

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

OF MARCH 1, 2013

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF TIDE MENDEZ *ET AL.* v. DOMINICAN REPUBLIC

HAVING SEEN:

1. The brief of July 12, 2012 and its attachment, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application against the Dominican Republic (hereinafter the "Dominican Republic" or "the State"). The attachments to said brief were received by the Secretariat of the Court (hereinafter "the Secretariat") on July 26, 2012.

2. The brief of October 30, 2012, in which the representatives of the alleged victims¹ (hereinafter "the representatives") presented their brief of pleadings, motions and evidence in this case (hereinafter the "brief of pleadings and motions"). The attachments to said brief, including the sworn statements of William Medina Ferreras, Berson Gelin, Jeannise Midy, Antonio Sesión and Víctor Jean and Benito Tide Méndez were received on November 19, 2012 and the statement of Rafaelito Pérez Charles was received on November 20, 2012. In the brief of pleadings and motions the alleged victims, through their representatives, requested access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Assistance Fund of the Court" or "the Fund") to "cover some specific costs related to the production of evidence during the proceeding before the Court" (*infra* Considering paragraph 5).

3. The communications of December 7, 2013 in which the Secretariat informed the parties that the request by the alleged victims to have access to the Fund would be examined and submitted to the consideration of the President of the Court (hereinafter "the President").

¹ The representatives of the alleged victims are the *Movimiento de Mujeres Dominico-Haitianas* (MUDHA), the Human Rights Clinic of the University of Columbia Law School, the *Grupo del Apoyo a los Refugiados y Repatriados* (GARR), and the Center for Justice and International Law (CEJIL).

4. The brief of February 10, 2013, in which the State submitted its brief containing preliminary objections, the answer to the submission of the case and observations to the brief of pleadings and motions (hereinafter "answer brief"), in which it referred to the request of the representatives to have access to the "Assistance Fund of the Court. "

CONSIDERING THAT:

1. The Dominican Republic has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since April 19, 1978 and recognized the contentious jurisdiction of the Court on March 25, 1999, in accordance with Article 62(3).

2. In 2008 the General Assembly of the Organization of American States (hereinafter the "OAS") created the Legal Assistance Fund of the Inter-American Human Rights System and entrusted its regulation to the Permanent Council of the OAS.² Said Assistance Fund was created to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before it."³ In accordance with the Rules of Procedure adopted by the Permanent Council of the OAS in November 2009, the Assistance Fund of the Inter-American System maintains two separate accounts: one for the Inter-American Commission and the other for the Inter-American Court.⁴ As to the financing of the Assistance Fund of the Inter-American System, this is currently comprised of "voluntary capital contributions from the Member States of the OAS, the Permanent Observer States and other States and donors that may wish to collaborate with the Fund."⁵ Likewise, pursuant to Article 4 of the Rules of Procedure approved by the Permanent Council, the Court shall determine the eligibility requirements for requesting assistance as well as the procedure for approving such assistance.

3. Accordingly, on February 4, 2010 the Court adopted the Rules for the Operation of the Assistance Fund, (hereinafter the "Rules of the Assistance Fund"), which entered into force on June 1, 2010, and whose purpose is to "regulate the operation of, and access to, the [...] Fund, for the litigation of cases before it."⁶ As established therein, alleged victims wishing to have access to the Fund must follow three steps: 1) request assistance in the brief containing pleadings, motions and evidence; 2) demonstrate, by means of a sworn affidavit and other probative evidence that will satisfy the Court, that they lack the financial resources needed to cover the cost of litigation before the Inter-American Court, and 3) state precisely the aspects of their participation in the proceedings that require the use of resources of the Court's Legal Assistance Fund.⁷

² Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the Thirty-Eighth Regular Session of the OAS, at the fourth plenary session, held on June 3, 2008, "*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*," Operative Paragraph 2.b.

³ AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, Operative paragraph 2.a, and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the Permanent Council of the OAS, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*," Article 1(1).

⁴ Cf. Resolución CP/RES. 963 (1728/09), *supra* note 3, Article 3(1).

⁵ Resolución CP/RES. 963 (1728/09), *supra* note 3, Article 2(1).

⁶ Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, approved on February 4, 2010, Article 1.

⁷ Cf. Rules of the Assistance Fund, *supra* note 6, Article 2.

4. As stipulated in Article 3 of the Rules of the Court's Assistance Fund, in response to a request to access the Fund's resources, the Secretariat of the Court shall conduct a preliminary review of the request for assistance and shall require the requesting party to present the background information necessary so that the request may be submitted to the consideration of the President. The President of the Court shall then evaluate the request and make a decision within three months as of the date on which the required background information is received.

5. The representatives submitted a request to cover some costs related to the production of evidence during the proceedings before the Court, particularly with regard to "[t]ravel expenses (fares, hotel and *per diem*) for the persons summoned to testify by the Court at a hearing, including victims, witnesses and expert witnesses, according to Article 50 of the Court's Rules of Procedure", together with the "[n]otary costs associated with taking statements from victims, witnesses and expert witnesses that the Court deems pertinent to receive by affidavit, according to the aforesaid article." The representatives provided a list of fourteen people, nine witnesses and five expert witnesses, and presented an estimate of the expenses incurred for the appearance of six of these deponents at the public hearing at the seat of the Court. Based on this assumption, for the six deponents (four alleged victims, one expert witness), they estimated total expenses of approximately US \$10,475.06 (ten thousand, four hundred and seventy-five dollars of the United States of America and six cents). This amount includes transportation costs from the deponents' place of residence, as well as accommodation and per diems during their five-day stay in San Jose, Costa Rica. The representatives also pointed out that "if the hearing should take place in a place other than Costa Rica, the expenses could vary considerably." In relation to the statements or expert opinions that the Court decides should be rendered by affidavit, they stated that "the approximate cost of notarizing sworn statements in the Dominican Republic is USD 40.00 each [and] this cost may vary depending on the number of pages contained in the document." Moreover, given that the majority of the alleged victims live outside Santo Domingo and Port-au-Prince, it would be necessary for two attorneys of MUDHA or GARR, as the case may be, to travel to place where they are, or cover their transfer from their place of residence. The approximate cost of this is US \$500.00 (five hundred dollars of the United States of America).

6. The representatives based their request on the fact that the alleged victims "do not have the necessary financial resources to cover this process." In support of this request, the representatives presented the sworn statements of members of the various families of the alleged victims, namely: of William Medina Ferreras, Berson Gelin, Jeannise Midy, Antonio Sesión, Víctor Jean, Benito Tide Méndez and Rafaelito Pérez Charles (*supra* Have Seen 2). These statements confirm that neither these individuals, nor their family members, have the financial resources necessary to cover the costs of litigation before the Court.

7. Also, the representatives explained that there are a number of expenses that they are in a position to cover and that, therefore, the alleged victims had not included these in their request for assistance from the Fund, which they specified, "on the understanding that the corresponding amounts shall be reimbursed [to them] by [...] the State if the Court so decides in its judgment in this case."

8. In its answer, the State "objected to [the] outlays [from the Fund] to cover the participation of Mckenson Jean, Marlene Mesidor, Antonio Sesión and Ana Lidia Sesión in these proceedings, in their capacity as alleged victims, and with regard to Mr. Cristóbal Rodríguez Gómez, in his capacity as an expert witness, given that it has challenged their characterization as such and requested their exclusion from the processing of this case."

9. The President confirms that the request for access to the Court's Legal Assistance Fund was submitted at the appropriate time, in the brief of pleadings and motions (*supra* Having Seen paragraph 2). Likewise, he notes that on that occasion the representatives indicated that the alleged victims were advising the Court that they wished to have access to the Fund. The President reiterates that the alleged victims are the ones who should benefit from the Assistance Fund.⁸ Accordingly, the President takes cognizance of the lack of financial resources claimed by the alleged victims through their representatives and considers sufficient, as evidence thereof, the statements submitted in accordance with Article 2 of the Rules of the Assistance Fund of the Court.

10. The President notes that the alleged victims have requested access to the Assistance Fund to cover expenses related to the production of evidence before the Court, specifically for the presentation of nine testimonies and five expert opinions, either at the public hearing or by means of affidavits (*supra* Considering paragraph 5).

11. The President recalls that the Court's Legal Assistance Fund is comprised of voluntary contributions from donor sources (*supra* Considering paragraph 2), and that these limited resources are insufficient to cover all the expenses related to a possible appearance and presentation of evidence before the Court by the alleged victims. Therefore, in each specific case, the President must consider a request for financial assistance on the basis of the resources available and bearing in mind the need for assistance that might arise in other cases before the Court, in order to ensure the correct administration and fair distribution of the Fund's limited resources.

12. The President points out that, at this stage of the proceedings, it has not been decided whether the Court shall admit the statements offered by the representatives, or the means by which these will be rendered. In accordance with Article 50(1) of the Court's Rules of Procedure, that decision is taken by the Court, or by its President, once the parties have submitted the definitive lists of proposed deponents and the right to defense has been guaranteed, under the terms of Articles 45 to 49 of the Court's Rules of Procedure. Also, regarding the State's objection to the use of the Fund in relation to persons whose "supposed status as alleged victims" was called into question, the Court shall determine their status in due course.

13. Based on the foregoing considerations, the President considers valid the request submitted by the alleged victims, through their representatives, to have access to the Court's Legal Assistance Fund. Accordingly, having regard to the resources currently available in the Fund, the alleged victims shall be granted the financial assistance necessary for the presentation of a maximum of four testimonies, either by means of affidavits or at a public hearing. Likewise, the President considers it appropriate to defer a decision on the specific amount, recipients and purpose of the financial assistance to be provided to the alleged victims until such time as the Presidency, or the Court, rules on the validity and relevance of the testimonial and expert evidence offered and on the opening of the oral proceedings, in accordance with Article 50(1) of the Court's Rules of Procedure, in order to have certainty regarding which of the testimonies shall be received by the Court, and the means by which these shall be rendered.

⁸ Cf. *Case of Contreras et al. v. El Salvador*. Order of the President of the Inter-American Court of Human Rights of March 4, 2011, Considering paragraph 9, and *Case of Véliz Franco v. Guatemala*. Order of the President of the Inter-American Court of Human Rights of January 8, 2013, Considering paragraph 8.

THEREFORE:

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

in exercise of his authority in relation to the Victim's Legal Assistance Fund of this Court, and pursuant to Article 31 of the Rules of Procedure of the Court and Article 3 of the Rules of the Assistance Fund,

DECIDES:

1. To declare admissible the request submitted by the representatives, in favor of the alleged victims, to have access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, and to grant the financial assistance necessary for the presentation of a maximum of four statements, either by means of affidavits or at a public hearing. The amount, recipients and purpose of this assistance shall be determined when a decision is made on the production of the testimonial and expert evidence, and the opening of the oral proceedings, pursuant to Article 50 of the Court's Rules of Procedure, and under the terms established in Considering paragraph 13 of this Order.
2. To require the Secretariat of the Court to serve notice of this Order to the representatives of the alleged victims, the Dominican Republic and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary