register births in the Dominican Republic are a factor that can be attributed to the State, because it is the State that has the means and the authority to adopt the respective measures. The lack of evidence cannot be assessed as proof that the facts alleged by the presumed victims did not occur, because they originated precisely from deficiencies in the actions or policies of the State. Consequently, an assessment of the evidence in that sense would be contrary to the principle that courts must reject any argument based on the negligence of the party presenting it (*Nemo auditur propiam turpitudinem alegans).*

196. Based on the above, the Court finds that, in this case, it would be disproportionate to place on the victims the burden of proving positively, with documentary or other types of proof, the occurrence of events relating to omissive acts of the State. The Court notes that, owing to the nature of the alleged facts, the State was able to obtain proof of them. In this regard, it is interesting to noted that, during the public hearing in the case, the State was asked whether it had conducted "any investigation […] at least of an administrative type, […] to determine […] whether the presumed [irregular] expulsions had occurred," and Dominican Republic failed to present any information in this regard, either on that occasion or subsequently.[178]

197. In addition, the Court notes that the State, when referring to the statements made by the presumed victims during the procedure before the Commission, had indicated that it "observe[d] with great concern that all the supposed facts and acts presented by the Commission […] and the representatives were established, and it is sought to prove them,

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[177] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 127 and 128, and *Case of Veliz Franco et al. v. Guatemala*, para. 179.

[178] In its written arguments, the State merely asserted that "the investigations came to a halt owing to the granting of the provisional measures," but did not indicate the investigations to which it referred, or how the orders given by this Court in relation to provisional measures prevented the continuation of the investigations. Furthermore, when answering the question, it merely referred to "annex 6 of the Merits report" which contains several documents. Among these documents, one dated July 19, 2000, issued by the DGM refers to only four of the presumed victims, in a paragraph concerning each one, indicating that several persons had commented on the supposed names, nationality and place of residence of the presumed victims and, also, indicates that "there is no record that Berson Gelim was deported." The State did not mention that the "inquiries" leading to the said comments formed part of formal administrative or judicial proceedings, or their eventual result.

by the statements of the presumed victims, which obviously lack any objectivity."[179] In this regard, added to the foregoing, the Court considers that it is pertinent to take into account in the instant case that the presumed victims form part of a population whose members, as indicated, "usually lived in poverty and were undocumented (*supra* para. 171). Owing to this situation of vulnerability, it can be inferred that the presumed victims have encountered difficulties to file complaints, to institute and to promote investigations and proceedings, or in any way to obtain evidence that would prove reliably the events that allegedly occurred to them. In this context, it is possible that activities of non-State entities (such as universities or civil society organizations), have been the means that, in the absence of others, have been accessible to the presumed victims in order to recount the alleged facts of this case. In addition, in view of this situation, the Court finds it understandable that there can be differences or contradictions in the statements of the presumed victims and considers that, in the instant case, this does not affect the overall credibility of the statements. On this basis, the Court must, as required, examine the statements meticulously.

198. Bearing in mind the above, the Court finds it admissible, in this case, to assess the statements made by the presumed victims during the processing of this case before the Court, to the extent that they narrate facts that are in agreement with the contextual situation that has been established (*supra* paras. 153 to 171). Other statements given by the presumed victims, admitted as documentary evidence (*supra* paras. 124), will be considered in a subsidiary or complementary manner. And this is, evidently, without prejudice to the consideration of other types of evidence provided to the Court.

B.2. Facts regarding the members of the different families

B.2.1. Medina family

199. Willian Medina Ferreras was born in Cabral, Dominican Republic, on November 14, 1966, and has a Dominican identity card.[180]

200. Mr. Medina lived in Oviedo, Pedernales, Dominican Republic, where he worked as a farmer.[181] He lived with his companion Lilia Jean Pierre, also known as Lilia Pierre or Lilia Pérez or Liliana Pérez or Lilia Jean (*supra* para. 83), who was born in Haiti,[182] and his three children, born in the Dominican Republic: Awilda Medina Pérez born on February 7, 1989,[183] Luis Ney Medina born on June 14, 1990,[184] and Carolina Isabel Medina, who was

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[179] The State added that "the case file lacks any probative element that supports beyond a reasonable doubt a declaration of international responsibility for facts and acts related to the factual framework of the case." The representatives, for their part, alleged that "most of the [presumed] victims […] are illiterate and live in rural areas, in a situation of extreme poverty," and that "[d]espite the conditions in which they live, the [presumed] victims have maintained their story of what happened for 15 years and have persisted in their search to obtain justice. Their accounts were always credible and consistent with the general context in which the facts occurred."

[180] *Cf.* identity card of Willian Medina Ferreras issued by the Central Electoral Board (file of annexes to the Merits report, annex 7, f. 156); birth certificate of Willian Medina Ferreras; extract from birth certificate of Willian Medina Ferreras, issued by the National Directorate of Civil Registries, Central Electoral Board (file of annexes to the motions and arguments brief, annex B01, f. 3493), and sheet with general information on Willian Medina Ferreras, issued by the Central Electoral Board, based on its master list of those registered, on December 2, 1999 (file of annexes to the Merits report, annex 38, f. 341).

[181] *Cf.* identity card of Willian Medina Ferreras; Statement made by Willian Medina Ferreras during the public hearing held before the Court on October 8, 2013, and sheet with general information on Willian Medina Ferreras.

[182] *Cf.* Electoral identity document and Haitian birth certificate of Lilia Jean Pierre, and Statement made by Willian Medina Ferreras during the public hearing.

[183] *Cf.* Certification of birth declaration of Awilda Medina, issued by the Central Electoral Board, Civil Registry (file of annexes to the Merits report, annex 9, f. 161); extract from birth certificate of Awilda Medina, and sheet with general information on Awilda Medina.

a child at the time of the expulsion and died in Haiti in 2004.[185] All three have birth certificates, and the first also has a Dominican identity card (*infra* para. 207*)*.

201. In November 1999 or January 2000,[186] during the early morning hours,[187] State officials from Pedernales came to the Medina family's home[188] and all the members were taken, together with other persons, to a prison in Oviedo where they were detained for several hours, without prior verification of their documentation.[189] According to Willian, he presented his documents, a "photocopy of [his] identity card and [one] of [his] birth [certificate …] and gave them to the immigration people," but "they tore them up and [he] had [his] original birth certificate."[190] Later they were put in a van with other people and

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184 *Cf.* Certification of birth declaration of Luis Ney Medina issued by the Central Electoral Board, Civil Registry (file of annexes to the Merits report, annex 10, f. 163), and extract from birth certificate of Luis Ney, issued by the National Civil Registry Directorate, Central Electoral Board, on October 17, 1999 (file of annexes to the motions and arguments brief, annex B03, f. 3497). It should be noted that the birth certificate is handwritten and records that Luis Ney is the son of Willian Medina, but the second surname is illegible. In addition, in the extract from the birth certificate and in the full birth record of Luis Ney, he appears as the son of Willian Medina "Taveras," so that the Court, in the absence of evidence indicating the contrary, understands that this is a clerical error in the transcription of the surname.

185 *Cf.* Certification of birth declaration of Carolina Isabel issued by the Central Electoral Board, Civil Registry (file of annexes to the Merits report, f. 165). The document indicates that the child was born on September 21, 1995, and the name of the father is Willian Medina. It should be noted that the representatives attached an extract from the birth certificate of Carolina Isabel, issued by the National Civil Registry Directorate, Central Electoral Board, indicating that she was born on November 21, 1999 (file of annexes to the motions and arguments brief, f. 3499). In addition, it should be noted that the birth certificate is handwritten and records that Carolina Isabel is the daughter of Willian Medina, but the second surname is illegible, and in the extract from the birth certificate she appears as the daughter of Willian Medina "Herrera"; consequently, in the absence of evidence indicating the contrary, the Court understands that this is a clerical error in the transcription of the surname. The Court does not have the child's death certificate, but the representatives reported her decease in their motions and arguments brief.

186 *Cf.* Affidavit made by Awilda Medina on September 24, 2013 (file of preliminary objections, merits and reparations, f. 1705), and statement made by Willian Medina to Columbia University on April 1, 2000 (file of annexes to the Merits report, annex 14, f. 186). In his statement to Columbia University, Willian Medina indicated that the facts had occurred in November 1999. Meanwhile, Awilda Medina stated that they took place in January 2000. Also, it should be noted that, during the public hearing before the Court, Willian Medina Ferreras stated that the expulsion took place in 1990. In this regard, the State indicated that, if the expulsion had occurred in 1990, it would have been implemented at a time when the Court did not have jurisdiction. However, the statement made by Willian Medina during the public hearing reveals that he was expelled together with his companion and their three children, and according to the information received, in 1990, his daughter Carolina Isabel had not been born; consequently, the Court finds that it was not possible that the expulsion took place in 1990. Based on the foregoing, and in view of the statement of Awilda Medina, the Court considers that the expulsion occurred subsequently, in November 1999 or January 2000.

187 *Cf.* Affidavit made by Awilda Medina, and statement made by Willian Medina during the public hearing.

188 It should be noted that, in her statement, Awilda indicated that, on the said day "a Mrs. Maribel [arrived] and ordered them to board a "*guagua*" (bus) (*cf*. Affidavit made by Awilda Medina). Also, Mr. Medina Ferreras stated that: "[t]he immigration officials came to [his] house at 3 a.m.; [he] didn't have problems with anyone. They knocked on the door; when [he] opened the door the yard was full of soldiers. There [he saw] a woman who was the Head of Immigration, her name was Maribel, and from there they sent [him] to the garrison. […] When [he] reached the garrison, [he saw] someone and asked, who are these people? And they told [him] that those people are from immigration and have come to collect up the Haitians and repatriate them" (statement of Willian Medina Ferreras during the public hearing). However, Carmen Maribel Ferreras Mella, in her affidavit, stated that "it is not true that, as Head of Deportations, she went at 3 a.m., accompanied by seven officials of the Dominican Marines, knocking on the door of the Medina Ferreras family's home, and that in November 2000, she no longer occupied that post" (Affidavit made by Maribel Ferreras Mella on September 16, 2013 (file of preliminary objections, merits and reparations, fs. 1697 and 1698.

189 *Cf.* Affidavit made by Awilda Medina, and Statement made by Willian Medina Ferreras during the public hearing.

190 Statement made by Willian Medina Ferreras during the public hearing. In its response, the State denied categorically that "a solider destroyed the photocopies of the Dominican identity card and birth certificate of Willian Medina Ferreras," because "there is no evidence, either direct or circumstantial, that substantiates that anything like that could have occurred. Not even the name or nickname of the soldier who allegedly committed

taken to the border with Haiti. The five members of the family remained together.[191] The State noted that there is no record of the deportation of these persons.[192]

202. According to Awilda Medina, during their detention they received no food or water, and they were treated very badly throughout the expulsion process; they were told "Haitians, go home!" When they reached Haiti, Awilda and Luis Ney did not speak Creole, but they learned it as a result of the expulsion.[193]

203. Following the expulsion from Dominican Republic, Awilda was run over by a vehicle in Anse-à-Pitres, Haiti, and the family tried to obtain medical assistance for her by several trips to the Dominican Republic, where they had no problem in crossing the border because they had papers from the hospital.[194] The State indicated that "even though the members of this family lived in Anse-à-Pitres, […] it provided them with the necessary health care services to respond to the medical needs of young Awilda Medina."

204. Following their expulsion, the Medina Ferreras family continued to live in Anse-à-Pitres, Haiti, because they feared returning to the Dominican Republic and being expelled once again.[195]

205. On March 20, 2002, safe-conducts were issued to members of the Medina family, as a result of the agreement reached during the processing of the provisional measures before the Inter-American Court.[196] Subsequently, on April 10, 2010, as part of the provisional measures procedure, the State renewed and granted new safe-conducts to members of the Medina family.[197]

206. On March 3, 2014, the State advised the Court that "after what transpired during the public hearing before the Court on October 8 and 9, 2013," the Central Electoral Board "provisionally suspended" the birth certificate of Willian Medina Ferreras, and that "the Legal Office of the Central Electoral Board was instructed to request the annulment of his birth declaration. It also proceeded to cancel [his] identity and voter registration cards."[198] At that time, it also presented documentation substantiating events that had occurred after September 12, 2013.

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this act is mentioned; nor was his physical description provided or any other information that would allow him to be identified."

191 *Cf.* Statement made by Willian Medina Ferreras during the public hearing before the Court.

192 *Cf.* Note No. 044-13 issued by the General Directorate of Immigration of the Ministry of the Interior and Police of January 23, 2013, certifying that there is no record of the deportation of, among other persons mentioned on a list attached as an annex to the note: Willian Medina, [Aw]ilda Medina Luis Ney Medina and Lilia Jean Pierre (file of annexes to the answering brief, fs. 6371 to 6373). The State argued that "there is no evidence whatsoever […] proving […] that the members of that family were really expelled from national territory."

193 *Cf.* Affidavit made by Awilda Medina.

194 *Cf.* Affidavit made by Awilda Medina.

195 *Cf.* Affidavit made by Awilda Medina and Statement made by Willian Medina Ferreras during the public hearing. In her affidavit Awilda stated that she "wanted to return to live in the Dominican Republic, but her father did not let them because he said they would be expelled."

196 *Cf.* safe-conducts granted to Willian Medina Ferreras, Awilda Medina and Luis Ney Medina issued on March 20, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 17, f. 200).

197 *Cf.* safe-conducts of Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina and Luis Ney Medina, issued on April 10, 2010, by the General Directorate of Immigration (file of annexes to the motions and arguments brief, annex B06, fs. 3516 to 3519).

198 *Cf.* Minutes No. 23-2013 of the Central Electoral Board, "Minutes of the regular meeting of the Registrars' Committee held on October 18, 2013" (file of preliminary objections, merits and reparations, fs. 3478 to 3490).

207. The documentation presented by the State shows that, on September 12, 2013, based on a request, the "Director General of the Inspectorate" of the Central Electoral Board was provided with information on the "origin" and "renewal of the identity and voter registration cards […] in the name of […] Willian Medina Ferreras." On September 26 and 27, 2013, an inspector from the Central Electoral Board recorded an interview with several persons[199] and examined various documents.[200] The respective record shows that the inspector intervened because she, along with other persons that she did not mention, had been "entrusted with the investigation of the birth declarations in the name of Willian Medina Ferreras […] because he had lodged a petition against the Dominican State before the Inter-American Commission." The Central Electoral Board inspector concluded that "the annulment of the birth declaration in the name of Willian Medina Ferreras" and of "Awilda, Luis Ney and Carolina Isabel, children of the person calling himself Willian Medina Ferreras, should be required before the corresponding civil courts, as well as the "cancellation" of these documents, and also the "cancel[lation] of the identity and voter registration cards […] of Willian Medina Ferreras [and] Awilda Medina Pérez."[201]

208. On October 18, 2013, the "Registrars' Committee" of the Central Electoral Board decided, *inter alia*: "[t]o authorize the provisional suspension […], except for judicial purposes, […] of the issue of records relating to the birth registrations" of Willian Medina Ferreras and of his children Awilda, Luis Ney and Carolina Isabel; that "the competent courts be required to annul the birth declarations" of the said persons; "[t]o recommend [… the] cancellation of the identity and voter registration cards [of] Willian Medina Ferreras [and] Awilda Medina Ferreras", and "[t]o prosecute […] Winet" (the individual who had presumably identified himself as Willian Medina Ferreras).[202] On February 13, 2014, it was recorded that "the number" of the "identity and voter registration card […] in the name of Willia[n] Medina Ferreras was being cancelled due to falsification of information."[203] On March 4, 2014, the Central Electoral Board, represented by its president, "formally became a complainant […], through the Public Prosecution Service, […] and civil party," "requested that criminal sanctions be imposed and reparations required of […] Willian Medina Ferreras," and accusing him of having taking steps "to obtain a false identity." The complaint cited the investigation conducted as of September 26, 2013. On March 5, 2014, Willian Medina Ferreras was notified of an "action to annul

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199 According to the inspector of the Central Electoral Board, these were "Argentina Medina Ferreras de Medina, Luis Medina Ferreras, Javiel Medina Ferreras[…], Carlos Manuel Medina Ferreras, Oscar Medina Cuello and Mario Medina Cuello" (Report on the investigation into the birth declarations in the name of Willian Medina Ferreras, on folio No. 44, volume No. 147, entry No. 44 of 1994, of the Cabral Civil Registry, signed by Kathia María Sánchez, Inspector, transmitted by Juan Bautista Tavárez Gómez, Director of the Inspectorate to Roberto Rosario Márquez, President of the Central Electoral Board on October 15, 2003. File of preliminary objections, merits and reparations, fs. 3545 to 3553). The Court notes that these interviews were the same as those that appeared in the video shown by the State during the public hearing and, as already decided, the Court will not consider this presentation (*supra* paras. 128 and 132). Nevertheless, reference is now made to the said interviews based on documents provided by the State following the hearing relating to supervening facts consisting in the institution and progress of certain domestic proceedings (*supra* paras. 20, 140 and 144).

200 Namely: "records of the children of Abelardo Medina", "[c]ertification of […] October 2, 2012," establishing that "Willian Medina Ferreras […] exercised his right to vote in […] 2002, 2006, 2008, 2010 and 2012," "identity and voter registration cards […] in the name of Willian Medina Ferreras" with which the "birth declarations […] of Awilda, Luis Ney and Carolina (children of the persons calling himself Willian Medina Ferreras) were made" (*cf*. Report on the investigation into the birth declarations in the name of Willian Medina Ferreras).

201 Report on the investigation into the birth declarations in the name of Willian Medina Ferreras.

202 Minutes No. 23-2013 of the "regular meeting of the Registrars' Committee [of the Central Electoral Board] held on […] October 18, 2013."

203 Note RE/14, of February 13, 2014, signed by Luis Mariano Matos, National Director of Electoral Registration and addressed to Rosario Altagracia Graciano De Los Santos, Member and Coordinator of the Cancellation and Disqualification Committee (file of preliminary objections, merits, reparations and costs, f. 3476).

[his] birth certificate due to falsification of information."[204] At the date of this Judgment, the Court has not received further information on the progress of the said proceedings.

B.2.2. Fils-Aimé family

209. Jeanty Fils-Aimé lived with his companion Janise Midi, who was born in Haiti, and had a Haitian identity card.[205] According to Jeanty Fils-Aimé himself and to Janise Midi, he was born in Las Mercedes, Dominican Republic, lived there, and carried out agricultural labors,[206] and died in 2009.[207] However, a copy of a Haitian identity card in the name of Mr. Fils-Aimé issued on July 26, 2005, was provided to the Court.[208] Mrs. Midi explained that her children Antonio, Diane and Endry were present at the time of the expulsion. She added that, "at that time, she had three children with [her] husband, but [he] had more [children] and that a son of [her] husband called Nené lived with [them]." Although she affirmed that her children Diane and Endry were born in the Dominican Republic,[209] she stated that she "registered [her] children in Haiti because they needed documents to go to school."[210]

210. On November 2, 1999,[211] Jeanty Fils-Aimé was arrested near the market, and later the same day State agents went to his home and also arrested Janise Midi and her three children who were forced to board a "truck," which already held many other people, and taken to the "Pedernales Garrison," near the Customs House," where they were counted and expelled together with other persons at around 8 p.m.[212] When they arrived in Anse-à-Pitres, Haiti, Mrs. Midi contacted the GARR, which received her and her children in its offices that night and the following six days. Afterwards, they found out that Jeanty Fils-Aimé was in the same place, but there were so many people, that she had been unable to find him at first. The State indicated, in this regard, that it had no record of registrations corresponding to Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé, in the opportune and late birth registrations of the Pedernales Civil Registry, or of Jeanty Fils-Aimé.[213] It added that there is no record of their deportation.[214]

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[204] Record No. 162/2014, of March 5, 2013, (*sic*) drawn up by Ángel Luis Rivera Acosta, Court Bailiff of the Supreme Court of Justice (file of preliminary objections, merits, reparations and costs, fs. 3702 to 3707).

[205] *Cf.* Affidavit made by Janise Midi, and safe-conduct of Janise Midi issued on April 10, 2010, by the General Directorate of Immigration (file of annexes to the motions and arguments brief, annex B06, f. 3517).

[206] *Cf.* Affidavit made by Janise Midi, and statement made by Jeanty Fils-Aimé to Columbia University.

[207] Affidavit made by Janise Midi. In her statement, Mrs. Midi indicated that Jeanty Fils-Aimé died in 2009. The body of evidence does not contain his death certificate.

[208] *Cf.* identity card of Jeanty Fils-Aimé issued on July 26, 2005, by the Republic of Haiti (file of preliminary objections, merits and reparations, f. 3750). According to the representatives this document was provided by Mr. Fils-Aimé himself, so that it has not had the opportunity clarify it before the Court.

[209] *Cf.* Affidavit made by Janise Midi. Similarly, Jeanty Fils-Aimé stated that Diane was born in 1991, Antonio in 1988 and Endry in 1993 (*Cf.* Statement made by Jeanty Fils-Aimé to Columbia University).

[210] *Cf.* Affidavit made by Janise Midi.

[211] *Cf.* Affidavit made by Janise Midi on September 24, 2013 (file of preliminary objections, merits and reparations, f. 1711), and Statement made by Jeanty Fils-Aimé to Columbia University of April 1, 2000 (*Cf.* Statement made by Jeanty Fils-Aimé to Columbia University, of April 1, 2000. File of annexes to the Merits report, Annex 19, fs. 212 to 219). In her affidavit, Janise Midi stated that the expulsion took place in 1999 without indicating the day and month in which it occurred. The State questioned the event, owing to the lack of certainty about the exact date of the expulsion. However, the statements made by Jeanty Fils-Aimé to Columbia University indicated that they were expelled on November 2, 1999.

[212] *Cf.* Affidavit made by Janise Midi.

[213] *Cf.* Certification issued by the Pedernales Civil Registry Office on July 18, 2012, stating, *inter alia*, that "Nené Fils-Aimé Midi," "Diane Fils-Aimé Midi," "Antonio Fils-Aimé Midi" and "Endry Fils-Aimé Midi" "are not registered in the opportune or late birth records of this Civil Registry Office" (file of annexes to the answering brief, f. 6221), and certification issued on July 17, 2012, by the Central Electoral Board (file of annexes to the

211. From 1999 to date, the Fils-Aimé family has lived in Anse-à-Pitres, Haiti. Mrs. Midi is afraid and does not want to return to the Dominican Republic, but indicated that perhaps when her children are grown they may want to return. She would like her children who were born in the Dominican Republic to have Dominican documents, because they could then return to that country, look for work, and make a life for themselves there.[215]

212. On March 20, 2002, safe-conducts were issued to the members of the Fils-Aimé family as a result of the agreement reached when the provisional measures were being processed before the Inter-American Court.[216] In addition, a damaged copy of Jeanty Fils-Aimé's safe-conduct was provided to the Court.[217] Subsequently, on April 10, 2010, as part of the provisional measures procedure, the State renewed and granted new safe-conducts to all the members of the family.[218]

B.2.3. Bersson Gelin

213. Bersson Gelin stated that he was born in Mencía, Pedernales, Dominican Republic, and does not have a Dominican birth certificate or identity card, but does have a Haitian birth certificate and identity document.[219] He has lived in Haiti since 1999 with his companion and his three children.[220] Bersson Gelin stated that he was expelled on two occasions, the second in 1999, which falls within the Court's competence. He stated that, on December 5 that year, while he was going to work, he was stopped, made to board a "*guagua,*"[221] and then taken to Haiti.[222]

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answering brief, f. 6222). This latter certification indicates that "after a thorough search in the archives for which [it] is responsible from 1958 to 2012, […]: Nene, Diane, Antonio and Endry are not registered in this Registry Office." The Court will understand that, as established in article 39 of Law No. 659 of the Dominican Republic, the opportune and late declarations are the birth declarations of natural children made before the Civil Registrar in the place where the birth took place within 30 days if they are opportune and within 60 days if they are late (*Cf.* Law No. 659 of July 17, 1944, on Civil Status Procedures, which includes provisions on death certificates and registrations. File of annexes to the answering brief, fs. 5705 to 5750).

214 Note No. 044-13 of the General Directorate of Immigration, certifying that there is no record of the deportation of Nené, Diane, Antonio, and Endry, all surnamed Fils-Aimé, or of Janise Midi, among other persons mentioned on a list.

215 *Cf.* Affidavit made by Janise Midi.

216 Safe-conducts of: Janise Midi, Antonio Fils-Aimé, Endry Fils-Aimé, Diane Fils-Aimé and Jeanty Fils-Aimé, issued on March 20, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 22, fs. 229 to 237).

217 *Cf.* Safe-conduct of Jeanty Fils-Aimé, damaged, issued on March 20, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 23, f. 253).

218 Safe-conducts of: Janise Midi, Antonio Fils-Aimé, Endry Fils-Aimé, Diane Fils-Aimé, issued on April 10, 2010, by the General Directorate of Immigration (file of annexes to the motions and arguments brief, annex B06, fs. 3517 and 3518). A safe-conduct in the name of Jeanty Fils-Aimé was also provided, and this Court notes that it was issued after his death.

219 *Cf.* Birth certificate of the Republic of Haiti of Bersson Gelin (file of preliminary objections, merits and reparations, f. 3749), and Haitian identity card issued on July 29, 2005 (file of preliminary objections, merits and reparations, f. 3748).

220 *Cf.* Affidavit made by Bersson Gelin on September 24, 2013 (file of preliminary objections, merits and reparations, f. 1708).

221 For the effects of this Judgment, the Court understands "*guagua*" to mean an automotive vehicle that provides urban or interurban services.

222 *Cf.* Affidavit made by Bersson Gelin. In his affidavit, he stated that the expulsion took place in 1999, when he "was detained in La Romana, [he] was walking to work and the guards stopped him, ill-treated him, pointed a rifle at him," and "forced him to go to Anse-à-Pitres."

214. Mr. Gelin has a son called William Gelin,[223] who was born in the Dominican Republic, in La Romana, and has been separated from him. Bersson Gelin stated that, in 2009, he went to the Dominican Republic to receive treatment for a bullet wound in the leg, and that was the last time he was able to visit his son William; since then, he has not seen his son for almost four years. Bersson Gelin does not want to return to the Dominican Republic because he is afraid that he will be expelled again.[224] The State noted that it has no opportune or late declaration of his birth, and no record of his deportation.[225]

215. On March 20, 2002, safe-conducts were issued to Mr. Gelin and William Gelin[226] as a result of the agreement reached when processing the provisional measures before the Inter-American Court. However, Mr. Gelin stated that, in 2006, during a visit to his son William in Santo Domingo, the immigration officials destroyed it.[227] However, on April 7, 2010, he was issued another safe-conduct.[228]

B.2.4. Sensión Family

216. Antonio Sensión was born on December 24, 1958, in Savaneta de Cangrejo, Dominican Republic;[229] he has a Dominican identity card,[230] and lives with Ana Virginia Nolasco, whose Creole name is Ana Virgil Nolasco (*supra* para. 83), and who was born in Haiti, and has a Haitian identity card.[231] They have two daughters: Ana Lidia Sensión Nolasco, born on August 3, 1990, in the Ricardo Limardo Hospital in Puerto Plata, Dominican Republic, who has a Dominican identity card,[232] and Reyita Antonia Sensión

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223 *Cf.* Affidavit made by Bersson Gelin, and safe-conduct of William Gelin, son of Bersson Gelin, issued on March 20, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 25, f. 268).

224 *Cf.* Affidavit made by Bersson Gelin.

225 *Cf.* Certification of the Pedernales Civil Registry Office of June 20, 2012, noting that "the person named BER[S]SON GELIN is not registered in the opportune or late birth records of this Civil Registry Office" (file of annexes to the answering brief, f. 2204), and Note No. 044-13 of the General Directorate of Immigration, noting that there is no record of the deportation of Bersson Gelin, among other persons mentioned on a list.

226 *Cf.* Safe-conduct of Bersson Gelin issued on March 20, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 26, f. 255), and safe-conduct of William Gelin.

227 *Cf.* Affidavit made by Bersson Gelin.

228 *Cf.* Affidavit made by Bersson Gelin, and safe-conduct of Bersson Gelin issued on April 7, 2010, by the General Directorate of Immigration (file of annexes to the motions and arguments brief, annex B07, f. 3525).

229 *Cf.* identity card of Antonio Sensión (file of annexes to the Merits report, annex 28, f.274); extract from birth certificate of Antonio Sensión issued by the Central Electoral Board (file of annexes to the motions and arguments brief, annex B10, f. 3535), and Affidavit made by Antonio Sensión. Regarding the date of birth of Antonio Sensión, the different official documents all state that he was born on December 24, 1958, as determined in judgment No. 117 of January 9, 2001, of the Judicial Service of the Dominican Republic, that ordered the Registry Office official of the municipality of Sosua "to ratify the birth certificate" of Antonio Sensión (file of annexes to the Merits report, annex 27, f. 272). However, in his affidavit, Mr. Sensión stated that he was born on September 23, 1972. Despite this, the Court considers that the date of birth is the one that appears in the official documents.

230 *Cf.* Identity card of Antonio Sensión.

231 *Cf.* Extract from the birth certificate of Ana Lidia issued by the Central Electoral Board on a date that is not visible (file of annexes to the motions and arguments brief, annex B12, f.3539); sheet with general information on Ana Lidia Sensión issued by the Head Identity Document Official on September 23, 2009 (file of annexes to the Merits report, f. 2190), and extract from birth certificate of Reyita Antonia issued by the Central Electoral Board on a date that is not visible (file of annexes to the motions and arguments brief, annex B13, f. 3541). These documents record that Ana Virginia Nolasco, of Haitian nationality, is the mother of Ana Lidia and Reyita Antonia.

232 *Cf.* identity card of Ana Lidia Sensión Nolasco issued by the Central Electoral Board (file of annexes to the motions and arguments brief, annex B14, f. 3543); birth certificate of Ana Lidia, issued by the Central Electoral Board on August 20, 1990 (file of annexes to the Merits report, f. 2193); extract from birth certificate of Ana Lidia; certification of birth declaration of Ana Lidia issued by the Civil Registry on January 25, 2001 (file of

Nolasco, who was born on January 6, 1992, in the Eastern Santo Domingo Hospital, Dominican Republic, and has a Dominican identity card.[233] The State indicated that Ana Lidia Sensión and Reyita Antonia Sensión are Dominican citizens, as recorded in the corresponding Civil Registry Offices.[234]

217. The Sensión Family lived in Mata Mamón, Santo Domingo, Dominican Republic, and Mr. Sensión went to Puerto Plata seasonally to work.[235] Prior to the date on which the State accepted the Court's contentious jurisdiction, Mrs. Nolasco and her daughters were detained by immigration officials and transported in a "truck" with other persons to the border with Haiti. Then, once in Haiti, they were able to travel to the place where Ana Virginia Nolasco's family lived.[236] The State indicated that it had no record of the deportation of these persons.[237]

218. Subsequently, when Mr. Sensión returned to Mata Mamón in 1994 and went to his home to look for his family, he found out from the neighbors that they had been expelled to Haiti.[238] Eight years later, now within the sphere of the Court's temporal competence, Mr. Sensión found his family in the Las Cahobas market in Haiti, and returned to the Dominican Republic with his daughters. A week later, Mrs. Nolasco was also able to return to the Dominican Republic.[239] According to Ana Lidia, she is "always afraid of meeting immigration [personnel]."[240]

219. On August 13, 2002, safe-conducts were issued to the members of the Sensión Family, as a result of the agreement reached when processing the provisional measures before the Court.[241] Subsequently, in 2010, and as part of the proceedings on provisional measures, the State renewed and granted new safe-conducts to Antonio Sensión, Ana

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annexes to the Merits report, f. 2162); sheet with general information on Ana Lidia Sensión, baptism certificate of Ana Lidia Sensión issued on January 11, 2000, by the Parish of San Antonio de Padua (file of annexes to the Merits report, annex 29, f. 276); Affidavit made by Ana Lidia Sensión Nolasco on September 29, 2013 (file of preliminary objections, merits and reparations, f.1717), and Affidavit made by Antonio Sensión.

233 *Cf.* birth certificate of Reyita Antonia, issued by the Central Electoral Board of the Dominican Republic on February 5, 1992 (file of annexes to the Merits report, f. 2196); extract from birth certificate of Reyita Antonia; baptism certificate of Reyita Antonia Sensión issued on January 11, 2000, by the Parish of San Antonio de Padua (file of annexes to the Merits report, annex 30, f. 278); Affidavit made by Antonio Sensión, and full birth certificate of Reyita Antonia, issued by the Central Electoral Board on July 4, 2012 (file of annexes to the Merits report, f. 2195).

234 *Cf.* Report of the Government of the Dominican Republic on the measures adopted to comply with the recommendations of the Commission (file of annexes to the Merits report, f. 2164). The State also indicated in its answering brief that these persons were Dominicans.

235 *Cf.* Affidavit made by Antonio Sensión.

236 *Cf.* Affidavit made Ana Lidia Sensión Nolasco, and Affidavit made by Antonio Sensión. In his affidavit, Mr. Sensión stated that, in 1994, "Ana Virginia and the girls lived in Mata Mamón"; that his "mother died on September 30 that year and that, as they did not arrive, [he] went to look for them and, one week later, a neighbor told him that immigration had caught [them] and deported them to Haiti." Meanwhile, in her affidavit made on September 29, 2013, Ana Lidia Sensión Nolasco stated that the events took place around Christmas 1994. Accordingly, the Court notes that although the day and month are not the same, in their statements they both agree on the year, so that the date of the expulsion was prior to the State's acceptance of the Court's jurisdiction.

237 Note No. 044-13 issued by the General Directorate of Immigration of the Ministry of the Interior and Police, certifying that there is no record of the deportation of Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión, among other persons mentioned on a list.

238 *Cf.* Affidavit made by Antonio Sensión.

239 *Cf.* Affidavit made by Antonio Sensión, and Affidavit made by Ana Lidia Sensión Nolasco.

240 Affidavit made by Ana Lidia Sensión Nolasco.

241 *Cf.* Safe-conducts of Antonio Sensión, Ana Virgi[nia] Nolasco, Reyita Antonia Sensión and Ana Lidia Sensión, issued on August 13, 2002 (file of annexes to the Merits report, annex 34, fs. 290 and 291).

Virginia Nolasco and Ana Lidia Sensión.[242] Some of the members of this family, for example, Reyita Antonia Sensión, were unable to collect this document.[243]

B.2.5. Rafaelito Pérez Charles

220. Rafaelito Pérez Charles was born in the Dominican Republic on August 18, 1978, and has a Dominican identity card.[244] His parents are Clesineta Charles (*supra* para. 95) and Rafael Pérez.[245] The State indicated that Mr. Pérez Charles is a Dominican citizen, according to information that appears in its civil registers; therefore, it had no objection to replacing the corresponding documentation, either the birth certificate or the identity card.[246]

221. On July 24, 1999,[247] Mr. Pérez Charles was arrested by several immigration agents when he was leaving his place of work. The officials asked him for his documentation and he told them that it was at his home and asked to be given the opportunity to go and fetch it; but the officials did not permit this. The officials then made him board a "*guagua,*" in which there were a large number of people, and he saw how the officials hit some of them. The Dominican authorities took them to a detention center "where there were many Haitians there, prisoners," and then the authorities transported them to Jimaní, from where they were expelled to Haitian territory. During the transfer they were not given food or water. When Rafaelito Pérez Charles reached Haiti, he met a man who, after being paid, helped him to return on foot to the Dominican Republic; once there, he walked for several days until he reached his home again. Due to the expulsion, he lost his job in the sugar mill.[248] He is living with the fear that he will be expelled again.[249] According to Rafaelito "they arrest you because you are dark, because you are black."[250] The State noted that there is record of his deportation.[251]

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242 *Cf.* Safe-conducts of Antonio Sensión, Ana Virginia Nolasco, and Ana Lidia Sensión, issued on April 7, 2010 (file of annexes to the motions and arguments brief, annex B07, f. 3522).

243 Affidavit made by Antonio Sensión.

244 *Cf.* Identity card of Rafaelito Pérez Charles (file of annexes to the Merits report, annex 36, f. 296); birth certificate of Rafaelito Pérez Charles, and Affidavit made by Rafaelito Pérez Charles on September 29, 2013 (file of preliminary objections, merits and reparations, f. 1737).

245 *Cf.* Birth certificate of Rafaelito Pérez. The sheet with general information on Rafaelito Pérez Charles and his birth certificate note that his mother is Clesineta Charles and that his father is Rafael Pérez.

246 *Cf.* Report of the Dominican Government on the measures adopted to comply with the Commission's recommendations in relation to this case issued by the Permanent Mission of the Dominican Republic to the Organization of American States on July 6, 2012 (file of annexes to the Merits report, f. 216). Also, a note of the Central Electoral Board of July 5, 2012, reported that it attached the "printout from the master list of identity documents and of the birth declaration of Rafaelito Pérez Charles, which show that they are free of any impediment" and provided a certification of the Central Electoral Board from the master list of identity documents dated July 4, 2012 (file of annexes to the Merits report, fs. 2171, 2172 and 2199).

247 *Cf.* Affidavit made by Rafaelito Pérez Charles, and statement made by Rafaelito Pérez Charles to Columbia University of January 10, 2001 (annexes to the Merits report, annex 37, fs. 298 and 299), in which he stated that the expulsion was on July 24, 1999.

248 *Cf.* Affidavit made by Rafaelito Pérez Charles. In this statement he indicated that he walked for a week to reach his home. However, in the statement made on January 10, 2001, to Columbia University, he indicated that it was four days.

249 Affidavit made by Rafaelito Pérez Charles.

250 *Cf.* Affidavit made by Rafaelito Pérez Charles.

251 *Cf.* Certification issued by the National Prisons Directorate on February 4, 2013 (file of annexes to the answering brief, f. 6220); Note No. 044-13 issued by the General Directorate of Immigration of the Ministry of the Interior and Police, noting that there is no record of the deportation of Rafaelito Pérez Charles, among other persons mentioned on a list.

B.2.6. Jean family

222. Victor Jean and his son Markenson stated that Victor was born in Jimaní, Dominican Republic,[252] on April 13, 1958. Victor Jean lived in Villa Faro, Dominican Republic, with his family consisting of Marlene Mesidor, born in Haiti on July 3, 1972, who has a Haitian passport,[253] and his four children: Markenson Jean Mesidor, born on November 15, 1992, in Haiti, who has a Haitian passport;[254] Miguel Jean, born on November 13, 1994;[255] Victoria Jean, born on November 13, 1996, who died on April 20, 2014,[256] and Natalie Jean, born on July 20, 2000, in Villa Faro, Santo Domingo.[257] Victoria, Miguel and Natalie were born in the San Lorenzo de los Minas Maternal and Child Health Care Center, Santo Domingo, Dominican Republic.[258] The Jean family lives in the Dominican Republic at this time. The State indicated that there are no opportune or late birth declarations of Miguel Jean, Victoria Jean, and Natalie Jean.[259]

223. In December 2000, at around 7:30 a.m. State agents came to the Jean family's home and knocked loudly on the door; they then entered the home and ordered the family to leave and get into a "bus,"[260] to which Mrs. Mesidor and the couple's four

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[252] *Cf.* Affidavit made by Markenson Jean on September 29, 2013 (file of preliminary objections, merits and reparations, f. 1730), and Statement made by Victor Jean to Columbia University on January 11, 2001 (file of annexes to the Merits report, annex 39, f. 350). The State provided a document entitled Certification that there is no birth declaration for Victor Jean, issued by the Jimaní Registry Office, corresponding to Volume No. 18 of 1958, as well as a document entitled Non-declared Certification, issued by the Civil Registry of the municipality of La Descubierta on February 8, 2013, indicating that, following a thorough search in the opportune and late birth records in its archives from 1958 to 2000, it was not possible to find the name of Victor Jean, born on April 13, 1958 (file of annexes to the answering brief, f. 6550). Similarly the State provided other certifications that support this (*cf.* file of annexes to the answering brief, fs. 6551 to 6555. It should be noted that in some of the certifications provided, the name of Victor Jean appears as Jeam or Jan).

[253] *Cf.* Affidavit made by Marlene Mesidor. Affidavit made by Markenson Jean, and safe-conduct of Marlene Mesidor (file of annexes to the motions and arguments brief, annex B07, f. 3523).

[254] *Cf.* Birth certificate of Markenson Jean, affidavit made by Markenson Jean, and affidavit made by Marlene Mesidor. According to the statements of Marlene Mesidor and Markenson Jean, in 1991 Victor Jean and Marlene Mesidor had been expelled from Dominican Republic. They stated that, after a time spent in Haiti, Mr. Jean returned to the Dominican Republic to work, while Mrs. Mesidor, who was pregnant again, remained in Haiti, where her son Markenson was born. She returned to the Dominican Republic when her son was one year old, in 1993.

[255] *Cf.* Affidavit made by Marlene Mesidor, and male birth certification [Miguel] issued on March 8, 2010, by the San Lorenzo de los Minas Mother and Child Health Care Clinic of the Secretariat of Public Health and Social Assistance (file of annexes to the motions and arguments brief, annex B09, f. 3529).

[256] *Cf.* Affidavit made by Marlene Mesidor; certification of female birth [Victoria] issued on March 8, 2010, by the San Lorenzo de los Minas Mother and Child Health Care Clinic of the Secretariat of Public Health and Social Assistance (file of annexes to the motions and arguments brief, annex B09, f. 3530). In the death certificate, which was issued on April 20, 2014, by the Ministry of Public Health, it appears that she is of "Haitian" nationality (death certificate of Victoria Jean issued by the Ministry of Public Health of April 20, 2014. File of preliminary objections, merits and reparations, f. 3751).

[257] Affidavit made by Marlene Mesidor, and certification of female birth [Natalie] issued on March 8, 2010, by the San Lorenzo de los Minas Mother and Child Health Care Clinic of the Secretariat of Public Health and Social Assistance (file of annexes to the motions and arguments brief, annex B09, f. 3531).

[258] Affidavit made by Marlene Mesidor; affidavit made by Markenson Jean; certification of male birth (live birth) [Miguel], certification of female birth (live birth) [Victoria], and certification of female birth (live birth) [Natalie]. Marlene Mesidor stated that her children only have the live birth certifications, that they did not have birth certificates. She also stated that she once when to register them and was told that if she did not have Dominican documents, she could not register them.

[259] *Cf.* Certification of birth declaration issued by the Central Electoral Board on July 4, 2012, recording that there are no opportune or late birth declarations relating to: Miguel Jean, Victoria Jean and Natalie Jean (file of annexes to the answering brief, f. 2204).

[260] *Cf.* Affidavit made by Markenson Jean; affidavit made by Marlene Mesidor, and statement made by Marlene Mesidor to Columbia University on January 11, 2001 (file of annexes to the Merits report, annex 40, fs. 352 to 361). These statements reveal that the agents were "immigration" officials. However, on January 11,

children were taken. The bus was full of people, including some standing up. The State agents then went back to the house and returned with Mr. Jean who they forced to board the bus.[261] It was early, and they were not allowed to get dressed, or to take the milk of the new-born child. Nor were they allowed to call anyone; they were not given anything "to eat and [were not allowed] to buy" food. The officials asked Mr. Jean and Mrs. Mesidor for their documents, but they did not have them, and the children only had certificates of live birth; at that time Natalie was almost four months old. The Jean family was taken in a "*guagua*" or bus to the Jimaní border and left on Haitian territory in the afternoon at around 5 p.m.[262] The State noted that there is record of the deportation of any of these persons.[263]

224. On August 13, 2002, safe-conducts were issued to the members of the Jean family, as a result of the agreement reached when processing the provisional measures before the Court.[264] Subsequently, on April 7, 2010, and as part of the proceedings on provisional measures, the State renewed and granted new safe-conducts to all the members of the Jean family.[265]

VIII
RIGHTS TO JURIDICAL PERSONALITY, TO A NAME, TO NATIONALITY AND TO IDENTITY, IN RELATION TO THE RIGHTS OF THE CHILD, THE RIGHT TO EQUAL PROTECTION AND THE OBLIGATIONS TO RESPECT RIGHTS WITHOUT DISCRIMINATION AND TO ADOPT DOMESTIC LEGAL PROVISIONS

A) Introduction

225. In this chapter the Court will examine together the alleged violations of the rights to recognition of juridical personality,[266] to a name,[267], to nationality,[268] and to identity (*infra* paras. 266 to 268), because, in this case, the facts that presumably resulted in these violations overlap. Based on the arguments of the parties and the Commission *(infra* paras. 230 to 251), the Court will make this analysis, as pertinent, in relation to the rights

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2001, Marlene Mesidor stated that "members of the Army and inspectors from the General Directorate of Immigration had come to her home" (file of annexes to the Merits report, annex 40, f. 353).

261 *Cf.* Affidavit made by Marlene Mesidor.

262 *Cf.* Affidavit made by Marlene Mesidor, and Affidavit made by Markenson Jean.

263 Note No. 044-13 issued by the General Directorate of Immigration of the Ministry of the Interior and Police, noting that there is no record of the deportation of Miguel Jean, Victoria Jean, Natalie Jean, Victor Jean, Marlene Mesidor and "M[ar]kenson" Jean, among other persons mentioned on a list.

264 Safe-conducts granted to Victor Jean, Marlene Mesidor, Victoria Jean, Natalie Jean and "M[ar]kenson" Jean, issued on August 13, 2002, by the General Directorate of Immigration (file of annexes to the Merits report, annex 41, fs.363 and 364).

265 *Cf.* Safe-conducts granted to Marlene Mesidor, Victor Jean, "M[ar]kenson" Jean, Miguel Jean, Victoria Jean, and Natalie Jean, and issued on April 7, 2010, by the General Directorate of Immigration (file of annexes to the motions and arguments brief, annex B07, fs. 3521 to 3524).

266 Article 3 of the American Convention establishes that: "Every person has the right to recognition as a person before the law."

267 Article 18 of the Convention indicates that: "Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary."

268 Article 20 of the American Convention stipulates: "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."

of the child[269] and the right to equality before the law,[270] as well as to the obligations to respect and ensure the rights without discrimination[271] and to adopt domestic legal provisions.[272]

226. Two types of arguments have been presented, and will be evaluated separately. The first situation alleged is the destruction of identity documents of Dominicans, or the authorities' failure to take them into account at the time of the expulsions, and the second is the failure to register persons of Haitian descent born in Dominican territory.

227. In addition, regarding the arguments relating to the obligation to adopt domestic legal provisions, and the right to a name, the Court notes that the Commission did not allege the violation of Articles 2[273] and 18 of the Convention, whereas the representatives did.[274] In this regard, the Court reiterates that "the presumed victims or their representatives may cite rights other than those included by the Commission, based on the facts that the Commission has presented";[275] hence, it is admissible to examine the alleged violation of Article 2 of the Convention.

228. Lastly, regarding the necessary preliminary clarifications, it is pertinent to recall that the Court has determined that it is not possible to consider that the birthplace of Bersson Gelin, Jeanty Fils-Aimé, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé has been proved (*supra* paras. 86 and 87). This prevents the Court from analyzing arguments about the nationality of these persons, or presumed violations of rights linked to this. Consequently, the Court will not describe or analyze the arguments related to the alleged violations, to the detriment of these persons, of the rights to nationality, recognition of juridical personality, and name and, in relation to these three rights taken as a whole, the right to identity; or the violation of the right to equal protection of the law inasmuch as this was alleged in relation to the preceding rights. Similarly, it will not

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269 Article 19 of the Convention establishes 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."

270 Article 24 of the American Convention stipulates: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

271 Article 1(1) of the American Convention states: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

272 Article 2 of the Convention indicates: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

273 Nevertheless in the Merits report, the Commission recommended that the State adopt measures "including a review of domestic legislation on registering and granting 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 race or national origin, taking into account the principle of *ius soli* established by the State, the State obligation to prevent statelessness, and applicable standards of international human rights law."

274 Regarding Article 2, in their motions and arguments brief, when setting out arguments with regard to Articles 3, 18, 20 and 24 of the Convention, the representatives mentioned and transcribed Article 2, but failed to include arguments to justify its violation. However, it should be noted that, in answer to a question posed by the Court during the public hearing, the representatives indicated that the alleged violation of Article 2 was "linked to the violation of the right to nationality and the rights to juridical personality, of the family and to privacy, because [they] consider[ed] that the violation ar[o]se from the undue application of article 11 of the Constitution […], that, as [they] explain[ed] in [their] arguments has considered that 'in transit' is equal to 'an irregular migratory situation'; hence [their] allegation relating to Article 2." However, when including allegation

in their final written arguments, they indicated other norms (*infra* paras. 241 and 242)

275 *Cf. Case of the "Five Pensioners" v. Peru,* para. 155, and *Case of Veliz Franco v. Guatemala,* para. 132.

describe or examine the respective arguments when analyzing the alleged violation of the right to movement and residence (*infra* paras. 384 to 389).

229. Having made these clarifications, the Court will now describe the arguments of the Commission and of the parties, and then set out the considerations of the Court in this regard.

B) Arguments of the Commission and of the parties

230. The Commission**,** referring to Willian Medina Ferreras and Rafaelito Pérez Charles, as well as to the children at the time: Awilda Medina, Luis Ney Medina and Carolina Isabel Medina, Miguel Jean, Victoria Jean and Natalie Jean, argued that, according to the statements of the presumed victims and the documentation provided by the State, they were Dominican nationals and possessed the pertinent documentation to prove this. However, during their arbitrary detention and expulsion, they were not given the opportunity to present this documentation or it was destroyed by Dominican officials, and this resulted in the presumed victims being unable to prove their physical existence and juridical personality. The Commission alleged that "these practices" placed the victims in a situation of extreme risk, depriving them of the enjoyment and exercise of their rights, and signified de *facto* that the victims were arbitrarily deprived of the recognition and enjoyment of their nationality.

231. The Commission argued that, according to the evidence provided, Dominican officials "refused" to register Victor Jean as a citizen of the Dominican Republic, which resulted in his "exclusion from the State's legal and institutional order, refusing to recognize his very existence as a subject […] of law."

232. The Commission also "recall[ed] the Court's finding" that "a person's migratory status is not transmitted to his children,"[276] and added that, in any case, the exception to *ius soli* currently included in Dominican law, consisting in the "legal status of the parents," is not applicable to any of the presumed victims born in Dominican territory, because this exception was introduced in 2004 and constitutionalized in 2010. The Commission considered that, despite the fact that the State observes the principle of *ius soli,* the impediments that exist to granting nationality to persons born in the Dominican Republic constitute an arbitrary deprivation of nationality which contributes to the detention and possible deportation of Dominican nationals.

233. Consequently, it inferred that "based on the established context, and the laws and practices of the Dominican State at the time of the events, Haitian migrants had to contend with a number of obstacles that prevented them from legalizing their status in the country and registering their children born in Dominican territory." In addition, it noted that the State's laws and practices that led to the deprivation of nationality owing to the failure to register Dominicans of Haitian descent constituted a generalized practice specifically aimed at persons of Haitian descent and those with the darkest skin color. It considered that, although it was true that Dominican laws do not expressly establish provisions that prejudice Haitians and those of Haitian descent, "it is no less true that their interpretation and application reveal their discriminatory impact on this population."

234. "[T]he Commission […] consider[ed] that the obstacles that exist in the Dominican Republic to registering children of Haitian descent had been proved" and recalled the Court's observation in paragraph 109 of its judgment in the *Case of the Yean and Bosico*

[276] The Commission referred to the judgment of the Court in the case *of the Yean and Bosico Girls v. Dominican Republic*, also indicating other aspects of that decision included in its paragraph 157.

Girls v. Dominican Republic, as regards "the difficulty of [the mothers] to travel from the *bateyes* to the hospitals in the town, the limited financial resources, and the fear of meeting hospital officials, police agents, or officials from the local municipality and being deported.'" In this context, with regard to the presumed victims who were children at the time of the events,[277] the Commission indicated that "this case involves a sequence of events beginning with the refusal to register births, which made it impossible to obtain nationality and accede to basic services such as health and education; […] adversely affecting the normal and full development of their persona and their life project." Therefore, it concluded that the State had failed to comply with its international obligations, by not adopting the necessary measures that took into account the best interests of the child, guaranteeing his or her right to be heard, protecting the right to identity, and ensuring the protection of children on its territory.

235. The Commission indicated that the Constitutional Court's judgment TC/0168/13 of September 23, 2013:

> Could have the effect of retroactively denationalizing thousands of people who had acquired Dominican nationality in application of the Constitution in force at the time, [and] could represent an obstacle to the restitution of the right to nationality of the victims in this case, one of the essential measures of reparation.

Furthermore, on June 24, 2014, "without making a ruling on the content of [Law 169-14]," presented by the State as a supervening fact (*supra* paras. 13, 126, 180, and *infra* para. 251), it "consider[ed] that this law does not provide any evidence as regards whether or not a situation of structural discrimination existed. In addition, the Commission is unaware of how it could affect the [presumed] victims in this case."

236. The Commission concluded that the State had violated the right to juridical personality and the right to nationality recognized in Articles 3 and 20 of the American Convention, in relation to 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 Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased), Rafaelito Pérez Charles, Victor Jean, Victoria Jean (deceased), Miguel Jean and Natalie Jean, as well as the rights of the child, recognized in Article 19 of this instrument, to the detriment of the presumed victims who were children at the time of the facts.

237. The representatives argued that the officials who took part in the expulsions of Willian Medina Ferreras and Rafaelito Pérez Charles and of the children Awilda Medina, Carolina Isabel Medina and Luis Ney Medina disregarded their juridical personality, because, even though they had documentation that proved their identity and nationality, the officials did not request this. To the contrary, in the cases in which the victims showed this documentation it was not received or, in the worst case, it was taken from them. The representatives stated that this is also connected to a violation of the right to a name. They also asserted that all the alleged violations were especially egregious in the case of the victims who were children at the time of the events, because they were in a situation of special vulnerability.

238. The representatives also indicated that, although Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean were born in the Dominican Republic, they do not have documents to substantiate their identity. The representatives argued that it was "impossible" for those of Haitian descent born in the Dominican Republic to obtain identity documents

[277] Among them, the Commission indicated Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Victoria Jean, Miguel Jean and Natalie Jean.

owing to the "incorrect application of article 11 of the Dominican Constitution [of 1994]"; specifically the application of the exception established in article 11(1) which excluded from the principle of acquisition of nationality based on *ius soli* the children of aliens "in transit." They pointed out that the Dominican authorities had classified the Haitians who were in Dominican territory, without considering the time that they had spent in this country, as aliens "in transit" and, consequently, their children did not have the right to acquire Dominican nationality even though they had been born in this territory. The representatives indicated that "[t]his was precisely the criterion that was applied to the victims in this case, which has meant that, at the present time, they lack identity and nationality documents." They also alleged a discriminatory application of the law, indicating that the application of article 11 of the Constitution, in the sense of considering that all Haitians were "in transit," created a differential treatment that was based solely on the race or ethnic origin of those affected and, therefore, lacked any justification. They noted that this definition had been incorporated textually into the new 2010 Constitution, which added a third exception excluding the children of those persons "who are residing illegally in Dominican territory" from the right to nationality under *ius soli.*

239. They also explained that, even though Haiti accepts *ius sanguinis*, "obstacles exist […] *de jure* and *de facto* to acquire the nationality of that country" for the presumed victims. They indicated that article 11 of the Haitian Constitution, according to the translation into Spanish made by the representatives, indicates that "[a]nyone born of a Haitian father or mother, who is also Haitian by birth and has never renounced their nationality, shall have the right to Haitian nationality as of birth." The representatives affirmed that, nevertheless, "in the case of the families [they] represent where the nationality of their children born in the Dominican Republic has been questioned, at least one of the parents is Dominican. This gives rise to the presumption that article 11 of the Haitian Constitution is not directly applicable to them." They added that "the 1984 law on access to Haitian nationality […] established [that] all those born abroad of Haitian mother and father will be Haitians of origin"; that article 7 of that law established (in the words of the representatives) that "children born abroad of a foreign father and a Haitian mother will have the foreign nationality until they achieve their majority, at which time they will have the right to acquire Haitian nationality," and that article 8 of this law indicates, according to the non-textual indication of the representatives, that "the person who is of age and who wishes to acquire Haitian nationality must live in that country and apply to the competent court of his or her place of residence."

240. They stressed that the situation of statelessness in which the said victims were kept and the failure to recognize their juridical personality and their name, denatured and denied the external or social projection of their persona and prevented them from having access to other rights.

241. The representatives also explained that their argument concerning the violation of Article 2 of the Convention, with regard to the obligation to adopt domestic legal provisions, was in relation to the fact that "the violation of the right to nationality […] results […] from the adoption and application of a series of State norms and practices." Although they referred to "the implementation […] at different times of the norms and practices of Dominican domestic law," they only expressed their disagreement with the 2004 Immigration Act, Resolution 02-07 of the Central Electoral Board that created and brought into effect the Birth Register for the children of a foreign mother in the Dominican Republic,[278] "Circular No. 017 […] of March 29, 2007, of the Administrative Chamber of

[278] The representatives indicated that, owing to that Resolution, "[i]n practice, the State […] by means of the [respective] registration, denies Dominican nationality to the child, seeking to grant it the nationality of another country by registering it in [the] 'aliens' register.'"

the Central Electoral Board, and Resolution No. 12-07 of December 10, 2007, of the plenary session of the Central Electoral Board." The first one because "it prohibited the Civil Registry officials from responding to any request relating to birth certificates that were possibly 'irregular,'" because "[w]hile their birth certificates are investigated, […] the Dominicans of Haitian descent concerned are trapped in a legal limbo." The second, because "it established the 'provisional suspension of civil status certificates that appeared to be irregular.'" They stated that "the measure, in addition to being discriminatory, was applied retroactively to those born before 2007." Lastly, when outlining their arguments on the violation of Article 2, they referred to judgment TC/0168/13, which will be examined below.

242. On October 2, 2013, the representatives informed the Court of judgment TC/0168/13 of the Constitutional Court of September 23, 2013 (*supra* para. 13). In this regard, they recalled that article 11 of "the 1994 Constitution (and its precedents since 1929) established that [… 'a]ll those born on the territory of the Republic, with the exception of the legitimate children of foreign diplomats resident in the country or aliens who are in transit," are Dominicans, and that this judgment "established that 'traditional Dominican jurisprudence recognizes as aliens in transit those who […] lack a legal residence permit."[279] They pointed out that this interpretation is "in open contrast" to the Court's decision in its judgment in the *Case of the Yean and Bosico Girls v. Dominican Republic* in relation to the concept of "in transit," because the Constitutional Court defined this as a status that may be permanent, irrespective of the time spent and the ties developed in the State's territory. In addition, they stressed that, in its fifth operative paragraph, the judgment ordered the Central Electoral Board to undertake a comprehensive review of the birth records since 1929 and to make a list of "aliens who were registered irregularly." They alleged that this "affects all the [presumed] victims of this case, because they were all born after 1929, […] and also jeopardizes the right to nationality of those who have been recognized as Dominicans."

243. Lastly, on June 17, 2014, the representatives referred to Decree No. 327-13 of November 29, 2013, and Law No. 169-14 of May 23, 2014, norms that the State presented as supervening facts (*supra* paras. 13, 126 and 180, and *infra* para. 251). They indicated that Decree No. 327-13, which establishes a regularization plan for aliens in an irregular situation who comply with a series of requirements that make this "impossible for a group in […] a vulnerable situation, […] such as the situation of most of the Haitian population in an irregular situation, so that [they] are unable to access the regularization plan." With regard to Law No. 169-14, the representatives asserted that, in the case of those born in Dominican territory who had obtained documentation and who are children of foreign parents in an irregular situation, the law "makes the granting of nationality conditional on an administrative requirement that was never previously established in any Constitution; in other words, the formal registration procedure." With regard to the persons who are in the same situation as the former, but who have never been registered, they indicated that Law No. 169-14, insofar as it establishes a "naturalization" procedure, treats them as aliens, ignoring *ius soli*. They "considered that the Court should analyze these norms in detail, applying the standards established in the inter-American system in relation to the right to non-discrimination, the right to nationality, and the obligation to eradicate and to prevent statelessness."

[279] They noted that, in this regard, the Constitutional Court had reiterated the interpretation of the concept of "aliens in transit" made by the Dominican Supreme Court in the judgment of December 14, 2005, that forms part of the probative framework in this case (Supreme Court of Justice, Judgment of December 14, 2005. No. 9, file of annexes to the motions and arguments brief, annex A19, fs. 3366 to 3373).

244. The representatives asked the Court to declare that the State was responsible for the violation of the rights to the recognition of juridical personality, to nationality, to a name, and to equal protection of the law (Articles 3, 20, 18 and 24 of the Convention, respectively), to the detriment of the same presumed victims mentioned by the Commission, together with non-compliance with the obligations contained in Articles 1(1) and 2 of this instrument, as well as with Article 19 of the treaty with regard to the presumed victims who were children at the time of the facts.[280]

245. For its part, the State denied its responsibility and asked the Court to declare that it had not violated the said rights to the detriment of the presumed victims mentioned. Similarly, it noted that "the procedure for the acquisition of nationality is a matter exclusively reserved to Dominican domestic law," because it is an "inalienable attribute of State sovereignty," only limited by respect for human rights and, specifically, the risk of statelessness and/or the existence of a discriminatory norm.

246. Regarding Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles, in its answering brief the State indicated that it had accepted that they are Dominicans and had provided the corresponding documentation, so that the arguments with regard to them "had no purpose." Specifically with regard to the alleged violation of the right to a name of these individuals, the State indicated that this allegation was also meaningless, because they were all registered in the corresponding civil registry offices. Nevertheless, during the public hearing in this case, and subsequently (*supra* para. 89), the State also affirmed that the person presenting himself before the Court as Willian Medina Ferreras was not the person he said he was and, therefore, he was not Dominican (*supra* para. 63). It also presented information on administrative and judicial proceedings that questioned the validity of this man's personal documents, as well as those of Awilda Medina, Luis Ney Medina and Carolina Isabel Medina, in view of the determination it had made in this regard (*supra* para. 145).

247. Regarding the persons who, it argued, had not obtained Dominican identity documents,[281] it alleged that, in its opinion, it was not obliged to grant them nationality as they would not become stateless, because: (a) they were all of Haitian origin, and (b) the State of Haiti applied the system of *ius sanguinis* to the recognition of nationality.[282] As regards the principle of equality before the law and of non-discrimination, it indicated that the inclusion of requirements in order to acquire nationality by birth in the territory of the State was not discriminatory *per se*. It pointed out that there was no reliable evidence of

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[280] Although they did not formally ask that the Court declare its violation, the representatives referred to the "right to identity." They "affirm[ed] that the rights to juridical personality, to nationality and to a name, as well as the rights of the family […] compose the right to identity." However, they indicated that, regarding "the rights of the family," they would "refer to this in a later section" of the motions and arguments brief, and not in the one in which they were setting out their arguments on 'the rights to juridical personality, to a name, to nationality and to equal protection of the law." In other words, despite the conceptual indication that, in their understanding, "the right to identity" is linked to the "rights of the family," the representatives did not present specific arguments on the supposed violation of the "rights of the family" in relation to the "right to identity."

[281] The State indicated the following persons, among others: Victor Jean, Victoria Jean, Miguel Jean, and Natalie Jean.

[282] The State, in a report on the measures adopted to comply with the Commission's recommendations in relation to the case issued by the Permanent Mission of the Dominican Republic to the Organization of American States on July 6, 2012, indicated that "in the cases of Miguel Jean, Victoria Jean, Natalie Jean and Victor Jean […], the Dominican State is very willing to comply with the recommendations of the Commission […], provided that the petitioners present the documentation - not merely assertions – that prove their birth in Dominican territory before January 26, 2010" (file before the Commission, f. 2164). However, in its answering brief, the State indicated that "[a]lthough the State acknowledges that Victoria Jean, Miguel Jean and Nat[…]alie Jean were born in Dominican territory, there is no evidence whatsoever, beyond his own statement, proving that Victor Jean was born in Dominican territory."

the existence in the country of "institutional discrimination" against "Haitians who seek to obtain Dominican nationality," because this is not revealed by either the law or practice.

248. In addition, it recalled that, at the time of the presumed facts of the case, the acquisition of Dominican nationality had different elements[283] and indicated that the exceptions to the acquisition of Dominican nationality based on *ius soli* established in the Constitution were reasonable because, in keeping with the Court's case law, they were established by law, formally and materially, they sought a legitimate purpose, and they complied with the requirements of suitability, necessity and proportionality. The State also cited the principle that "irregularity does not give rise to a right," indicating that "[a]nyone who violates the established legal parameters to enter the country as an immigrant, lacks legitimacy […] to require this same institutional system to grant nationality," so that the children born of mothers who entered the country irregularly would not have the right to Dominican nationality.

249. In addition, in relation to the presumed violation of the right to a name, the State indicated that, in the case of the presumed "foreign victims," in principle, it was not for the Dominican Republic to guarantee them the right to a name.

250. The State also "consider[ed] that [judgment TC/0168/13 of the Constitutional Court of September 23, 2013] should be rejected as supervening evidence, because its content has no impact on the factual framework of this case," and "additionally," provided the "official position" with regard to that judgment. Thus, it indicated that, according to the text of article 184 the Constitution, decisions of the Constitutional Court are "binding for all the public powers and all the organs of the State." In this regard, it indicated that "[t]he Constitutional Court has established […] a series of procedures […] that will allow the persons concerned to regularize their status," and that "in order to execute the procedures [ordered by the Constitutional Court, the State] has implemented different measures." It clarified, however, that the contents of this judgment "do not affect all the children of immigrants who are born in the country. Those with at least one parent who is a legal resident are and will continue to be Dominican nationals."

251. In addition, on June 9, 2014, the State advised the Court, as "supervening facts," of "Decree No. 327-13, of November 29, 2013, creating the National Plan to regularize aliens in an irregular migratory situation in the Dominican Republic," and "Law No. 169-14, of May 23, 2014, which establishes a special regime for those born on national territory who are registered irregularly in the Dominican civil registry and with regard to naturalization" (*supra* paras. 13, 126 and 180).

C) Considerations of the Court

[283] The elements mentioned by the State were as follows: "(a) The State applies the hybrid system for obtaining nationality: *ius soli and ius sanguinis;* (b) The *ius soli* system for the acquisition of nationality was not automatic, but includes two important exceptions: (1) birth as a member of a family that was part of a diplomatic or consular mission, and (2) birth as a member of a family in transit in the country; (c) the addition of a third exception to the acquisition of nationality in the 2010 Constitution was aimed at clarifying the legal consequences established since the 1934 constitutional reform in relation to those born on national territory whose parents were in transit in the country. Therefore, this rule has been applicable from 1934 to date; (d) as indicated by the decision of the Dominican judicial authority, in functions as a Constitutional Court, *the status of a transient person presupposes a prior State authorization to enter the country and to remain there for a certain time.* Consequently, and following the same jurisprudential criteria, if nationality based on *ius soli* is not granted to the children of those in transit who have an official authorization to remain in the country, even though only temporally, pursuant to the said constitutional interpretation, still less can Dominican nationality based on *ius soli* be granted to the children of a foreign mother in an irregular situation in the country, and (e) the constitutional rule is *race-blind*; in other words, it is not the result of considerations of a racial, ethnic, cultural or any other *category prohibited* by the Constitution of the Republic or the American Convention" (italics in the original text).

252. To examine the arguments of the Commission and the parties, the Court finds it desirable to begin by indicating general standards relating to the arguments submitted on the relevant rights and obligations. It will then examine the alleged violations to the detriment of those whose personal documentation was ignored by the Dominican authorities and, after that, will analyze the alleged violations suffered by the presumed victims who lack this documentation. Lastly, it will consider the arguments on the obligation to adopt domestic legal provisions established in Article 2 of the American Convention.

C.1. Rights to nationality and to equality before the law

253. Regarding the right to nationality recognized in Article 20 of the American Convention, the Court has indicated that nationality, "as a legal and political bond that links a person to a particular State, allows the individual to acquire and to exercise the rights and responsibilities inherent in membership in a political community. As such, nationality is a prerequisite for the exercise of certain rights,"[284] and it is also a non-derogable right according to Article 27 of the Convention.[285] In this regard, it is pertinent to mention that nationality is a fundamental right of the human person that is established in other international instruments.[286]

254. Furthermore, it should be mentioned that the American Convention includes two aspects of the right to nationality: the right to a nationality from the perspective of endowing the individual with the basic legal protection for a series of relationships by establishing his connection to a specific State, and the protection of the individual against the arbitrary deprivation of his nationality because this would deprive him of all his political rights and of those civil rights that are based on a person's nationality.[287]

255. This Court has established that:

> Nationality, as it is mostly accepted, should be considered a natural condition of the human being. This condition is not only the very basis of his political status but also part of his civil status. Consequently, even though it has traditionally been accepted that the determination and regulation of nationality fall within the competence of each State, developments in this area reveal that international law has imposed certain limits on the State's margin of discretion.[288]

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[284] *Cf. Case of the Yean and Bosico Girls v. Dominican Republic,* para. 137.

[285] *Cf. Case of the Yean and Bosico Girls v. Dominican Republic*, para. 136. On this issue, the Court has recognized the rights that cannot be suspended as a non-derogable nucleus of rights; in this respect, *cf*. *Case of the Pueblo Bello Massacre v. Colombia*. *Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 119, and *Case of González et al. ("Cotton Field")*, para. 244. The Court recalls that the right to nationality cannot be suspended according to Article 27 of the Convention. In this regard, *cf. Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 23.

[286] *Cf.* Among others, the American Declaration of the Rights and Duties of Man, Article XIX; the Universal Declaration of Human Rights, Article 15; the International Covenant on Civil and Political Rights, Article 24(3) (rights of the child); the Convention on the Rights of the Child, Article 7; the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d) (iii); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 29; the Convention on the Reduction of Statelessness, Article 1(1); the European Convention on Nationality, Article 4; the African Charter on the Rights and Welfare of the Child, Article 6.

[287] *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984, Series A No. 4, para. 34, and *Case of Gelman v. Uruguay*. *Merits and reparations.* Judgment of February 24, 2011 Series C No. 221, para. 128.

[288] *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. OC-4/84, para. 32.

256. In this regard, the Court considers that the determination of its nationals continues to be subject to the internal jurisdiction of the States. Nevertheless, this State attribute must be exercised in conformity with the parameters that emanate from binding norms of international law which States, in the exercise of their sovereignty, have undertaken to abide by. Thus, in accordance with the current trend of international human rights law, when regulating the granting of nationality, States must take into account: (a) their obligation to prevent, to avoid and to reduce statelessness, and (b) their obligation to provide each individual with the equal and effective protection of the law without discrimination.[289]

257. Regarding its obligation to prevent, avoid and reduce statelessness, States have the obligation not to adopt practices or laws on the granting of nationality whose application contributes to increasing the number of stateless persons. Statelessness makes it impossible for individuals to enjoy their civil and political rights, and places them in a situation of extreme vulnerability.[290]

C.1.1. Nationality and the obligation to prevent, avoid and reduce statelessness

258. Regarding the moment at which the State's obligation to respect the right to nationality and to prevent statelessness can be required, pursuant to the relevant international law, this is at the time of an individual's birth. Thus, the International Covenant on Civil and Political Rights[291] establishes that children automatically acquire the nationality of the State in whose territory they are born if, to the contrary, they would be stateless. In this regard, the Human Rights Committee indicated, in relation to Article 24 of the Covenant (rights of the child),[292] that "[S]tates are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born."[293] Moreover, Article 7 of the Convention on the Rights of the Child[294] stipulates that:

> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality […]
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

259. Article 20(2) of the American Convention indicates that "every person has the right to the nationality of the State in whose territory he was born if he does not have the right

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289 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 140.

290 *Case of the Yean and Bosico Girls v. Dominican Republic,* para. 142.

291 In force since March 23, 1976. Ratified by the Dominican Republic on January 4, 1978.

292 Article 24 establishes: 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.

293 Genera Comment 17, Article 24 International Covenant on Civil and Political Rights, para. 8. This was also the interpretation followed by the African Committee of Experts on the Rights and Welfare of the Child, Institute for Human Rights and Development in *Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. Kenya*, of March 22, 2011, para. 42: "a purposive reading and interpretation of the relevant provision strongly suggests that, as much as possible, children should have a nationality beginning from birth." In addition, Article 6(4) of the African Charter on the Rights and Welfare of the Child establishes that: "States Parties to the present Charter shall undertake to ensure that their constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."

294 In force since September 2, 1990. Ratified by the Dominican Republic on June 11, 1991.

to any other nationality." This principle must be interpreted in light of the obligation to ensure the exercise of the rights to all persons subject to the State's jurisdiction, established in Article 1(1) of the Convention. Hence, a State must be certain that a child born in its territory may truly acquire the nationality of another State immediately after birth,[295] if he does not acquire the nationality of the State in whose territory he was born.

260. Taking the foregoing into account, the Court considers that Article 20(2) of the American Convention should be interpreted in the sense established in Article 7 of the Convention on the Rights of the Child (*supra* para. 258).[296] In the *Case of the Yean and Bosico Girls,* the Court had the occasion to point out that "the condition of being born in the territory of a State is the only one that needs to be proved in order to acquire nationality, in the case of those who would not have the right to another nationality if they did not acquire that of the State where they were born."[297]

261. Moreover, if the State cannot be certain that a child born in its territory can obtain the nationality of another State, for example the nationality of a parent by *ius sanguinis*, that State has the obligation to grant it nationality (*ex lege,* automatically), to avoid a situation of statelessness at birth, pursuant to Article 20(2) of the American Convention. This obligation also applies in the hypothesis that the parents cannot (owing to the existence of *facto* obstacles*)* register their children in the State of their nationality.[298]

C.1.2.Nationality and the principle of equality and non-discrimination

262. The Court has indicated that Article 1(1) of the American Convention, which establishes the obligation of the States to respect and ensure the free and full exercise of the rights and freedoms recognized therein "without any discrimination," is a general norm the content of which extends to all the provisions of this instrument. In other words, whatsoever its origin or form, any treatment that can be considered discriminatory in relation to the exercise of any of the rights ensured in the Convention is *per se* incompatible with it.[299] In addition, Article 24 recognizes the right to equal protection of

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[295] Similarly, see United Nations, Human Rights Committee, General Comment 1, Article 24 of the International Covenant on Civil and Political Rights, para. 8*;* African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. Kenya*, of March 22, 2011, para. 51 (the Committee observed that the Government of Kenya had made no efforts to ensure that children of Nubian descent acquired the nationality of another State, in this case Sudan); UNHCR Executive Committee, *Guidelines on Statelessness No. 4* of 21 December 2012, para. 25. The UNHCR Executive Committee only considered it acceptable that States do "not grant nationality to children born in their territory if the child concerned can acquire the nationality of a parent immediately after birth and the State of nationality of the parent does not have discretion to refuse the grant of nationality." It is recommended to "States that do not grant nationality in such circumstances" that they "assist parents in initiating the relevant procedure with the authorities of their State or States of nationality."

[296] Article 1 of the Convention on the Reduction of Statelessness, which the Dominican Republic adhered to on December 5, 1961, stipulates that States must grant their nationality to a person born in their territory who would otherwise be stateless. In addition, it establishes that the nationality must be granted "at birth, by operation of law, or upon an application being lodged with the appropriate authority […] in the manner prescribed by the national law." In any case, based on the foregoing, the Court understands that the State, on ratifying the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child, undertook to observe a regime that obliges States to guarantee, both internally and in cooperation with other States, that a person has a nationality from the moment of his birth.

[297] *Cf. Case of the Yean and Bosico Girls v. Dominican Republic,* para. 156.

[298] UNHCR Executive Committee*, Guidelines on Statelessness No. 4* of 21 December 2012, para. 26. This must also be determined based on whether it can reasonably be expected that a person takes measures to acquire nationality in the circumstances of his or her specific case. For example, the children of refugees, see para. 27.

[299] *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, OC-4/84,* para. 53*; Case of the Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia.*

the law, and is applicable if discrimination relates to unequal protection by domestic law or its application.[300]

263. The Court also reiterates "that international human rights law prohibits not only policies and practices that are deliberately discriminatory, but also those whose impact discriminates against certain categories of persons, even when it is not possible to prove the discriminatory intention."[301] In this regard:

> A violation of the right to equality and non-discrimination occurs also in situations and cases of indirect discrimination reflected in the disproportionate impact of laws, actions, policies or other measures that, even though their wording is or appears to be neutral, or has a general and undifferentiated scope, have negative effects on certain vulnerable groups.[302]

Thus, the Court has also stipulated: "States must abstain from implementing measures that, in any way, are addressed, directly or indirectly, at creating situations of discrimination *de jure* or *de facto,*"[303] and are obliged "to adopt positive measures to reverse or change discriminatory situations that exist in their societies that prejudice a specific group of persons."[304]

264. Regarding the right to nationality, the Court reiterates that the *jus cogens* principle of equal and effective protection of the law and non-discrimination[305] requires States, when regulating the mechanisms for granting nationality, to abstain from establishing discriminatory regulations or regulations that have discriminatory effects on different groups of a population when they exercise their rights.[306] In addition, States must combat

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Preliminary objections, merits, reparations and costs. Judgment of November 20, 2013. Series C No. 270, para. 332, and *Case of Veliz Franco et al. v. Guatemala*, para. 204.

300 *Cf. Case of Apitz Barbera et al. v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Veliz Franco et al. v. Guatemala*, para. 214.

301 *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 234, *and* ECHR, *Case of D.H. and Others v. Czech Republic.* No. 57325/00. Judgment of 13 November 2007, paras. 184 and 194.

302 *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 235. On that occasion, the Court referred to the comments of the Committee on Economic, Social and Cultural Rights, in its *General Comment No. 20 (Non-discrimination in economic, social and cultural rights, para. 10(b))*. In this judgment, the Court also recalled that the European Court has considered "that where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be regarded as discriminatory notwithstanding that it is not specifically aimed or directed at that group," in the following decision: ECHR. "*Hoogendijk v. The Netherlands*, No. 58641/00. First section. Decision on admissibility of 6 January 2005, p. 21."

303 *Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 103, *and Case of Veliz Franco et al. v. Guatemala*, para. 206.

304 *Juridical Status and Rights of Undocumented Migrants. OC-18/03*, para. 104, and *Case of Veliz Franco et al. v. Guatemala*, para. 206.

305 *Cf. Juridical Status and Rights of Undocumented Migrants. OC-18/03,* para. 101.

306 *Cf. Case of the Yean and Bosico Girls v. Dominican Republic,* para. 141. See also: *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 135; *Juridical Status and Rights of Undocumented Migrants. OC-18/03*, para. 88, *and Juridical Status and Human Rights of the Child. Advisory Opinion* OC-17/02 of August 28, 2002. Series A No. 17, para. 44. See also, with regard to the principle of non-discrimination in the granting or denying of nationality, other international systems and instruments: ECHR, *Case of Genovese v. Malta,* No. 53124/09. Judgment of 11 October 2011 (Discrimination between legitimate and illegitimate children in relation to the acquisition of nationality by *jus sanguinis*); European Commission on Human Rights, *Slepcik v. The Netherlands and Czech Republic*, No. 30913/96, Decision of 2 September 1996 (Discrimination based on race or ethnic group); 1997 European Convention on Nationality, article 5; Convention on the Reduction of Statelessness, Article 9; Convention on the Rights of the Child, articles 2(2), 7 and 8; Committee on the Rights of the Child, General Comment No. 6 (Treatment of unaccompanied or separated children), 2005, para. 12, International Convention on the Elimination of All Forms of Racial Discrimination, article 5 (d) (iii); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, article 29; African Commission on Human and Peoples' Rights, 54/91-61/91-96/93-98/93-164/07-196/97-210/98, *Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricane des droits de l'homme and*

discriminatory practices at all their levels, especially in public entities and, lastly, they must adopt the necessary affirmative measures to ensure that everyone is truly equal before the law.[307] The Court has also established that States have the obligation to guarantee the principle of equality before the law and non-discrimination irrespective of a person's migratory status, and this obligation extends to the sphere of the right to nationality.[308] In this regard, the Court has established, when examining a case with regard to the Dominican Republic, that the migratory status of the parents cannot be transmitted to their children.[309]

C.2. Rights to recognition of juridical personality, to a name, and to identity

265. With regard to the right to juridical personality protected in Article 3 of the American Convention, the Court has stated that juridical personality "implies the ability to be a holder of rights (ability and enjoyment) and of obligations."[310] Consequently, the State must put in place and respect the means and legal conditions to ensure that the right to juridical personality can be exercised freely and fully by those with title to this right.[311] This recognition determines the effective existence of this right before society and the State, which allows the individual to be a holder of other rights and obligations, to exercise them and to be able to function, which constitutes a right inherent in the human person that, pursuant to the American Convention, can never be derogated by the State.[312] The Court has also asserted that "[a] stateless person, *ex definitione*, does not have a recognized juridical personality, because he has not established a juridical and political relationship with any State."[313]

266. Furthermore, the Court has determined that the right to nationality forms part of what has been called the right to identity, defined by this Court as "the series of attributes and characteristics that permit the individualization of the person in society and, thus, encompasses a number of other rights according to the specific subject of rights and the circumstances of the case."[314]

RADDHO, Collectif des Veuves et ayant-droit, et Association mauritanienne des droits de l'homme v. Mauritania, paras. 129 and 131 (denationalization of black Mauritanians).

307 *Cf. Case of the Yean and Bosico Girls v. Dominican Republic*, para. 141.

308 *Cf. Case of the Yean and Bosico Girls v. Dominican Republic,* paras. 155 and 156.

309 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 156.

310 *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000, Series C No. 70, para. 179, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012 Series C No. 250, para. 119.

311 *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. *Merits, reparations and costs.* Judgment of March 29, 2006. Series C No. 146, para. 189, and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 101.

312 *Cf.* Article 27 (Suspension of Guarantees) of the American Convention, and Case of *Chitay Nech et al. v. Guatemala,* para. 101.

313 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 178.

314 *Case of Gelman v. Uruguay*, para. 122. The Court has also indicated that "the right to identity is not expressly established in the 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, […] 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

267. In this regard, the General Assembly of the Organization of American States (hereinafter "the OAS General Assembly") has indicated "that recognition of the identity of persons is one of the means through which observance of the rights to juridical personality, 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."[315] It has also determined that "the failure to recognize identity may signify that the individual has no legal record of his existence, making it difficult for him to exercise fully his civil, political, economic, social and cultural rights."[316] Similarly, the Inter-American Juridical Committee has stated that the "right to identity is consubstantial to human rights and dignity" that that, consequently, "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."[317]

268. As revealed by the foregoing, the right to a name is also connected to identity. Regarding that right, recognized in Article 18 of the Convention, the Court has determined that it "constitutes a basic and essential element of the identity of each person, without which he cannot be recognized by society or registered by the State. [Thus,] States […] have the obligation not only to protect the right to a name, but also to provide the necessary measures to facilitate the registration of the individual immediately after his birth."[318] The Court has indicated that:

> States must ensure that the individual is registered with the name chosen by that person or by his or her parents, according to the moment of registration, without any type of restriction of the right or interference in the decision to choose the name. Once the individual has been registered, States must guarantee the possibility of preserving and re-establishing the name and surname. The name and surnames are essential to establish formally the relationship that exists between the different members of the family.[319]

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attributes and dignity,' and an autonomous right, possessing 'a core of clearly identifiable elements that include the right to a name, the right to nationality, and the right to family relations.' In fact, 'it is a basic human right enforceable *erga omnes* as an expression of a collective interest of the international community as a whole, that does not admit annulment or suspension in the cases established in the American Convention.' [Opinion adopted by the Inter-American Juridical Committee "on the scope of the right to identity," at the seventy-first regular session, CJI/doc.276/07 rev.1, of August 10, 2007, paras. 11(2), 12 and 18(3)(3), approved at the same session by resolution CJI/RES.137 (LXXI-O/07), of August 10, 2010, second operative paragraph]." *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No.232, para. 112. Nevertheless, taking into consideration the way in which the pertinent arguments were indicated by the representatives (*supra* footnote 280 and *infra* footnote 346), in this case, the Court considers it appropriate to examine the right to identity together with the rights to juridical personality, to a name and to nationality.

315 *Cf.* 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 this aspect, the Inter-American Juridical Committee considered that the American Convention on Human Rights, although it does not recognize the right to identity under this specific name, does include, as mentioned, the right to a name, the right to nationality, and the right to protection of the family. In this regard, *cf.* Opinion adopted by the Inter-American Juridical Committee on the scope of the right to identity, on August 10, 2007, paras. 11(2), 12 and 18(3)(3). This was cited in the Court's judgment in the case of *Gelman v. Uruguay* (para. 123).

316 *Cf. Case of Gelman v. Uruguay*, para. 123.

317 *Cf. Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No.232, para. 112.

318 *Cf. Case of the Yean and Bosico Girls v. Dominican Republic*, paras. 182 and 183, and Case of *Contreras et al. v. El Salvador*, para. 110.

319 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 184, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 192.

C.3. Rights of the child

269. The Court has emphasized that cases in which the victims of human rights violations are children are particularly serious,[320] because children are holders of the rights established in the American Convention, and also require the special measures of protection established in its Article 19, which must be defined according to the particular circumstances of each specific case.[321] The Court has affirmed that any State, social or family decision that entails any constraint to the exercise of any right of a child must take into account the principle of the best interests of the child and be rigorously adapted to the relevant legal provisions.[322] In this regard, the Committee on the Rights of the Child had indicated that the failure to register a child "can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare."[323]

C.4. Obligation to adopt domestic legal provisions

270. With regard to the obligation to adopt domestic legal provisions established in Article 2 of the Convention, the Court has indicated that this provision imposes on the States Parties the general obligation to adapt their domestic law to the provisions of the Convention in order to ensure and make effective the exercise of the rights and freedoms recognized therein.[324] The Court has affirmed that this entails the adoption of two types of measures, namely: (a) the enactment of laws and the implementation of practices leading to the effective observance of these guarantees, and (b) the elimination of laws and practices of any kind that result in a violation of the guarantees established in the Convention,[325] because they fail to recognize those rights and freedoms or they prevent their exercise.[326]

271. As the Court has indicated on other occasions, the provisions of domestic law that are adopted to this end must be effective (principle of the practical effects or *effet utile*), which means that States are obliged to adopt and to establish in their domestic laws all the measures required to ensure that the provisions of the Convention are truly complied with and implemented.[327]

C.5. Application to this case

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320 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, paras. 146 and 191, and *Case of Veliz Franco et al. v. Guatemala*, para. 133.

321 *Cf. Case of Fornerón and daughter v. Argentina. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 242, para. 44, and *Case of the Pacheco Tineo Family v. Bolivia*, para. 217.

322 *Cf. Juridical Status and Human Rights of the Child. OC-17/02,* para. 65*, and Case of the Pacheco Tineo Family v. Bolivia*, para. 218.

323 United Nations, Committee on the Rights of the Child, General Comment No. 7 (2005) "Implementing child rights in early childhood," CRC/C/GC/7/Rev.1, 20 September 2006, para. 25.

324 *Cf. Case of Albán Cornejo et al.. v. Ecuador. Merits reparations and costs.* Judgment of November 22, 2007. Series C No. 171, para. 118, *and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile,* para. 175.

325 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile,* para. 175.

326 *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 113.

327 *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, para. 87; and *Case of Osorio Rivera and family members v. Peru,* footnote 332.

C.5.1. Regarding those whose identity documents were disregarded by the authorities at the time of their expulsion

272. In the case of the persons who, according to the representatives and the Commission, possessed documentation that proved their Dominican nationality at the time of their expulsion (*supra* paras. 230 and 237), it should be recalled that, as established in when determining the status as presumed victims of certain persons, the Court will not consider, for the effects of this Judgment, the questions raised by the State with regard to the identity of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina (*supra* paras. 78 and 91).

273. According to the facts of the case (*supra* para. 201), the personal documents of Willian Medina Ferreras were destroyed by Dominican officials during his expulsion, and Awilda Medina, Luis Ney Medina and Carolina Isabel Medina were not given the opportunity to show their documents to the officials, because they were expelled without proper examination of their documents and their nationality. Meanwhile, Rafaelito Pérez Charles was detained and expelled by several agents who did not allow him to show his identity documents, even though Mr. Pérez Charles informed them that these were at his home (*supra* para. 221).

274. The actions of the State agents signified failure to acknowledge the identity of the victims by not allowing them to identify themselves or not considering the documents they presented. This situation affected other rights, such as the right to a name, to recognition of juridical personality, and to nationality that, taken as a whole, impaired the right to identity. In addition, the Court considered that, in this case the State, by ignoring the documentation of Awilda Medina, Luis Ney Medina and Carolina Isabel Medina, who were children at the time of the events, did not take the best interests of the child into consideration.

275. In addition, considering the context in which the facts of the case occurred, the Court found that, in violation of the obligation not to discriminate, the said violations were the result of derogatory treatment based on the personal characteristics of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles that, in the opinion of the authorities who intervened, denoted their Haitian origin.

276. Based on the above, the Court considers that the disregard of the documentation of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles by State agents at the time of their expulsion constituted a violation of their rights to recognition of juridical personality, to a name, and to nationality, as well as, owing to all these violations taken as a whole, to the right to identity. This entailed the violation of Articles 3, 18 and 20 of the American Convention, respectively, in relation to non-compliance with the obligation to respect rights without discrimination, established in Article 1(1) of this instrument and, in addition, in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of Awilda Medina, Luis Ney Medina and Carolina Isabel Medina (deceased).

C.5.2. Regarding those born in Dominican territory who were not registered and did not have documentation

277. It should be explained that, as revealed by the foregoing, the Commission, contrary to the representatives, affirmed that Victoria, Natalie and Miguel, all surnamed Jean, who were children at the time of the facts, were Dominican nationals and possessed the pertinent documentation to prove this (*supra* paras. 230 and 238). However, the facts of the case and the State's assertions (*supra* para. 222 and footnote 282) reveal that,

although the State acknowledged that these persons were born in Dominican territory, they did not have documentation that proved their Dominican nationality. To the contrary, the State affirmed that they have the right to Haitian nationality so that, it understood that they would not become stateless if they were not granted Dominican nationality (*supra* para. 247). With regard to Victor Jean, the facts of the case (*supra* para. 222) reveal that he was born in the Dominican Republic,[328] despite which he did not have documentation to prove his nationality of that country. The Court notes that, even though some of the said individuals were born before the acceptance of the Court's temporal competence, the lack of documentation continued following the acceptance of the Court's jurisdiction and therefore the Court is competent to examine that circumstance.

278. Regarding the above-mentioned individuals, the fact that must be examined is an omission, as of March 25, 1999, consisting in the said lack of documentation to prove their identity and nationality. In response, the State has argued that this does not constitute a violation of the American Convention because, for legal reasons, these individuals are not entitled to that documentation. Thus, the Court must now examine the State's arguments in order to determine whether the State is responsible for this omission.

279. The Court notes that the State has argued that, based on its domestic laws, the presumed victims were not entitled to Dominican nationality by the application of *ius soli*, and that the State has no obligation to grant it to them because, in its opinion, they would not be made stateless (*supra* paras. 247, 248 and 277, and *infra* para. 293). In view of the State's assertion that, in this case, the presumed victims, for legal reasons, were not Dominican, the Court finds that it is not necessary to verify factual aspects relating to the alleged obstacles to obtain documents, or the alleged "refusal" of the authorities to grant these.

280. Regarding the alleged legal aspects, the Court finds it relevant to begin by recalling that the regulation of nationality in the Constitutions in force at the time of the birth of the said presumed victims, which were the 1955 and the 1994 Constitutions, was governed by the principle of *ius soli,*[329] with two exceptions. Thus, articles 12(2) and 11(1),

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[328] According to the criteria for the assessment of the evidence (*supra* paras. 193 to 198), based on the evidence available, the Court understands that Victor Jean was born in Dominican territory in 1958.

[329] In this regard, it should be pointed out that the Court has observed that the laws of most States Parties to the American Convention are based on a system that combines the principle of the acquisition of nationality by *ius soli* with elements of *ius sanguinis.* It is interesting to note that Chile has a regulation similar to that of the 1955, 1966 and 1994 Dominican Constitutions; article 10 of the 1980 Constitution of the Republic of Chile stipulates: "The following are Chileans: 1. Those born in the territory of Chile, with the exception of the children of aliens who are in Chile in the service of their own Government, and of the children of transient aliens, all of whom may, however, opt for Chilean nationality." In this regard, it should be emphasized that the Supreme Court of Chile has affirmed that the concept of "children of transient aliens" should be understood in its "natural and obvious" sense, referring to the *Diccionario de la Real Academia,* which defines a "transient" as "a person who travels or passes through a place, who is passing through, who is only residing temporarily in a place." According to the Supreme Court of Chile, "in Chile it is possible to distinguish between persons domiciled and transients, because domicile is residence accompanied by the real or presumptive intention of remaining there." On this basis, the Supreme Court of Chile has considered that foreign citizens in an irregular migratory situation who have remained in the country with the intention of remaining there cannot be classified as mere "transient aliens," so that the exception to the acquisition of Chilean nationality based on the principle of *ius soli* established in article 10(1) of the Constitution could not be applied to their children born in Chilean territory. See, for example: judgment of December 28, 2009, of the Supreme Court of Chile, Case file 6073/2009. This case law has been reiterated: judgment of January 22, 2013, of the Supreme Court of Chile, Case file 7580/2012. In addition, it should be noted that article 96.1(a) of the 1991 Colombian Constitution indicates that: "[t]he following are Colombian nationals […b]y birth: the people of Colombia who meet one of two conditions: that the father or mother is a Colombian national or indigenous person, or that, in the case of children of aliens, one of their parents was domiciled in the Republic at the time of the birth." The Colombian courts have interpreted "domicile" as legal residence or domicile. The Council of State has indicated that "domicile, as a legal concept, supposes the legal entry into country." The Constitutional Court of Colombia has understood that aliens for whom "it has not been found that a visa has been issued" by Colombia, and who "do not appear in any records as aliens

respectively, of these Constitutions established in very similar wording that the following were Dominicans: "[e]veryone born in the territory of the Republic, with the exception of the legitimate children of aliens resident in the country as part of a diplomatic mission or of persons in transit" (1955 Constitution), and that "Dominicans are: 1. [e]veryone born in the territory of the Republic, with the exception of the legitimate children of aliens resident in the country as part of a diplomatic mission or of persons in transit" (1994 Constitution).[330]

281. With regard to the interpretation of the constitutional exception relating to the children of "aliens in transit," the Court underscores that it has already noted that a judgment of the Civil Chamber of the Court of Appeal of the National District of October 16, 2003, established that "the illegal status of the alien cannot be compared to the concept of 'in transit,' because they are different notions."[331]

282. Meanwhile, article 36(10) of General Migration Law No. 285-04, published on August 27, 2004 (*supra* para. 177), states: "[n]on-residents are considered persons in transit for the purposes of the application of article 11 of the Constitution."

283. The Supreme Court of Justice, "acting as Constitutional Court," in a judgment of December 14, 2005, established that:

> When article 11(1) of the [1994] Constitution excludes the legitimate children of foreign diplomats resident in the country and aliens who are in transit from acquiring Dominican nationality by *ius soli*, this means that these persons, those in transmit, have in some way been authorized to enter the country and remain there for a certain time; that if by mandate of the Constitution, in these circumstances which are evidently legitimate, an alien gives birth in national territory, her child is not born a Dominican, all the more so, the child of a foreign mother who, at the moment of giving birth is in an irregular situation and, therefore, cannot justify her entry into and permanence in the Dominican Republic cannot be a Dominican.[332]

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resident in national territory [and for whom] no entries into and departures from the country are recorded by the authorized immigration control posts" "have never been domiciled in national territory" (Council of State of Colombia, File No. 1653, of June 30, 2005; Constitutional Court of Colombia, Judgment T-1060/10, of December 16, 2010).

330 Both texts are also similar to the wording of the 1966 Constitution, article 11(1) of which indicates that: "[t]he following are Dominican: 1. [a]ll those born in the territory of the Republic, with the exception of the legitimate children of aliens who are diplomats resident in the country or those who are in the country in transit." Also, article 10(c) of Immigration Law No. 95 of April 14, 1939, in force at the time of the facts, established that: "Those born in the Dominican Republic are considered nationals of the Dominican Republic, whether or not they are nationals of other countries." In addition, the State provided as evidence the Civil Code of August 2007, article 9 of which establishes that: "[t]he following are Dominicans: First – all those who were born or will be born in the territory of the Republic, whatever the nationality of their parents. For the effects of this provision, the legitimate children of the aliens who reside in it while representing or in the service of their own country shall not be considered as born in the territory of the Republic."

331 *Cf. Case of the Yean and Bosico Girls v. Dominican Republic,* para. 154. The citation corresponds to judgment No. 453 of the Civil Chamber of the Court of Appeal of the National District of October 16, 2003.

332 Supreme Court of Justice, acting as Constitutional Court, Judgment of December 14, 2005. Expert witness Gómez Pérez, when testifying during the public hearing, confirmed that "in 2005, […] the Supreme Court of Justice […] acting as Constitutional Court, interpreted that the concept of 'transit,' established in the Constitution refers to the attribution of Dominican nationality to those persons, children of aliens, whose situation in the Dominican Republic is regular […] and that, to the contrary, […] the children of aliens in transit in the Dominican Republic, do not qualify for Dominican nationality" (expert opinion provided by Cecilio Gómez Pérez before the Court during the public hearing). Meanwhile, expert witness Rodríguez Gómez indicated that "[t]he main effect of the judgment [of December 14, 2005,] of the Supreme Court of Justice is that, based on it, the Central Electoral Board began to apply administratively a policy of denationalization of an indeterminate number of Dominicans based on the position that they could not prove that, at the time of their birth, the situation of their parents was legal." He linked this to the issue and application of Circular 017 of the President of the Central Electoral Board (*supra* para. 177) (*cf.* Expert opinion of Cristóbal Rodríguez Gómez provided by affidavit).

284. On January 26, 2010, a constitutional amendment was published (*supra* para. 178) establishing that: "[t]he following are Dominicans: those born in national territory, with the exception of the children of aliens […] who are in transit or reside illegally in Dominican territory. A person in transit is considered to be any alien defined as such by Dominican laws." Later, article 68 of Migration Regulations No. 631-11 of 2011 (*supra* footnote 163) established that "for the purposes of application of the [Migration] Law and these regulations, non-resident aliens and aliens who enter or have entered and who live or have lived in Dominican territory without a legal immigration status under the immigration laws are considered persons in transit."

285. Also, the Constitutional Court in judgment TC/0168/13 of September 23, 2013, (*supra* paras. 13 and 179), reiterated the opinion of the Supreme Court in the said 2005 judgment with regard to the concept of "aliens in transit" and stated that:

> Aliens who remain in the country without a legal resident permit or those who have entered the country illegally, are in an irregular migratory situation and, therefore, are violating domestic law […]. Thus, such persons may not claim that their children born in the country have the right to obtain Dominican nationality under the said article 11(1) of the 1966 Constitution, because it is juridically inadmissible to found the inception of a right on a *de facto* illegal situation.[333]

286. In addition, in the same 2013 judgment, the Constitutional Court stipulated that:

> *The* ***aliens in transit*** who appear in all the Dominican Constitutions as of […] 1929 […] correspond to all the four groups that later were globally designated ***non-immigrant foreign workers*** in […] article 3 of Immigration Law [No.] 95 of 1939[334] and in the said second Section of Immigration Regulations […] [No.] 279 of the same year[335]. Thus, ***aliens in transit*** should not be confused with ***transient aliens*** […] who […] are only the second of the said four groups of persons who compose the category of the said ***non-immigrant foreign workers*** […]; in other words, of *the aliens in transit.* […]
>
> Children born in the country of parents who form part of these four groups of persons are excluded, as an exception, from the […] acquisition of Dominican nationality by application of the principle of *ius soli*. […] ***Aliens in transit*** who change their migratory situation and obtain a legal residence permit in the country then become part of the category of ***foreign immigrants,*** […] so that their children born in national territory do acquire Dominican nationality under the principle of *ius soli* (bold and italics in the original text).

287. The Constitutional Court also referred to paragraph 157 of the judgment of the Inter-American Court in the *Case of the Yean and Bosico Girls v. Dominican Republic*, which indicated the following:

> In addition to the foregoing, the [Inter-American] Court finds it desirable to refer to Section V of the Dominican Republic's Immigration Regulations No. 279 of May 12, 1939, […] which clearly establishes that the purpose of the transient is merely to pass through the territory and, to this end, sets a time frame of no more than 10 days.[336]

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333 Constitutional Court, Judgment TC/0168/13 of September 23, 2013, pp. 65 and 66.

334 Article 3 of Immigration Law No. 95 establishes: "Aliens who wish to be admitted into Dominican territory shall be considered immigrants or non-immigrants. Aliens who wish to be admitted shall be considered immigrants, unless they fall within one of the following categories of non-immigrants: 1. Visitors for purposes of business, study, recreation or sightseeing; 2. Persons who travel across the territory of the Republic on their way to another country; 3. Persons who are employed in ships or aircraft; 4. Temporary unskilled workers and their families.

335 Immigration Regulations No. 279, stipulates that: "(a) The following categories of aliens who try to be admitted to the [Dominican] Republic, are non-immigrants: 1. Visitors for purposes of business, study, recreation or sightseeing; 2. Persons who travel across the territory of the Republic on their way to another country; 3. Persons who are employed in ships or aircraft; 4. Temporary unskilled workers and their families. (b) All other aliens shall be considered immigrants, except those persons who occupy a diplomatic or consular post, as determined by article 16 of the Immigration Law."

336 Section V of Immigration Regulations No. 279 of May 12, 1939, establishes that: "(a) Aliens who try to enter the [Dominican] Republic for the main purpose of passing through the country to another country shall be

288. In this regard, the Constitutional Court stated that:

> [In the] paragraph transcribed, the [Inter-American] Court causes confusion by considering the time frame of 10 days granted to the ***transient alien*** as if it also corresponded to the ***alien in transit***, which is a flagrant error of interpretation, given the distinction that exists between the two categories of aliens, as explained previously (bold and italics in the original text)[337]

289. The foregoing reveals, first, that the Constitutions of 1955 and 1994, as well as that of 1966, did not state literally that those born in Dominican territory who were the children of aliens in an irregular situation could not acquire Dominican nationality based on this circumstance; nor that, in relation to the acquisition of Dominican nationality, there was a parallel between migratory irregularity and the concept of a person who "is in transit in [Dominican territory]." In addition, judicial interpretations existed prior to the enactment of the Migration Law of August 27, 2004, stating that the concept of "transit" was not the same as the "illegal status of the alien" (*supra* para. 281).

290. Second, the foregoing also reveals that, in 2005 and 2013 – in other words, following the birth of the presumed victims and, in general, the facts of this case – the Supreme Court of Justice and the Constitutional Court, respectively, interpreted article 11(1) of the Constitutions of 1994 and 1966, as well as the similar provision included in "all the Dominican Constitutions as of […] 1929" (*supra* paras. 283 and 285 to 288). According to these judicial interpretations, individuals whose parents are aliens residing irregularly in Dominican territory cannot acquire Dominican nationality. Thus, in the words of the Constitutional Court cited above, "these persons may not claim that their children born in the country have a right to obtain Dominican nationality under article 11(1) of the 1966 Constitution cited above" (*supra* para. 285), the wording of which is almost identical to that of the Constitutions of 1955 and 1994 (*supra* para. 280 and footnote 330). And this is, even though, as previously mentioned, the constitutional texts do not include an explicit statement in the sense indicated.[338]

291. Third, it should be underscored that the express inclusion in the Dominican constitutional provisions of the "illegal residence" of the parents of persons born in Dominican territory as grounds for denying them Dominican nationality was included only in 2010. Thus, article 18(3) of the Constitution, resulting from the constitutional amendment published on January 26, 2010, indicates that the persons born on national territory who are "children […] of aliens who are in transit or reside illegally in Dominican territory" shall not be Dominicans.[339]

292. Regarding the above, it should be pointed out that the Dominican Republic's assertion that the inclusion of requirements for the acquisition of nationality by birth in the State's territory is not discriminatory *per se* is true (*supra* para. 247). Nevertheless, as

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granted privileges of transients. These privileges shall be granted even though the alien is inadmissible as an immigrant, if his entry is not contrary to public health and order. The alien shall be required to declare his destination, the means he has chosen for his transport, and the date and place of his departure from the Republic. A 10-day period shall normally be considered sufficient to be able to pass through the Republic. (b) An alien admitted for the purpose of continuing his journey across the country shall be granted a Landing Permit valid for 10 days […]."

337 Constitutional Court, judgment TC/0168/13 of September 23, 2013, p. 70.

338 The 2004 Migration Law had established that "[n]on-residents are considered to be persons in transit for the purposes of the application of article 11 of the Constitution."

339 Even though this was a new exception, the State alleged before the Court that the purpose of the said "addition" "was to explain the legal consequences established following the 1934 constitutional reform in relation to persons born in national territory whose parents were in transit in the country. Therefore, [it considered that] this rule was applicable from 1934 to date."

the State has indicated, the State's "authority" concerning the regulation of nationality is limited by respect for human rights; in particular, by the obligation to avoid the risk of statelessness (*supra* para. 245). Expert witness Harrington made a similar observation.[340]

293. However, the State alleged that, in its opinion, the presumed victims referred to above (*supra* para. 277) "were not born Dominicans based on the application of the principle of *ius soli* […], because neither they nor their parents have proved that […] their migratory status was regular at the time of their birth." In addition, the State indicated that these persons would not be stateless, because Haiti recognized *ius sanguinis* and asserted that the establishment of requirements for acquiring nationality is not discriminatory and that there was no evidence of "institutional discrimination" against "Haitians who seek to obtain Dominican nationality" (*supra* para. 247).[341] The State's argument is consistent with the affirmation of the Supreme Court of Justice and the Constitutional Court in 2005 and 2013, respectively, understanding that, despite the absence of an explicit reference in the constitutional texts prior to the constitutional amendment published on January 26, 2010, based on the domestic constitutional and juridical regime in force prior to that year, those whose parents were aliens in an irregular situation do not have a right to acquire Dominican nationality.

294. In this regard, the Court finds it desirable to indicate that, irrespective of the legal terms of State laws and regulations, or their interpretation by the competent State organs, as indicated by this Court in the *Case of the Yean and Bosico Girls v. Dominican Republic*, basic standards of reasonableness must be followed in matters relating to the rights and obligations established in the American Convention. Thus, as the Inter-American Court indicated in that case, "to consider a person as a transient or in transit, irrespective of the classification used, the State must respect a reasonable time frame, and be coherent with the fact that an alien who develops ties in a State cannot be compared to a transient or to a person in transit."[342]

295. Moreover, the Court notes that, prior to the entry into force of the 2010 constitutional amendment or, at least before the enactment of the 2004 Migration Law, there was no consistent State practice or uniform judicial interpretation that denied nationality to the children of aliens in an irregular situation. Thus, it is illustrative to note the previously cited domestic judicial decision of October 16, 2003, that "the illegal status of the alien cannot be compared to the concept of 'in transit,'" (*supra* para. 281). Expert witness Rodríguez Gómez, in his expert opinion provided by affidavit on October 1, 2013, stated that, until the enactment of the Migration Law, "national case law […] was consistent and categorical on this issue" in the sense of the said judicial decision. Furthermore, the "*Consideranda"* of Law No. 169-14 (*supra* para. 180 and *infra* paras. 320 to 324) are also illustrative when noting, based on findings of the Constitutional Court in

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340 The expert witness added that, in addition to the deprivation of nationality on discriminatory grounds, and in case statelessness was caused, the deprivation of nationality without due process of law was also arbitrary. She indicated that the "deprivation of nationality" which is prohibited under international law, when it is arbitrary, "covers [both] situations in which persons who have previously been recognized as citizens of a State are subsequently deprived of the recognition of that nationality, [and] cases of persons who have a right to the nationality of a specific State based on a first reading of the domestic laws, but who cannot obtain recognition of that nationality as a result of local practices and customs or other aspects of the recognition process" (expert opinion of Julia Harrington provided by affidavit on October 1, 2013; file of preliminary objections, merits and reparations, fs. 1778 to 1733).

341 Regarding the State's argument, it should be noted that there is no dispute between the parties that the presumed victims mentioned here are of Haitian descent, and this has not been contested by the Commission either. In particular, it should be stressed that the State has indicated that they are all "of Haitian origin" (*supra* para. 247).

342 *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 157.

judgment TC/0168/13 that, from 1929 on, documentation had been granted that "presumed" the Dominican nationality of persons who, according to the legal interpretations made in that judgment, were not Dominicans. Thus, these "*Consideranda"* indicated that, in the said judicial ruling "the Constitutional Court referred […] to what it called 'the unanticipated legal issues of the Dominican immigration policy and the institutional and bureaucratic shortcomings of the Civil Registry,' indicating that these unanticipated issues 'go back to the time immediately after the proclamation of the Constitution of […] June 20, 1929,' which resulted in a number of persons born in Dominican territory receiving from the Dominican State documentation suggesting that they were Dominican nationals, as a result of which they had specific certainties and expectations in their life as citizens based on that condition." In addition, Cristóbal Rodríguez Gómez, in his expert opinion, stated that "the Central Electoral Board began, more than six years ago, to revoke the nationality of […] [persons] who had been born 15, 20, 30 and 40 years before the new General Migration Law 285-04 was enacted." The statement of the expert witness reveals that, prior to 2004, Dominican nationality had been granted to persons who, eventually and only as a result of legal criteria that was explicitly indicated subsequently, did not comply with the requirements to possess it.

296. In addition, as the State itself has admitted (*supra* para. 245), it is not possible to establish regulations that result in the risk of persons born in their territory being stateless. In this regard, the Court has indicated that "the condition of being born in the territory of a State is the only one that needs to be proved in order to acquire nationality, in the case of those who would not have the right to another nationality if they did not acquire that of the State where they were born."[343] Accordingly, it is relevant to examine the State's argument that the presumed victims would be able to acquire Haitian nationality because Haiti allegedly applies the system of *ius sanguinis* to grant nationality (*supra* para. 247).

297. On this point, the Court notes that the State's argument that is relevant to this case consisting in the mere assertion that, in Haiti, nationality is regulated by *ius sanguinis* is insufficient. This is because the State has not proved that the presumed victims who never obtained Dominican nationality are, in fact, able to obtain Haitian nationality.[344]

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[343] *Cf. Case of the Yean and Bosico Girls v. Dominican Republic*, para. 156.c.

[344] The State presented as evidence the expert opinion of Cecilio Gómez Pérez who indicated, referring to the 1987 Haitian Constitution, that "every child of a Haitian mother or father, regardless of his or her place of birth, is born a Haitian, is Haitian, and possesses by descent, by *ius sanguinis*, Haitian nationality; therefore, the fact of not benefiting from nationality by *ius soli*, owing to the Dominican constitutional exception, could never [result in the child] being stateless […]." Even though the expert opinion of Mr. Gómez Pérez related to Dominican law and not to Haitian law, the Court took note of his assertion insofar as it relates to the evaluation of the Dominican nationality regime, in aspects that may have an impact on the situation of the presumed victims. Despite this, the Court notes that when the expert witness was questioned in person by the representatives about whether he knew the "1984 Haitian Law on Nationality which establishes two restrictions in its articles 7 and 8," the State indicated that "[the law mentioned by the representative of the presumed victims does not form part of the purpose for which the expert witness was summoned." After the President of the Court had consulted the expert witness as to whether he could "respond to the clarification" requested by the representatives, Mr. Gómez Pérez made observations in which he failed to indicate whether he was aware of the said Haitian law. Consequently, the Court considers that the assertions of the expert witness concerning the supposed impossibility of statelessness were insufficient. Meanwhile, expert witness Julia Harrington, in considerations based, according to her, on "guidelines" of the United Nations High Commissioner for Refugees adopted, according to the expert witness, in relation to the "1954 Convention […] relating to the Status of Stateless Persons", indicated that "a *theoretical* nationality available in another State does not constitute citizenship of that State. Although it may be considered that a person possesses or can obtain another nationality owing to his ethnic or national background, it cannot be presumed that he has that nationality unless he possesses proof or recognition of this; in particular, the possibility of claiming another nationality does not, of itself, constitute nationality" (italics in the original text). The Court understands that the observations of the expert witness are appropriate also for the examination of the State obligations under Articles 1(1) and 20 of the American Convention. The expert witness referred to "guidelines," citing a document that she indicated was entitled "UNHCR, *Guidelines on Statelessness No. 1: The definition of 'Stateless Person' in Article I (1) of the 1954 Convention relating to the Status of Stateless Persons,*

Hence, to reveal the insufficiency of the State's arguments, it is enough to weigh them against certain well-known public information, such as that, at the date of birth of the presumed victims who were children on March 25, 1999, the 1987 Haitian Constitution was in force. In its article 11, this Constitution established that any individual born of a Haitian father or mother who had been born Haitian and had never renounced that nationality could acquire nationality by birth. However, articles 7 and 8 of the Decree-Law on nationality of November 6, 1984, established that children born abroad of a Haitian mother and a foreign father, as in the case of these presumed victims, could not acquire Haitian nationality until they came of age, at which time, they could choose between the foreign nationality and the Haitian nationality, provided that they were going to settle, or were already settled in Haiti. Regarding Victor Jean, the Haitian Constitution in force at the time of his birth, in 1958, was the 1957 Constitution, which, in its article 4(a) established that any child of a Haitian father may acquire nationality by birth.[345] In this regard, it should be clarified that this does not mean that the Court, in the context of this case, is examining the laws of Haiti; it is merely demonstrating, based on certain public information, that the State's argument that the presumed victims could acquire Haitian nationality would have required greater substantiation to support it. Thus, the information presented by the State in this regard does not allow the Court to be certain whether the State has taken measures to verify that the presumed victims in question could really obtain Haitian nationality.

298. The foregoing reveals that the presumed victims never obtained documentation proving their nationality. In this regard, the State's assertion that the presumed victims are not Dominicans relates to the interpretation of constitutional provisions in force prior to January 26, 2010, based on judicial decisions issued in 2005 and 2013 (*supra* paras. 283 to 288), following the birth of the individuals in question and, in general, the facts of this case. Thus, the said understanding of the applicable legal regime would mean, in practical terms, a retroactive application of norms, affecting legal certainty concerning the enjoyment of the right to nationality. In addition, in the circumstances of the case, this would entail the risk of statelessness for the presumed victims, because the State has not proved sufficiently that these persons would obtain another nationality. Consequently, the State has not proved sufficiently that there are valid legal arguments to justify that the State's omission to provide documentation to the said persons did not result in the deprivation of their access to nationality. Hence, the State's denial of the right of the presumed victims to Dominican nationality resulted in an arbitrary violation of that right.

299. Thus, it must be established that, as indicated previously, that the denial of nationality to the presumed victims gave rise also to a violation of the right to recognition of juridical personality and, similarly, the failure to obtain personal identification documentations led to a violation of the right to a name. Moreover, the close relationship between these three rights that were violated and the right to identity that, in

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UN Doc. HCR/GS/12/01, 20 February 2012". In addition, referring in general to "international law" and not to a specific international norm, the expert witness indicated that "[l]aws that make a distinction between groups of persons based on an unalterable characteristic, particularly when that characteristic is related to ethnic or national origin, cannot be tolerated in international law. The provisions that restrict access to nationality merely on the basis of the migratory situation of a person or their parents, [… i]n addition to constituting discrimination […] risk leaving children without access to any nationality, making them stateless" (opinion of Julia Harrington provided by affidavit).

345 Despite the general indication, with which the parties agree, that the presumed victims are of Haitian descent, the information with regard to Victor Jean's filiation has not been authenticated, so that it has not been proved whether his parents were both Haitians, or whether only his mother or only his father were. This gives rise to uncertainty about whether Victor Jean's situation is adapted to the hypothesis established in the said Haitian constitutional text.

consequence, was also violated, has already been pointed out (*supra* paras. 265 to 268).[346]

300. The Court also considers that, in this case, the State's actions did not take into consideration the best interests of the child by failing to grant documentation to Miguel Jean, Victoria Jean and Natalie Jean, who were children at the time of the facts and after March 25, 1999.

301. Based on the above, the Court considers that the State violated the rights to recognition of juridical personality, to a name, and to nationality recognized in Articles 3, 18 and 20 of the American Convention, as well as – owing to this series of violations – the right to identity, in relation to non-compliance with the obligations established in Article 1(1) of the Convention, to the detriment of Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of this instrument, to the detriment of the last three of these persons.

C.5.3. Regarding the alleged violation of Article 2 of the American Convention, in relation to its Articles 1(1), 3, 18, 20 and 24

302. The representatives also alleged the violation of Article 2 of the American Convention in relation to the right to nationality, based on different norms and decisions of the Dominican authorities issued following the expulsions (*supra* para. 241): General Migration Law No. 285-04 enacted in 2004; Resolution 02-07 of the Central Electoral Board; "Circular No. 017 […], of March 29, 2007, of the Administrative Chamber of the Central Electoral Board; Resolution No. 12-07 of December 10, 2007, of the plenary session of the Central Electoral Board," and judgment TC/0168/13. Meanwhile, the State presented as a supervening fact Law No. 169-14 of May 23, 2014 (*supra* para. 13), which is regulated by Decree No. 250-14 (*supra* para. 146).

303. Before examining the alleged violation of Article 2 of the Convention, the Court deems it pertinent to indicate that, in this Judgment, it has already analyzed the close relationship between the rights to nationality and to recognition of juridical personality, insofar as the former constitutes a prerequisite to exercise certain rights, and the latter, "involves the ability to be a holder of rights (ability and enjoyment) and of obligations," as well as its connection to the right to a name, which constitutes "a basic and essential element of a person's identity" (*supra* paras. 265 to 268), and concluded that the State was responsible for the violation of the said rights and, owing to this series of violations, of the right to identity (*supra* paras. 276 and 301).

304. However, the representatives only alleged non-compliance with Article 2 of the Convention in relation to the right to nationality. Neither the Inter-American Commission in its brief submitting the case or the Merits report, nor the representatives in their motions and arguments brief included arguments with regard to this non-compliance in

[346] Regarding the arguments of the Commission and the representatives in relation to the alleged discriminatory "impact" or "application" of "the law" or its "interpretation or application" (*supra* paras. 233 and 238), this Court refers to its analysis below (*infra* paras. 314 to 317 and 323). In addition, as already mentioned (*supra* footnote 280), the representatives indicated a connection between the right to identity and "the right to a family," without presenting specific arguments in this regard. This failure to present specific arguments on the "right to a family" prevents the Court from examining the supposed violation of that right. This is without prejudice to the analysis of Article 17 of the Convention that, based on other grounds, will be made in Chapter X.

relation to the rights to recognition of juridical personality and to a name.[347] However, this does not prevent the Court from analyzing whether this non-compliance with the obligation to adopt domestic legal provisions in relation to the said rights existed. It is relevant to examine this in the case *sub-judice* because the Court has declared the violation of those rights as a result of the State authorities disregarding personal documents or the impossibility of obtaining them in the case of some of the presumed victims (*supra* paras. 276 and 301). The Court will also make this analysis with regard to the right to equality before the law, the violation of which was alleged by the Commission and the representatives (*supra* paras. 236 and 244).

305. On this point, the Court reiterates that the *iura novit curia* principle, which is strongly supported by international jurisprudence, allows it to examine the possible violation of provisions of the Convention that have not been alleged in the briefs presented by the parties, provided that the latter have been able to state their respective positions in relation to the facts that support them.[348] In this regard, the Court has used this principle on several occasions since its first judgment,[349] in order to declare the violation of rights that had not been directly alleged by the parties, but that were revealed by the analysis of the facts in dispute, because this principle authorizes the Court to classify the legal situation or statement in conflict differently from that the way in which the parties classified it, provided that it respects the factual framework of the case.[350]

306. Accordingly, the Court, in application of the *iura novit curia* principle and based on the facts of the case, notes that the possible failure to comply with Article 2, owing to the indicated norms and decisions (*supra* para. 302), could also have implications on the said

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[347] Despite this, it should be noted that, during the public hearing, in answer to questions posed by Judges Ventura Robles and Ferrer Mac-Gregor Poisot on Article 2 of the Convention, the representatives stated that the alleged violation "is related to the violation of the right to nationality and the rights to juridical personality, of the family, and to privacy and family life, because [they] considered that the violation arose from the undue application of article 11 of the Dominican Constitution, and as [they had] explained, the State had sought to equate the term 'in transit' with migratory irregularity; hence, [their] allegation concerning Article 2." Subsequently, in their final written arguments they included a section entitled "violation of the right to juridical personality, to a name, to nationality and to equal protection of the law […] together with non-compliance with the obligations contained in Articles 1(1), 2 and 19 of this instrument," and mentioned that they had "explained why Article 2 had been violated" in answer to the question of the said judges during the public hearing. However, in the conclusion of the section they made no mention of Article 2, and did not refer to it in their final arguments. In this regard, the Court notes the lack of consistency and clarity in the arguments of the representatives with regard to the said alleged violation. Consequently, it is not possible to examine those arguments. As will be explained (*infra* para. 306), the Court examined the connection of the alleged violation of Article 2 of the convention to rights other than the right to nationality based on the *iura novit curia* principle.

[348] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 163*, and Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 55.

[349] For example, in the following cases, *inter alia*, the Court declared the violation of rights that were not cited by the parties in application of the *iura novit curia* principle: (i) in the case of *Velásquez Rodríguez v. Honduras* it declared the violation of Article 1(1) of the Convention; (ii) in the case of *Usón Ramírez v. Venezuela* it declared the violation of Article 9 of the American Convention; (iii) in the case of *Bayarri v. Argentina* it declared the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; (iv) in the case of *Heliodoro Portugal v. Panama* it declared the violation of Article I of the Convention on Forced Disappearance of Persons, in relation to Article II of that instrument; (v) in the case of *Kimel v. Argentina* it declared the violation of Article 9 of the American Convention; (vi) in the case of *Bueno Alves* it declared the violation of Article 5(1) of the American Convention to the detriment of the next of kin of Mr. Bueno Alves; (vii) in the case of the *Ituango Massacres v. Colombia* it declared the violation of Article 11(2) of the Convention; (viii) in the case of the *Sawhoyamaxa Indigenous Community v. Paraguay* it declared the violation of Article 3 of the American Convention; (ix) in the case of *Vélez Loor v. Panama* it declared the violation of Article 9 of the American Convention, and (x) in the case of *Furlan and family members v. Argentina* it declared the violation of Article 5 of this instrument.

[350] *Cf. Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, para. 70, and *Case of Furlan and family members v. Argentina*, para. 55.

rights (*supra* para. 303). Consequently, in this section, the Court will examine the arguments presented by the representatives on the right to nationality, extending its analysis to the other rights that have been mentioned, insofar as the Court has already examined them and declared that they have been violated.

307. The Court notes that there is no evidence that General Migration Law No. 285-04 enacted in 2004, and Resolution 02-07 of the Central Electoral Board which created and brought into effect the Birth Register for the children of a foreign mother in the Dominican Republic, norms indicated by the representatives (*supra* para. 241), were applied to the victims in this case or affected the enjoyment of their rights in any other way. Hence, the Court is unable to rule on their supposed incompatibility with the American Convention.

308. Nevertheless, the Court finds it necessary to rule on judgment TC/0168/13 of the Constitutional Court of September 23, 2013, and, owing to its close relationship with that judgment, on Law No. 169-14 (*infra* paras. 319 to 324). Also, for the reasons outlined below (*infra* paras. 326 to 328), it is pertinent that the Court examine Circular No. 017 of March 29, 2007, of the President of the Administrative Chamber of the Central Electoral Board, and Resolution 12-2007 of December 10, 2007, of the plenary session of the Central Electoral Board.

309. Regarding judgment TC/0168/13, the representatives presented this as a "supervening fact," which the State contested (*supra* paras. 13 and 250). In the case of the above-mentioned Circular and Resolution, it should be clarified that they were attached by the representatives to their motions and arguments brief as documentary evidence.[351]

310. The Court considers that, although judgment TC/0168/13 was not the result of proceedings in which the presumed victims were a party, and no one has indicated that it applied directly to them, it not only establishes the interpretation of norms that are relevant to their situation, because it referred to "all the Dominican Constitutions as of 1929," as mentioned (*supra* para. 286), and also ordered a general review policy as of 1929 in order to detect "aliens who are registered irregularly," which may affect the enjoyment of the right to nationality of the victims considered in this chapter.[352]

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[351] Regarding the said Circular and Resolution, expert witness Rodríguez Gómez stated that "[b]oth directives have resulted in a *de facto* process of denationalization that, in turn, has led to a situation of statelessness for an indeterminate number of descendants of Haitian immigrants." According to expert witness Rodríguez Gómez, Circular 017 was issued as a result of the judgment of the Supreme Court of Justice of December 14, 2005 (*supra* para. 283). The expert witness also stated that, based on this Circular, the Central Electoral Board began to revoke the nationality of Dominicans who were born before the new General Migration Law 285-04 had been enacted and the Supreme Court of Justice had delivered its judgment from which, in the opinion of the expert witness, "a mandate for retroactive application" cannot be inferred (*cf.* Expert opinion of Cristóbal Rodríguez Gómez provided by affidavit). Meanwhile, expert witness Gómez Pérez asserted that Resolution 12-2007 was issued because the inspection units of the Central Electoral Board had verified a series of anomalies in the issue of civil status certifications, particularly birth certificates, as a result of requests for identity and electoral cards made by numerous individuals [and that] it guarantees […] due process of law in favor of the holder of any civil status certification who is suspected of being irregular (*cf.* Expert opinion of Cecilio Gómez Pérez provided by affidavit).

[352] In this regard, even though judgment TC/0168/13 is not a law, the text reveals that the decisions made in it have general implications that go beyond the parties involved in the respective proceedings. Not only was this not contested by the State (or by the representatives or the Commission), but was also revealed by the Dominican Republic because it advised that it is "binding for all the public powers and organs of the State," and its words reveal that it affects those born in Dominican territory of foreign parents who do not have at least one parent who is a "legal resident" (*supra* para. 250). According to the Court's case law, the possibility of the Court examining a general law or norm, also including Resolution No. 12-07, Circular No. 017 and Law No. 169-14, is not narrowly restricted to their having been applied to the victims in a case because, depending on the case, it may also be in order for the Court to rule on norms or measures of a general nature when, even in the absence of a specific and actual action applying them to the presumed victims, their impact or effects on the validity,

Consequently, it is pertinent to consider judgment TC/0168/13 as a supervening fact and, therefore, to examine its juridical consequences for the case *sub examine.*[353]

311. Regarding judgment TC/0168/13, it should be recalled that, in its case law, the Inter-American Court has established that it is aware that the domestic authorities are subject to the rule of law and, therefore, are obliged to apply the laws that are in force.[354] However, when a State is a party to an international treaty such as the American Convention, all its organs, including its judges, are also subject to that treaty, which obliges them to ensure that the effects of the provisions of the Convention are not impaired by the application of norms that are contrary to its object and purpose. The judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* a "control of conventionality" between domestic laws and the American Convention; evidently within the framework of their respective jurisdictions and the corresponding procedural regulations. In this task, they must take into account not only the treaty, but also its interpretation by the Inter-American Court, ultimate interpreter of the American Convention.[355]

312. In judgment TC/0168/13, the Constitutional Court indicated that it was legal, according to the text of article 11(1) of the 1966 Constitution (which, as already indicated is very similar to the provisions of the Constitutions of 1955 and 1994, *supra* para. 280 and footnote 330), and of Dominican constitutional law as of 1929, in general, to apply the fact that the parents of the persons born in Dominican territory were aliens living irregularly in the country as an exception to the acquisition of Dominican nationality by *ius soli*.[356] Based on this understanding, the Constitutional Court decided the following in the fifth operative paragraph of judgment TC/0168/13:

> **FIFTH: TO ESTABLISH**, also, that the Central Electoral Board implement the following measures:: *(i) Conduct a thorough audit of the birth records of the Civil Registry of the Dominican Republic from (June 21, 1929,) to date*, within one year of notification of this judgment (renewable for a further year at the discretion of the Central Electoral Board), to identify and to incorporate into a documentary and/or digital list, all the aliens registered in the birth records of the Civil Registry of the Dominican Republic; *(ii) Make a second list of the aliens who are registered irregularly because they lack or do not meet the requirements set out in the*

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exercise and enjoyment of the treaty-based rights of these persons is verified, or they represent an obstacle or an impediment to the due observance of the corresponding State obligations. (This is revealed by the analysis made by the Court in the *Case of García Lucero et al. v. Chile*, paras. 156, 157 and 160).

353 In addition, as already indicated, on June 9, 2014, the State presented as "supervening facts" norms relating to judgment TC/0168/13. These are "Decree No. 327-13 of November 29, 2013," and "Law No. 169-14 of May 23, 2014" (*supra* para. 13). First, it should be noted that the State's presentation of these facts to the Court means that the State considers them relevant to the case *sub examine*, even though it did not present arguments on how they impact it. The Court notes that the said norms consider judgment TC/0168/13 to be one of their justifications, and Law No. 169-14 accords it an important place in its "*Consideranda.*" This reaffirms that, even though, at one time the State was opposed to the Court examining this Constitutional Court judgment, it is relevant to this case.

354 *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 273, footnote 76.

355 *Cf. Case of Liakat Alibux v. Suriname,* para. 87.

356 With regard to Dominican constitutional law, it should be placed on record that the representatives indicated that the criterion for interpretation of the term "in transit" in article 11 of the 1994 Constitution, which, in their opinion, created an unjustified distinction in treatment, was incorporated textually in the 2010 Constitution, which excludes the children of those who "reside illegally in Dominican territory" from the right to nationality (*supra* para. 238). Despite this, they did not argue that the Constitution has been applied to or has had any impact on the enjoyment of the rights of the presumed victims, and they have not alleged the possible violation of Article 2 of the American Convention, or of other provisions of this treaty, based on the 2010 Constitution. Moreover, the facts of the case do not reveal that a direct application of the 2010 Constitution to the presumed victims has been proved, or any other type of direct impact of this Constitution on their situation.

> *Constitution of the Republic for attribution of Dominican nationality through* ius soli, *which shall be called the List of aliens irregularly registered in the Civil Registry of the Dominican Republic*. (iii) Create special annual birth records for aliens from June 21, 1929, to April 18, 2007, date on which the Central Electoral Board brought into effect the *Birth Register of a child to a foreign mother non-resident in the Dominican Republic* by Resolution 02-2007; and, then*, to transfer administratively the births that appear on the List of aliens irregularly registered in the Civil Registry of the Dominican Republic to new birth records of aliens,* for the respective year. (iv) *Notify all births transferred* in accordance with the preceding paragraph *to the Ministry of Foreign Affairs, so that the latter may make the corresponding notifications*, to the person who the said birth concerns, and to the consulates and/or embassies or diplomatic delegations, as applicable, *for the pertinent legal effects*[357] (italics added).

313. The Court considers that this extract from the judgment reveals an order, mandated by the Constitutional Court, for a general policy to be applied retroactively to all those persons born in the Dominican Republic since June 21, 1929, who include the victims in this case.[358] In addition, the State has advised that this order is binding for all the public powers and organs of the State, and that the State had "taken different measures" to comply with it (*supra* para. 250).

314. The Court concludes, therefore, that judgment TC/0168/13 includes a general measure that would affect the presumed victims' enjoyment of their rights. Thus, it would deprive the following, who have Dominican nationality and possessed official documentation to prove this at the time that they were removed from Dominican Republic (*supra* paras. 201 and 221), of legal certainty regarding the enjoyment of their right to nationality: Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles. This is because their birth certificates or their registration in the birth records will be subject to review by the Central Electoral Board and they may have been "registered irregularly." This also infringes the rights to recognition of juridical personality, and to a name, as well as the right to identity, owing to these violations taken as a whole.

315. Judgment TC/0168/13 has ordered a retroactive policy based on the understanding that, prior to 2010, domestic law envisaged the impossibility of those born in Dominican territory of parents who were aliens residing irregularly in the country acquiring Dominican nationality based on *ius soli*. Thus, given the resulting distinction between such persons and others also born in Dominican territory, it is necessary to verify whether the right of the presumed victims to equality before the law was violated.

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[357] In judgment TC/0168/13, the Constitutional Court noted: "Regarding the measures that must be adopted, the Constitutional Court finds the following: […] Migration Act No. 285 (of 2004) […and] Migration Regulations No. 631 (of 2011) […] replaced Immigration Law No. 95 of […] 1939, and its implementing Regulations No. 279, of the same year, that were in force for almost 70 years; which is an overlong period during which the absence of legal provisions encouraged the creation of conditions that have had a negative impact on the Dominican Civil Registry. However, fortunately, today the country has these two important legal instruments, whose provisions contain the solutions to the current migratory problem and restore the reliability of our registration system." After referring in detail to the contents of these (and other) new sources of law, the Constitutional Court proceeded to consider: "In this regard, it should be pointed out that the elements of this case oblige the Constitutional Court to adopt measures that go beyond the particular situation of Juliana Dequis (or Deguis) Pierre; conferring on this judgment effects *inter comunia*, because it tends to protect the fundamental rights of a very large group of individuals who are in situations that, from a factual and legal perspective, are the same or similar to that of the appellant. Thus, the [Constitutional] Court finds that, in cases such as this, the application for *amparo* goes beyond the sphere of the specific violation claimed by the appellant, and that its protective mechanism should have an expanded and binding authority that permits the protection of fundamental rights to be extended to other persons outside these proceedings who are in similar situations" (*cf.* Constitutional Court, judgment TC/0168/13, pp. 91 to 97).

[358] In this regard, expert witness Carlos Quesada stated that the judgment of the Constitutional Court "gives rise to […] the danger of the wholesale denationalization of Dominicans of Haitian descent in the Dominican Republic [because] birth records as of 1929 will be examined, and if they are found to be irregular, this could lead to the denationalization of persons who today have Dominican nationality" (*cf.* Expert opinion provided by Carlos Quesada Quesada before the Court during the public hearing).

316. The Court considers that, in view of the said difference in treatment among persons born in the territory of the Dominican Republic based on normative regulations (or on practices or decisions that determined their application or interpretation),[359] the State must prove that this differentiated treatment does not entail, with regard to the group of persons who, having been born in Dominican territory, are unable to acquire the nationality of this country, a violation of the right to equal protection of the law. In this regard, the Court has established that a difference in treatment is discriminatory when it does not have a reasonable and objective justification;[360] in other words, when it does not seek a legitimate purpose and there is no reasonable proportional relationship between the means used and the end sought.[361]

317. In this regard, the Court notes that, as already mentioned (*supra* para. 285), in judgment TC/0168/13 the Constitutional Court indicated that, contrary to the children of aliens who "obtain a legal residence permit," "[a]liens who […] are in an irregular migratory situation […] cannot claim that their children born in the country have the right to obtain Dominican nationality […] because it is legally inadmissible to found the inception of a right on a *de facto* illegal situation." The Inter-American Court notes that the argument concerning the "illegal situation" of the alien who "is in an irregular migratory situation," refers to aliens in an irregular situation, and not to their children. In other words, the difference between those born in Dominican territory who are children of aliens is not made based on a situation related to them, but based on the different situation of their parents as regards whether they are regular or irregular migrants. Thus, this distinction between the situations of the parents, in itself, does not explain the justification or purpose of the difference in treatment between individuals who were born in Dominican territory. Consequently, the Court understand that the arguments set forth in judgment TC/0168/13 are insufficient, because they do not explain the objective sought by the distinction examined and, therefore, they prevent an assessment of whether it is reasonable and proportionate.

318. As already mentioned (*supra* para. 264), the obligation to provide every individual with the equal and effective protection of the law without discrimination establishes a limit to the State's authority to determine those who are its nationals. The Court finds no reason to differ from its opinion in its judgment in the case of *the Yean and Bosico Girls v. Dominican Republic*, that "the migratory status of a person is not transmitted to his or her children."[362] Thus, the introduction of the standard of the irregular permanence of the parents as an exception to the acquisition of nationality by *ius solis* was discriminatory in the Dominican Republic, when it was applied in a context that has previously been

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[359] It should be emphasized that the said difference in treatment is between those born in the State's territory, and not with regard to their parents. The Court takes note that expert witness Gómez Pérez indicated that "regarding nationality, acquisitive prescription or usucaption does not exist; hence, regardless of the time that [a person] has allowed to elapse, first, violating a law; second, without regularizing his status, […] the fact that the [said] persons] let 5, 10, 15, 20, [or] 30 years go by, does not give them the right to […] acquire the right to nationality by acquisitive prescription." Nevertheless, the hypothesis examined is not that of the person who, being an alien, is in an irregular situation in the territory of the State, which is the one indicated by the expert witness, but rather that of those who were born on this territory. (*Cf.* Expert opinion provided by Cecilio Gómez Pérez before the Court during the public hearing).

[360] *Cf. Juridical Status and Human Rights of the Child. OC-17/02*, para. 46; *Juridical Status and Rights of Undocumented Migrants. OC-18/03*, para. 84, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 200.

[361] *Cf. Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 200. (This judgment cites the following case law: ECHR, *Case of D.H. et al. v. Czech Republic,* No. 57325/00. Judgment of 13 November 2007, para. 196, and ECHR, *Case of Sejdic and Finci v. Bosnia and Herzegovina*, Nos. 27996/06 and 34836/06. Judgment of 22 December 2009, para. 42.)

[362] *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 156.

described as discriminatory towards Dominicans of Haitian origin. In addition, this group was disproportionately affected by the introduction of the differentiated criteria.[363] The foregoing results in a violation of the right to equality before the law recognized in Article 24 of the Convention.

319. Furthermore, as indicated, on June 9, 2014, the State presented "Law No. 169-14 of May 23, 2014," as a "supervening fact" (*supra* para. 13),[364] which is regulated by Decree No. 250-14 (*supra* para. 146). In view of the close relationship between these norms and judgment TC/0168/13, the Court finds it necessary to refer to them.

320. The *consideranda* of Law No. 169-14 indicate that the law is based on the provisions of judgment TC/0168/13 and that, in this regard, "regularizing civil status records does not involve a denial or questioning of the interpretation provided by the Constitutional Court." The articles of the law make a distinction between the situation of certain persons registered in the Civil Registry and others who are not registered.

321. Regarding the former, article 2 of Law No. 169-14 orders the "regulariza[tion of] […] the records of the persons who" as indicated in paragraph (a) of the preceding article, are "children born in national territory during the period between June 16, 1929, and April 18, 2007, of foreign non-resident fathers and mothers, who were registered in the records of the Dominican Civil Registry based on documents that were not recognized by the relevant norms in force at the time of the registration." The Court has not been provided with sufficient evidence to verify that the presumed victims are in this situation, so that the analysis of articles 2 to 5 of Law No. 169-14 in relation to the persons mentioned in paragraph (a) of its article 1 is not relevant.[365]

322. With regard to the children "of foreign parents in an irregular migrator situation who, having been born in national territory do not appear registered in the Dominican Civil

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[363] In this regard, added to the reference made to the context of this case (*supra* para. 171), it should be indicated that, in its judgment TC/1068/13 the Constitutional Court indicated not only that Haitian immigration in the Dominican Republic is greater than that from other countries, but also that a very high percentage of this Haitian immigration is irregular. Thus, it stated in this judgment that "[t]here are 100,638 foreigners from countries other than Haiti, while those of Haitian origin amount to 668,145. […] Haitian immigrants and their descendants […] represent 6.87% of the population living in national territory. According to information published by the Dominican press, the General Directorate of Immigration of the Dominican Republic has only legally registered 11,000 Haitian immigrants, which represents a very small percentage, 0.16%, of the total." In the Dominican Republic, the population of Haitians and those of Haitian descent is greater that the population of aliens or those of foreign descent from other countries and, also, a percentage of Haitian migrants are not "legally registered." In addition, contextual references have been made to the difficulties encountered to obtain personal documentation and the vulnerability of Haitians and those of Haitian descent in the Dominican Republic (*supra* para. 171).

[364] On the same occasion, the State also submitted as a supervening fact Decree No. 327-13, which indicates that it has been issued by order of the Constitutional Court in the said judgment. The Decree establishes the "terms and conditions" for aliens who are living irregularly in Dominican territory to acquire a "documented legal status under […] General Migration Law No. 285-04." Its provisions with regard to "aliens" and the conditions for regularizing their permanence in Dominican territory are not related to the question of the right to nationality and, therefore, cannot have an impact on the presumed victims in this regard. Consequently, it is not relevant for the Court to examine the norm in question.

[365] Thus, on June 17, 2014, when presenting their respective observations, the representatives only indicated that "some of the [presumed] victims in this case [were in the situation described], and even if at one time they had an identity document, they were unable to register their children owing to the situation of discrimination and arbitrariness that existed. One of Antonio Sensión's daughters was in that situation." Although they referred to "some" of the presumed victims, the representatives did not clarify who they were referring to. Furthermore, the reference to one of Antonio Sensión's daughters is confusing; not only does it not indicate which daughter is referred to, but it is also unclear whether she is in the "situation" of "being unable" "to register her children," or whether it is she herself who could not be "registered." The indications provided by the representatives are insufficient to allow the Court to examine the matter.

Registry," Law No. 169-14 establishes in its sixth article (article 6, in conformity with article 1(b)) that they "may register in the register for aliens established by General Migration Law No. 285-04." According to article 6 of Law No. 169-14 and article 3 of its implementing regulations (Decree No. 250-14), those interesting in submitting an application in order to "benefit from the registration of aliens" have 90 days from the entry into force of these regulations. Once they have complied with certain conditions, and following this registration, these persons may "take advantage of the provisions of Decree No. 327-13," which regulates the "National Plan for the regularization of aliens in an irregular migratory situation." Article 8 of the law also establishes the "[n]aturalization" of "children of aliens born in the Dominican Republic and regularized pursuant to the provisions of Decree No. 327-13. Lastly, article 11 establishes that the provisions relating to the said persons who are not registered in the Dominican Civil Registry and to "naturalization" will be valid "during the execution of the National Plan for the regularization of aliens in an irregular migratory situation. Furthermore, article 3 of Decree No. 327-13 indicates that "[t]he alien who wishes to avail himself of the Plan must file his application within 18 months of the date that it comes into force."[366]

323. The Court notes that Law No. 169-14, in the same way as judgment TC/0168/13 on which it is based, is founded on considering that those born in Dominican territory, who are the children of aliens in an irregular situation, are aliens. In practice, this understanding, applied to persons who were born before the 2010 constitutional reform, entails a retroactive deprivation of nationality; and, in relation to some presumed victims in this case, it has already been determined that this is contrary to the Convention (*supra* paras. 298 to 301). Accordingly, the Court must examine the provisions of Law No. 169-14 in relation to the possible violation of the rights of Victor Jean, Miguel Jean, Victoria Jean (deceased) and Natalie Jean, who never benefited from the registration established in the law.

324. The Court notes that Law No. 169-14 created an impediment to the full exercise of the victims' right to nationality. Thus, the law considered them aliens not only conceptually, but also established the possibility that, if they presented the corresponding request within 90 days, (*supra* para. 322), they could benefit from a plan to "regularize aliens" established by the said Decree No. 327-13. This could lead to a "naturalization" process that, by definition, is contrary to the automatic acquisition of nationality based on having been born on the State's territory. Even though the foregoing could result in the individuals in question "acquiring" Dominican nationality, this would be the result of treating them as aliens, which is contrary to full respect for the right to nationality to which they should have had access since birth. Consequently, submitting the said individuals, for a limited time only, to the possibility of acceding to a process that could eventually result in the "acquisition" of a nationality that, in fact, they should already have, entailed establishing an impediment to the enjoyment of their right to nationality. Therefore, in this aspect, articles 6, 8 and 11 of Law No. 169-14 violated treaty-based obligations, including the duty to adopt domestic legal provisions, in relation to the rights to recognition of juridical personality, to a name, and to nationality, as well as, in relation to these rights, the right to identity, to the detriment of Victor Jean, Miguel Jean, Victoria

[366] Other provisions of Law No. 169-14, such as articles 9 and 10, establish, respectively, "sanctions" for "false information" when filing an application to the aliens registry, or "false information in an official document or any other criminal offense committed by Civil Registry officials." Article 12 indicates that "[t]he Executive shall issue the regulations to implement the provisions of chapters II and III of this law [regarding "registration of children of aliens born in the Dominican Republic," (articles 6 and 7), and "naturalization" (article 8)], within 60 days at most of the date of its promulgation; regulations that, among other provisions, shall include the mechanism for authenticating the birth, as well as the necessary amendments to the National Plan for the regularization of aliens in an irregular migratory situation for these persons." Lastly, article 13 of Law No. 169-14 establishes that "[t]he provisions of this law shall not result in any cost or charge for the beneficiaries."

Jean and Natalie Jean. Also, for similar reasons to those already indicated (*supra* paras. 316 and 317), they violate the right to equal protection of the law.

325. In conclusion, given its general scope, judgment TC/0168/13 constitutes a measure that fails to comply with the obligation to adopt domestic legal provisions, codified in Article 2 of the American Convention, in relation to the rights to recognition of juridical personality, to a name, and to nationality recognized in Articles 3, 18 and 20 of this instrument, respectively, and in relation to these rights, the right to identity, as well as the right to equal protection of the law recognized in Article 24 of the American Convention; all in relation to failure to comply with the obligations established in Article 1(1) of this instrument. This non-compliance violated the said rights of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased) and Rafaelito Pérez Charles. In addition, as indicated (*supra* paras. 323 and 324), the State violated these same articles of the Convention to the detriment of Victor Jean, Miguel Jean, Victoria Jean (deceased) and Natalie Jean owing to articles 6, 8 and 11 of Law No. 169-14.

326. The Court must now refer to the other norms indicated by the representatives: Circular No. 017 and Resolution 12-07 (*supra* paras. 241 and 302).

327. Circular No. 017, by establishing a retroactive policy, and also Resolution 12-07, by including provisions relating to "civil status certifications" issued prior to the publication of the Resolution, could eventually affect the presumed victims and must therefore be examined.

328. Circular No. 017 contains a directive to "Civil status officials" to examine "birth records when issuing copies or any document relating to civil status (paragraph 1), in order to detect "any irregularity" (paragraph 3). This is because the "Administrative Chamber has received reports that, in the past, some Civil Registry Offices issued birth certificates irregularly to foreign parents who had not proved their legal residence or status in the Dominican Republic." The Court observes that Circular No. 017, in the same way as judgment TC/0168/13, establishes a policy with retroactive application. However, since it does not explain the criteria that the Administrative Chamber must use to "proceed," in does not appear that, of itself, Circular No. 017 can affect the rights of the victims in this case,[367] and the representatives have not presented sufficient arguments to the contrary. Consequently, in the understanding that, should the need arise, the Administrative Chamber may act in conformity with the American Convention and the standards established in this Judgment, the Court does not consider that this norm, in itself, is contrary to the American Convention.

329. The *consideranda* of Resolution No. 12-07 indicate that the Central Electoral Board, "generally […] on request," "carries out […] permanent verifications of civil status records in the files of the civil registry offices and the Central Civil Registry Office," and that it has "frequently" noted "serious irregularities" in the records, but that judicial proceedings are required in order to annul them. Consequently, the Central Electoral Board "must implement a mechanism […] that prevents the issue of certifications based on irregular civil status records or entries that are evidently illegal, without the need to exhaust the corresponding judicial proceedings, unless these documents are issued for reasons that

[367] In this regard, expert witness Gómez Pérez indicated that "under [Resolution 12-2007]" the "falsity" of the "civil status certifications […] suspected of being false," would eventually be decided by the courts of justice, and added that "the person concerned" can "have recourse to the corresponding court to contest the decision or the opinion of the Central Electoral Board, and in oral public and adversarial proceedings, the Court will decide whether it accepts the recommendation of the Central Electoral Board or the petition of the person concerned" *(cf.* expert opinion of Cecilio Gómez Pérez provided during the public hearing).

are exclusively judicial." On this basis, the first paragraph of the Resolution orders the "provisional suspension of the issue of civil status certifications containing irregularities or flaws that make their issue legally impossible, and only to issue them for reasons that are strictly judicial." Other paragraphs of the Resolution establish procedural norms relating to provisional suspension or final annulment, determining the intervention of the courts in the latter case, and also, in the former, the intervention of "[t]hose interested in the lifting of the provisional suspension of the issue of civil status certifications." However, the operative paragraphs of the Resolution, as well as its preambular paragraphs and *consideranda*, do not make a direct reference to aspects relating to nationality or migratory status as grounds for the suspension or annulment of the records or the civil status certifications.[368] Therefore, as in the case of Circular No. 017, the Court notes that, in the understanding that, when applying Resolution 12-07, the respective authorities may interpret it in conformity with the American Convention and the standards established in this Judgment, the representatives' argument is not sufficiently substantiated to consider that the said resolution, in itself, is incompatible with the Convention in a way that has prejudiced or violated the rights of the victims in this case. The Court also notes that the State has advised that the Central Electoral Board, "by means of Circular No. 32-2011 of October 19, 2011, has annulled Resolution No. 12-07 issued by the plenary session of the Board."

IX
RIGHTS TO PERSONAL LIBERTY, TO JUDICIAL GUARANTEES, TO FREEDOM OF MOVEMENT AND RESIDENCE, AND TO JUDICIAL PROTECTION, IN RELATION TO THE RIGHTS OF THE CHILD AND THE OBLIGATION TO RESPECT RIGHTS WITHOUT DISCRIMINATION

A) Arguments of the Commission and of the parties

330. The Commission argued that, in violation of the Constitution and the laws that apply to repatriation procedures, State agents arbitrarily detained certain presumed victims while they were out and about or else in their homes, without an arrest warrant issued by a competent authority or administrative of judicial proceedings instituted with regard to these persons, who were not individualized or informed of the charges that led to their detention. Then, in less than 24 hours, the presumed victims were expelled from the territory of the Dominican Republic to the territory of Haiti. It added that the facts "occurred in the tense climate of mass collective expulsions," that "specifically involved" individuals considered "to be Haitians," and the phenotypic characteristics and skin color were "determinant elements" when selecting the persons who would be detained and then expelled. It alleged 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." It added that "the [presumed] victims' expulsion meant the automatic and *de facto* loss of all those effects that were left behind in Dominican territory, which represented an unlawful deprivation of their property for which they received no compensation." Regarding the presumed victims of Dominican nationality, the Commission indicated that some of them lacked documentation, while others had official identity documents and some of the latter were

[368] In this regard, one of the *consideranda* of the Resolution indicates that "the following are the most typical cases of irregularity: records contained on inserted folios, records registered after the books have been closed; records altered illegally with data such as the name of the person registered, dates, name of the parents or the declarant changed; duplications of birth declarations, and omission of substantial information, among others."

prevented from proving their nationality while, in other cases, the Dominican authorities examined, retained and destroyed their documentation.

331. The Commission also indicated that the presumed victims were not given the possibility of their cases being subject to an individual, objective and reasonable examination by the Dominican authorities. It underscored that the State has presented no evidence or information proving that it made a "detailed analysis of the particular circumstances of each of the presumed victims." According to the Commission, the presumed victims "did not have sufficient time or means to be able to prove their nationality or their legal status in the Dominican Republic; they were not provided with legal assistance; they were unable to appeal the decision taken, and there was no order from a competent, independent and impartial authority that decided their deportation." It also indicated that "there were significant obstacles to access to justice in this case" relating to the speed with which the expulsions took place; moreover "the geography made access to a competent judge or court difficult, and there was no way to prove their identity." The Commission indicated that the presumed victims "did not even have guarantees of due process […] and there was no effective judicial remedy in domestic law that would have allowed them to contest the decision of the Dominican authorities to expel them." Proceedings resulting in the detention and return of aliens to the territory of a State by exclusion, expulsion or extradition entail the obligation to subject them to the same basic and non-derogable procedural protections that are applicable to proceedings of a criminal nature. Lastly, the Commission referred to the principle whereby detention for immigration issues must be the exception, when affirming "immigration policy must be premised on a presumption of liberty and not on a presumption of detention. Immigration detention must be the exception and justified only when lawful and non-arbitrary."

332. The Commission considered that the State had violated the right to personal liberty (Article 7), the right to freedom of movement and residence (Article 22(1)),[369] the prohibition to expel nationals (Article 22(5)), the prohibition of the collective expulsion of aliens (Article 22(9)), the right to equal protection of the law (Article 24), and the rights to judicial guarantees and to judicial protection (Articles 8(1) and 25(1)), of the American Convention, in relation to the obligation to respect the rights of the Convention without discrimination, established in Article 1(1) of this instrument, to the detriment of certain presumed victims,[370] and also, the rights of the child (Article 19) of the Convention, to the detriment of the presumed victims who were children at the time of the events.

333. The representatives argued that the presumed victims were detained because of their physical characteristics, based on their race or ethnic origin, owing to which they were identified as Haitians or of Haitian descent, and treated as irregular migrants, without the existence of an arrest warrant or a prior investigation to comply with the formalities established in Dominican laws for the "detention" of individuals for migratory reasons. They indicated that the legal requirements were not met in any of the cases; hence, the detentions of the said individuals had been illegal and arbitrary. They added that the presumed victims were not informed of the reasons for their detention, or brought before a judicial authority, or provided with an effective remedy to request a review of the lawfulness of their detention. Following their detention, they were taken to

[369] The Commission argued this in general, without specifying how the violation of this right had affected each of the presumed victims.

[370] Among others, the Commission named: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Diana Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Nené Fils-Aimé, Bersson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean, as applicable.

the border with Haiti by different means and obliged to stay on the Haitian side. According to the representatives, the expulsions occurred in a context of mass collective detentions and expulsions of Haitians and Dominicans of Haitian descent, which affected many thousands of persons and were carried out in groups. They indicated that although some of the victims returned to the Dominican Republic, they did so by their own means and without the assistance of the Dominican authorities. Based on the way in which the expulsions were carried out, and even on the expressions used by the authorities who implemented them, it is evident that the intention was that those concerned would not be able to return to that country. The representatives added that the presumed victims were not given the opportunity to take their possessions with them, and were unable to return to their place of origin for a long time. In other cases, the victims were divested of any possessions they had with them by the authorities who detained them.

334. The representatives also indicated that the procedure established by domestic law was not respected in any of the cases. They argued that "[t]he victims were not informed of the charges against them, and were not given the opportunity to defend themselves. Much less were they given access to a lawyer to assist them in the defense of their rights." They added that the presumed victims were unable to have recourse to the domestic remedies, because: (a) they were expelled collectively without a court order, so that there was no judicial decision to contest, and the immediate expulsion from Dominican territory prevented them from having access to any remedy, and (b) once expelled, the presumed victims were outside Dominican territory and, therefore, did not have access to an effective remedy.

335. Consequently, the representatives asked the Court to declare the violation of the rights to personal liberty, to judicial guarantees, to freedom of movement and residence and to judicial protection recognized in Articles 7, 8(1), 22(1), 22(5), 22(9) and 25(1), of the American Convention, in relation to Article 1(1), to the detriment of several victims,[371] and Article 19 of this instrument, because the violations are "particularly serious in the case of the victims who were children at the time of the events," because the State had also failed to comply with its obligation to adopt special measures of protection in their favor.

336. In addition, without linking it to a specific article of the American Convention, the representatives, in their brief of June 17, 2014, stated, in relation to the proceedings relating to the documentation of Willian Medina and the members of his family, that "[t]he State has not proved that it has ensured the right to defense of Mr. Medina Ferreras and his family or that the State authorities have conducted an impartial investigation in the course of which they have proved the responsibility of Mr. Medina Ferreras in the irregularities of which he is accused."

337. The State, for its part, refuted the "presumed pattern" of the immigration control operations or "sweeps" for the detention and subsequent deportation of Haitians and Dominicans of Haitian origin, and reiterated that the General Directorate of Immigration at the time of the supposed actions and facts applied a procedure consisting of three stages: (a) arrest and identification; (b) investigation and filtering, and (c) verification and confirmation.

[371] The representatives indicated, among others, as presumed victims: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean, as applicable.

338. In relation to certain presumed victims regarding whom it was alleged that they were in detention centers,[372] it provided two certifications issued by the General Directorate of Prisons indicating that these persons were not detained in the said prisons at the time of the events. Accordingly, and in view of the supposed lack of evidence of the alleged "retention" of the presumed victims, the State considered it unnecessary to refer to the supposed non-compliance with the guarantees established in Article 7 of the American Convention.

339. The State also rejected all the arguments related to the collective expulsions of Haitian nationals, affirming that it "does not carry out collective or mass deportations of Haitians." According to the State, in "agreement with the […] version of the Commission […] and the representatives," "all the presumed victims […] had been questioned by the immigration agents regarding their identity document and none of them showed this, either at the time or subsequently. […] Consequently, the State agents would have investigated the legality of their permanence in the country, so that the deportation process had been individualized. If any of the foreign presumed victims had shown a Haitian passport with a visa, or a work permit authorized by the General Directorate of Immigration, they would not have been deported." Furthermore, regarding the expulsions of Dominican nationals of Haitian origin or descent, the State asserted that it had "never repatriated a Dominican who had been detained and who, during the verification procedure, had produced documents to prove his condition as a national."

340. In addition, the State stressed that, after they had supposedly been deported or expelled, the presumed victims returned to the country without any type of impediment, either hidden in a bus that transported migrant workers or crossing the guarded border on foot. According to the State, given the ease with which individuals could enter national territory, it could not be proved reliably with circumstantial situations that the State's immigration agents had really deported or expelled any of the presumed victims. Regarding a national immigration policy based on racial profiling or skin color, the State rejected the allegations and indicated that it would be ineffective, because the Haitian physiognomy was extremely similar to that of a large part of the Dominican population.

341. The State also argued that, at the time of the events, several effective domestic remedies existed: the application for *amparo*, the possibility of *habeas corpus* established by Law No. 5353 of October 22, 1914, and the contentious-administrative proceeding established by Law No. 1494 of August 9, 1947, that would have allowed any of the presumed victims to question the lawfulness of their detention and the decision of the Dominican authorities to deport or expel them. The State indicated that the presumed victims "had the real and effective opportunity to file" the remedies and that there is no evidence in the case file to prove that any of them filed any of the remedies established by the contentious-administrative jurisdiction. Lastly, the State asserted that "there is no evidence in the case file to substantiate the material losses of the [presumed] victims," or "that, at any time, they had possessed such objects, money or household goods."

342. Based on the above and "the lack of evidence in the file of this case," the State asked the Court to declare that it had not violated the rights recognized in Articles 7, 8, 19, 22(1), 22(5) and 22(9) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of certain presumed victims.[373]

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[372] The State indicated this in its answering brief in relation to "the supposed detentions" of Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina (deceased) were in the prison of Oviedo, Pedernales; Rafaelito Pérez Charles in the prison of San Cristóbal; Jeanty Fils-Aimé (deceased) in the Pedernales prison, and "Bers[s]on Gelin" in the Barahona prison.

[373] The State indicated the following, among others: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio

B) Considerations of the Court

343. In this chapter the Court is examining together the alleged violations of the rights to personal liberty,[374] freedom of movement and residence,[375] judicial guarantees,[376] and judicial protection,[377] in relation to the rights of the child, and the obligation to respect rights without discrimination, owing to the concurrence of the facts that could have given rise to these violations.

344. But first, bearing in mind the characteristics of this case, the Court underlines that ten of the presumed victims who were deprived of liberty and then expelled were children at the time of the events, namely: Luis Ney Medina, Awilda Medina, Carolina Isabel Medina, Antonio Fils-Aimé, Endry Fils-Aimé, Diane Fils-Aimé, Markenson Jean, Miguel Jean, Victoria Jean and Natalie Jean. In this regard, the facts of the case do not reveal that the State took special measures of protection in favor of the children concerned based on the principle of the best interests of the child. The said children were treated the same as the adults during the deprivation of liberty and subsequent expulsion, without any consideration for their special condition.

345. In addition, with regard to the presumed victims Bersson Gelin, Jeanty Fils-Aimé, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé, the Court is unable to determine with certainty where they were born (*supra* para. 86), so that, in their case, it is unable to examine the alleged violation of any of the paragraphs of Article 22 of the Convention. Nevertheless, with the exception of Nené Fils-Aimé, the Court has already established that these presumed victims were effectively deprived of their liberty and expelled from Dominican territory to Haiti, so that it will examine the presumed violation of Articles 7, 8 and 25 of the Convention, with regard to them. In the case of Nené Fils-Aimé, insufficient factual evidence has been provided to analyze the presumed violation of these articles to his detriment.

Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean, as appropriate.

[374] Article 7 stipulates: "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 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."

[375] The pertinent part of Article 22 of the Convention establishes: "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. [...] 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. 9. The collective expulsion of aliens is prohibited."

[376] Article 8(1) of the Convention indicates: "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."

[377] Article 25(1) of this instrument establishes: "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."

B.1. Basic guarantees in immigration proceedings that may involve deprivation of liberty and expulsion or deportation

B.1.1. General considerations

346. It should be recalled that the Court has affirmed that Article 7 of the American Convention contains a general rule, established in its first paragraph, according to which: "[e]very person has the right to personal liberty and security," and also another rule, of a specific nature, that consists of guarantees that protect the right not to be deprived of liberty illegally (Art. 7(2)) or arbitrarily (Art. 7(3)), to be informed of the reasons for the detention and of the charges (Art. 7(4)), to judicial control of the deprivation of liberty (Art. 7(5)), and to contest the lawfulness of the detention (Art. 7(6)).[378] Regarding the general obligation, the Court has reiterated that "any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily results in the violation of Article 7(1) thereof."[379]

347. The Court has also indicated that any restriction of the right to personal liberty must only be for the reasons and in the conditions previously established by the Constitution or the laws enacted in accordance with this (material aspect), and also strictly subject to proceedings objectively defined in it (formal aspect).[380] In addition, the Court has reiterated that any detention, regardless of the reasons or duration, must be duly recorded in the pertinent document, indicating clearly, at least, the reasons for the detention, who made the arrest, the time of the arrest and the time of the release, as well as a record that the competent judge was advised, in order to protect against any illegal or arbitrary interference with physical liberty.[381] If this is not done, the rights recognized in Articles 7(1) and 7(2) of the American Convention, in relation to Article 1(1) of this instrument, have been violated.[382]

348. Furthermore, the Court has indicated that programmed collective detentions and roundups, which are not based on the individualization of wrongful actions and that lack judicial control are incompatible with respect for fundamental rights; among others, they are contrary to the presumption of innocence, unduly curtail personal liberty, and transform preventive detention into a discriminatory mechanism; consequently, the State may not implement them under any circumstance.[383]

349. In addition, the Court has indicated that the right to judicial guarantees, recognized in Article 8 of the American Convention, refers to the series of requirements that must be observed at the different procedural stages to ensure that the individual is able to defend his rights adequately vis-à-vis any act of the State, adopted by any public authority,

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[378] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of J. v. Peru*, para. 125.

[379] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*, para. 54*, and Case of J. v. Peru*, para. 125.

[380] *Cf. Case of Gangaram Panday v. Suriname. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47*,* and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 258, para. 100.

[381] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 53, *and Case of García and family members v. Guatemala,* para. 100.

[382] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 54, *and Case of García and family members v. Guatemala*, para. 100.

[383] *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 21, 2006. Series C No. 152, paras. 93 and 96.

whether administrative, legislative or judicial, that may affect them.[384] Thus, in its consistent case law, the Court has reiterated that "although Article 8 of the American Convention is entitled "Right to a Fair Trial" [Note: Right to judicial guarantees in the Spanish version], its application is not limited strictly to judicial remedies."[385] Rather, the "series of basic guarantees of due process of law" are applicable in the determination of rights and obligations of a "civil, labor, fiscal or any other nature."[386] In other words, "any act or omission of the State's organs in the course of proceedings, whether these are administrative, punitive, or jurisdictional, must respect due process of law."[387]

B.1.2. Standards for expulsion proceedings

350. In relation to immigration matters, the Court has indicated that, in the exercise of its authority to establish immigration policies,[388] States may establish mechanisms to control the entry into and departure from its territory of non-nationals, provided that these policies are compatible with the norms for the protection of the human rights established in the American Convention. In other words, although States have a margin of discretion when determining their immigration policies, the objectives of such policies must respect the human rights of migrants.[389]

351. In this regard, the Court has affirmed that "due process must be guaranteed to everyone, regardless of their migratory status," because "the broad scope of the intangible nature of due process applies not only *ratione materiae* but also *ratione personae* without any discrimination,"[390] and in order that "migrants may assert their

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[384] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 69, *and Case of the Pacheco Tineo Family v. Bolivia,* para. 130.

[385] *Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87* of October 6, 1987. Series A No. 9, para. 27, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 166.

[386] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs*, para. 70, *and Case of the Pacheco Tineo Family v. Bolivia*, para. 130.

[387] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 124, and *Case of the Pacheco Tineo Family v. Bolivia,* para. 130.

[388] A State's immigration policy is composed of any institutional act, measure or omission (laws, decrees, resolutions, directives, administrative acts, etc.) that relates to the entry into, departure from, or permanence in its territory of the national or foreign population. *Cf. Juridical Status and Rights of Undocumented Migrants.* OC-18/03, para. 163, and *Case of Vélez Loor v. Panama*, para. 97.

[389] *Cf. Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03* of September 17, 2003. Series A No. 18, para. 168; *Case of Vélez Loor v. Panama*, para. 97, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 39. See also: Expert opinion of Pablo Ceriani Cernadas provided before the Court, in which, among other matters, he stated that "[r]egardless of the different immigration categories that a State devises (wherein, in principle, there is a margin of discretion to grant a residence permit when implementing these categories), this definition of categories and the way in which they are implemented differs significantly from the *de facto* reality of migratory flows, which results in – and this is the experience not only of the countries of the region, not only of Latin America, but it is the situation in the United States, in many countries of the European Union, and of Asia – a significant number of people in an irregular migratory situation, which, without doubt, will have a negative impact as regards the human rights of these persons, in addition to the impact that it may have for policies, for example, of human development and other kinds of social integration policies that a country wishes to implement" (expert opinion of Pablo Ceriani Cernadas before the Court during the public hearing held on October 7 and 8, 2013).

[390] *Cf. Juridical Status and Rights of Undocumented Migrants.* OC-18/03, para. 122, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 159.

rights and defend their interests effectively and in conditions of procedural equality with others who are justiciable."[391]

352. The Court considers it desirable to stress that the international organs and norms for the protection of human rights all indicate basic guarantees applicable to such proceedings.[392]

353. Thus, for example, under the universal system for the protection of human rights, Article 13 of the International Covenant on Civil and Political Rights[393] indicates that:

> 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.

354. The Human Rights Committee, interpreting this article, determined that "[t]he particular rights of [the said] article 13 only protect those aliens who are lawfully in the territory of a State party. […] However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13."[394]

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391 *Cf. The Right to Information on Consular Assistance within the Framework of the Due Guarantees of Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 117 and 119; *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 159, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* OC-21/14, para. 113.

392 *Mutatis mutandi*, Case of *Nadege Dorzema et al. v. Dominican Republic*, para. 160.

393 Dominican Republic ratified the International Covenant on Civil and Political Rights on January 4, 1978.

394 Human Rights Committee, General Comment 15: The position of aliens under the International Covenant on Civil and Political Rights; adopted at the twenty-seventh session, 1986, para. 9. Regarding the regional systems for the protection of human rights, the African Commission on Human and Peoples' Rights has considered that: "it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the Charter [African Charter on Human and Peoples' Rights] and international law." (African Commission on Human and Peoples' Rights, Communication No. 159/96, 22nd Ordinary Session, 11 November 1997, para. 20.). Consequently, in expulsion proceedings during which the basic guarantees of due process of law are not observed, the African Commission has frequently decided a violation of the rights protected in Article 7(1)(a) of the African Charter on Human and Peoples' Rights ("Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force") and, in some cases, Article 12(4) of this treaty ("A non-national legally admitted in a territory of a State Party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law.") (See, for example: African Commission on Human and Peoples' Rights, Communication No. 313/05, 47th Ordinary Session of 12 to 26 May 2010, para. 205; African Commission on Human and Peoples' Rights, Communications 27/89, 46/91, 49/91, 99/93, 20th Ordinary Session, 31 October 1996, para. 34: "By expelling these refugees from Rwanda, without giving them the opportunity to be heard by the national judicial authorities, the Government of Rwanda has violated Article 7(1) of the Charter." African Commission on Human and Peoples' Rights, Communication No. 71/92, 20th Ordinary Session, 31 October 1996, para. 30: "The Commission has already established that none of the deportees had the opportunity to seize the Zambian courts to challenge their detention or deportation. This constitutes a violation of their rights under Article 7 of the Charter and under Zambian national law"; African Commission on Human and Peoples' Rights, Communication No. 212/98, 25th Ordinary Session, 5 May 1999, para. 61: "The Zambian government by denying Mr. Chinula the opportunity to appeal his deportation order has deprived him of a right to fair hearing which contravenes all Zambian domestic laws and international human rights laws."). Under the European system for the protection of human rights, Article 1(1) of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes a series of specific procedural safeguards relating to expulsion of aliens lawfully resident in the territory of a State Member. Thus, the alien must be allowed: (a) to submit reasons against his expulsion; (b) to have his case reviewed, and (c) to be represented for these purposes before the competent authority. The European Court of Human Rights, in its consistent case law, has considered that: the right to an effective remedy (Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority

355. Lastly, the International Law Commission, in its draft articles on the protection of the human rights of persons expelled or in the process of being expelled, has stated that such persons must receive the following procedural guarantees: (a) basic detention conditions during the proceedings; (b) the right to receive notice of the expulsion decision; (c) the right to challenge the expulsion decision; (d) the right to be heard by a competent authority; (e) the right to be represented before the competent authority; (f) the right to have the free assistance of an interpreter, and (g) the right to consular assistance.[395]

356. Based on these standards and the obligations associated with the right to judicial guarantees, the Court has considered that proceedings that may result in the expulsion of an alien must be individualized, in order to evaluate the personal circumstances of each individual and to comply with the prohibition of collective expulsions. Also, these proceedings must not discriminate for reasons of nationality, color, race, sex, language, religion, political opinion, social origin, or other condition, and the persons subject to them must have the following basic guarantees:[396] (a) to be informed expressly and formally of the charges against them and the reasons for the expulsion or deportation. This notice must include information on their rights, such as: (i) the possibility of explaining their reasons and contesting the charges against them, and (ii) the possibility of requesting and receiving consular assistance,[397] legal advice and, if appropriate, translation or interpretation services; (b) if an unfavorable decision is taken, the right to request a review of their case before the competent authority and to appear before this authority in that regard, and (c) to receive formal legal notice of the eventual expulsion decision, which must be duly reasoned pursuant to the law.

357. The Court finds it necessary to reiterate that, in expulsion proceedings involving children, the State must also observe the guarantees indicated above, and others whose purpose is to protect the best interests of the child, in the understanding that these interests are directly related to the child's right to the protection of the family and, in particular, to the enjoyment of family life, maintaining family unity insofar as possible.[398] Hence, any ruling of an administrative or judicial organ that must decide on family separation owing to the migratory status of one or both parents must take into

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notwithstanding that the violation has been committed by persons acting in an official capacity"), and the possible violation of other rights protected by the Convention owing to expulsion, such as the right to life (Article 2), to personal integrity (Article 3) and to respect for private and family life (Article 8), require States to "make available to the individual [subject to an expulsion decision] the "effective" possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality" (See, ECHR, *Case of Al-Nashif v. Bulgaria,* Application No. 50963/99, Final judgment of 20 September 2002, para. 133).

395 International Law Commission. Expulsion of aliens. Text of draft articles 1-32 provisionally adopted on first Reading by the Drafting Committee at the sixty-fourth session, A/CN.4/L.797, 24 May 2012, articles 19 and 26; *cf. Case of Nadege Dorzema et al. v. Dominican Republic,* para. 163, and *Case of the Pacheco Tineo Family v. Bolivia,* footnote 157.

396 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic*, para. 175, and *Case of the Pacheco Tineo Family v.* Bolivia*,* para. 133. See also, expert opinion of Pablo Ceriani Cernadas, in which he referred to the different guarantees of due process that must be ensured in the context of expulsion proceedings. Specifically, he indicated that "[t]he nature of an expulsion is evidently punitive and thus the need to ensure all the procedural guarantees in order to respect and guarantee the rights that may be at risk in each case. In addition, based on the principle of legality, which makes it obligatory to regulate the proceedings to be followed in such cases by law, a key element is the adoption of the mechanisms to be applied in each individual case in order to examine in detail the offense attributed to the person, the evidence and other elements of the case and, evidently, to ensure the person's right of defense." Expert opinion of Pablo Ceriani Cernadas provided during the public hearing.

397 *Cf.* Vienna Convention on Consular Relations, Article 36.1.b, and *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law.* OC-16/99, para. 103.

398 *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 275.

consideration the particular circumstances of the specific case, thus ensuring an individual decision;[399] it must seek to achieve a legitimate purpose pursuant to the Convention, and it must be suitable, necessary and proportionate.[400] To achieve this, the State must analyze the particular circumstances of each case as regards: (a) the immigration record, the length of the stay, and the extent of the ties of the parent and/or the family to the receiving State; (b) consideration of the nationality,[401] custody and residence of the children of the person it is intended to deport; (c) the implications of the breakup of the family owing to the expulsion, including of the persons with whom the child lives, as well as the time that the child has lived in this family unit, and (d) the extent of the disruption of the child's daily life if the family situation changes owing to the expulsion of a person in charge of the child, so that these circumstances are rigorously weighed in light of the best interests of the child against the essential public interest that it is sought to protect.[402]

358. Regarding proceedings or measures that affect fundamental rights, such as personal liberty, and that may result in expulsion or deportation, the Court has considered that "the State may not make administrative decisions or adopt judicial decisions without respecting certain basic guarantees the content of which is substantially the same as those established in Article 8(2) of the Convention."[403]

B.1.3. Standards related to the deprivation of liberty, including that of children, in immigration proceedings

359. The Court has established the incompatibility with the American Convention of the punitive deprivation of liberty in order to control migratory flows, in particular those of an irregular nature.[404] Thus, it has determined that the detention of persons for non-compliance with the immigration laws should never be for punitive reasons, so that the deprivation of liberty should only be used when necessary and proportionate in the specific case in order to ensure the appearance of the person in the immigration proceedings or to ensure the application of a deportation order, and only for the least possible time.[405] Consequently, "immigration policies whose central focus is the obligatory detention of irregular migrants will be arbitrary, if the competent authorities do not verify, in each particular case and by an individualized evaluation, the possibility of using less restrictive measures that are effective to achieve those ends."[406] In this regard, the Working Group on Arbitrary Detention has stated that:

> If there has to be administrative detention, the principle of proportionality requires it to be the last resort. Strict legal limitations must be observed and judicial safeguards be provided for. The

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399 *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 281.

400 *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21*/14, para. 153.

401 *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 279.

402 *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* OC-21/14, para. 279.

403 *Case of the Pacheco Tineo Family v. Bolivia*, para. 132. See also, *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 157, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* OC-21/14, para. 112.

404 *Cf. Case of Vélez Loor v. Panama*, para. 167, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* OC-21/14, para. 151.

405 *Cf. Case of Vélez Loor v. Panama,* para. 171, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. OC-21/14, para. 151.

406 *Case of Vélez Loor v. Panama***,** para. 171*, and Case of the Pacheco Tineo Family v. Bolivia*, para. 131.

> reasons put forward by States to justify detention […] must be clearly defined and exhaustively enumerated in legislation. […] The detention of minors […] requires even further justification.[407]

360. Furthermore, in the Court's opinion, States may not use the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents as a precautionary measure for the purposes of immigration proceedings; nor may they base this measure concerning non-compliance with the requirements to enter or remain in a country on the fact that the child is alone or separated from his or her family, or on the purpose of ensuring family unity, because States can and should order less harmful alternatives and, at the same time, protect the rights of the child comprehensively and as a priority.[408]

B.1.4. The prohibition of collective expulsions

361. In addition, the inadmissibility of collective expulsions stems from the considerations on due process of law in immigration proceedings (*supra* paras. 356 to 358), and is established in Article 22(9) of the Convention, which expressly prohibits them.[409] This Court has found that the fundamental factor to determine the "collective" nature of an expulsion is not the number of aliens included in the expulsion order, but that this order is not based on an objective analysis of the individual circumstances of each alien.[410] The Court, referring to the observations of the European Court of Human Rights, has determined that a collective expulsion of aliens is "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."[411]

362. Similarly, in its General Recommendation No. 30, the United Nations Committee on the Elimination of Racial Discrimination indicated that the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination[412] must "[e]nsure that non-citizens are not subject to collective expulsion in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account."[413]

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[407] United Nations, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, paras. 59 and 60.

[408] *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 160.

[409] In this regard, different international human rights treaties are consistent in prohibiting collective expulsions in terms similar to the American Convention, *Cf.* Protocol 4 to the European Convention, article 4: "The collective expulsion of aliens is prohibited"; the African Charter on Human and Peoples' Rights, article 12(5): "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups," and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 22(1): "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."

[410] *Case of Nadege Dorzema et al. v. Dominican Republic*, paras. 171 to 172.

[411] *Cf. Case of Nadege Dorzema et al. v. Dominican Republic,* para. 171. *Cf.* ECHR, *Case of Andric v. Sweden.* Application No. 45917/99. First Chamber. Decision of 23 February 1999, para. 1, *Case of Conka v. Belgium.* Application No. 51564/99. Third Chamber. Judgment of 5 February 2002, para. 59. Also *cf.* Committee of Ministers of the Council of Europe, "*Twenty Guidelines on Forced Return*." Guideline No. 3 establishes the prohibition of collective expulsion. It indicates that "A removal order shall only be issued on the basis of a reasonable and objective examination of the particular case of each individual person concerned."

[412] Dominican Republic ratified the International Convention on the Elimination of All Forms of Racial Discrimination on May 25, 1983.

[413] *Cf.* Committee on the Elimination of Racial Discrimination, General recommendation No. 30, para. 26.

363. Furthermore, the Office of the United Nations High Commissioner for Human Rights, in its report on "The Rights of Non-citizens," underlined that "the procedure for the expulsion of a group of non-citizens must afford sufficient guarantees demonstrating that the personal circumstances of each of those non-citizens concerned has been genuinely and individually taken into account."[414]

B.2. Legal qualification of the facts of this case

B.2.1. Right to personal liberty

B.2.1.1. Alleged illegal and arbitrary nature of the deprivations of liberty (Article 7(2) and 7(3))

364. With regard to Article 7(2) of the Convention, the Court has emphasized that the restriction of physical liberty, "even for a brief period, and even merely for identification purposes,"[415] must be "strictly in keeping with the relevant provisions of the American Convention and domestic laws, provided that the latter are compatible with the Convention."[416] Consequently, the alleged violation of Article 7(2) must be examined in light of the previously mentioned domestic legal and constitutional provisions (*supra* paras. 181 to 189), and "any requirement established therein that is not complied with will make the deprivation of liberty illegal and contrary to the American Convention."[417] As for the arbitrary nature of the detention, Article 7(3) of the Convention establishes that "[n]o one shall be subject to arbitrary arrest or imprisonment." Regarding this provision, on other occasions the Court has considered that no one may be subject to arrest or imprisonment for reasons and by methods that – although classified as lawful – may be deemed incompatible with respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unpredictable, or disproportionate.[418]

365. In this regard, article 8(2) of the 1994 Constitution (*supra* para. 181), in force at the time of the facts, stipulated that:

> […]
> b. No one shall be imprisoned or have his liberty restricted without a reasoned written order issued by a competent judicial official, except in cases of *flagrante delicto*.
> […]
> d. Anyone deprived of his liberty shall be brought before the competent judicial authority within forty-eight hours of his detention or released.
> […]
> f. It is strictly prohibited to transfer any detainee from a prison to another place without a reasoned written order issued by the competent judicial authority.
> […]

366. In addition, article 13 of Immigration Law No. 95 of 1939 (*supra* para. 186), in force at the time of the events, established the specific reasons for which an alien could be "arrested and deported" by order of the Secretary of State for Internal Affairs and Police or of another official designated by him. Nevertheless, it indicated that "[n]o alien shall be deported without having been informed of the specific charges that justified his

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414 Office of the United Nations High Commissioner for Human Rights. "The Rights of Non-citizens," 2006, p. 18

415 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic*, para. 126.

416 *Case of Torres Millacura et al. v. Argentina, Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 76, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 126.

417 *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 126.

418 *Cf. Case of Gangaram Panday v. Suriname*, para. 47*, and Case of J. v. Peru*, para. 127*.*

deportation, or without having been given a fair opportunity to refute these charges […]."[419]

367. Lastly, Immigration Regulations No. 279 of 1939 (*supra* para. 189), in force at the time of the facts, required a complete investigation to be conducted, whenever there were indications of a violation of the Immigration Act, based on which, if pertinent, the Immigration Inspector could request the Director General of Immigration to issue an arrest warrant. The said request had to state the facts and indicate the specific reasons why the alien should be deported.[420] The regulation also indicated that, if the arrest warrant was issued:

> The Immigration Inspector shall summon the alien to be heard with regard to the charges set forth in the arrest warrant. The information on the alien shall be recorded on the G-1 form when he is heard, unless it has been recorded previously. […] If the alien does not accept any of the charges included in the warrant, evidence shall be sought to support the charges; then the alien shall be summoned again, and given another opportunity to speak as well as to submit evidence contesting his deportation."

368. Nevertheless, the Court notes that the facts do not reveal that the deprivations of liberty of the members of the Jean,[421] Fils-Aimé[422] and Medina[423] families, as well as of Rafaelito Pérez Charles[424] and Bersson Gelin,[425] prior to their expulsion from Dominican territory to Haiti, were carried out in accordance with the procedure established by domestic law. Thus, they were illegal and violated Article 7(2) of the Convention. Furthermore, the detentions were not carried out in order to implement formal immigration proceedings.[426] It is obvious that the way in which the presumed victims were

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[419] According to article 13(e). In addition, according to Law No. 4658 of 1957, the deportation of an alien "who has committed any of the misdemeanors established in article 13" of Immigration Law No. 95, or "has committed a crime or offense the gravity of which, in the opinion of the respective court, warrants that penalty," may also be ordered by the Dominican courts (article 1). In that case, the alien "may be arrested for up to three months by order of the competent prosecutor (article 2).

[420] In this regard, it indicates: "[i]f the arrest warrant is issued, the Immigration Inspector shall summon the alien to be heard with regard to the charges set forth in the arrest warrant. The information on the alien shall be recorded on the 'G-1 form'[…]. If the alien does not accept any of the charges included in the warrant, evidence shall be sought to support the charges; then the alien shall be summoned again, and he shall be given another opportunity to speak, as well as to submit evidence contesting his deportation."

[421] The Jean family consisting, at the time of the events, of Victor Jean, Marlene Mesidor, the girls Victoria Jean (deceased) and Natalie Jean, and the boys Miguel Jean and Markenson, who, in December 2000, at around 7.30 a.m., were arrested by State agents in their home, made to get into a bus and taken to Haitian territory, where they arrived at around 5 p.m. (*supra* paras. 222 and 223).

[422] First Jeanty Fils-Aimé, and then the rest of the family, Janise Midi and their daughter Diane Fils-Aimé and their sons Antonio Fils-Aimé and Endry Fils-Aimé, were detained and taken to the "Pedernales garrison," and then expelled to Haiti at around 8 p.m. (*supra* paras. 209 and 210).

[423] The Medina family, consisting of Willian Medina Ferreras, the boy Luis Ney Medina, and the girls Awilda Medina and Carolina Isabel Medina (deceased), Dominican nationals with official documentation, and Lilia Jean Pierre, a Haitian national, were arrested in November 1999 or January 2000 in their home and taken to a prison in Oviedo, where they remained until they were expelled to Haiti (*supra* paras. 200 and 201).

[424] Mr. Pérez Charles was arrested on July 24, 1999, by immigration agents and taken to a detention center where he remained for a short time. He was then taken to Jimaní, from where he was expelled to Haitian territory (*supra* para. 221).

[425] Mr. Gelin was arrested on December 5, 1999, and then expelled to Haiti (*supra* para. 213).

[426] To the contrary, the Court observes that the said deprivations of liberty were not formally justified or recorded. The State has not proved, in any of these cases, that the deprivations of liberty of the presumed victims were carried out based on a written and reasoned order issued by a competence authority, as required by article 8.2.b) of the 1994 Constitution. As for the requirements of the immigration norms, the State has not proved that, in any of these cases, immigration proceedings were underway and that, with regard to the said persons, a complete investigation had been conducted into a possible violation of immigration laws, or that an arrest warrant had been requested or issued, as established in section 13 of Immigration Regulations No. 279. In addition, at no time during the deprivation of liberty were the presumed victims brought before a competent

deprived of their liberty by the State agents indicates that this was due to racial profiling related to the fact that they apparently belonged to the group of Haitians or Dominicans of Haitian origin or descent (*supra* para. 168 and *infra* paras. 403 and 404), which is evidently unreasonable and therefore arbitrary and thus violated Article 7(3) of the Convention. Consequently, the Court finds that the deprivations of liberty were illegal and arbitrary and that the State violated paragraphs 2 and 3 of Article 7 of the Convention.

B.2.1.2. Notice of the reasons for the deprivations of liberty (Article 7(4))

369. With regard to Article 7(4) of the American Convention, the Court has stated that "the facts must be examined in relation to domestic law and the provisions of the Convention, because the information on the 'reasons' for the detention must be provided 'promptly' at the time of the detention, and because the right contained in that paragraph entails two obligations: (a) the need for written or oral information on the reasons for the detention, and (b) notice, in writing, of the charges."[427]

370. In the case *sub judice*, both Immigration Law No. 95 and Immigration Regulations No. 279 require that aliens detained for deportation purposes be informed of the specific reasons why they must be deported. According to the Immigration Regulations, the specific charges against them had to be included in the arrest warrant issued by the Director General of Immigration. However, as indicated above, the established facts do not reveal that the members of the Medina, Fils-Aimé and Jean families, Rafaelito Pérez Charles and Bersson Gelin were ever informed of the reasons for the deprivation of their liberty, either orally or in writing. Moreover, there is no document proving that they were advised in writing about the existence of any kind of charge against them, as required by the domestic laws in force at the time of the facts. This leads to the conclusion that the State failed to observe the guarantee established in Article 7(4) of the Convention.

B.2.1.3. Presentation before a competent authority (Article 7(5))

371. With regard to Article 7(5) of the Convention, which establishes that any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial functions, the Court has underlined that "it is for the judge to guarantee the rights of the detainee, to authorize the adoption of precautionary or coercive measures when strictly necessary, and to ensure, in general, that the detainee is treated in a manner consistent with the presumption of innocence," as a "guarantee to avoid arbitrary or illegal detention,[428] as well as to ensure the rights to life and to personal integrity."[429]

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authority, such as the Immigration Inspector, nor were they given the opportunity to respond to the charges supposedly set forth in the arrest warrant, pursuant to this regulation. To the contrary, there is no evidence that the presumed victims were ever informed of the reasons for their arrest or detention, either orally or in writing, or that they were able to contest their detention, in evident violation of the Immigration Law and the Immigration Regulations. The Court also observes that the authorities did not comply with the obligation to record the information on the aliens arrested or detained for the purpose of their deportation. This information was not recorded on the "G-1 form" established in section 10.d) of the Immigration Regulations. Lastly, the transfer of those who were detained to the border with Haiti without a reasoned order contravened the prohibition to transfer detainees from a prison to another place without a reasoned written order from the competent judicial authority established in article 8.2.f) of the 1994 Constitution.

427 *Cf. Case of Cabrera García and Montiel Flores v. Mexico*. *Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 106, *and Case of J. v. Peru,* para. 149.

428 *Case of Bulacio v. Argentina*, para. 129, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 135.

429 *Case of Tibi v. Ecuador*. *Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, para. 118, *and Case of Nadege Dorzema et al. v. Dominican Republic,* para. 135.

372. Contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms[430] (hereinafter also "the European Convention"), the American Convention does not establish a limitation to the exercise of the guarantee established in Article 7(5) of the Convention based on the reasons or circumstances for which the person has been arrested or detained.[431] Consequently, "based on the *pro persona* principle, this guarantee must be observed, whenever anyone is arrested or detained due to his migratory situation, in keeping with the principles of judicial control and procedural immediacy."[432] This Court has considered that, in order to constitute a mechanism that truly counters illegal or arbitrary detentions, "the judicial review must be conducted promptly and in a way that guarantees compliance with the law and the detainee's effective enjoyment of his rights, taking into account his particular vulnerability."[433] In this regard, the United Nations Working Group on Arbitrary Detention has stated that "[a]ny […] immigrant placed in custody must be brought promptly before a judicial or other authority."[434]

373. In this regard, article 8.2.d) of the 1994 Constitution, in force at the time of the detentions, established that "[a]nyone deprived of his liberty shall be brought before the competent judicial authority within forty-eight hours of his detention or released."

374. The deprivations of the liberty of the members of the Jean, Fils-Aimé and Medina families, and of Bersson Gelin and Rafaelito Pérez Charles only lasted a few hours and, therefore, less than the 48 hours established by the Constitution for bringing the detainee before a competent judicial authority. However, the conclusion of the deprivation of liberty of the presumed victims was not brought about by their release in Dominican territory, but occurred at the time that the State agents expelled them from Dominican territory, without these persons being brought before a competent authority who could decide, as appropriate, on the eventual admissibility of their release. Consequently, in this case, Article 7(5) of the Convention was violated to the detriment of the members of the Jean, Fils-Aimé and Medina families, and of Bersson Gelin and Rafaelito Pérez Charles.

B.2.1.4. Judicial review of the lawfulness of deprivations of liberty (Article 7(6))

375. Lastly, Article 7(6) of the Convention protects the right of anyone who is arrested or detained to have recourse to a competent judge or court so that the judge or court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

376. In this regard, the Court has indicated that "the authority that must decide on the lawfulness of the arrest or detention must be a judge or court. Thus, the Convention is

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[430] In the European Convention, the right to be brought promptly before a judge or other officer established in Article 5(3) is related exclusively to the category of detainee mentioned in paragraph 1(c) of this Article; that is, the person who is detained for the purpose of "bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so." *Cf. Case of Vélez Loor v. Panama,* footnote 106.

[431] *Cf. Case of Vélez Loor v. Panama,* para. 107, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 136.

[432] *Cf. Case of Tibi v. Ecuador,* para. 118, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 136.

[433] *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of October 30, 2008. Series C No. 187, para. 67, and *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 136.

[434] United Nations, Working Group on Arbitrary Detention, Report of the Group, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 3. *Cf. Case of Vélez Loor v. Panama*, para. 107.

ensuring the judicial control of the deprivation of liberty."[435] In addition, in relation to the nature of such remedies at the domestic level, the Court has underscored that these "must not only exist formally by law, but must be effective; that is, they must comply with the purpose of obtaining a prompt decision on the lawfulness of the arrest or detention."[436]

377. In this specific case, the Court notes that article 8.2.g) of the 1994 Constitution established that:

> Anyone who has custody of a detainee shall be obliged to bring him before the competent authority as soon as that authority requires this.
> […]
> The *Habeas Corpus* Act shall determine the summary proceeding to comply with the requirements of paragraphs a), b), c), d), e), f) and g) and shall establish the respective penalties.

378. In addition, article 1 of Law No. 5353 on *Habeas Corpus* of 1914 (*supra* para. 182), in force at the time of the facts, established that:

> Anyone who has been deprived of his liberty for any reason in the Dominican Republic has the right, either at his own request or that of any other person, […] to a writ of *habeas corpus* in order to determine the reasons for his imprisonment or deprivation of liberty and so that, in the appropriate cases, his liberty is restored.

379. Regarding the arguments on the alleged violation of Articles 8 and 25 of the Convention, the State referred to Law No. 5353 on *Habeas Corpus* arguing that the law established the "effective domestic remedy" of *habeas corpus*, that would have allowed any of the presumed victims to question the lawfulness of their detention (*supra* para. 341). However, as indicated previously, the Court reiterates that remedies must not only exist formally by law, but they must also be effective. In this regard, the Court has ruled on Article 7(6) of the Convention indicating that it "signifies that the detainee effectively exercises this right, presuming that he is able to do so, and that the State effectively provides this remedy and decides it."[437] Nevertheless, bearing in mind the circumstances in which the deprivations of liberty occurred, especially owing to the expedited expulsion, the said presumed victims who were detained had no opportunity whatsoever to file an effective remedy that would examine the lawfulness of their detention. Therefore, the Court finds that the State violated Article 7(6) of the Convention, to the detriment of the members of the Jean, Medina and Fils-Aimé families and Rafaelito Pérez Charles and Bersson Gelin.

B.2.1.5. Conclusion

380. As indicated in the preceding paragraphs, the State violated the right to personal liberty, established in paragraphs 1, 2, 3, 4, 5 and 6 of Article 7 of the American Convention, in relation to non-compliance with the obligation to respect rights established in Article 1(1) of this instrument, to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Antonio Fils-Aimé, Diane Fils-Aimé, Endry Fils-Aimé, Rafaelito Pérez Charles, Bersson Gelin, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean (deceased), Miguel Jean and Natalie Jean, and also in relation to the rights of

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[435] *Case of Vélez Loor v. Panama***,** para. 126, and *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 140**.**

[436] *Case of Vélez Loor v. Panama,* para. 129, and *Case of J. v. Peru,* para. 170.

[437] *Case of Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 114*, and Case of Nadege Dorzema et al. v. Dominican Republic*, para. 143.

the child recognized in Article 19 of the Convention, with regard to those victims who were children at the time of the expulsion.

B.2.2. Rights to freedom of movement and residence, to judicial guarantees and to judicial protection

B.2.2.1. Collective expulsions of Haitian nationals (Article 22(9))

381. As indicated above, the Court has indicated that, to comply with the prohibition of collective expulsions, proceedings that may result in the expulsion or deportation of an alien must be individual in order to assess the personal circumstances of each person, and this requires, at least, the identification of the person and the clarification of the particular circumstances of his migratory situation. In addition, such proceedings must not discriminate for reasons of nationality, color, race, sex, language, religion, political opinion, social origin or any other condition, and must observe the basic guarantees mentioned previously (*supra* paras. 356 to 358).[438]

382. However, the facts of the case *sub judice* reveal that Lilia Jean Pierre, Janise Midi, Marlene Mesidor and Markenson Jean, of Haitian nationality, were detained and expelled in less than 48 hours together with their family members and other persons, without any evidence that they had been submitted to an individualized evaluation of the kind mentioned above prior to being expelled (*supra* paras. 201, 210 and 223). The State has not provided any evidence proving that it had instituted formal proceedings to identify these individuals, or to evaluate the particular circumstances of their migratory situation.

383. Furthermore, the statements of the presumed victims reveal that the expulsions were carried out in a summary manner and as a group.[439] Thus, the Court recalls that the members of the Medina family, including Lilia Jean Pierre, were taken to the border with Haiti together with other persons (*supra* para. 201) Also, the bus that Marlene Mesidor and the other members of the Jean family were forced to board in order to be expelled to

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[438] *Cf. Case of Nadege Dorzema et al. v. Dominican Republic*, para. 175, *and Case of the Pacheco Tineo Family v. Bolivia*, para. 133. See also: Expert opinion of Pablo Ceriani Cernadas, In his statement he indicated that the term racial profiling, "especially when one observes the use of profiles in negative terms, relates to the program, practice, policy, specific measures by which law enforcement officials in general – in this case, we can speak of security forces with competence in the area of immigration – establish, explicitly or implicitly, certain criteria based on, it could be ethnic origin, or the language or nationality of origin of a person, to implement, above all, measures of investigation and control, in this case control or verification of immigration offenses, to provide a reasonable and objective justification to overcome those types of control mechanisms, and which subsequently, have a whole series of negative impacts, not only on migrants, but also on society." In addition, he stated that "a measure of collective expulsion, prohibited not only by the American Convention on Human Rights, but also by other regional and universal treaties such as the Convention on the Protection of the Rights of All Migrant Workers, refers to the decision to expel a person that is not the result of due process in which, with the appropriate guarantees, the different circumstances, especially the personal situation and the specific facts in each case, have been evaluated thoroughly and in sufficient detail, in order to eventually reach a decision on a sanction that could constitute an eventual expulsion. If these circumstances in terms of procedural guarantees are not present – which also signify the substantive guarantees that are being discussed during those proceedings – we would be speaking of what, in migratory terms, is usually referred to as automatic expulsion mechanisms that, in many cases, may constitute what is called collective expulsions." He added that "the number of persons is irrelevant as regards collective expulsion; the important point is how the proceedings functioned, how the decision was reached, and what were the procedural and substantive stages that resulted in the expulsion order and the implementation of those measures (expert opinion of Pablo Ceriani Cernadas provided during the public hearing).

[439] According to the statements of the presumed victims, they were deprived of liberty or taken from their homes without being given the opportunity to take some of their possessions with them, and without being able to return to their place of origin for a long time. According to the presumed victims, they had their home furnishings, personal effects, clothes, livestock, savings and cash or were owed wages, and in other cases, the presumed victims were deprived of possessions they had taken with them by the authorities who detained them.

Haitian territory was already "full of people" (*supra* para. 223). Even though these facts, *per se*, do not prove a collective expulsion of persons, they reinforce the belief that the facts relating to the victims were inserted in procedures involving collective deprivation of liberty that were not supported by the prior assessment of the situation of each person who was deprived of liberty.

384. Consequently, the Court concludes that the expulsions of Lilia Jean Pierre, Janise Midi, Marlene Mesidor and Markenson Jean were not carried out on the basis of individual evaluations of the particular circumstances of each of them, for the effects of Article 22(9) of the American Convention, so that their expulsions are considered to be collective expulsions of aliens in violation of this article.

B.2.2.2. The expulsions and the alleged violation of the freedom of movement and residence of the Dominican nationals (Articles 22(1) and 22(5))

385. The Court has indicated that the right to freedom of movement and residence of every person who is lawfully protected by Article 22(1) of the American Convention, "is an essential condition for the free development of the person, and includes, *inter alia*, the right of those who are lawfully in a State to move about it freely and also to choose their place of residence."[440] The Court has also indicated that "[t]his right can be violated formally or by restrictions *de facto* when the State has not established the conditions or provided the means that allow it to be exercised."[441]

386. In addition, Article 22(5) of the American Convention establishes the prohibition to expel a person from the territory of the State of which he is a national, as well as the prohibition to deprive anyone of the right to enter it. In this regard, it should be noted that several international instrument establish the prohibition to expel nationals.[442] Similarly, the European Court of Human Rights has affirmed that it is possible to speak about the expulsion of nationals when a person is obliged to abandon the territory of which he is a national, without being able to return,[443] and has found violation of the norm equivalent to Article 22(5) of the American Convention in the European system, Article 3(1) of Protocol 4 to the European Convention, in cases of expulsions of nationals.[444]

387. The Court notes that Rafaelito Pérez Charles, Willian Medina Ferreras and the children at the time, Awilda Medina, Carolina Isabel Medina and Luis Ney Medina, were Dominican nationals who had official identity documents at the time of the facts, and has already determined that it was precisely the disregard of these documents that violated their right to nationality (*supra* para. 276). In addition, the children, Victoria Jean, Natalie

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440 *Cf. Case of Ricardo Canese v. Paraguay*. *Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 115*, and Case of Nadege Dorzema et al. v. Dominican Republic,* para. 169*.*

441 *Case of the Moiwana Community v. Suriname*, paras. 119 and 120, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 220.

442 Protocol 4 to the European Convention, Article 3(1), which states that "[n]o one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national"; Arab Charter on Human Rights Carta, Article 27(b), which indicates that "[n]o one may be exiled from his country or prohibited from returning thereto," and International Covenant on Civil and Political Rights, Article 12(4): "No one shall be arbitrarily deprived of the right to enter his own country." *Cf.* In her expert opinion provided by affidavit, Julia Harrington mentioned Article 12(4) of the International Covenant on Civil and Political Rights, Article 22(5) of the American Convention, and Article 3 of Protocol 4 of the European Convention (expert opinion of Julia Harrington provided by affidavit).

443 ECHR, *Case of A.B. v. Poland.* Application no. 33878/96. Decision on admissibility, third section, 13 March 2003, para. 4.

444 ECHR, *Case of Slivenko v. Latvia.* Application no. 48321/99. Judgment of 9 October 2003, para. 120.

Jean and Miguel Jean, as well as Victor Jean were born in the Dominican Republic, but, at the time of the events, did not have official identity documents. With regard to these individuals, the Court has also determined that the absence of this documentation was related to a violation of the right to nationality (*supra* para. 301). Therefore, all these persons must be considered Dominican nationals for the purposes of the application of Article 22 of the Convention.

388. The State asserted that it had never repatriated a Dominican national who could prove his nationality. However, the evidence provided by the State does not prove that it took measures to identify and verify formally the nationality of the said presumed victims.

389. The Court considers that, although some of the presumed victims could, in fact, return to Dominican territory,[445] owing to the way in which the events occurred (*supra* paras. 221 and 222), the destruction or disregard of the documents of the Dominican nationals who did have documentation, as well as the expulsion of Dominicans who lacked official documentation, prevented the victims from being able to return to Dominican territory lawfully, and to move around and reside freely and lawfully in the Dominican Republic. Consequently, the Court considers that the State violated the right to enter the country of which they are nationals and to move around and live in it recognized in Articles 22(5) and 22(1) of the American Convention, in relation to failure to comply with the obligation to respect rights established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Rafaelito Pérez Charles, Victor Jean, Miguel Jean, Victoria Jean (deceased) and Natalie Jean.

B.2.2.3. Respect for the basic procedural guarantees (Article 8(1))

390. The Court notes that, in proceedings that may result in expulsion or deportation, respect for the right to judicial guarantees established in Article 8 of the American Convention is relevant, and includes the observance of a series of basic guarantees of due process (*supra* paras. 356 to 358).

391. The Court also recalls that the immigration norms in force at the time of the facts of this case were Immigration Law No. 95 of April 14, 1939, Law No. 4658 of March 24, 1957, and the Immigration Regulations No. 279 of May 12, 1939, which established a series of procedures for the expulsion or deportation process (*supra* paras. 186 to 189).

392. In addition, at the time of the facts, the procedures for the repatriation of Haitian immigrants were regulated by the "Memorandum of Understanding on Repatriation Mechanisms" signed by the Dominican Republic and the Republic of Haiti on […] December 2, 1999."[446] This agreement called for the Dominican authorities: (i) to recognize and respect the human rights of those repatriated; (ii) not to retain the personal documents of those repatriated; (iii) to provide each person repatriated with a copy of the individual form containing the repatriation order, and (iv) to provide, with reasonable advance notice, the list of individuals in the process of being repatriated to the Haitian diplomatic or consular authorities accredited in Dominican territory, so that they could exercise their function of consular assistance (*supra* para. 190).

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[445] According to the facts, Rafaelito Pérez Charles, and the Jean family returned to the Dominican Republic permanently in 2002. Furthermore, some members of the Medina family made several trips to the Dominican Republic for medical reasons related to the accident suffered by Awilda Medina (*supra* para. 203).

[446] The Court also noted this in its judgment in the case of *Nadege Dorzema et al. v. Dominican Republic*, para. 167 and footnote 234.

393. In this case, it is not necessary for the Court to rule on the conformity of the said domestic norms with the State's international obligations. However, it is sufficient to note that, specifically with regard to the expulsions that are the subject of this case, the Dominican Republic has not presented any evidence that it applied the procedure established in the said domestic norms, or took any other measures to ensure to the victims the basic guarantees of due process in order to comply with its obligations under international standards and the American Convention,[447] and this is quite apart from the prohibition to expel nationals established in Article 22(5) of the Convention.

394. Based on the above, the Court finds that the expulsion of the said persons did not respect the relevant international standards, or the procedures established in domestic law (*supra* paras. 356 to 358 and 391). Consequently, the victims were not granted the basic guarantees that corresponded to them as persons subject to expulsion or deportation, and this violated Article 8(1) of the American Convention, in relation to non-compliance with the obligation to respect rights established in Article 1(1), to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Victor Jean, Marlene Mesidor, Markenson Jean, Miguel Jean, Victoria Jean (deceased), Natalie Jean, Rafaelito Pérez Charles and Bersson Gelin, and also, in relation to the rights of the child, protected by Article 19 of the Convention, with regard to those victims who were children at the time of the expulsion.

B.2.2.4. The existence of an effective remedy to contest the detention and expulsion (Article 25(1))

395. The Court recalls that the State had reiterated that, at the time of the facts, three domestic remedies existed under domestic law, the application for *amparo*, the *habeas corpus* (Law No. 5353 of *Habeas Corpus* of October 22, 1914), and the remedies of the contentious-administrative jurisdiction (Law No. 1494 of August 9, 1947) (*supra* paras. 182 to 185, 191 and 341), and had indicated that the presumed victims had the "real and effective opportunity" to file these remedies, which would have allowed them to question the lawfulness of their detention and the decision of the Dominican authorities to deport or expel them (*supra* para. 341).

396. The sudden deprivations of liberty and expulsions of the victims were carried out in less than 48 hours without prior notice. Consequently, in this case, it is not necessary for the Court to examine whether, in general terms, the remedies indicated by the State might be appropriate and effective in similar circumstances to those experienced by the presumed victims. Indeed, it is sufficient to note that, in view of the particular circumstances of this case, specifically the way in which the expulsions were implemented, the presumed victims were unable to file the remedies mentioned by the Dominican Republic, and no effective proceedings were available to them.

[447] To the contrary, the Court notes that the facts and evidence provided reveal that none of the said presumed victims were the subject of a complete investigation of their particular individual circumstances based on well-founded indications of a possible infringement of the Immigration Law. In addition, no arrest warrant was issued for any of them, and no formal proceedings were instituted to grant the presumed victims the possibility of being heard and contesting the decision to expel them and defending themselves from any charges against them. No final decision on deportation was taken by the Secretary of State for Internal Affairs and Police and communicated to the presumed victims, or any other type of official decision ordering the expulsions. Furthermore, the victims were not informed of the reasons for their expulsion or the specific charges against them, or of possible judicial remedies to contest the decision to expel them, and they were not provided with legal assistance. In addition, in the case of the presumed victims of Haitian nationality, Lilia Jean Pierre, Janise Midi, Marlene Mesidor and Markenson Jean, they were not provided with consular assistance, and did not receive a copy of their repatriation order (which did not exist) and the Haitian diplomatic or consular authorities were not informed of their expulsion.

397. Based on all the above, the Court concludes that, owing to the particular circumstances of this case, the victims did not have real and effective access to the right to appeal, which violated the right to judicial protection recognized in Article 25(1) of the American Convention, in relation to failure to comply with the obligation to respect rights established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Victor Jean, Marlene Mesidor, Markenson Jean, Miguel Jean, Victoria Jean (deceased), Natalie Jean, Rafaelito Pérez Charles and Bersson Gelin, and also in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of those previously indicated who were children at the time of the facts.

B.2.3. The discriminatory nature of the expulsions (Article 1(1))

398. As already indicated (*supra* para. 262), the Court has determined that Article 1(1) of the Convention "is a general norm the content of which extends to all the provisions of the treaty, and establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein without any discrimination." In other words, whatever the origin or form it takes, any treatment that may be considered discriminatory in relation to the exercise of any of the rights ensured in the Convention is *per se* incompatible with this instrument.[448] Consequently, the State's failure to comply, by any discriminatory treatment, with the general obligation to respect and ensure rights gives rise to its international responsibility.[449] This is why the Court has affirmed that there is an indissoluble connection between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.[450] Article 24 of the Convention recognizes a right that also entails the State obligation to respect and ensure the principle of equality and non-discrimination in order to safeguard other rights and in all the domestic laws that it enacts,[451] because this protects the right to "equal protection of the law,"[452] so that discrimination resulting from an inequality that stems from domestic law or from its application is also prohibited.[453]

399. In this case, the representatives and the Commission argued that the deprivations of liberty and the expulsions were based on racial motives; that is to say on discriminatory acts or on a discriminatory practice by State agents (*supra* paras. 330 and 333).

400. In this regard, the State argued that it had not carried out the deprivation of liberty and subsequent expulsion of the presumed victims (*supra* paras. 337 to 339). The Court reiterates that it has already established that, at the time of the events there existed in Dominican Republic a context of expulsions, including collective expulsions, of Haitians

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448 *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. OC-4/84*, para. 53, *and Case of Veliz Franco et al. v. Guatemala*, para. 204.

449 *Cf. Juridical Status and Rights of Undocumented Migrants. OC-18/03,* para. 85, and *Case of Veliz Franco et al. v. Guatemala*, para. 204.

450 *Cf. Juridical Status and Rights of Undocumented Migrants. OC-18/03,* para. 53, and *Case of Veliz Franco et al. v. Guatemala*, para. 204.

451 *Cf. Case of Yatama v. Nicaragua*, para. 186, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile,* para. 199.

452 *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84*, para. 54*, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile,* para. 199.

453 *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela*, para. 209, *and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile,* para. 199.

and Dominicans of Haitian descent (*supra* paras. 171). The facts related to the presumed victims conform to this context and the *modus operandi* applied in those practices (*supra* paras. 167 to 169, 201, 210, 213, 221 and 223).

401. Regarding racial discrimination,[454] the Court has recognized "the difficulty for those who are the object of discrimination to prove cases of racial prejudice" and agrees with the European Court that, in certain cases of human rights violations motivated by discrimination, the burden of proof falls on the State, which controls the means to clarify events that occurred in its territory.[455]

402. In addition, with regard to the rights of migrants, the Court has established that it is permissible for the State to grant a different treatment to documented migrants in relation to undocumented migrants, or to immigrants in relation nationals, "provided that this treatment is reasonable, objective and proportionate, and does not harm human rights."[456] However, "the obligation to respect and to ensure the principle of equality before the law and non-discrimination is independent of the migratory status of a person in a State." In other words, States have the obligation to ensure this fundamental principle to their citizens and to any alien who is in their territory, without any discrimination based on their regular or irregular presence, their nationality, race, gender or any other condition.[457]

403. Furthermore, the Court has already established that the deprivations of liberty were not implemented in order to conduct a formal immigration proceeding, and the way in which the presumed victims were detained while they were out and about or in their home indicates a presumption by the State agents that, based on their physical characteristics, the presumed victims must belong to the specific group of Haitians or individuals of Haitian origin.

404. Based on the foregoing, the Court considers that the established facts and the context in which the facts of this case occurred reveal that the victims were not deprived of liberty in order to conduct formal immigration proceedings, but were detained and expelled mainly owing to their physical characteristics and the fact that they belonged to a specific group; that is, because they were Haitians or of Haitian origin. This constituted a discriminatory action to the detriment of the victims due to their condition as Haitians and Dominicans of Haitian descent, which impaired the enjoyment of the rights that the Court found had been violated. Consequently, the Court concludes that, regarding the rights whose violation has been declared, the State failed to comply with the obligation

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[454] In this regard, the Article 1(1) of the American Convention establishes respect for and guarantee of the rights recognized therein, "without any discrimination for reasons of race, color, […] national or social origin, economic status, […] or any other social condition." In addition, the International Convention on the Elimination of All Forms of Racial Discrimination defines discrimination as: "[…] any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." International Convention on the Elimination of All Forms of Racial Discrimination of January 4, 1969, Article 1. *Cf. Case of Nadege Dorzema et al. v. Dominican Republic,* para. 231.

[455] *Cf. Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012 Series C No. 240, para. 132, *and Case of Nadege Dorzema et al. v. Dominican Republic*, para. 229.

[456] *Cf. Juridical Status and Rights of Undocumented Migrants OC-17/02,* para. 119; *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 233*, and Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, footnote 74.

[457] *Cf. Juridical Status and Rights of Undocumented Migrants. OC-18/03,* para. 118, and *Case of the Yean and Bosico Girls v. Dominican Republic*, para. 155.

established in Article 1(1) of the American Convention to respect the rights without discrimination.

B.3. Conclusion

405. As established, the State violated the right to personal liberty (*supra* paras. 364 to 380 and 400 to 404) established in paragraphs 1, 2, 3, 4, 5 and 6 of Article 7 of the American Convention, in relation to its failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of this instrument, to the detriment of the persons who were deprived of liberty: Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Antonio Fils-Aimé, Diane Fils-Aimé, Endry Fils-Aimé, Rafaelito Pérez Charles, Bersson Gelin, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean (deceased), Miguel Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of the victims who were children at the time of the events.

406. The Court also concludes that, for the reasons described (*supra* paras. 381 to 389 and 400 to 404), the State violated the prohibition of the collective expulsion of aliens recognized in Article 22(9) of the American Convention, in relation to failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of the victims of Haitian nationality: Lilia Jean Pierre, Janise Midi, Marlene Mesidor and Markenson Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of Markenson Jean who was a child at the time of the events. In addition, the Court considers that the State violated the right to freedom of movement and residence recognized in Article 22(1) and 22(5) of the American Convention, in relation to failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of the victims of Dominican nationality: Willian Medina Ferreras, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Rafaelito Pérez Charles, Victor Jean, Victoria Jean (deceased), Miguel Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of the victims who were children at the time of the events.

407. Lastly, based on the foregoing considerations (*supra* paras. 390 to 397 and 400 to 404), the Court concludes that the State violated the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in relation to failure to comply with the obligation to respect the rights of the Convention without discrimination established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Victor Jean, Marlene Mesidor, Markenson Jean, Miguel Jean, Victoria Jean (deceased), Natalie Jean, Rafaelito Pérez Charles and Bersson Gelin, as well as its obligations arising from the rights of the child, protected in Article 19 of the Convention, to the detriment of the victims who were children at the time of the events.

X
RIGHT TO THE PROTECTION OF PRIVACY AND RIGHTS OF THE FAMILY,[458] IN RELATION TO THE RIGHTS OF THE CHILD AND THE OBLIGATION TO RESPECT RIGHTS

A) Arguments of the Commission and of the parties

408. The Commission observed that the expulsion of the presumed victims left them unable to communicate with their families and broke up the family unit, which took a direct toll on the family roles and dynamics. According to the Commission, in the cases of Bersson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión and Rafaelito Pérez Charles, their expulsion entailed, *ipso facto,* the rupture of their ties with their family unit: in the case of Mr. Gelin, the separation from his son William Gelin and, in the case of Ana Lidia and Reyita Antonia Sensión, the separation from their father, Antonio Sensión. Furthermore, the Commission considered it proved that Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión faced serious difficulties to meet their basic needs, and none of the children could continue their schooling. With regard to the Medina family and the Fils-Aimé family, the Commission indicated that their expulsion meant that the families found themselves in a foreign country, without resources of any kind and without documentation. The adult members of the family were unable to find work to be able to feed and educate their children, while the children were unable to continue their studies. Consequently, the Commission considered that the State had violated the rights of the family, recognized in Article 17 of the American Convention, in relation to Article 1(1) of this instrument, as well as in relation to the rights of the child, recognized in Article 19 of the Convention, in the case of the children.

409. The representatives indicated that the Sensión, Fils-Aimé, Gelin and Pérez Charles families were separated as a result of the expulsion of some of their members from Dominican territory. Regarding the Sensión family, they indicated that when Ana Virginia Nolasco and her daughters, Ana Lidia Sensión and Reyita Antonia Sensión, were expelled from Dominican territory in 1994, they were unable to inform the girls' father Antonio Sensión about what was happening, so that he was unaware of their whereabouts, and it was only eight years later, having taken various steps to try and locate his family, that he was able to find them and reunite with them. This separation continued following the date on which Dominican Republic accepted the Court's jurisdiction on March 25, 1999, so that the Court is competent to rule on it. Lastly, the representatives alleged that although it is true that Mr. Sensión did not live with his family permanently, he had a family relationship with it, proved by the fact that he searched for them for years until he found them. They alleged that Janise Midi, and her children were expelled separately from Jeanty Fils-Aimé, Mrs. Midi's husband and the children's father, and they remained separated for eight days until they were able to reunite in Haiti. The representatives also noted that Bersson Gelin has remained separated from his son, William Gelin, who was born in the Dominican Republic and has lived in that country since 1999. Meanwhile, at the time of his expulsion, Rafaelito Pérez Charles was separated from his mother and siblings, who lived in the Dominican Republic. They were unaware of what had occurred for around five days. The representatives argued that the consequences of the expulsion of the Sensión and Fils-Aimé families and of Mr. Gelin were particularly serious, because they involved the separation of the children from their fathers for different lengths of time.

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[458] The pertinent part of Article 11 of the American Convention (Right to Privacy), states: […] 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. […]. While the relevant part of Article 17 of the American Convention (Rights of the Family) indicates: "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

410. The representatives also asserted that the expulsion of the victims constituted abusive and arbitrary interference in the right to privacy of the Medina Ferreras, Fils-Aimé, Sensión, Jean, Gelin and Pérez Charles families. In this regard, they argued that the members of these families had been born in the Dominican Republic or had lived in that country for many years, so that they had close ties with the persons around them and with the different communities in which they lived, and Dominican Republic was the only reality they knew. Their expulsion meant that they were exposed to a new reality, a place with a different culture, in which another language was spoken, and where they had no support network. In addition, the expulsions had a significant impact on their living conditions and, in many cases, even on their health. The representatives alleged that this violation had been particularly severe in the case of the children affected by the expulsion, given their particular situation of vulnerability and the obligation of the State to adopt special measures of protection in their favor, which it failed to comply with.

411. Based on the above, the representatives considered that the State had violated the rights of the family and to family life of the members of the said families who were separated, as well as the right to privacy of all the victims who were expelled in violation of Articles 11(2) and 17 of the American Convention, in relation to Articles 1(1) and 19 of this instrument.

412. For its part, the State denied the facts relating to the expulsions. Regarding the presumed separations, the State indicated that, in a communication of August 21, 2001, the representatives had indicated that: "Berson Gelin has been reunited in Haiti with his youngest son, William, and therefore there is no need to insist on the measures of the Inter-American Court in that regard." It had also been indicated that Mr. Gelin was currently living in the Dominican Republic. In the case of Rafaelito Pérez Charles, who had alleged a supposed separation from his mother and siblings for five days due to his presumed expulsion, the State understood that this lapse could not be considered an unreasonable time in order to establish that the State had violated the right to protection of the family. Regarding the members of the Medina, Fils-Aimé and Jean Mesidor families, the State emphasized that they had alleged that they were deported together so that there was no violation of the rights of the family owing to the supposed family separation. With regard to the situation of the Sensión Family, the State, in its answering brief, indicated that Antonio Sensión was working in Puerto Plata at the time of the supposed deportation of Ana Virginia Nolasco and her daughters, Ana Lidia Sensión and Reyita Antonia Sensión, so that he was already living apart from his family; moreover, Antonio Sensión became aware of the presumed deportation months after it occurred. In addition, the State indicated that only three years passed from March 25, 1999, until 2002, and that, in March 2002, the State had proceeded to grant safe-conducts, which were renewed in 2010. Consequently, the State indicated that it had not violated the rights recognized in Articles 11 and 17 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the said presumed victims.

B) Considerations of the Court

B.1. Family separation (Article 17(1))

413. The Court observes that some of the arguments of the Commission and of the representatives concerning the presumed violation of the rights of the family, recognized in Article 17 of the American Convention, in relation to the rights of the child, recognized in Article 19 thereof, refer to the impact of the expulsions, for example on the living conditions of the victims who were expelled, and not to obligations related to the rights of the family *stricto sensu*. Regarding the alleged violations of Article 17 of the Convention,

in relation to Article 19 of this instrument, the Court considers it in order, based on the facts that have been established, to refer only to the family separation of the members of the Fils-Aimé, Sensión, Gelin and Pérez Charles families.

414. With regard to the obligations relating to the rights of the family, the Court has underscored that these rights entail not only that the State must order measures of protection for children and implement them directly, but that it must also encourage as comprehensively as possible the development and strengthening of the family unit,[459] because the mutual enjoyment of the harmonious relations between parents and children is a fundamental aspect of family life.[460] Added to this, the Court has indicated that, in certain circumstances, the separation of children from their family constitutes a violation of the right in question.[461] This is because "[c]hildren have the right to live with their family, which is required to meet their material, affective and psychological needs."[462]

415. The provisions of the Convention on the Rights of the Child, which are part of the *corpus juris* of childhood rights, reveal the obligation to prevent family separation and preserve family unity.[463] In addition, the State must not only abstain from interfering unduly in the private or family relationships of the child, but must also, depending on the circumstances, take positive measures to ensure the full enjoyment and exercise of the child's rights.[464] This requires that the State, given its responsibility for the common good, safeguard the predominant role of the family in the protection of the child, and provide assistance to the family by public authorities, by adopting measures that promote family unity.[465]

416. With regard to possible family separation for migratory reasons, the Court recalls that States have the authority to elaborate and execute their own immigration policies,

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459 *Cf. Juridical Status and Human Rights of the Child. OC-17/02,* para. 66, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 404.

460 *Cf. Juridical Status and Human Rights of the Child. OC-17/02,* para. 72, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 264.

461 *Cf. Juridical Status and Human Rights of the Child. OC-17/02,* paras. 71 and 72*, and Case of the Pacheco Tineo Family v. Bolivia*, para. 226.

462 *Cf. Juridical Status and Human Rights of the Child. OC-17/02*, para. 71; *Case of Chitay Nech et al. Vs Guatemala*, para. 157, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 158. In this regard, "[t]he European Court has established that the mutual enjoyment of harmonious relations between parents and children is a fundamental component of family life and that, even when the parents are separated, harmonious family relations must be ensured. Measures that impede this enjoyment are an interference with the right protected by Article 8 of the Convention. The Court itself has pointed out that the essential content of this precept is protection of the individual in the face of arbitrary action by public authorities. One of the most grave interferences is that which leads to the division of the family" (*cf. Juridical Status and Human Rights of the Child. OC-17/02*, para. 72).

463 Convention on the Rights of the Child, Article 9.1: "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." Cf. Committee on the Rights of the Child, General comment 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/CG/14, May 29, 2013, para. 60. *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 273.

464 *Cf. Case of Contreras et al. v. El Salvador,* para. 107, referring to Articles 7, 8, 9, 11, 16, and 18 of the Convention on the Rights of the Child

465 *Cf. Juridical Status and Human Rights of the Child.OC-17/02*, para. 88, and *Case of Contreras et al. v. El Salvador,* para. 107. See also Articles 9(3) and 9(4) of the Convention on the Rights of the Child.

including control of the entry, residence and expulsion of aliens.[466] However, when a State takes a decision that involves a limitation to the exercise of any right of a child, it must take the child's best interests into account and adhere strictly to the relevant provisions.[467] In this regard, it should be stressed that a measure of expulsion or deportation may have prejudicial effects on the life, well-being and development of the child, so that his or her best interests should be an overriding consideration.[468] Thus, "[a]ny decision concerning the separation of the child from his or her family must be justified by the best interests of the child."[469] Specifically, the Court has affirmed that "the child must remain in its family unit, unless there are determining reasons, based on the child's best interests, to decide to separate him or her from the family."[470] Consequently, the legal separation of the child from his or her family is only admissible if it is duly justified by the best interests of the child, if it is exceptional and, insofar as possible, temporary.[471]

417. Nevertheless, the Court considers that the child's right to family life does not transcend *per se* the sovereign authority of the States Parties to implement their own immigration policies in conformity with human rights. In this regard, it should be noted that the Convention on the Rights of the Child also refers to the possibility of family separation owing to the deportation of one or both parents.[472]

418. The Court will now apply the jurisprudential principles described above. Bersson Gelin was expelled from Dominican Republic to Haitian territory in 1999, resulting in his separation from his son, William Gelin, who was a child at the time. Mr. Gelin's deprivation of liberty and expulsion were actions taken in non-compliance with the State's obligation to respect the treaty-based rights without discrimination; they were not carried out within the framework of immigration proceedings under domestic law, the basic procedural guarantees required by domestic law were not followed, nor were the international obligations of the State (*supra* paras. 213, 405 and 407). Consequently, the measure did not seek a lawful purpose and it was not in keeping with the legal requirements, hence it is not necessary to weight the protection of the family against the measure, and converts the separation of Bersson Gelin from his son, William Gelin, into an unjustified family

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[466] *Cf. Case of Vélez Loor v. Panama*, para. 97, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. *OC-21/14*, para. 273.

[467] *Cf. Juridical Status and Human Rights of the Child. OC-17/02,* para. 65*, and Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. OC-21/14, para. 273.

[468] *Cf.* Committee on the Rights of the Child, *General Comment 14* on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/CG/14, para. 60, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 278.

[469] *Cf. Juridical Status and Human Rights of the Child*. OC-17/02, para. 73, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. OC-21/14, para. 273.

[470] *Cf. Juridical Status and Human Rights of the Child.* OC-17/02, para. 77, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. OC-21/14*, para. 273.

[471] *Cf. Juridical Status and Human Rights of the Child. OC-17/02*, para. 77; *Case of Gelman v. Uruguay*, para. 125, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. *OC-21/14*, para. 273.

[472] Article 9(4) indicates the following: "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." *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. *OC-21/14*, para. 274.

separation. Furthermore, the Court considers that, from the moment of the separation in 1999, the State had the positive obligation to take measures aimed at family reunification to ensure that the child William Gelin could live with his father. In this regard, the Court notes that there is no record that the State took steps to ensure that Bersson Gelin and his son could meet again from 1999 until March 2002 when Mr. Gelin obtained a safe-conduct. However, in its arguments, the State affirmed that the representatives had supposedly indicated that Bersson Gelin had been reunited with his son and currently lived in the Dominican Republic (*supra* para. 412). The Court considers that this does not change the unjustified nature of the separation and the absence of measures taken by the State to facilitate family reunification between 1999 and 2002.[473] Based on the foregoing, the Court finds that the State violated the right to protection of the family, recognized in Article 17(1) of the Convention, in relation to failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Bersson Gelin and William Gelin, and also in relation to the rights of the child, recognized in Article 19 of this instrument, to the detriment of the child, William Gelin.

419. Regarding the separation of the Sensión family, the Court recalls that, in 1994, before the State had accepted the Court's contentious jurisdiction, Ana Virginia Nolasco and her daughters Ana Lidia Sensión and Reyita Antonia Sensión were detained and expelled to Haiti, while the girls' father, Antonio Sensión, was working in Puerto Plata. Mr. Sensión found out about the expulsion of his wife and daughters when he returned home and began his search, which lasted eight years, until 2002, when he found them and was reunited with them (*supra* para. 218). The Court reiterates that, even though it does not have competence to rule on the expulsion of Ana Virginia Nolasco and her daughters, it can rule on the State's obligation to adopt measures aimed a reuniting the members of the Sensión family from the time of the State's acceptance of the Court's jurisdiction on March 25, 1999. In this regard, the State argued that, on the one hand, Virginia Nolasco and the girls Ana Lidia and Reyita Antonia, both surnamed Sensión, were already living apart from Mr. Sensión before their expulsion because he worked in Puerto Plata, and that Mr. Sensión only became aware of the expulsion of his family three months later. On the other hand, the State asserted that, "only three years" had passed between the time it accepted the Court's jurisdiction in 1999 and 2002 when it proceeded to grant safe-conducts to the members of the Sensión family (*supra* para. 412). The Court considers that the fact that Antonio Sensión worked in another place and did not live with his family permanently does not mean that the Sensión family did not have a family life before the expulsion. Furthermore, the State's assertion reaffirms that, from 1999 to 2002, it took no measures aimed at facilitating the reunification of the members of the Sensión family.

420. Consequently, the State failed to comply with its obligation to take measures aimed at reuniting the members of the Sensión family, the Court considers that the State violated its obligations relating to the right to protection of the family recognized in Article 17(1) of the Convention, in relation to non-compliance with its obligations established in Article 1(1) of the Convention, to the detriment of Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión, and also in relation to the rights of the child, protected in Article 19 of this treaty, to the detriment of children at the time, Ana Lidia Sensión and Reyita Antonia Sensión.

421. According to the facts, Jeanty Fils-Aimé was detained separately from Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé (*supra* para. 210). However, the Court does not have sufficient probative elements to determine with certainty the exact

[473] However, it should be noted that although Mr. Gelin has been able to visit his son several times, to date permanent family reunification has not been achieved, because, according to the statements of Bersson Gelin, he continues to live in Haiti for fear of being expelled again.

nature and duration of the family separation, and is therefore unable to rule in this regard. This impossibility to rule owing to insufficient evidence includes the circumstances surrounding Nené Fils-Aimé, regarding whom it has not been proved that he was expelled, or the circumstances of the hypothetical family separation.

422. Regarding the separation of Rafaelito Pérez Charles from María Esthel Matos Medina and from Jairo Pérez Medina and Gimena Pérez Medina, the Court recalls that the family relationship allegedly connecting the former with the other three persons has not been proved; moreover, the latter are not considered presumed victims (*supra* para. 95). In addition, the Court notes that the representatives failed to explain how the separation of Rafaelito Pérez Charles for a period of one week at the time of the facts would have affected the supposed family ties of Mr. Pérez Charles with these other persons. Consequently, the Court finds that it is not necessary to rule on the alleged violation of the right to protection of the family to the detriment of Mr. Pérez Charles.

B.2. Interference in the family home (Article 11(2))

423. The Court observes that the representatives argued that the expulsion of the presumed victims constituted an unlawful and arbitrary interference in their right to privacy, protection by Article 11(2) of the American Convention. The Commission did not allege the violation of Article 11 of the Convention and the State did not make a specific comment in this regard. However, the Court reiterates that "the presumed victims or their representatives may cite rights other than those included by the Commission, based on the facts presented by the latter" (*supra* para. 227).

424. The Court recalls that Article 11 of the American Convention, entitled "Right to Privacy," requires the State to protect the individual from arbitrary acts by State entities that affect private and family life. It prohibits any arbitrary or abusive interference in the private life of the individual, specifying different spheres of this, such as the private life of the family. In this regard, the Court has affirmed that the sphere of privacy is characterized by being free and immune from abusive or arbitrary interference or invasion by third parties or by the public authorities.[474] In addition, the Court has indicated that, "under Article 11(2) of the Convention, everyone has the right to receive protection against arbitrary and abusive interference in the family, especially children because the family plays an essential role in their development."[475]

425. The Court now finds it pertinent to examine whether, in relation to the State's actions with regard to the members of the Medina, Jean and Fils-Aimé families who were detained in their homes in order to be expelled, the interference in the home constituted an arbitrary or abusive interference in their private life, in violation of Article 11(2) of the Convention.

426. In this case, State agents went to the homes of the Jean, Medina and Fils-Aimé families without an arrest warrant issued by the court, reasoned and in writing, and without the subsequent deprivation of liberty and expulsion of the victims being part of ordinary immigration proceedings pursuant to domestic law. It should be recalled that, in the case of the Jean family, the officials went to the family home in December 2000, at around 7.30 a.m., beat on the door and forced the members of the family to leave the house and get into a bus. Later, the State officials returned to the house and arrested Mr.

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474 *Cf. Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Merits, reparations and costs.* Judgment of November 28, 2012, para. 142.

475 *Cf. Juridical Status and Human Rights of the Child. OC-17/02*, para. 71*, and Case of Contreras et al. v. El Salvador*, para. 106.

Jean who was still there and also forced him to get into a bus (*supra* para. 223). Regarding members of the Medina Ferreras family, in November 1999 or January 2000 during the early morning hours, State officials from Pedernales went to their home and took them, together with other people, to the "Oviedo prison" (*supra* para. 201). Lastly, regarding the Fils-Aimé family, State agents went to the family home on November 2, 1999, where they found Janise Midi and her children Antonio, Diane and Endry Fils-Aimé; the agents obliged them to leave the house, forced them to get into a truck, and took them to the "Pedernales Garrison" (*supra* para. 210).

427. In view of the fact that the above-mentioned interferences in the homes of the Jean, Medina Ferreras and Fils-Aimé families were not justified, because they were not in keeping with the procedure established by domestic law, the Court finds that they should be considered arbitrary interferences in the private life of these families, in violation of Article 11(2) of the Convention. Furthermore, they were linked to acts that involved a violation of the obligation to respect rights without discrimination (*supra* paras. 400 to 407).

428. These arbitrary interferences were particularly grave in the case of the children involved. Given their special situation of vulnerability, the State had the obligation to adopt special measures of protection in their favor under Article 19 of the Convention. However, the facts reveal that, despite the presence and special needs of the children, in the case of the three families, the State agents did not allow them to get dressed or to take anything with them. In the case of the Jean family, they were not allowed to take milk for Natalie Jean, who was approximately four months (*supra* para. 223).

B.3. Conclusion

429. Based on the foregoing, in the terms indicated (*supra* para. 418), the Court concludes that the State violated the right to protection of the family, recognized in Article 17(1) of the Convention, in relation to its failure to comply with the obligation to respect the treaty-based rights without discrimination established in Article 1(1) of the Convention, to the detriment of Bersson Gelin and William Gelin, and also in relation to the rights of the child, recognized in Article 19 of this instrument, to the detriment of the child, William Gelin. In addition, in the terms indicated (*supra* para. 420), the Court finds that the State violated its obligation related to the right to protection of the family, recognized in Article 17(1) of the Convention, in relation to its failure to comply with the obligations established in Article 1(1) of the Convention, to the detriment of Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión, and also in relation to the rights of the child, protected in Article 19 of this treaty, to the detriment of children at the time, Ana Lidia Sensión and Reyita Antonia Sensión.

430. In addition, as indicated (*supra* paras. 427 and 428), the Court considers that the State violated the right to privacy, owing to the violation of the right not to be the object of arbitrary interference in private and family life, recognized in Article 11(2) of the American Convention, in relation to its failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean (deceased), Miguel Jean, Natalie Jean, Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé, and in addition in relation to the rights of the child recognized in Article 19 of the Convention, to the detriment of the children Victoria Jean (deceased), Natalie Jean, Markenson Jean, Miguel Jean, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased), Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé.

XI
RIGHT TO PERSONAL INTEGRITY[476]

A) Arguments of the Commission and of the parties

431. The Commission alleged that the presumed victims were detained in an unlawful and arbitrary manner and that, while in custody, they received no water, food, or medical attention; in addition, they were unable to communicate with anyone, and could not contact their family members to advise them of their arrest and expulsion. It added that, during their detention, they were subjected to verbal abuse by the State agents. The foregoing, added to the uncertainty about the reasons for the detention, the failure to bring them before a competent authority, and the subsequent expulsion had a profound impact on the mental integrity of the presumed victims. According to the Commission, these circumstances led to "mental or psychological suffering which, given the particular situation [of Haitians and Dominicans of Haitian descent], is unjustifiable." In addition, it indicated that, in some cases, the destruction of identity documents was aimed at depriving the holders of their juridical personality, while, in other cases, it was designed to break the legal bond of nationality that linked them to the State, in an attempt to make these persons deportable. The Commission considered that the arbitrary and deliberate destruction of identity documents[477] by the State authorities was inserted in the context of discrimination of which Haitians and Dominicans of Haitian descent in the Dominican Republic are victims, and constituted degrading treatment.

432. It also argued that the next of kin who remained in the Dominican Republic suffered from not knowing the whereabouts of their expelled family members, and that the effect of the expulsion of the presumed victims was to sever family ties and break up the family unit, and adversely affected the normal development of family relations, even for the new members of the family.

433. Based on the above, the Commission considered that the State had violated the right to personal integrity and the prohibition of cruel, inhuman or degrading treatment recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1), to the detriment of the presumed victims,[478] and also that it had violated the right to personal integrity recognized in Article 5(1) of the Convention, in relation to Article 1(1), to the detriment of the next of kin of the presumed victims.[479]

434. For their part, the representatives argued that many of the presumed victims were taken from their homes or arrested while they were out and about, and were not informed of the reasons for their detention, or allowed to communicate with their family members, or with a lawyer to obtain assistance. They indicated that the presumed victims were obliged to get into vehicles transporting other people with the same physical

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476 The pertinent part of Article 5 (Right to Humane Treatment) of the Convention stipulates: "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."

477 The identity documents of Willian Medina Ferreras, and the safe-conducts of Jeanty Fils-Aimé and Bersson Gelin.

478 The presumed victims regarding whom the violations were alleged include: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Diana Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean, and Natalie Jean.

479 Including: William Gelin and Antonio Sensión.

characteristics, in some cases, to detention centers for ordinary prisoners – even if they were accompanied by young children – without knowing what would happen to them. In addition, the representatives alleged that the presumed victims saw how the authorities mistreated other people detained in similar circumstances, and also that they themselves were subject to verbal abuse. This caused the presumed victims to feel anguish and helplessness together with a well-founded fear that they, or one of their family members, could be a victim of violence and ill-treatment by the authorities. Several family groups were taken to detention centers without appropriate conditions before their deportation, even though they had not committed a wrongful act and it was never proved that they had committed an immigration offense, and this caused profound suffering. The representatives also stated that the presumed victims were transported to the border in inadequate conditions; they were not given food or water.

435. Like the Commission, the representatives indicated that the identity documents of some of the presumed victims were seized, and others had been unable to obtain identity documents for themselves and their children, owing to the context of discrimination towards Dominicans of Haitian descent that reigns in the Dominican Republic. Accordingly, they lived in a situation of uncertainty because they did not possess any proof of their identity or juridical personality. The representatives added that those expelled suffered profoundly because they were obliged to live in a country that they did not know. Furthermore, they referred to the opinion of expert witness Rosa Del Rosario Lara, who explained the different symptoms of anxiety and depression suffered by the presumed victims in relation to the events that occurred during the expulsions, and the situation that they faced during the time before they were able to reunite with their family members. In addition, the representatives indicated that the different violations committed to the detriment of the presumed victims in this case caused profound suffering to the members of their families.

436. Lastly, the representatives asked the Court to declare the violation of the right to personal integrity, recognized in Article 5 of the Convention, with regard to the members of the Medina, Fils-Aimé, Sensión, Jean, Gelin and Pérez Charles families who were detained or expelled, in relation to the failure to comply with the obligations established in Article 1(1) of the Convention and the obligations contained in Article 19 of this instrument, in the case of the children.

437. The State indicated that the arrest of individuals who will be deported is part of the usual deportation process and that they are taken to “special shelters” for undocumented migrants. This deportation process is governed by Immigration Law No. 95 of 1939.[480] The State also argued that the case file does not contain any medical certificate, photograph or other document proving that the presumed victims were caused any physical harm. Furthermore, there is no record that they were, in fact, subject to verbal abuse, which would determine whether the arrest was truly an arbitrary detention; in other words, that it was not in keeping with the legitimate exercise of the State’s sovereignty to maintain public order. Based on the legal arguments presented, the Court’s

[480] Article 13 of this law established that: "[t]he following aliens shall be arrested and deported by order of the Secretary of State for Internal Affairs and Police or of other officials designated to this end: 1. Any alien who enters the Republic following the date of publication of this law, by means of false or misleading declarations or without inspection and admission by the immigration authorities at one of the indicated ports of entry; […] 7. Any alien who remains in the Republic in violation of any restriction or condition under which he was admitted as a non-immigrant; […] 10. Any alien who has entered the Republic before the date of the entry into force of this law who does not possess a residence permit and who, within three months of this date, does not request a residence permit, as required by this law.”

case law and, in particular, the lack of evidence in the case file, the State concluded that it had not violated the right to personal integrity with regard to the presumed victims.[481]

B) Considerations of the Court

438. In the case *sub judice,* the Court considers it desirable to point out that it has already established the international responsibility of the State for the violation of the rights to nationality, recognition of juridical personality, a name, personal liberty, judicial guarantees and protection, freedom of movement and residence, and protection of the family with regard to different victims and, in the case of the children, the rights of the child, in relation to the situation of vulnerability of the victims because, according to the facts of this case, their situation is inserted in a context of collective expulsions or deportations. Some of the victims were expelled from the Dominican Republic, even though they had Dominican nationality and had their birth certificate and/or identity card, which were disregarded or destroyed by the State authorities. In other cases, the State had not granted the victims the corresponding documentation, even though they were born in the Dominican Republic, and had faced difficulties trying to obtain it. Consequently, the State did not recognize their nationality, or their juridical personality, or their name, and also, owing to this series of violations, their right to identity. Also, some victims who were Haitian nationals were expelled. Additionally, the victims were detained unlawfully and arbitrarily without knowing the reasons for the deprivation of liberty, and without being brought before a competent authority, and were expelled in less than 48 hours, without the basic guarantees of due process having been observed. Also, in the case of some of the victims, the State failed to comply with its obligation to protect the family, and to safeguard the family from arbitrary interference in its private or family life. The Court notes that most of the arguments of the Commission and the representatives are related to the facts have already been examined. Consequently, the Court finds that, in this case, it is not in order to rule on arguments referring to facts that have already been analyzed in light of other obligations under the Convention.

XII
RIGHT TO PROPERTY[482]

A) Arguments of the Commission and of the parties

439. The Commission considered that "the victims' expulsion meant the automatic and *de facto* loss of all those personal effects that were left behind in Dominican territory, which is an unlawful deprivation of their property for which they received no compensation." It added that the presumed victims had household furnishings, personal effects, clothing, livestock, savings and cash, or unpaid wages. In addition, it observed that, in deportation cases, the confiscation of personal effects was not permitted under Dominican law and that, despite the domestic laws in force, the presumed victims did not have the opportunity to retrieve their belongings, personal effects, and cash at the time of their expulsion. Consequently, it considered that the State had violated the right to property

[481] The State referred, among others, to the following presumed victims: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé (deceased), Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Carolina Fils-Aimé, Bersson Gelin, William Gelin, Antonio Sensión, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean.

[482] The pertinent part of Article 21 establishes: "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."

established in Article 21 of the American Convention, in relation to Article 1(1), to the detriment of some presumed victims.[483]

440. The representatives referred to the fact that some of the presumed victims were forced from their home without having the opportunity to take their possessions with them, and without being able to return to their place of origin for a long time. In other cases, they indicated that the presumed victims were deprived of the possessions that they had taken with them by the authorities who detained them. The representatives considered that "the expulsion of the presumed victims entailed, for all of them, interference in the enjoyment of the right to property in relation to several of their belongings." Consequently, they asked the Court to declare that the State had violated Article 21 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Willian Medina Ferreras, Jeanty Fils-Aimé, Victor Jean, Bersson Gelin and Rafaelito Pérez Charles.

441. For its part, the State asserted that there was no evidence in the case file to prove material losses, "not even documentary or circumstantial proof, other than the statements of the presumed victims themselves that, at some time, they had possessed these objects, money or household goods." Accordingly, the State indicated that it was not responsible for the presumed violations of the right contained in Article 21 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of some presumed victims.[484]

B) Considerations of the Court

442. The Court has already determined that the expulsion of Ana Virginia Nolasco and her daughters, Ana Lidia and Reyita Antonia, both surnamed Sensión, falls outside the temporal competence of the Court; hence, it is not pertinent to examine the alleged violation of the right to property recognized in Article 21 of the Convention, in relation to them.

443. As regards the members of the Medina, Jean, Fils-Aimé, Bersson Gelin and Rafaelito Pérez Charles families, although both the Commission and the representatives argued the loss of household furnishings, personal effects, clothing, livestock (pigs, hens, cows, horses), savings and cash or wages owed to the presumed victims, the Court considers that the facts described and alleged by the Commission and the representatives are related to facts that have already been examined in Chapter IX of this Judgment, so that there is no need to rule on this.

XIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

444. Based on Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation, and that this provision reflects a customary norm that constitutes

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[483] Including: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Nené Fils-Aimé, Diana Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, Ana Virginia Nolasco, Ana Lidia Sensión, Reyita Antonia Sensión, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean.

[484] Including: Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina (deceased), Jeanty Fils-Aimé, Janise Midi, Nené Fils-Aimé, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, Rafaelito Pérez Charles, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean.

one of the fundamental principles of contemporary international law on State responsibility.[485] In this case, the Court has considered it necessary to award different measures of reparation in order to ensure the violated rights and to redress the harm integrally.

445. It should be noted that this Court has established that reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective harm. Therefore, the Court will observe the concurrence of these factors to rule correctly and pursuant to law.[486]

446. In light of the foregoing considerations on the merits of the case and the violations of the American Convention declared in Chapters VIII, IX and X, the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law with regard to the nature and scope of the obligation to make reparation, in order to establish measures aimed at redressing the harm caused to the victims.[487]

A) Injured party

447. The Court reiterates that, in the terms of Article 63(1) of the Convention, those who have been declared victims of the violation of any right recognized in this instrument are considered to be the injured party. Therefore, the Court considers that the "injured party" are: Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Antonio Fils-Aimé Midi, Diane Fils-Aimé Midi, Endry Fils-Aimé Midi, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean, Natalie Jean, Antonio Sensión, Ana Virginia Nolasco, Reyita Antonia Sensión, Ana Lidia Sensión, Rafaelito Pérez Charles, Bersson Gelin and William Gelin, and, as victims of the violations declared in Chapters VIII, IX and X, they will be considered beneficiaries of the reparations ordered by the Court.

B) Measures of integral reparation: restitution, satisfaction, and guarantees of non-repetition

448. International case law, and in particular that of the Court, has established repeatedly that the judgment constitutes *per se* a form of reparation.[488] Nevertheless, considering the circumstances of the case and the harm to the victims arising from the violations of the American Convention that have declared to their detriment, the Court finds it pertinent to decide the following measures of reparation.

B.1. Measures of restitution

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485 *Cf. Case of Velásquez Rodríguez v. Honduras. reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 412.

486 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 414.

487 *Cf. Case of Velásquez Rodríguez v. Honduras. reparations and costs,* paras. 25 to 27, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 415.

488 *Cf. Case of Neira Alegría et al. v. Peru. reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 394.

B.1.1. Recognition of nationality to the Dominicans and residence permits for the Haitians

B.1.1.1. Willian Medina Ferreras and the members of his family

449. The Commission asked the State to permit all the victims who are still in Haitian territory to return to the territory of the Dominican Republic and to take the measures required: (a) to recognize the Dominican nationality of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Miguel Jean, Victoria Jean and Natalie Jean and to provide or to replace all the necessary documentation proving that they are Dominican nationals; (b) to provide "Bersson Gelin and Victor Jean with the necessary documentation certifying that they were born Dominican territory, and to facilitate the procedures corresponding to the recognition of their Dominican nationality," and (c) to allow Lilia Jean Pierre, Janise Midi, Ana Virginia Nolasco, Marlene Mesidor and Markenson Jean, Haitian nationals, to live with their families in Dominican territory as legal residents.

450. The representatives asked the Court to order the State to grant, as soon as possible, "the official documents recognized by the State to certify the identity of the Dominicans, so that they may use these documents for the relevant purposes." They also asked that the State "grant the appropriate immigration status to each of the victims, who are Haitian citizens, so that they may remain lawfully in Dominican territory with the members of their families."

451. The State asserted that "[r]egarding the recognition of the Dominican nationality of the presumed victims, […] it is only able to act in accordance with the domestic laws that are in force, and […] is unable to circumvent the legal requirements for granting nationality." It indicated that, as appropriate and based on the decisions reached by the Court, it "will proceed accordingly, provided that the presumed victims agree to comply with the requirements established by domestic law for the granting of Dominican nationality, if this is in order."

452. The Court has determined that the authorities' disregard of the personal documentation of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina (deceased), entailed the violation, *inter alia*, of their right to nationality (*supra* para. 276). The Court also recalls that, in its answering brief, the State underscored that it had "indicate[d] opportunely that 'Willia[n] Medina Ferreras, [A]wilda Medina [and] Luis Ney Medina […] are Dominican citizens […] so that there is no objection to replacing the corresponding documentation, either the birth certificate or the identity card, as appropriate." Therefore, the Court considers that, within six months, the Dominican Republic must adopt the measures required to ensure that Willian Medina Ferreras, Awilda Medina and Luis Ney Medina have the necessary documentation to prove their identity and their Dominican nationality, and must, if necessary, proceed to replace or restore documentation, as well as to take any other measure required in order to comply with this decision, free of charge.

453. The Court notes that Law No. 169-14 institutes a procedure to regularize documentation and has determined that articles 6, 8 and 11 of this law are contrary to the Convention, but not that the law as a whole is contrary to this instrument. Having established this, it must be indicated that it is not pertinent for the Inter-American Court to rule on whether or not the articles of this law that have not been declared contrary to the Convention by the Court are appropriate to comply with the measure ordered in the preceding paragraph. However, it is pertinent to indicate that Law No. 169-14, or any other procedure, must be implemented in keeping with the decisions made in this Judgment and, in particular, with the provisions of the preceding paragraph.

454. The Court also underlines that article 3 of Law No. 169-14 excludes the possibility of regularizing "records based on false information, identity theft, or any other act that constitutes falsifying a public deed, provided that the act can be attributed directly to the beneficiary." The Court has been informed of administrative and judicial proceedings to decide on the annulment of records and documentation of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, and Carolina Isabel Medina (deceased), as well as on the criminal sanction of presumed wrongful acts in this regard. These proceedings originated from an administrative investigation arising from the fact that Willian Medina Ferreras was a plaintiff, under the inter-American system, requiring that the Court declare the international responsibility of the Dominican Republic (*supra* para. 208). Thus, the facts reveal that the actions and interviews on September 26 and 27, 2013, that resulted in other proceedings, including of a judicial nature (*supra* para. 207), were conducted "because this person is suing the Dominican State before the Inter-American Commission on Human Rights" (*supra* para. 207).

455. Consequently, it should be recalled that Article 53 of the Court's Rules of Procedure establishes that "States may not prosecute […] presumed victims, or […] implement reprisals against them […] on account of their statements […] or their legal defense before the Court."[489]

456. It should be recalled that States have the power to institute proceedings to penalize or annul acts contrary to their laws. However, Article 53 of the Rules of Procedure prohibits, in general, the "prosecut[ion]" or the implementation of "reprisals" on account of "statements or [the] legal defense" before the Court. The purpose of this norm is to ensure that those who intervene in the proceedings before the Court may do so freely, in the certainty that it will not prejudice them. Hence, regardless of whether or not the documentation relating to Willian Medina Ferreras and the members of his family is null and void, or whether or not an offense was committed (matters that the State may investigate), in this case the explicit reason behind certain administrative investigations relating to some victims, which resulted in judicial proceedings, was the fact that the State was being sued in the international sphere, In these circumstances, the Court notes that the State's conduct has impaired the safety of the procedural activity that Article 53 seeks to protect. Thus, the Court cannot consider that legal proceedings arising from a violation of Article 53 of the Rules of Procedure are valid, because this provision could not achieve its purpose if proceedings instituted in violation of the provision were found to be legitimate. Therefore, notwithstanding the State's power to take measures under its domestic laws and its international undertakings to punish acts that are contrary to domestic law, the above-mentioned administrative and judicial proceedings cannot represent an obstacle to compliance with any of the measures of reparation ordered in this Judgment, including that related to the adoption of measures aimed at providing Willian Medina Ferreras, Awilda Medina and Luis Ney Medina with the documentation required to prove their identity and Dominican nationality.[490]

457. Based on the above, the Dominican Republic must also adopt, within six months, the necessary measures to annul the said administrative investigations, as well as the civil

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[489] It should be placed on record that, in their observations of April 10 and 14, 2014 (*supra* para. 19), respectively, both the representatives and the Commission asserted that the judicial proceedings related to the documentation of Willian Medina Ferreras and his family members "could be a retaliation […] for having recourse to the organs of the [inter-American] system," or the State could be "violating the regulatory norm according to which States may not take reprisals against those who testify before the Court."

[490] Thus, if eventually applicable, the administrative and judicial proceedings underway in relation to the said persons cannot result in the application of Article 3 of Law No. 169-14 (*supra* para. 454).

and criminal proceedings that are underway (*supra* para. 208), relating to records and documentation of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina. The eventual continuation, and possible results, shall have no effects with regard to the said victims as regards compliance with this Judgment.

B.1.1.2. Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean

458. The Court has also determined that the absence of records and documentation of Victor Jean, Miguel Jean, Victoria Jean (deceased) and Natalie Jean, violated, *inter alia*, the rights to recognition of juridical personality, a name, and nationality of these persons, as well as the right to identity, owing to these violations taken as a whole. Therefore, the State must adopt, within six months, the measures required to ensure that Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean are, as appropriate, duly registered and have the necessary documentation to prove their identity and Dominican nationality; that is, their birth certificate and, as appropriate, also their identity card. The State may not make compliance with this decision dependent on the opening or continuation of any procedure or proceedings by the victims or their representatives, and may not require any cost for this.

B.1.1.3. Marlene Mesidor

459. The Court notes that Marlene Mesidor has children who are Dominicans, including a daughter who is still a child and a victim in this case: Natalie Jean. Therefore, taking into account the rights of the family, and also the rights of the child,[491] the Court finds that the State must adopt, within six months, the necessary measures to ensure that Marlene Mesidor may reside or remain lawfully in the territory of the Dominican Republic, together with her children, some of whom are still children (*supra* footnote 69), in order to keep the family unit together in light of the protection of the rights of the family.

B.2. Measures of satisfaction

B.2.1. Publication of the Judgment

460. The Court orders, as it has in other cases,[492] that the State must publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the Official Gazette of the Dominican Republic and (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation. In addition, this Judgment, in its entirety must remain available for one year on an easily accessible official website of the State.

B.3. Guarantees of non-repetition

461. In cases such as this one, the guarantees of non-repetition acquire increased relevance to ensure that similar events are not repeated and to contribute to prevention.[493] In this regard, the Court recalls that the State must prevent the recurrence

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[491] It should be borne in mind that the Convention on the Rights of the Child establishes, as part of the regime for the integral protection of the child, the obligation to prevent family separation and preserve family unity. *Cf.* Committee on the Rights of the Child, General comment 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/CG/14, May 29, 2013, para. 60.

[492] *Cf. Case of Cantoral Benavides v. Peru. reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 428.

[493] *Cf. Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 241, para. 92, and *Case of Veliz Franco et al. v. Guatemala*, para. 260. See also, "Guarantees of

of human rights violations such as those described in this case and, to this end, adopt all the legal, administrative and other types of measures necessary to make the exercise of human rights effective, pursuant to the obligations to respect and ensure rights established in Articles 1(1) and 2 of the Convention.[494]

B.3.1. Human rights training for State agents

462. The Commission asked the Court to order the State "to ensure that the Dominican authorities who perform immigration functions receive an intensive training in human rights to ensure that, when performing their functions, they respect and protect the fundamental rights of everyone, without any discrimination for reasons of race, color, language, national or ethnic origin, or other social condition." In addition, it asked that the Court order the State to adopt measures of non-repetition "that ensure the cessation of the practice of collective expulsions and deportations, adjust repatriation procedures to conform to international human rights standards […] guaranteeing the principle of equality and non-discrimination and observing the State's specific obligations towards children and women." It added that the State should implement effective measures to eradicate the practice of "sweeps" or immigration control operations based on racial profiling, and also establish effective judicial remedies for cases of human rights violations committed in the course of expulsion of deportation procedures.

463. Meanwhile, the representatives asked the Court to order the State to implement "an intensive education and training program for State agents, including immigration and civil registry officials at all levels, on standards for equality and non-discrimination." They indicated that this program should have a "component dedicated to the incompatibility of racial profiling as a mechanism for making arrests based on either immigration or criminal grounds" and that it should be accompanied by "a national awareness-raising campaign, focused principally on the fundamental nature of the principles of non-discrimination and equal protection of the law and its relationship to respect for human dignity. They also indicated that, in order to avoid a repetition of events such as those referred to in this case it was essential that the Court order the State to adjust deportation and expulsion procedures to international human rights law. To this end, the State should adopt any administrative or legislative measures that might be necessary to ensure the absolute prohibition of collective expulsions and establish penalties for the authorities who implement them. It should also ensure respect for the guarantees of due process of individuals subject to expulsion and deportation procedures.

464. The Court has considered that the effectiveness and impact of human rights education programs for public officials is crucial in order to generate guarantees of non-repetition of human rights violations.[495]

465. Based on the facts and the violations declared in the case *sub judice*, the Court considers it relevant to enhance respect for and to ensure the rights of the Dominican population of Haitian descent and the Haitian population by training those involved in immigration matters, such as members of the Armed Forces, border control agents, and

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non-repetition […] will also contribute to prevention." United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution adopted by the General Assembly of the United Nations, UN Doc. A/Res/60/147, 16 December 2005, principle 23.

494 *Cf. Case of Velásquez Rodríguez. Merits,* para. 166, and *Case of Veliz Franco et al. v. Guatemala*, para. 260.

495 *Cf. Case of the Las Dos Erres Massacre v. Guatemala,* para. 252, and *Case of Nadege Dorzema et al. v. Dominican Republic,* para. 269.

agents responsible for immigration and judicial proceedings, so that events such as those of this case are not repeated. To this end, the Court finds that the State must implement, within a reasonable time, continuous and permanent training programs on topics that concern this population in order to ensure: (a) that racial profiling never constitutes a reason for detention or expulsion; (b) strict observance of the guarantees of due process during any proceedings related to the expulsion or deportation of aliens; (c) that Dominican nationals are never, in any circumstance, expelled, and (d) that collective expulsions of aliens are never executed.

B.3.2. Adoption of domestic legal measures

466. The Commission considered that the State should "adopt measures […] including a review of domestic legislation on registration 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 race or national origin, taking into account the principle of *ius soli* established by the State, the State obligation to prevent statelessness, and the applicable international human rights law standards."

467. The representatives asked the Court to order the State to adapt its domestic laws and practices concerning registration and the granting of nationality to international human rights law and, more specifically, to adopt administrative and legislative measures to eliminate the distinction established in Dominican law that prevents the children of aliens born in the Dominican Republic from acquiring this nationality.

468. The Court has established that judgment TC/0168/13 and articles 6, 8 and 11 of Law No. 169-14 violate the American Convention (*supra* para. 325). Consequently, the Dominican Republic must, within a reasonable time, take the necessary measures to avoid these laws continuing to produce legal effects.

469. The Court has established that, in the Dominican Republic, considering the irregular migratory status of parents who are aliens as grounds for an exception to the acquisition of nationality based on *ius soli* is discriminatory and, therefore, violates Article 24 of the Convention, and "has found no reason […] to differ from its finding in its judgment in the *Case of the Yean and Bosico Girls v. Dominican Republic*, that an individual's immigration status is not transmitted to his or her children" (*supra* paras. 318). In addition, the Court has indicated that the application of this criterion deprives an individual of legal certainty in the enjoyment of the right to nationality (*supra* paras. 298 and 314), which violates Articles 3, 18 and 20 of the Convention, and owing to these violations taken as a whole, the right to identity (*supra* paras. 301 and 325). Therefore, in keeping with the obligation established in Article 2 of the American Convention, the State must adopt, within a reasonable time, the necessary measures to annul any type of norm, whether administrative, regulatory, legal or constitutional, as well as any practice, decision or interpretation that establishes or has the effect that the irregular status of parents who are aliens constitutes grounds for denying Dominican nationality to those born on the territory of the Dominican Republic, because such norms, practices, decisions or interpretations are contrary to the American Convention.

470. In addition to the foregoing, in order to avoid a repetition of facts such as those of this case, the Court finds it pertinent to establish that the State must adopt, within a reasonable time, the legislative and even, if necessary, constitutional, administrative or any other type of measures required to regulate a simple and accessible procedure to register births, to ensure that all those born on its territory may be registered immediately

after birth, regardless of their descent or origin, and the migratory situation of their parents.[496]

471. Lastly, the Court finds it pertinent to recall, without prejudice to the measures that it has established, that, in their sphere of competence, "all the authorities and organs of a State Party to the Convention have the obligation to exercise a 'control of conventionality.'"[497]

B.3.4. Other measures

472. In the circumstances of this case, the Court finds it pertinent that the State adopt other measures in order to implement the expulsion or deportation procedures in strict compliance with the guarantees of due process, and not to carry out collective detentions or expulsions of aliens.

B.3.5. Other measures requested

473. The Commission asked the Court to order the State to "investigate the facts of this case, determine who is responsible for the violations that have been proved, and establish the necessary sanctions."

474. The representatives indicated that "the victims were detained, in an illegal and arbitrary manner, and subsequently expelled from Dominican territory." Accordingly, they asked that the Court order the State: (a) "to investigate the facts and to punish those responsible. This should include conducting the necessary administrative and criminal proceedings, which should encompass all those who took part in the [facts]"; (b) to organize an act of "public acknowledgement of the State's responsibility"; (c) to provide "free medical and psychosocial assistance to the victims and the members of their families ensuring that they can have access to a State medical center in which they are provided with appropriate and personalized treatment that will help them heal their physical and psychological wounds arising from the violations they suffered." The treatment should "include the cost of any medicines that are prescribed" and should follow an "individual assessment" of each victim. The representatives also requested that the medical center that provides the necessary attention "should be in a place accessible to the victims' homes." Lastly, they indicated that, for the victims who live in Haiti, the State should "provide a reasonable sum of money to cover the costs corresponding to medical and psychological treatment, and the purchase of any medicines they are prescribed."

475. The Court has already determined that, in this case and based on the respective arguments that have been presented, it is not in order to examine the alleged failure to observe the obligation to investigate the facts of the case. Regarding the psychosocial

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[496] *Case of the Yean and Bosico Girls v. Dominican Republic,* para. 239 to 241. In this regard, paragraph 240 establishes that "[t]his Court considers that the State, when establishing the requirements for the late registration of births, should take into account the particularly vulnerable situation of Dominican children of Haitian descent. The requirements should not represent an obstacle to obtain Dominican nationality and should be only those that are essential to establish that the birth took place in the Dominican Republic. In this regard, the identification of the father or the mother of the child should not be restricted to the presentation of the identity and electoral card, but, to this end, the State should accept any other appropriate public document, because the said identity card is exclusive to Dominican citizens. Also, the requirements must be standard and clearly established, so that the application is not subject to the discretion of State officials, thus ensuring the legal certainty of those who use this procedure, and in order to effectively ensure the rights established in the American Convention, pursuant to Article 1(1) of the Convention."

[497] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 142, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 436.

treatment requested by the representatives, the Court considers that the said measures are not intrinsically related to the violations declared in this Judgment; therefore, it does not deem it pertinent to order them. Furthermore, it does not find it necessary to order the act of public acknowledgement of responsibility. Nevertheless, the Court reiterates that the delivery of this Judgment constitutes *per se* a form of reparation, and considers that the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims.

C) Reparations for pecuniary and non-pecuniary damage

476. The Commission has requested the payment of "full compensation to the victims, or their heirs where applicable, that includes the pecuniary and non-pecuniary harm caused, and the property that the victims left in the Dominican Republic at the time of their expulsion.

477. The representatives requested that, when establishing the pecuniary damage, the Court take into account the consequential damage and loss of earnings. They argued that "the victims were detained without being allowed to take with them any type of property, and especially documents that proved their possession or ownership of this." They also indicated that, "owing to the way in which the expulsions were carried out, the victims had to abandon the few possessions they had, and could not recover them subsequently." On this basis they asked the Court to "establish the sum that the State should pay [the victims] in […] equity." They also alleged that "the victims in this case and the members of their family lost their income as a result of the violations suffered due to different circumstances," and therefore asked that the Court establish a sum, in equity, in their favor. In addition, they asked the Court to order the State to "compensate the non-pecuniary damage caused to the members of the Medina Ferreras, Fils-Aimé, Jean, Gelin and Pérez Charles families who were detained and expelled, owing to the violations of their rights." In this regard, they asked the Court to establish "the sum of US$10,000.00 (ten thousand United States dollars) [for] each beneficiary" and the sum of US$5,000.00 (five thousand United States dollars) for the family members of the presumed victims who were affected by the expulsion of their loved ones.

478. The State asked the Court to reject all the reparations, "because the assessment of the evidence in the case file, the arguments of the parties, and the Court's consistent case law does not reveal that the State has incurred international responsibility and, thus, the right to reparation of any of the presumed victims has not arisen. It also argued that, "other than the statements of each victim, the representatives of the victims have not submitted evidence to substantiate the existence or the value of the property that they owned at the time of the events, or their occupations." The State also considered that the assessment of eventual non-pecuniary damage by the representatives of the presumed victims was exaggerated and asked the Court to determine this based on its case law in this type of case. In addition, the State indicated that "when establishing the amounts for pecuniary compensation, the economic reality of the Dominican State should be taken into account, [because] following the global financial crisis, the country's economic development has fallen behind, and this is why the amounts requested by the representatives of the presumed victims are not necessarily in keeping with the economic reality of the State."

C. 1. Pecuniary damage

479. The Court has developed the concept of pecuniary damage in its case law and has established that it supposes "the loss of, or detriment to, the income of the victims, the

expenses incurred because of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."[498]

480. The information provided reveals that, owing to the detention and expulsion, the Medina family lost a horse valued at RD$3,400 Dominican pesos, a mule valued at RD$2,800 Dominican pesos, four cows valued at RD$5,000 Dominican pesos each, 43 hens valued at RD$200 Dominican pesos each, their house in Oviedo, which was worth approximately RD$50,000 Dominican pesos, and two beds, one table, four chairs, valued at RD$10,500 Dominican pesos. The Fils-Aimé family lost two beds, eight chairs, clothing, 19 pigs, one donkey, one goat, several hens, 36 turkeys valued at RD$500 Dominican pesos each, and a lot where Jeanty Fils-Aimé planted corn, pigeon peas and yam, all with an approximate value of RD$50,000 Dominican pesos. The Jean Mesidor family lost two beds, one table, four chairs, a refrigerator, a stove, a gas tank, fans, a television, a radio, clothing, and sheets for six people, and Victor Jean was unable to collect RD$1,000 Dominican pesos. Bersson Gelin lost approximately RD$3,000 Dominican pesos that were stolen from him during the expulsion, and, owing to the detention and expulsion, he was unable to collect three months of wages that his employer owed him, amounting to RD$42,000 Dominican pesos. Regarding the supposed disbursements made by the Medina family for the medical treatment of the child Awilda Ferreras Medina, the evidence provided to the Court does not reveal a causal nexus between the problems suffered by the child and the violations declared in this Judgment.

481. In this regard, the Court considers, based on the facts, that the victims were summarily expelled by the State without being able to take their belongings with them or to collect them or to dispose of them. Consequently, it can be presumed that they suffered financial losses on being expelled and, owing to the factual situation, it is evidently impossible for them to have probative elements to prove this. Taking into account that the Medina, Fils-Aimé and Jean Mesidor families, and Bersson Gelin were expelled when the Court had temporal competence, the Court establishes, in equity, the sum of US$8,000.00 (eight thousand United States dollars) for each family for pecuniary damage. The amount corresponding to each family must be delivered, respectively, to Willian Medina Ferreras, Janise Midi, Bersson Gelin, and Victor Jean. With regard to the request relating to the transport and accommodation expenses for the journeys made by Antonio Sensión and Rafaelito Pérez Charles, the Court rejects them, because it has not been proved that these expenses are connected to the violations declared to their detriment.

482. Furthermore, with regard to the alleged loss of earnings of Antonio Sensión, Bersson Gelin, Rafaelito Pérez Charles, Jeanty Fils-Aimé, Willian Medina Ferreras and Victor Jean on losing their Jobs and their means of subsistence, although the representatives referred to the different activities they carried out, they failed to submit any evidence relating to the income that the victims received, or to possible future income, or information relating to their wages. Consequently, the Court does not have sufficient elements to make this determination and therefore rejects this request.

C.2. Non-pecuniary damage

483. The Court has developed the concept of non-pecuniary damage in its case law and has established that this "may include both the suffering and afflictions caused by the violation, and also the impairment of values that are very significant for the individual and

[498] *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 441.

any change of a non-pecuniary nature, in the living conditions of the victims."[499] Since it is not possible to assign a precise monetary equivalent to the non-pecuniary damage, this can only be compensated, in order to ensure full reparation for the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value determined by the Court in reasonable application of judicial discretion and based on equity.[500] In addition, the Court reiterates the compensatory nature of damages, the nature and amount of which depend on the harm caused, so that they should not result in the enrichment or impoverishment of the victims or their heirs.[501]

484. This Court has affirmed that non-pecuniary damage is evident, because it is inherent in human nature that any person whose human rights are violated endures suffering.[502] In relation to the victims in this case, the Court has declared the international responsibility of the State for various violations, depending on the specific situation of each victim. Thus, it has established the violation of the rights to nationality, to recognition of juridical personality, to a name (and owing to these violations taken as a whole, to identity), to personal liberty, to personal integrity, to judicial guarantees and protection, to protection of the family, to privacy in relation to the interference in the home, to movement and residence, to equality before the law and the prohibition of discrimination with regard to different victims, as well as in relation to the rights of the child with regard to the children in this case.

485. Based on the foregoing, the Court establishes, in equity, the following amounts for non-pecuniary damage:

a) *Medina Ferreras family*

Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, and Carolina Isabel Medina (deceased): the sum of US$10,000.00 (ten thousand United States dollars) each. The amount corresponding to Carolina Isabel Medina shall be delivered, in equal parts, to the other victims from her family.

b) *Fils-Aimé family*

Jeanty Fils-Aimé (deceased), Janise Midi, Endry Fils-Aimé, Antonio Fils-Aimé and Diane Fils-Aimé: the sum of US$10,000.00 (ten thousand United States dollars) each. The amount corresponding to Jeanty Fils-Aimé shall be delivered, in equal parts, to the other victims from his family.

c) *Gelin family*

Berson Gelin and William Gelin: the sum of US$10,000.00 (ten thousand United States dollars) each.

d) *Sensión Family*

Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión: the sum of US$10,000.00 (ten thousand United States dollars) each.

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499 *Cf. Case of the "Street Children" (Villagrán Morales et al.),* para. 84, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 441.

500 *Cf. Case of Cantoral Benavides v. Peru. reparations and costs*, para. 53, and *Case of Veliz Franco et al. v. Guatemala*, para. 295.

501 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Veliz Franco et al. v. Guatemala*, para. 295.

502 *Cf. Case of Reverón Trujillo v. Venezuela,* para. 176, and *Case of Veliz Franco et al. v. Guatemala*, para. 299.

e) *Jean family*

Victor Jean, Marlene Mesidor, Markenson Jean, Miguel Jean, Victoria Jean (deceased), and Natalie Jean: the sum of US$10,000.00 (ten thousand United States dollars) each. The amount corresponding to Victoria Jean shall be delivered, in equal parts, to the other victims from her family.

f) *Pérez Charles family*

Rafaelito Pérez Charles: the sum of US$10,000.00 (ten thousand United States dollars).

D) Costs and expenses

486. The representatives indicated that CEJIL, MUDHA, GAAR and Columbia University have represented the presumed victims and the members of their families during the proceedings before the Court. Consequently, they stated that "CEJIL has represented the victims […] since 2009," and that "while exercising this representation it has incurred expenses that include travel, accommodation, communications, photocopies, stationery and mailings." They also indicated that "CEJIL has incurred expenses corresponding to legal work specifically related to this case and to investigating, gathering and presenting evidence." On this basis, they asked that the Court establish the sum of US$8,927.00 (eight thousand nine hundred and twenty-seven United States dollars). In their final written arguments, they argued that, following the presentation of the motions and arguments brief, CEJIL had incurred expenses relating to a trip for two persons from Washington D.C. to the Dominican Republic and a trip by three persons from Washington D.C. to Mexico, among their expenses were plane tickets, land transport, accommodation, communications, photocopies, stationery, and mailings. They indicated that the estimate of the expenses incurred amounts US$9,742.00 (nine thousand seven hundred and forty-two United States dollars).

487. With regard to the expenses incurred by MUDHA, the representatives stated that this organization has represented the victims "for around a decade, taking different steps at the national and international level." However, they indicated that "it does not have vouchers for all the expenses incurred," and therefore asked the Court to establish, in equity, the sum of RD$200,000.00 (two hundred thousand Dominican pesos) for expenses. They added in the brief with final arguments that MUDHA had paid all the expenses of its team that attended the public hearing and would send the corresponding vouchers to the Court, but it did not indicate any amount in this regard.

488. Regarding the expenses incurred by GARR, the latter asked "the Court to determine, in equity, the representation expenses in this case." The representatives indicated that GARR had paid the expenses of one person to attend the public hearing held in Mexico.

489. Lastly, with regard to the expenses incurred by the Human Rights Clinic of Columbia University, they indicated that it "had made at least nine trips to meet with the victims, to take their statements, and to discuss the progress in the case, including the friendly settlement procedure." They indicated that, although they did not have vouchers for each of these trips, "the records show that at least 23 round trips from New York to the Dominican Republic were bought, at an approximate cost of US$650 [(United States dollars)] each, which represents around US$14,950.00 [(fourteen thousand nine hundred and fifty United States dollars)]." They also indicated that the Clinic "incurred additional costs associated with the trips […] including accommodation in the Dominican Republic." Accordingly, they requested that the Court "recognize the sum of US$20,000.00 (twenty thousand United States dollars) for the expenses incurred by this organization." They

alleged that following the motions and arguments brief, the Human Rights Clinic had supported several measures taken at the national level and on the border with Haiti, in order to document evidence for the public hearing and paid the expenses of its team to attend the public hearing, indicating that the Clinic would forward the vouchers directly to the Court.

490. The State indicated that "none of the members of the representatives' team has specified or argued when they incurred the expenses corresponding to the vouchers provided, or their relationship to the case." In the case of CEJIL, the State indicated that "it had provided at least 116 pages with photocopies of presumed receipts […] many of which [contain] deletions, [are] unsigned and/or not stamped, and this undermines their authenticity." In addition, it indicated that "this representative does not provide a logical, detailed and illustrative account of the use of the financial resources supposedly disbursed […] so that the State has reasonable doubts that all these expenses were associated with this case" and asked the Court to reject them. Nevertheless, it indicated that, if the Court denied its request, it considered that the amount requested by CEJIL was "exorbitant" and therefore asked that the Court "establish, in equity, the amount to be reimbursed for the expenses that can be proved."

491. Regarding the Human Rights Clinic, the State indicated that "it has not provided all the documents that support the expenses it alleges it incurred, such as, for example, for the supposed international travel," and "it has not provided a logical, detailed and illustrative account of the use of the resources," and asked the Court to reject the amount requested by the Clinic. In addition, it considered that "it was unheard of that this Clinic would request recognition of more than double to costs requested by CEJIL, because it has only taken part in the proceedings since 2001, while the NGO has worked on the case since 1999." Consequently, it asked the Court "to "establish, in equity, the amount of the costs."

492. Lastly, with regard to the expenses of MUDHA and GARR, the State asked the Court "to reject them, purely and simply, because they are not supported by any document or voucher and they had not even provided a detailed and specific account to justify these disbursements." In addition, it affirmed that the Court "should not even apply recognition of costs in equity, because these representatives have not provided a single voucher for their monetary disbursements."

493. Regarding future expenses, the State asserted that it reserved the right to make observations on these when the representatives, jointly or individually, provided vouchers for expenses incurred with the appropriate explanation of the connection of such expenses to this case.

494. In its observations on the annexes presented by the representatives with their final written arguments, the State submitted different "objections" to the documents presented. In this regard, it indicated: (1) that the documents relating to the hotel reservations, "whether or not they had been used, could never prove the amount of money that was in fact paid"; the document relating to the Hotel Francés in Santo Domingo does not mention who the reservation was made for, and the other reservations refers to a presumed witness whose expenses were not covered by the Fund, but does not specify which witness; (2) regarding transportation expenses, there is an invoice for a taxi fare to and from a meeting with Tahira Vargas on July 10, 2013; the State observed that the representatives withdrew the opinion of this expert witness and, therefore, it could not accept the said expense, because the evidence was never provided to the proceedings. Also CEJIL had never provided an invoice supporting the alleged expense for transport to Pedernales from July 7 to 9, 2013; therefore, the State did not accept the supposed

disbursement, and (3) with regard to the communication expenses (office inputs and expenses, photocopies), CEJIL had not provided the invoices that supported these supposed disbursements, and had not substantiated these supposed disbursement on the basis of its work of legal representation in this case. Hence, the State did not accept the said supposed disbursements. Consequently, it asked the Court to exclude them from its examination of the file, or to reject the representatives' request to reimburse the said costs and expenses, because they lacked probative support. It rejected any other claim that the other three representatives, MUDHA, GARR and the Human Rights Clinic of Columbia University, might present because they had not submitted any claims to the Court.

495. The Court reiterates that, pursuant to its case law,[503] costs and expenses form part of the concept of reparation, because the activity deployed by the victims in order to obtain justice at both the national and the international level, entails disbursements that must be compensated when the international responsibility of the State is declared in a judgment.

496. The Court also reiterates that it is not sufficient to forward probative documents, but the parties must include arguments that relate the evidence to the fact that it is supposed to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.[504]

497. In this case, based on the arguments of the representatives concerning the request for costs and expenses and the evidence provided in this regard, the Court has verified that, in some cases, the amounts requested were not justified completely. Furthermore, the Court takes into account the State's observations on the inconsistency between the amounts requested and the vouchers provided and, in other cases, the failure to provide vouchers, and lastly the State's discrepancy with regard to the presentation of certain disbursements that it considered unjustified. Consequently, the Court will now examine separately the arguments of each organization that represents the victims.

498. In the case of CEJIL, having examined the vouchers presented as annexes to the motions and arguments brief and to the brief with final arguments, the Court has verified that, as the State indicated, there are vouchers that cannot be taken into account because the expenses have not been duly justified,[505] or did not arise from an evidentiary activity in this case,[506] or refer to expenses that were covered by the Victims' Legal Assistance Fund,[507] or their existence has simply not been proved owing to the absence of invoices to support them.[508] In addition, CEJIL presented a list of different expenses incurred and

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503 *Cf. Case of Garrido and Baigorria v. Argentina. reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 449.

504 *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*, para. 277, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 451.

505 Invoices have been attached without any description of the activity or the date: fs. 3572, 3590, 3602, 3604 and 3599.

506 Namely: payment of round trip by taxi to meet with Tahira Vargas in 2013; the representatives subsequently withdrew her presentation as an expert witness (*supra* para. 112) (file of preliminary objections, merits and reparations, f. 3581)

507 Namely: Per diems for expert witnesses Carlos Quesada and Bridget Wooding (file of preliminary objections, merits and reparations, fs. 3423 to 3438).

508 Documents unsupported by invoices that mention expenses incurred by CEJIL in relation to travel to the Dominican Republic, accommodation, meals, and transportation in the Dominican Republic (file of annexes to the motions and arguments brief, fs. 3570, 3571, 3585, 3586, 3593, 3594, 3595, 3596, 3598, 3600, 3601, 3603,

indicated that 30% of each item corresponded to activities in this case. Consequently, and owing to the inconsistencies between the amounts requested and the amounts substantiated, the Court establishes, in equity, the sum of US$10,000.00 (ten thousand United States dollars), that must be delivered to CEJIL.

499. In the case of MUDHA and GARR, these organizations asked the Court to establish, in equity, the amount corresponding to costs and expenses and did not present vouchers to justify the alleged disbursements, but merely listed them. The Court considers that the case file reveals that the two organizations carried out various procedural activities, both in the domestic jurisdiction and before the organs of the inter-American system during the processing of this case. Consequently, the Court establishes, in equity, the sum of US$3,000.00 (three thousand United States dollars) to be delivered to MUDHA and the sum of US$3,000.00 (three thousand United States dollars) to be delivered to GARR.

500. With regard to the Human Rights Clinic of Columbia University, the Court establishes, in equity, the sum of US$3,000.00 (three thousand United States dollars) to be delivered to this Clinic.

501. At the stage of monitoring compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for subsequent reasonable and duly substantiated expenses.[509]

E) Reimbursement of expenses to the Victims' Legal Assistance Fund

502. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the inter-American human rights system, "in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."[510] In this case, the Orders of the President of March 1 and September 6 and 11, 2013 (*supra* paras. 10 and 12) authorized access to the Legal Assistance Fund to cover the reasonable and necessary expenses that consisted in: (i) purchase of plane tickets for Willian Medina Ferreras, Bridget Frances Wooding and Carlos Enrique Quesada Quesada; (ii) a per diem to cover accommodation and meals in Mexico City D.F., on October 7, 8 and 9, 2013, for the first two, and on October 7 and 8, 2013, for the third, as well as these expenses for Mr. Medina Ferreras in the Dominican Republic, and (iii) airport expenses for these three persons.

503. In a note of the Secretariat dated January 31, 2014, the State was given the procedural opportunity to present its observations on the disbursements made in application of the Victims' Legal Assistance Fund, but did not submit them during the time granted for this purpose.[511]

3613, 3619, 3620, 3621, 3623, 3624, 3625, 3626, 3627, 3628, 3649, 3650, 3651, 3655, 3659, 3668, 3670, 3671, 3674, 3678, 3680 and 3682); and also expenses included in the table of expenditures that are not properly justified: f. 3569 (communication and administrative expenses).

509 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 291, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, para. 454.

510 AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, *"Creation of the Legal Assistance Fund of the Inter-American Human Rights System,"* operative paragraph 2(b), operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, *"Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System,"* article 1(1).

511 However, in its observations on the annexes presented as evidence by the representatives together with their final written arguments, the State presented "objections" with regard to some vouchers related to the expenses paid by the Victims' Fund. In this regard, when establishing the amount disbursed in application of the

504. As a result of the violations declared in this Judgment, the Court orders the State to reimburse the sum of US$5,661.75 (five thousand six hundred and sixty-one United States dollars and seventy-five cents) to this Fund for the expenses incurred. This sum must be reimbursed to the Inter-American Court within ninety days of notification of this Judgment.

F) Method of complying with the payments ordered

505. The State must pay the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons indicated herein, within one year of notification of this Judgment, in accordance with the following paragraphs.

506. In the case of the beneficiaries who are deceased, Jeanty Fils-Aimé, Carolina Isabel Medina and Victoria Jean, the compensation established in their favor must be delivered to the persons indicated in paragraph 484 of this Judgment.

507. The State must comply with its monetary obligations by payment in United States dollars. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit these amounts in their favor in an account or certificate of deposit in a solvent Dominican financial institution in United States dollars, and in the most favorable financial conditions allowed by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

508. The amounts allocated in this Judgment as compensation and to reimburse costs and expenses must be delivered to the persons and organizations indicated integrally, as established in this Judgment, without any deductions arising from possible charges or taxes.

509. If the State should incur in arrears, it must pay interest on the amount owed corresponding to banking interest on arrears in the Dominican Republic.

510. In keeping with its consistent practice, the Court reserves the authority inherent in its attributions and also derived from Article 65 of the American Convention to monitor complete compliance with this Judgment. The case will be concluded when the State has complied fully with its provisions.

511. Within one year of notification of this Judgment, the State must provide the Court with a report on the measures adopted to comply with it.

XIV
OPERATIVE PARAGRAPHS

512. Therefore,

THE COURT

DECIDES,

Fund, the Court has only taken into account those vouchers attached to the report that was forwarded to the State at the appropriate time (*supra* para. 21).

unanimously:

1. To reject the preliminary objections filed by the State concerning the failure to exhaust domestic remedies and the lack of competence *ratione personae*, in the terms of paragraphs 30 to 34 and 52 to 57 of this Judgment.

2. To admit partially the preliminary objection of lack of competence *ratione temporis* of the Court in relation to certain facts and acts, in the terms of paragraphs 40 to 47 of this Judgment.

DECLARES,

unanimously that:

3. The State violated the rights to recognition of juridical personality, to nationality and to a name recognized in Articles 3, 20 and 18 of the American Convention on Human Rights, as well as the right to identity, owing to the said violations taken as a whole, in relation to the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of the victims who were children at the time of the facts, in the terms of paragraphs 272 to 276 of this Judgment.

4. The State violated the rights to recognition of juridical personality, to nationality and to a name recognized in Articles 3, 20 and 18 of the American Convention on Human Rights, as well as the right to identity, owing to the said violations taken as a whole, in relation to the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of this instrument to the detriment of the victims who were children at the time of the facts and after March 25, 1999, in the terms of paragraphs 277 to 301 of this Judgment.

5. The State violated the right to personal liberty recognized in paragraphs 1, 2, 3, 4, 5 and 6 of Article 7 of the American Convention on Human Rights, in relation to the failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Antonio Fils-Aimé, Diane Fils-Aimé, Endry Fils-Aimé, Rafaelito Pérez Charles, Bersson Gelin, Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of the victims who were children at the time of the facts, in the terms of paragraphs 364 to 380, and 400 to 405 of this Judgment.

6. The State violated the prohibition of the collective expulsion of aliens established in Article 22(9) of the American Convention on Human Rights, in relation to the failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of the victims of Haitian nationality: Lilia Jean Pierre, Janise Midi, Marlene Mesidor and Markenson Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of Markenson Jean who was a child at the time of the facts, in the terms of paragraphs 381 to 384, 400 to 404 and 406 of this Judgment. In addition, the State violated the right to freedom of movement and residence, and the prohibition to expel nationals recognized in Articles

22(1) and 22(5) of the American Convention on Human Rights, in relation to the failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of the victims with Dominican nationality: Willian Medina Ferreras, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina, Rafaelito Pérez Charles, Victor Jean, Victoria Jean, Miguel Jean and Natalie Jean, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of the victims who were children at the time of the facts, in the terms of paragraphs 385 to 389, 400 to 404 and 406 of this Judgment.

7. The State violated the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1), and 25(1) of the American Convention on Human Rights, in relation to the failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Lilia Jean Pierre, Luis Ney Medina, Awilda Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé, Endry Fils-Aimé, Victor Jean, Marlene Mesidor, Markenson Jean, Miguel Jean, Victoria Jean, Natalie Jean, Rafaelito Pérez Charles and Bersson Gelin, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of the victims who were children at the time of the facts, in the terms of paragraphs 390 to 397, 400 to 404 and 407 of this Judgment.

8. The State violated the right to protection of the family recognized in Article 17(1) of the Convention, in relation to the failure to comply with the obligation to respect the treaty-based rights without discrimination established in Article 1(1) of the Convention, to the detriment of Bersson Gelin and William Gelin, and also in relation to the rights of the child recognized in Article 19 of this instrument to the detriment of the child William Gelin, in the terms of paragraphs 413 to 418 and 429. In addition, the State violated the right to protection of the family, recognized in Article 17(1) of the Convention, in relation to failure to comply with the obligations established in Article 1(1) of the Convention, to the detriment of Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión and Reyita Antonia Sensión, and in also in relation to the rights of the child recognized in Article 19 of this treaty to the detriment of the children at the time, Ana Lidia Sensión and Reyita Antonia Sensión, in the terms of paragraphs. 413 to 417, 419 420 and 429.

9. The State violated the right to protection of privacy owing to the violation of the right not to be the object of arbitrary interference in private and family life recognized in Article 11(2) of the American Convention on Human Rights, in relation to the failure to comply with the obligation to respect rights without discrimination established in Article 1(1) of the Convention, to the detriment of Victor Jean, Marlene Mesidor, Markenson Jean, Victoria Jean, Miguel Jean, Natalie Jean, Willian Medina Ferreras, Lilia Jean Pierre, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Janise Midi, Diane Fils-Aimé, Antonio Fils-Aimé and Endry Fils-Aimé, and also in relation to the rights of the child recognized in Article 19 of the Convention to the detriment of the victims who were children at the time of the facts, in the terms of paragraphs 423 to 428 and 430 of this Judgment.

10. The State failed to comply, in relation to judgment TC/0168/13, with its obligation to adopt domestic legal provisions established in Article 2 of the American Convention on Human Rights, in relation to the rights to recognition of juridical personality, to a name, and to nationality, as well as the right to identity owing to the said violations taken as a whole, and the right to equality before the law, recognized in Articles 3, 18, 20 and 24 of the Convention, in relation to the failure to comply with the obligations established in Article 1(1) of the Convention, to the detriment of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina, Carolina Isabel Medina and Rafaelito Pérez Charles, in the terms of paragraphs 302 to 325 of this Judgment. The State also failed to comply, owing to articles

6, 8 and 11 of Law No. 169-14, with its obligation to adopt domestic legal provisions, established in Article 2 of the American Convention on Human Rights, in relation to the rights to recognition of juridical personality, to a name, and to nationality, as well as the right to identity, owing to the said violations taken as a whole, and the right to equality before the law, recognized in Articles 3, 18, 20 and 24 of the Convention, in relation to the failure to comply with the obligations established in Article 1(1) of the Convention, to the detriment of Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean, in the terms of paragraphs 302 to 325 of this Judgment.

11. It is not necessary to rule on the alleged violation of the rights to personal integrity and to property recognized in Articles 5(1) and 21(1) of the American Convention on Human Rights, in the terms of paragraphs 438, 442 and 443 of this Judgment.

AND ESTABLISHES

unanimously that:

12. This Judgment constitutes *per se* a form of reparation.

13. The State must adopt, within six months of notification of this Judgment, the necessary measures to ensure that Willian Medina Ferreras, Awilda Medina and Luis Ney Medina have the necessary documentation to prove their Dominican nationality and identity, in the terms of paragraph 452 of this Judgment. In addition, the State must adopt the necessary measures to annul the administrative investigations, as well as the civil and criminal judicial proceedings underway relating to the records and documentation of Willian Medina Ferreras, Awilda Medina, Luis Ney Medina and Carolina Isabel Medina, in the terms of paragraphs 457 of this Judgment.

14. The State must adopt, within six months of notification of this Judgment, the necessary measures to ensure that Victor Jean, Miguel Jean, Victoria Jean and Natalie Jean are duly registered, as appropriate, and have the necessary documentation to prove their Dominican nationality and identity, in the terms of paragraphs 458 of this Judgment.

15. The State must adopt, within six months of notification of this Judgment, the necessary measures to ensure that Marlene Mesidor may reside or remain lawfully in the territory of the Dominican Republic, in the terms of paragraphs 459 of this Judgment.

16. The State must make the publications ordered and that are indicated in paragraph 460 of this Judgment, within six months of its notification. In addition, the State must keep this Judgment available for one year on an official website of the State, in the terms of paragraph 460 of this Judgment.

17. The State must implement, within a reasonable time, continuous and permanent training programs on topics related to the said population in order to ensure: (a) that racial profiling is never the reason for detention or expulsion; (b) strict observance of the guarantees of due process of law during any proceedings related to the expulsion or deportation of aliens; (c) that, under no circumstances are Dominican nationals expelled, and (d) that collective expulsions of aliens are never carried out, in the terms of paragraph 465 of this Judgment.

18. The State must adopt, within a reasonable time, the measures required to prevent judgment TC/0168/13 and the provisions of articles 6, 8 and 11 of Law No. 169-14 from continuing to have legal effects, in the terms of paragraph 468 of this Judgment.

19. The State must adopt, within a reasonable time, the measures required to annul any law or regulation of any nature, whether administrative, regulatory, legal or constitutional, as well as any practice or decision or interpretation that establishes or results in the irregular situation of the parents who are aliens being used as a reason to deny Dominican nationality to those born in the territory of the Dominican Republic, in the terms of paragraph 469 of this Judgment.

20. The State must adopt, within a reasonable time, the necessary measures of an administrative, legislative – even constitutional if required – or any other nature to regulate a simple and accessible birth registration procedure, in order to ensure that all those born in its territory may be registered immediately after birth, regardless of their descent or origin and the migratory situation of their parents, in the terms of paragraph 470 of this Judgment.

21. The State must pay, within one year of notification of this Judgment, the amounts stipulated in paragraphs 481, 485 and 498 to 500 of this Judgment as compensation for pecuniary and non-pecuniary damage, reimbursement of costs and expenses, and to reimburse the Victims' Legal Assistance Fund, in the terms of paragraph 504 of this Judgment.

22. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

23. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in fulfillment of its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with its provisions.

Done, at San José, Costa Rica, on August 28, 2014, in the Spanish language.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto

President

Pablo Saavedra Alessandri
Secretary