

FINAL ARGUMENT
YEAN & BOSICA v. DOMINICAN REPUBLIC
Inter-American Court of Human Rights
San Jose, Costa Rica
Case No. 12.189
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Thank you Sr. President. It is an honor to address the court today on behalf of Dilcia and Violeta, and their families.

As Judge Cancado Trindade of this honorable court has written: “A world which does not take care of its children, which destroys the enchantment of their infancy within them, which puts a premature end to their childhood, and which subjects them to all sorts of deprivations and humiliations, effectively has no future.”¹

These words aptly describe the Dominican Republic today.

One of the first formative experiences for Dilcia and Violeta was the state denying them their birth certificates. This denial had legal consequences, social consequences, and psychological consequences. The State’s refusal to recognize their legal existence as Dominicans conveyed to them the legal and social reality that the State considers them – because of the color of their skin, the heritage of their fathers, their names – Haitian. But they are Dominican: born in the country, to Dominican mothers, and living within small, tightly-knit Dominican communities. Yet as Professor Martinez’s explains, Dominicans of Haitian descent are considered “Haitian,” not Dominican. And to be considered “Haitian” is to be deemed illegal, without rights, to be something less and inferior to Dominicans.

The girls and their families are fearful of expulsion from their country. They know that their *Actas* are no guarantee against expulsions. As the USAID

¹ Advisory Opinión OC-17/2002, Juridical Condition and Human Rights of the Child, Judge A.A. Cancado Trindade concurring at para. 3.

report submitted by the State found: “Even those in possession of cédulas may have their ID cards declared false and ripped up” before being summarily expelled (USAID Report at 67).²

The effects of discrimination are already etched into the girls’ young lives. Violeta was expelled from school; punitively excluded from her peers because she did not have a birth certificate. And sadly, Dilcia, though only 8, exhibits signs of internalizing the negative opinions that Dominican society holds of her ancestry: already thinks that “Haitian” is a dirty word.

This case is our clients’ last hope for justice. This court’s jurisprudence has guided the development of human rights protections throughout the Americas. We ask the Court to provide justice to Dilcia and Violeta, to give them a future in which they can realize their full human potential, and in so doing provide important guidance to States throughout the region and redress to the victims.

This case addresses the human rights violations of children, a vulnerable group that enjoys special protections under international law. As I will explain, the special protection afforded to children through Article 19 of the Convention should be applied to all the substantive violations in this case, creating heightened duties of the state.³

THE STATE VIOLATED OUR CLIENTS’ RIGHTS TO DOMINICAN NATIONALITY.

Through the actions of Sra. Bienvenidas and the application of an unreasonably burdensome list of registration requirements, for over four years the state discriminatorily refused to confer nationality on Dilcia and Violeta, thereby constituting an arbitrary denial of their right to Dominican nationality under the Dominican Constitution and Article 20 of the American Convention read in conjunction with Article 19.

Article 11 of Dominican Constitution adopts the jus soli principle of nationality. Those born in the territory of the state are nationals by law and in practice the state confers nationality through its birth registration process.

² Submitted by State on 10 January 2005 to the Court.

³ Caso “Instituto de Reeducacion del Menor” v. Paraguay, Para. 147.

As Professor Packer testified, the right to nationality without arbitrary deprivation is now recognized as a basic human right under international law. In the case of children born in the Dominican Republic, the State has a particular obligation to confer nationality at birth and to make this right accessible. In this case the State discriminated against the girls and actively prevented them from access their birthright.

The birth registration policies, of which Dilca and Violeta are victims, exclude children of Haitian descent from what Professor Martinez terms “the charmed circle of full cultural citizenship.” (Martinez Aff. ¶ 7) As Professor Martinez explains, policymakers think of Haitians and their Dominican descendants as an undifferentiated mass who cling to Haitian ways, are loyal to Haiti, and therefore constitute a threat to Dominican national identity. (Martinez Aff. ¶ 9).

Dominican laws reflect these assumptions and state officials exercise their discretion to enforce the presumption that those regarded as Haitian should not be included in the Dominican body politic. State officials in this case, and in general practice, ignore the facts, and presume that a child with Haitian ancestry is a Haitian national and seek to force on that child the presumed illegal status of Haitians. As the study submitted by the State found, these efforts are all too successful. There may be as many as 280,000 Dominican-born individuals of Haitian descent living in the Dominican Republic without documents. (USAID report at 62).

Thelma Bienvenida Reyes added Dilcia and Violeta to these numbers by denying their applications for late registration on the basis of their Haitian ancestry. Even when a child meets the state’s requirements for conferral of nationality, the state official can choose to ignore the law with impunity or, as Mrs. Bienvenida testified yesterday in response to the Honorable Judge Medina’s questions, create a completely new set of requirements to fit their whimsy or prejudices. In this case Sra. Bienvenida did both. She told Dr. Rincon that she could not register the girls because they were Haitian; in her subsequent affidavit and her testimony she stated that she denied their applications because they had not submitted the *cédulas* (national identity cards) of their parents.

Sra. Bienvenida has clearly invented facts to support the government’s attempt to blame Dilcia’s and Violeta’s mothers for her discriminatory action. The evidence is clear. By April 22, 1999, we had submitted to the

Commission copies of the *cédulas* and birth documents that Dr. Rincon submitted to Sra. Bienvenida in 1997. Moreover, Dilcia's and Violeta's mothers submitted their *cédulas* when the girls received their *Actas* in 2001. The evidence here is plain: the mothers had their *cedulas*. And these mothers wanted to protect their daughters. Clearly in 1997, if all they really needed to register their daughters was to present their *cédulas*, they would have done so. Indeed, they did. Unfortunately, it wasn't enough to overcome Sra. Reyes' discriminatory refusal of their applications because of their Haitian descent.

And the record is also clear that after Sra. Bienvenida denied their applications, the State put up a new barrier: the *Procurador Fiscal* (public prosecutor) found on 20 July 1998 that the girls could not be registered because they did not meet the 11 requirements. The Junta (electoral board) agreed with this determination in its letter of September 27, 1999. And, the Junta President reiterated this position in an interview in February 2001.

Even if the Court accepts as true Sra. Bienvenida's testimony that she merely applied the late registration requirements, the Court must strike down the regulations, as they have the same discriminatory effect of denying full citizenship based on Haitian ancestry. Even the reduced requirements Sra. Bienvenida yesterday claimed she applied, include proof of the parent's legal status. These documents exclude children of Haitian nationals without documentation. And, as this case demonstrates, documents that also exclude children of Haitian descent whose mothers' *cédulas* are not acknowledged. As Professor Packer testified, the state cannot adopt regulations that undermine its duty to confer nationality. And the onerous requirements—particularly proof of legal status of the parents—do just that. The legal status of the parent is irrelevant to conferring nationality on their children. And in the context of anti-Haitian attitudes, such requirements invite discrimination.

Dilcia and Violeta lived, from the time of their birth until 2001, 8 and 20 years, respectively, and even to the present, without the full protections of Dominican, or any, nationality. There was no state that effectively protected their human rights. In fact, the Dominican state rendered them vulnerable to expulsion and failed to guarantee them access to education. And to this day, their legal documents are in doubt because they were issued outside of the law. The State's treatment of Dilcia and Violeta constitutes a failure to act in

the girls' best interests, a norm enshrined in Article 19 through the Convention on the Rights of the Child.

Dilcia's and Violeta's mothers tried to register their daughters, they repeatedly appealed to state officials to honor their children's' rights. Instead they were met with a retreat to formal legalism: officials told Leonidas and Tiramén that they had not done their duty. In fact, state officials relied on the regulations to enforce the social and political norms of cultural citizenship, norms that exclude those like Dilcia and Violeta of Haitian descent. This Court can dislodge the stranglehold of cultural citizenship by finding unequivocally that the Dominican state violated the victims' rights in maintaining a discriminatory registration regime.

RIGHT TO EDUCATION

The government violated our clients' right to education by impermissibly conditioning enrollment in school on presentation of a birth certificate.

The state education policy and practice reflect the dominant discriminatory attitudes that children of Haitian descent are not part of the Dominican nation. The state conditions access to schools on presentation of a birth certificate. For years, school officials told Violeta that she needed a birth certificate and Violeta feared that her principal would expel her from the school she loved so much. And ultimately her worst fears were realized when she was expelled.

Multiple state officials manipulated the rules and practices to prevent Violeta from accessing education. First state officials denied her a birth certificate because the registrar presumed her to be Haitian and therefore illegal and, erroneously, ineligible for Dominican nationality. Subsequently, state officials justified the denial of this document on the ground that Violeta had not met the 11 registration requirements. Then, the director of Violeta's school enforced the state policy requiring a birth certificate for school admission and expelled her. Were it not for intervention by the Commission ordering precautionary measures and directing officials to admit her, Violeta would have remained locked out of her classroom.

As the School Director testified, the Dominican Republic requires that students have birth certificates to attend school. Students must present this document again to gain high school admission and to attend the university.

The government's practice of offering education only to those within the "charmed circle" of citizenship violates the fundamental presumption of the state's obligations for international protections for children: to act in the best interests of the child.

After her expulsion, Violeta was confined to night school, a program that was unfit for a child of her age under international standards. Former UN Special Rapporteur on the Right to Education, Professor Katarina Tomasevksi has formulated the internationally-recognized standard for the dimensions of the right to education, referred to as the "4-A's": availability, accessibility, acceptability and adaptability. Professor Tomasevski discusses these in greater detail in her amicus brief filed with this Court. The state violated Dilcia's and Violeta's right to an education that is **accessible** by making school enrollment contingent on presenting a birth certificate thereby discriminating against them as children of Haitian descent. Dilcia's right to an accessible education was violated because without a birth certificate she would not have been able to enroll in school when her time came. In addition, the School Director violated Violeta's right to an education that is acceptable by limiting her to adult night school because adult education is inappropriate for a child-centered education which is the international standard. The Court has recognized the right to education and now has the opportunity to more concretely define this right. By so doing, this Court may provide critical guidance to the states of the Americas on the standards for educational law and policy that conform to their Convention obligations.

INJURY

Before turning to my esteemed colleague from MUDHA to discuss the measures the state should take to repair the injury to Dilcia and Violeta, I wish to focus the Court's attention on the fact and nature of the injury the girls have suffered.

Dr. Deborah Munczek, the psychologist who examined the girls and their families, testified that the victims have been deeply affected by the state's discriminatory treatment. Violeta, though young, knew that without a birth certificate she was in danger; danger of being expelled to a foreign land. She lived in a constant state of anxiety that prevented her from moving freely in her community and fully exploring the world as a child needs to. And Dilcia's mother feared for her young daughter's safety – a fear that she

transmitted to Dilcia and which negatively impacts the young girl's sense of well being.

Sadly, both girls must adapt to being left out of the charmed circle of full citizenship. Already Dilcia shows signs that she has absorbed the dominant negative attitudes toward Haitian ethnicity. While both girls are proud of their Haitian heritage, they face an irresolvable conflict between their Haitian and Dominican identities. Receipt of their documents did not and cannot resolve this conflict. But eliminating the laws and practices which led to their injury will begin to dismantle the discriminatory environment in which these harms will surely be repeated.

Dilcia and Violeta are entitled to and deserve the opportunity to fulfill their life goals free from state discrimination. Unfortunately, today equality is still a dream for them. We ask this Court to act today to make their dreams a reality.