



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINNE DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. 20006 USA

February 11, 2011

Ref.: Case No. 12.688
Nadage Dorzema et.al.
Guayubín Massacre
Dominican Republic

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.688, *Nadage Dorzema et. al. (Guayubín Massacre) v. the Dominican Republic* (hereinafter “the State”, “the Dominican State” or “Dominican Republic”) before the jurisdiction of the Honorable Inter-American Court of Human Rights. The State ratified the American Convention on Human Rights on January 21st, 1978 and accepted the contentious jurisdiction of the Court on March 25th, 1999.

The Commission has designated Commissioner Rodrigo Escobar Gil, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary; Karla Quintana Osuna and Isabel Madariaga, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing a copy of Merits Report No. 174/10, prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I.) The Merits Report of November 2, 2010, was notified to the State by means of communication of November 11, 2010. After granting an extension, the IACHR determined that the term had elapsed and the State had not complied with the recommendations.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica

Enclosure

The Commission refers the instant case to the jurisdiction of the Inter-American Court based on the State's failure to comply with the recommendations and the resulting need to obtain justice in the instant case. As demonstrated throughout the report on the merits, the Dominican State is responsible for the excessive use of force by military forces against a group of Haitians, in which seven people lost their lives and several more were wounded. The military justice system was directly informed of the facts and, after several years of proceedings and despite the petition submitted by the relatives of the executed victims that the case be submitted to the ordinary jurisdiction, the military courts acquitted the military personnel involved.

In addition, some of the surviving victims suffered violations of their rights to personal liberty, a fair trial, and judicial protection, given that they were expelled from the Dominican Republic, without receiving the guarantees due to them as migrants. Furthermore, the Commission submits this case due to the denial of justice from the time the violations were committed, to the detriment of the executed victims, as well as with respect to the survivors and the resulting impunity for the violations committed.

The Commission emphasizes that the facts in the instant case are part of a more general pattern of discrimination against Haitians or persons of Haitian origin in the Dominican Republic, as well as deportations of Haitians from the Dominican Republic. The Commission has followed this situation closely through various mechanisms. In particular, the Commission has referred to these problems since its report on the human rights situation in the Dominican Republic in 1999. The Commission deems it necessary that, in analyzing this case, the Inter-American Court gives special consideration to the characteristics of this pattern in the Dominican Republic, in the terms described in the report on the merits.

Accordingly, the Inter-American Commission asks the Court to conclude and declare the international responsibility of the State for:

- a) The violation of the rights to life and humane treatment established in Articles 4(1) and 5(1) and 5(2) of the American Convention, as they relate to Article 1(1) thereof, to the detriment of Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus, and Nadege Dorzema.
- b) The violation of the rights to a fair trial and judicial protection established in Articles 8 and 25 of the American Convention, as they relate to the obligations established in Article 1(1) thereof, to the detriment of the relatives of the executed victims identified in paragraph 104 of the Merits Report, as well as the wounded identified in paragraph 103 of the same. In addition, the State is responsible for failure to comply with Article 2 of the American Convention, as it relates to Articles 8 and 25 thereof.
- c) The violation of the rights to personal liberty, humane treatment, a fair trial, and judicial protection, established in Articles 7(1), 7(2), 7(3), 7(4), 7(5), and 7(6), as well as Articles 5(1) and 5(2), and 8 and 25 of the American Convention, as they relate to Article 1(1) thereof, to the detriment of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Cecilia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, and Honorio Winique.
- d) The violation of the right to humane treatment, established in Article 5(1) and 5(2) of the American Convention, as it relates to Article 1(1) thereof, to the detriment of Joseph Desravine.
- e) The violation of the right to non-discrimination, established in Article 24 of the American Convention, as it relates to Article 1(1) thereof, to the detriment of the executed Haitian victims, the Haitian survivors, and the relatives of the executed victims.

Consequently, the Commission requests that the Inter-American Court establish the following reparations:

1. Provide adequate reparations for the human rights violations stated in [the merits] report in both material and moral terms, including implementation of an adequate program of psycho-social treatment for the survivors.

2. Conduct an investigation in the ordinary jurisdiction regarding the events related to the human rights violations reported in the merits report and conduct those investigations impartially and effectively, and within a reasonable period of time, in order to fully clarify the facts, identify the intellectual authors and perpetrators, and impose the appropriate penalties.

3. Take the respective administrative, disciplinary, or criminal measures against the actions or omissions of State agents who contributed to denying justice and fostering impunity with respect to the facts of this case.

4. Establish a mechanism to facilitate the comprehensive identification of the wounded victims as well as of the relatives of the executed victims.

5. Take the measures necessary to ensure that Article 3 of the Code of Justice of the Armed Forces is compatible with the American Convention and inter-American jurisprudence.

6. Adopt the measures necessary to prevent similar occurrences in future, consistent with the duty to prevent human rights violations and guarantee those rights as recognized in the American Convention. Implement, in particular, permanent human rights programs in the Armed Forces and National Police training schools, especially on the excessive use of force and on the principle of non-discrimination.

On the other hand, regarding the identification of the relatives who should be considered victims in the instant case, the Commission informs the Inter-American Court that, when report 174/10 was approved, it delimited the scope of victims, leaving open in the recommendations the State's obligation to locate the remaining victims of the facts. After the approval of the report on the merits, the petitioners submitted to the Commission a list of persons they consider to belong to the group of survivors and relatives of the executed victims.

Finally, the Commission requests the Honorable Court to transfer the appropriate parts of the expert witness report provided by anthropologist Samuel Martínez in the *Yean and Bosico v. Dominican Republic Case* to the present case, and additionally, the Commission offers the following expert declarations in relation to issues of the inter-American public interest in the instant case:

- Expert to be defined, who will testify on the intervention of Dominican military justice in the investigation and adjudication of crimes that are not part of its function and that could constitute human rights violations; as well as the constitutional and legal regulation of the scope of military justice in the Dominican Republic.
- Expert to be defined, who will testify on the treatment that Haitian migrants receive in Dominican territory, and regarding the minimum guarantees that in accordance with international human rights standards should govern any criminal or other proceeding involving the determination of a person's migrant status or that could result in punishment as a result of said status.
- Expert to be defined, who will testify on structural discrimination in the Dominican Republic against Haitians or those of Haitian origin, the excessive use of force by agents of the State against Haitians or those of Haitian origin, as well as the absence of effective responses by the judicial branch in addressing these problems.

The *curricula vitae* of the experts proposed by the Inter-American Commission are attached.

Finally, the petitioners expressed the victims' interest in the submission of the present case to the Inter-American Court and informed that the following shall be representatives of the victims: the *Grupo de*

Apoyo a los Repatriados y Refugiados Cherubin Tragelus, the *Centro Cultural Dominicano Haitiano* and the *Clínica Internacional de Defensa de los Derechos Humanos* of the UQAM. The contact information provided is:

Grupo de Apoyo a los Repatriados y Refugiados (GARR)

Cherubin Tragelus [REDACTED]
[REDACTED]

Por-au-Prince, Haiti
[REDACTED]

Centro Cultural Dominicano Haitiano: [REDACTED]

Clínica Internacional de Defensa de los Derechos Humanos
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Please allow me to greet you and express my appreciation.

Signed in the original

Elizabeth Abi-Mershed
Executive Deputy Secretary