

Submission to the Committee on the Elimination of Racial Discrimination: Review of the Dominican Republic

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The Open Society Justice Initiative and the Center for Justice and International Law present this submission in preparation for the Committee on the Elimination of Racial Discrimination's review of the Dominican Republic during its 82nd session. This paper focuses on the Dominican Republic's failure to respect the right of persons of Haitian descent to nationality and the detrimental impact it has on their enjoyment of other human rights.



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Executive Summary

The Open Society Justice Initiative and the Center for Justice and International Law present this submission in preparation for the Committee on the Elimination of Racial Discrimination's review of the Dominican Republic during its 82nd session. This submission focuses on laws, official policies and practices that discriminate against Dominicans of Haitian descent¹ in relation to their right to nationality, in violation of the Dominican Republic's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The Committee last reviewed the Dominican Republic's compliance with ICERD in February 2008 and expressed concern about a range of discriminatory laws, policies and practices undermining the right of Dominicans of Haitian descent to nationality as well as their enjoyment of a host of other human rights. Regrettably, the discriminatory laws and policies have not been amended as recommended by the Committee. To the contrary, they have been further entrenched in the Dominican legal system and even elevated to constitutional status. Moreover, discriminatory practices which this Committee has previously condemned continue unabated. The Dominican Republic's nationality laws, policies and practices continue to constitute impermissible discrimination against persons of Haitian descent as defined in Article 1 of ICERD. The laws, policies, and practices detailed in this submission constitute significant and widespread breaches of Articles 5 and 6 of ICERD.

The Open Society Justice Initiative promotes the rule of law through litigation, legal advocacy and reform of legal institutions aimed at enhancing the protection of human rights. Since 2005 the Justice Initiative has been systematically challenging the Dominican Republic's discriminatory nationality policies through documentation, litigation, advocacy and legal capacity development.

The Center for Justice and International Law (CEJIL) protects and promotes human rights in the Americas, including in the Dominican Republic, through the strategic use of the tools offered by international human rights law. CEJIL offers advice and free legal representation to victims of human rights abuses - and to organizations that defend their causes - when justice proves impossible to achieve in their own countries.

Recommendations

We urge the Committee to address the discriminatory nationality and birth registration laws, policies and practices described in this submission when it conducts its periodic review of the Dominican Republic's compliance with ICERD. In particular, we urge the Committee to recommend that the Dominican Republic:

- Review and amend the 2010 constitutional provisions regarding nationality as well as the 2004 General Law on Migration to ensure that they comply with ICERD, and ensure access to citizenship irrespective of a person's ethnicity or their parents' national origin;

- Ensure that the constitution and the 2004 General Law on Migration are not applied retroactively to strip persons of their nationality;
- Repeal Circular 17 and Resolution 12 and adopt and effectively implement non-discriminatory birth registration and personal identification policies that ensure that all individuals born in the Dominican Republic receive the same proof of birth and non-discriminatory access to identity documents; and
- Adopt and fully implement and publicize transparent and non-discriminatory procedures with respect to birth registration and personal identification, and guarantee due process in respect of these procedures, including written notifications and records of investigations, written explanations for decisions given and opportunities for appeal; and adequately train all civil registry staff in these procedures and on human rights principles, in particular non-discrimination.

We further encourage the Committee to seek clarification from the government delegation on the following questions:

- Why are the provisions in the 2010 Dominican constitution and the 2004 General Law on Migration regarding nationality being applied retroactively to persons born prior to when they were adopted?
- Why are government agencies refusing to issue copies of or renew existing identity documents of Dominicans of Haitian descent? What guarantees of due process are in place with regard to this practice?
- On the basis of which criteria are decisions to investigate identity documents made? What guarantees of due process exist for individuals whose documents are being investigated?
- What procedural safeguards has the Dominican Republic instituted or does it plan to institute to protect the right to nationality without discrimination on grounds of race, ethnicity or national origin?
- What steps has the Government taken to implement the provisions of the General Law on Migration that govern regularization of the status of individuals who do not have identity documents?

Discrimination against Dominicans of Haitian descent

A. Constitutional change entrenches discrimination against Haitian descendants in nationality matters

At its last review of the Dominican Republic in 2008, the Committee was concerned about discrimination in access to nationality and birth registration and its severe implications for the enjoyment of a number of other human rights.² Similar concerns were expressed by the Inter-American Court of Human Rights in its 2005 decision in the case *Dilcia Yean and Violeta Bosico v. Dominican Republic*.³ The Court found that the Dominican Republic applied its nationality and birth registration laws in a discriminatory manner and ordered it to reform its birth registration system to eliminate its discriminatory elements, and to create an effective procedure to issue birth certificates to all children born on Dominican territory, regardless of their parents' migratory status.

Since the Committee's last review, the situation concerning nationality for persons of Haitian descent has deteriorated. Rather than comply with the Committee's recommendations to eliminate discrimination in access to nationality and ensure equal access to birth registration and identity documents and the Inter-American Court's decision, the Dominican government has instituted a series of legislative and administrative measures that have deepened and solidified the long-standing discrimination against Dominicans of Haitian descent in relation to their right to nationality.

The most important of these legal changes was the adoption in January 2010 of a revised constitution⁴ that introduced additional exceptions to the former constitution's provisions that guaranteed Dominican nationality to anyone born in the Dominican Republic with the limited exception of children of diplomats and children of parents who were "in transit".⁵

Article 18(3) of the new constitution gives constitutional status to the language of the 2004 General Law on Migration (Law 285-04),⁶ which limited the right to Dominican nationality to children of legal "residents".⁷ This law, and its retroactive application, was heavily criticized by the Committee during the last review in 2008.⁸ As a result of the 2010 constitutional change, all children of "illegal residents" or "persons in transit" born on Dominican territory are now barred from acquiring Dominican nationality.

Dominicans of Haitian descent, who have been denied formal recognition of their Dominican nationality, even many of those previously recognized and documented as Dominican nationals, are now considered as "illegal residents" for the purposes of Article 18 of the Constitution, and as a result their children have no constitutional right to Dominican nationality.⁹ Those born before the entry into force of the General Law on Migration and the new constitution have in many cases been stripped of their Dominican nationality through the government's retroactive application of the nationality restrictions imposed on "non-residents". In pursuing this policy, the Dominican

government is falling afoul of constitutional and international legal prohibitions of retroactive application of laws.¹⁰ Furthermore, persons unable to prove their Dominican nationality because of arbitrary and discriminatory practices that have resulted in denial of personal documentation (further discussed below) are barred from obtaining recognition of Dominican nationality under Article 18(2). The government has claimed that these persons never had a right to Dominican citizenship.¹¹

B. Continuing discriminatory birth registration policies and practices

For persons of Haitian descent it has become increasingly difficult to obtain a birth certificate for their children, which is required for accessing a number of essential services, including education and health care.

At its last review, the Committee was concerned at the practice by which children of foreign mothers are provided with birth certificates inferior to those given to Dominican mothers.¹² This practice continues as the General Law on Migration explicitly provides that children of “non-resident” mothers should receive *constancias de nacimiento* (certified birth documents provided by hospitals) “of a different type and color” (in practice, pink) than those given to “resident” mothers.¹³ The pink *constancias de nacimiento* are not official birth certificates, nor can they be used to obtain official birth certificates. They confer no rights upon the bearer and place no obligations upon the Dominican state. “Non-resident” mothers must instead register their children with the relevant embassy or consulate of a foreign government. In the case of children of Haitian descent, they and their parents often have no meaningful link to Haiti as the parents either have themselves been born in the Dominican Republic or have lived there for many years.¹⁴

This birth registration regime continues to have a discriminatory impact on Dominicans of Haitian descent who have experienced long-standing institutional discrimination in access to identity documents that prove both their nationality and their lawful residency.¹⁵ As a result, many Dominicans of Haitian descent have no valid identity documents even though they were born and have lived in the Dominican Republic their entire lives.¹⁶ The lack of documentation bars them from registering the births of their children perpetuating a situation of denial of legal identity and rights.

It is important to note that the 2004 General Law on Migration includes provisions that could mitigate this multi-generational discriminatory impact. Articles 151 and 152 require the Dominican government to develop a National Regularization Plan that would regularize the status of “non-residents” based on criteria such as how long they have lived in the Dominican Republic, whether they immigrated to the country under the previous migration law, their links to Dominican society, and their socioeconomic situation. To date, however, no action has been taken to implement these provisions and regularize the status of thousands of undocumented migrants and “non-residents”.

C. Discriminatory denial of personal documents leads to further rights violations

In the Dominican Republic, access to certified copies of birth certificates is critically important.¹⁷ They are required in order to register for primary school or university, to obtain health care coverage, to apply for mandatory identity documents (*cédulas*), to get married, and to enjoy a host of other rights.

A series of internal memorandums issued by the Dominican Central Electoral Board (*Junta Central Electoral*, JCE) have effectively barred Dominicans of Haitian descent from obtaining certified copies of their birth certificates.¹⁸ Circular No. 17 and Resolution 12-2007 ordered all civil registry officials to refrain from delivering, signing or copying "any identity documents to children of foreign parents who had received birth certificates under irregular circumstance". In most instances this has been interpreted as also applying to children of foreigners who had not proven their residency or legal status in the Dominican Republic at the time of the child's births. This interpretation has disproportionately affected Haitian migrants and their children who very often were not provided with documentation of their legal status (including work visas) due to the informal manner in which they came to the Dominican Republic.

Since 2007, many Dominicans of Haitian descent in possession of state-issued birth certificates have also faced serious difficulties in obtaining the mandatory identity document for persons over 18 years, called *cédula de identidad y electoral*.¹⁹ The Dominican Central Electoral Board has regularly claimed that their parents were "non-residents" at the time their births were registered and, as such, they never had the right to Dominican nationality.²⁰ This position, which constitutes an impermissible retroactive application of the recently introduced "non-resident" concept, has severe implications for the enjoyment of the rights of many Dominicans of Haitian descent to education, to work, political participation, freedom of movement and access to justice.²¹ One devastating consequence of being rejected for a *cédula* is the inability of affected Dominicans of Haitian descent to register the births of their own children, which perpetuates the denial of their rights.²²

In some cases Dominicans of Haitian descent have been explicitly denied identity documents because of their national background.²³ Civil registry officials have also admitted using darker skin color, racial features, a person's accent, and "Haitian-sounding names" to determine who might be carrying irregular or suspect documents.²⁴ There is evidence that these discriminatory practices have disproportionately affected Dominicans of Haitian descent.²⁵

There have also been cases of officially issued identity documents being retroactively declared invalid through administrative fiat. Starting in 2012, the JCE began conducting administrative "de-nationalizations" removing the records of people, including children, who were registered years ago in the Dominican birth registry and transferring them to registration books for foreigners.²⁶ There has been no review of individual cases to ensure that people do not become stateless as a result of their removal from the Dominican birth registry.

In 2008, the JCE announced its plan to replace the current *cédulas* with new ones that will include biometric data. There have been cases of Dominicans of Haitian descent who have faced significant problems in applying for the new *cédulas*. Many have reported being turned away by civil registry officers because they were "Haitian" or because their parents were now considered

“non-residents” or have been asked to return with a copy of their birth certificate, a requirement that most of them will not be able to fulfill.²⁷ Whether they will actually receive their new *cédulas* upon completion of the documentation process remains to be seen. Once the documentation process is complete, persons left without new *cédulas* will be essentially without any valid proof of their Dominican nationality and thus effectively de-nationalized.

Dominicans of Haitian descent whose identity documents have been denied or withdrawn are left in legal limbo with detrimental consequences for their enjoyment of fundamental rights as they are unable to prove their nationality or exercise the rights inherent to Dominican citizenship.

The Dominican judicial system has proved ineffective in stopping the discriminatory policies and practices and providing redress to victims.

The Dominican Republic’s Continued Failure to Meet its Obligations under ICERD

A. Article 5 Violations

By discriminating against Dominicans of Haitian descent in access to nationality, the Dominican Republic is violating its obligation under Article 5 of ICERD, which provides that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law” notably in the enjoyment of rights enumerated in that provision, which include the right to nationality in Article 5(d)(iii).

In its 2008 concluding observations, the Committee expressed concern at the impact of the 2004 General Law on Migration on persons of Haitian origin born in the Dominican Republic. The Committee recommended that the government take “appropriate measures to guarantee respect for the principle of non-discrimination in children’s access to nationality” and “reconsider the status of people who have been in its territory for a long period with a view to regularizing their stay”.²⁸ Rather than seek to respond to the Committee’s recommendations, the government has perpetuated its discriminatory policies and even elevated them to constitutional status.

Violation of the right to nationality

While States Parties to ICERD retain the right to determine nationality criteria, this is subject to a crucial qualification: nationality laws may not discriminate against any particular nationality (Article 1(3)). The Committee has made clear, moreover, that ICERD’s general recognition of States Parties’ discretion to determine nationality “must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”²⁹ The Committee has also affirmed that

states have an obligation to “[e]nsure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization”.³⁰

In adopting the revised constitution and implementing the General Law on Migration and Circular No. 17 and Resolution 12 in a way that disproportionately affects Dominicans of Haitian descent on the basis of their national origin, the Dominican Republic is perpetuating violations of these individuals’ right to nationality as protected by Article 5 of ICERD.

The Dominican government has not established any objective criteria for deprivation of nationality. Instead, officials rely on the brief instructions in internal memorandums and/or on a demonstrably incorrect interpretation of the General Law on Migration to arbitrarily declare the identity documents of hundreds of Dominicans of Haitian descent retroactively invalid. These declarations of invalidity are made orally by JCE officials, not in judicial proceedings as mandated by Dominican law.³¹ The absence of due process that follows objective criteria for the deprivation of nationality and its disproportionate impact on Dominicans of Haitian descent make clear it is a discriminatory practice.

Many children of Dominicans of Haitian descent have no official birth certificates. Even where their parents’ Dominican nationality has been recognized, the government often refuses to issue valid birth certificates on arbitrary and discriminatory grounds. As birth registration is a prerequisite for recognition of Dominican nationality, these children’s right to nationality is being violated on a discriminatory basis. The refusal to issue mandatory identity documents (*cédulas*) to adult Dominicans of Haitian descent constitutes an equivalent violation of the right to nationality as these identity documents constitute the only proof of Dominican nationality for those over the age of 18.

The Committee has recommended that States “[r]ecognize that deprivation of citizenship on the basis of race, color, descent, or national or ethnic origin is a breach of States Parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.”³² The Dominican Republic’s recent practice of retroactively declaring invalid the identity documents previously issued to Dominicans of Haitian descent clearly contradicts this recommendation. The practices that have invalidated and barred Dominicans of Haitian descent from obtaining official identity documents constitute effective deprivation of nationality for no reason other than the darker skin color, surname, or national origin of Dominicans of Haitian descent.

The 2004 General Law on Migration provides that the Dominican government should develop a National Regularization Plan to legalize “non-residents” based on criteria such as how long they have lived in the country, their links to Dominican society, and their socio-economic and labor conditions. However, the Dominican government has failed to implement the regularization scheme, thus effectively barring these individuals from obtaining citizenship and ignoring the Committee’s recommendation that States Parties “[t]ake into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantages for them in access to employment and social benefits, in violation of ...anti-discrimination principles.”³³ Failure to implement a plan to regularize the status of “non-residents”, regardless of

the length of their residence in the country, also has negative consequences for their children who are deprived of access to Dominican nationality.

Violations of economic, social and cultural rights

Article 5(e) of ICERD obligates all States Parties to guarantee without distinction as to race, color, or national or ethnic origin a number of economic and social rights.

In its 2008 concluding observations, the Committee recognized the link in the Dominican Republic between “the registration of births and the ability of children to enjoy civil, political, economic, social and cultural rights, in particular education and health” and recommended that the Dominican government ensure equal access to birth certificates for all children in the country, including in the case of late request for birth registration.³⁴

The Dominican Republic continues to be in violation of Article 5(e)(v) on the right to education, and has not taken steps to implement the Committee’s recommendations that it take all necessary measures to ensure the right of non-citizens, in particular migrants of Haitian origin, to an adequate standard of living and in particular access to education.³⁵ Dominicans of Haitian descent without birth certificates or mandatory identity documents (*cédulas*) cannot, in practice, attend school or any kind of secondary education. Although recent legislation³⁶ guarantees all children the right to primary education, government officials have publicly stated that they will prevent any “Haitian” child from enrolling in Dominican schools.³⁷ In May of 2012, the migration authorities tried to prevent undocumented children from attending school,³⁸ but due to national and international pressure this measure was put on hold for a year pending further review.³⁹

Children who have been denied birth certificates can access neither public nor private health care, as a certified copy of a birth certificate is required for health care coverage. Similarly, lacking birth certificates and/or *cédulas*, Dominicans of Haitian descent are barred from all social security and social services schemes, as proof of Dominican nationality is a requirement for accessing these. This constitutes a violation of ICERD Article 5(e)(iv), which requires States Parties to guarantee the right of everyone, without distinction as to race, color or national or ethnic origin, to equality in the enjoyment of “[t]he right to public health, medical care, social security and social services.”

Many Dominicans of Haitian descent have to work in the informal sector, as their lack of a *cédula* makes them ineligible for jobs in the formal economy. The jobs they obtain are often low-paying and do not qualify for protection under Dominican labor laws. Even those Dominicans of Haitian descent that have successfully completed secondary or university education risk losing the advantages their education has given them with respect to employment if the government continues to declare their *cédulas* invalid retroactively. Thus, their right to equality before the law in the enjoyment of “[t]he rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration,” guaranteed under ICERD Article 5(e)(i), is being violated.

Violations of the right to political participation, the right to freedom of movement, the right to return, and other civil rights

States Parties to ICERD must guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin to equality before the law in the enjoyment of the following rights: the right to freedom of movement and residence within the border of the State (Article 5(d)(i)); the right to leave any country, including one's own, and return to one's country (Article 5(d)(ii)); the right to marriage and choice of spouse (Article 5(d)(iv)); the right to own property alone as well as in association with others (Article 5(d)(v)); and the right to inherit (Article 5(d)(vi)). The Dominican Republic's discrimination against Dominicans of Haitian descent in access to nationality and identity documents prevents them from enjoying these civil rights.

Dominicans of Haitian descent without a *cédula* cannot travel freely within the country and without proof of lawful residence in the Dominican Republic they risk being deported.⁴⁰ *Cédulas* and, in the case of Dominicans of Haitian descent, birth certificates are also required to obtain a Dominican passport. Dominicans of Haitian descent whose applications for *cédulas* and requests for certified copies of their birth certificates have been rejected thus cannot travel abroad as consulates often require such documents to certify a person's identity.⁴¹ If they do travel, they are not guaranteed the right to return to the Dominican Republic.

Furthermore, *cédulas* are required in order to get married, to own property and to receive inheritances. Dominicans of Haitian descent without *cédulas* are prevented from enjoying all these rights.

All Dominicans must also present a valid *cédula* to vote in local and national elections. Denied this document by the government on discriminatory grounds, many adult Dominicans of Haitian descent are unable to enjoy the right to political participation protected by ICERD Article 5(c).⁴² Those whose *cédula* applications have been denied have not been able to participate in recent elections.⁴³

B. Article 6 Violations

While there are some permissible grounds for the deprivation of citizenship under international law, the procedure for any such deprivation must guarantee a remedy to anyone who might be discriminatorily, and thereby arbitrarily, deprived of citizenship. ICERD Article 6 provides that "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." In its last concluding observations, the Committee called on the Dominican government to "ensure that non-citizens have equal access to effective remedies".⁴⁴

Several Dominicans of Haitian descent have challenged the denials of their requests for identity documents in the national judicial system and most of them have received favorable rulings in first instance courts. However, the JCE has not complied with any of these rulings and has appealed all the decisions. The Supreme Court in 2011 upheld Circular 17 and the actions of the JCE in a case concerning its refusal to issue a certified copy of a birth certificate to Emildo

Bueno, a Dominican of Haitian descent. The court refused to hear the appeal and held that the JCE is authorized to implement any administrative measures it deems necessary for overseeing the Civil Registry and implementing the laws, particularly the 2004 General Law on Migration.⁴⁵ The ruling has then effectively eliminated the possibility of judicial review of the JCE's decisions in violation of ICERD Article 6.

Conclusion

Since the Committee's last review in 2008, the Dominican Republic has further entrenched a number of discriminatory nationality laws, policies and practices that disproportionately affect persons of Haitian descent and violate its obligations under ICERD Articles 5 and 6. The Justice Initiative and CEJIL encourage the Committee to address these issues when it examines the Dominican Republic's implementation of ICERD during its 82nd session and to call on the government to effectively end and prevent discrimination against persons of Haitian descent in line with this submission's suggested recommendations.

¹ In this submission we use the term "Dominicans of Haitian descent" to refer to descendants of Haitian migrants born in the Dominican Republic who worked and settled in the country throughout the 20th and 21st century.

² The Committee, in its 2008 concluding observations (paras. 14-16 and 18), called on the government to a) guarantee respect for the principle of non-discrimination in children's access to nationality; b) reconsider the status of people that have been on its territory for a long period with a view to regularizing their stay; c) take measures to ensure equal access to birth certificates for all children as ordered by the Inter-American Court of Human Rights in the *Yean and Bosico* case; d) take immediate steps to issue all Dominicans of Haitian descent with identity documents; and e) ensure the right of non-citizens, in particular migrants of Haitian descent, to an adequate standard of living, in particular their access to health services, sanitation, drinking water and education.

³ In 2005, the Inter-American Court of Human Rights issued a landmark judgment against the Dominican Republic affirming that these policies discriminated against Dominicans of Haitian descent and left them vulnerable to statelessness. The case was brought by two young girls of Dominican descent who were denied Dominican birth certificates even though their mothers were born in the Dominican Republic and possessed valid *cédulas*. In its judgment, the Inter-American Court found that the Dominican Republic was misapplying the "in transit" constitutional exception to deprive children of Haitian descent of their right to Dominican nationality, making them vulnerable to statelessness. The court ordered the State not to adopt arbitrary rules that ignore the enduring links that long term migrants develop with the country, noting that "to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit" (para. 157). The court made clear that the migratory status of parents could not be transmitted to children born on national territory and must never constitute justification for depriving a person of the right to nationality (para. 156). The court recognized that although states enjoy wide discretion in determining who has the right to be a national, its regulations cannot be discriminatory or have discriminatory effects on particular groups of people (para. 141). *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R. (Ser. C), No. 130 (2005).

⁴ The full text of the new constitution is available at <http://www.suprema.gov.do/codigos/Constitucion.pdf>.

⁵ According to the Immigration Act No. 95 of April 14, 1939 and the Immigration Regulation No. 279 of May 12, 1939, which were until August 2004 the applicable migration regulations, foreigners "in transit" were those who entered the Dominican Republic with the principal objectives of traveling to another destination, those engaging in business or leisure activities, and diplomats. According to statements made by the Dominican Republic before the passage of the 2004 General Law on Migration, "A period of 10 days will be considered ordinarily sufficient to pass through the Republic" See: UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Dominican Republic 27/04/2000*, UN Doc. CCPR/C/DOM/99/3, para 18 and *Follow-up State Reporting: Action by State Party: Dominican Republic*, UN Doc. CCPR/CO/71/DOM/Add.1(2002), para. 57.

⁶ The full text of the General Law on Migration no. 285-04 (*Ley General de Migración No. 285-04*) was published in the *Gaceta Oficial* on August 27, 2007. It is available (in Spanish) at <http://www.seip.gov.do/cnm.php>.

⁷ Article 18 of the new constitution identifies as Dominican citizens: (1) The children of Dominican mothers or fathers; (2) Those who enjoyed Dominican nationality prior to the entry into force of this Constitution; (3) Persons born on national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and foreigners who find themselves in transit or reside illegally on Dominican territory. Foreigners shall be considered as being in transit as defined in Dominican laws; (4) Persons born abroad to Dominican mothers or fathers, regardless of having acquired, by virtue of their place of birth, a different nationality than their parents. Having reached the age of 18, they may express their will, to the competent authority, to assume dual nationality or renounce one of them; (5) Whoever marries a Dominican, as long as they opt for their spouse's nationality and meet the requirements established by law; (6) Naturalized persons, in accordance with the conditions and formalities required by law.

⁸ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 14.

⁹ On June 1, 2011, the president of the JCE was asked about the thousands of Dominicans of Haitian descent who are being left without documents due to Resolution 12 and he answered that the JCE was simply applying the Constitution. For the full interview please see: *La JCE no cede en caso de hijos de haitianos nacidos en RD que reclaman nacionalidad*, Lisette Rojas. June 1, 2011, Acento.com.do, <http://www.acento.com.do/index.php/news/3485/56/La-JCE-no-cede-en-caso-de-hijos-de-haitianos-nacidos-en-RD-que-reclaman-nacionalidad.html>. Please also see: *La Suprema entiende que la Junta actuó en base a las disposiciones legales de la Constitución*. November 30, 2011, Diario El Día, <http://www.eldia.com.do/nacionales/2011/11/30/68965/La-Suprema-Corte-de-Justicia-valida-circular-de-la-Junta-Central-Electoral>.

¹⁰ According to Article 47 of the 1999 Dominican constitution, Dominican laws can only be applied prospectively. Furthermore, “in no case may the law or [any other] public power affect or alter the juridical security derived from situations established under previous legislation.” Article 110 of the January 26, 2010 constitution upholds this prohibition.

¹¹ In a lawsuit challenging these discriminatory practices filed by a victim, the Dominican Central Electoral Board stated the following: “[T]he birth certificate of [...] was registered in a fraudulent manner because she is not Dominican but Haitian as she is the daughter of Haitian parents who arrived in the country on a visa and then fell into the “transit” category. Her birth registration is therefore an act contrary to the Constitution, and as such, it should be annulled.” Supplementary brief filed on November 30, 2010 by the Central Electoral Board before the Civil and Commercial Court of the First Judicial District of San Pedro de Macoris regarding the *amparo* filed on November 15, 2010 by Ana Maria Belique.

¹² UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 16.

¹³ General Law on Migration No. 285-04, Article 28, enacted on August 15, 2004.

¹⁴ According to Haitian law, children born to Haitian nationals outside Haiti and who were not declared by the parents before Haitian authorities within three years after their birth or who accepted another nationality have no direct access to Haitian nationality. They must first establish residency in Haiti before being recognized as Haitian nationals. As a result, the Dominican Republic's retroactive de-nationalization of these persons makes them stateless and this status will be inherited by their children. Please see Articles 11, 12.1 13a of the Haitian constitution.

¹⁵ For the most recent findings of international human rights monitoring bodies, please see: UN Human Rights Council, *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*, UN Doc. A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008; Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, UN Doc. CRC/C/DOM/CO/2, February 11, 2008, para. 126, wherein the Special Rapporteur and Independent Expert issued a joint recommendation that the Dominican Republic “appropriately implement the law in a manner that protects the right to non-discrimination enjoyed by every person within Dominican territory and the imperative to avoid statelessness”; UN Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, UN Doc. CRC/C/DOM/CO/2, February 11, 2008, para. 40, where the Committee “encourage[d] the State party to adopt a procedure to require nationality which is applied to all children born in the Dominican Republic in a non-discriminatory manner and to make sure that no child becomes stateless;” UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, wherein the Committee “strongly recommend[ed] the State party to take appropriate measures to guarantee respect for the principle of non-discrimination in children's access to nationality.” The Committee also urge[d] the State party to take immediate steps, including the removal of administrative obstacles, to issue all Dominicans of Haitian descent with identity documents;” Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, UN Doc A/HRC/13/3, January 4, 2010, para. 53, where Working Group members recommended that that the Dominican Republic “[a]dopt measures to ensure that Dominicans of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancellation

of birth and identity comments and that it “[a]pply consistent and non-discriminatory citizenship policies and practices”; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Dominican Republic*, UN Doc. CCPR/C/DOM/CO/5, April 19, 2012, para 22, wherein the Committee expressed concern “at reports that the 2004 General Migration Act has been applied retroactively in a number of cases in which recognition of the Dominican nationality of Dominican adults of Haitian origin has been withdrawn because their parents were “in transit” at the time of their birth, regardless of the duration of their stay in the country.” The Committee also regretted “the serious consequences of this situation in terms of the affected persons’ access to education, justice, employment, housing, health services and to all the civil and political rights related to migration status and nationality.”

¹⁶ Human Rights Watch, “Illegal People: Haitians And Dominico-Haitians In The Dominican Republic”, April 2002 Volume 14, Number 1 (B), www.hrw.org/reports/2002/domrep/; Amnesty International, *Dominican Republic: A life in transit - The plight of Haitian migrants and Dominicans of Haitian descent*, Amnesty International, March 2007, www.amnesty.org/en/report/info/AMR27/001/2007.

¹⁷ Law 659 of 1955 on Civil Acts, Article 31.

¹⁸ Under current Dominican law, all holders of civil registry documents have unfettered and automatic right of access to these documents. See Law 659 of 1955 on Civil Status Acts, Article 31.

¹⁹ Upon reaching 18 years of age, all Dominican nationals must apply for a *cédula de identidad y electoral*. In order to obtain a *cédula*, applicants must first present a certified copy of their birth certificate issued by the JCE specifically for the purposes of applying for a *cédula*. Possession of a valid *cédula* is mandatory under law and persons unable to present one risk fines, imprisonment, and even deportation. For adult Dominicans, *cédulas* are a necessary prerequisite for enjoying a wide variety of civil, political, social and economic rights. *Cédulas* are required to vote and to run for political office, to register for university education, to pay into the Dominican social security system, to open a bank account and acquire or transfer property, to apply for a passport, to make a sworn statement before the judicial system, to get married or divorced, and to register the birth of one’s children.

²⁰ When *cédula* applications are rejected, it is done orally, rather than in writing; in a public place; and in an informal, often derogatory fashion. Interviews with several Dominicans of Haitian descent whose *cédula* applications have been denied show that most have been instructed to come back only when their parents’ migration status is “sorted out” – presumably, when their parents’ migration status has been regularized, leaving them in a legal limbo as for most, this is a requirement almost impossible to fulfill.

²¹ See Human Rights Watch, “*Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*”, 2002.

²² Enforcing a 1994 law, civil registries now require all parents over the age of 18 to present a valid *cédula* in order to obtain a birth certificate for their children.

²³ The Justice Initiative has on file an example of a copy of Circular 17 where the phrase “foreign parents” has been replaced with “Haitian parents.”

²⁴ Justice Initiative interview with an administrative assistant at a civil registry office in Puerto Plata, Dominican Republic, August 24, 2007 who admitted that she determined who was born to foreign parents “by the physical traits of the person, the manner of talking.” Please also see a report published by Centro Bono on the effects of Resolution 12 on Dominicans of Haitian descent. *Vidas Suspendidas*, November 2011. Available at: http://cat.unesco.pucmm.org/unesco_files/pdf/Vidas_Suspendidas.pdf.

²⁵ The National Director of the Civil Registry, Servio Tulio Almanzar, has stated that by December 2009 an estimated 3,650 unnamed individuals – the majority of them of Haitian origin – had come under administrative review as per Circular 17 and Resolution 12-2007. Please see *Genocidio civil inaceptable*, *Periodico Hoy*, October 15, 2011, available at: <http://www.hoy.com.do/tema-de-hoy/2011/10/15/397489/Genocidio-civil-inaceptable>. On October 17, 2011, the JCE recognized the annulment of 40% of the birth certificates of people of Haitian descent that had received favorable rulings in courts of first instance. Please see: *Dice JCE anula 40% actas haitianos con sentencias*, *El Nacional*, October 17, 2012, <http://www.elnacional.com.do/nacional/2012/10/17/138388/Dice-JCE-anula-40-actas-haitianos-con-sentencias>.

²⁶ JCE, Directive for the application of Resolution No. 02-2007 of April 18, 2007, for the registration of children of foreigners born after the entry into force of the Migration Law 285-04 and the creation of a special book for those born prior to its entry into force, see paragraph 4. (*Instructivo para la aplicación de la resolución No. 02-2007 del 18 de abril del 2007, para el registro de los hijos de extranjeros nacidos con posterioridad a la ley de migración 285-04 y la habilitación de un libro especial para aquellos nacidos con anterioridad a dicha ley, abril 28, 2011*).

²⁷ *Servicio Jesuita a Refugiados y Migrantes, Situación de dominicanos/as de ascendencia haitiana afectados por las disposiciones de la JCE*, October 1, 2011, available at <http://reconoci.do/images/stories/documentos/situacion-afectados-r12.pdf>.

²⁸ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, 16 May 2008, para. 14.

²⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation No.30: Discrimination Against Non Citizens*, October 1, 2004, para. 2.

³⁰ Committee on the Elimination of Racial Discrimination, *General Recommendation No.30: Discrimination Against Non Citizens*, October 1, 2004, para. 13.

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- ³¹ See for example *Ley No. 437-06 Que Establece el Recurso de Amparo* (enshrining the individual right to appeal actions taken by a public authority), Article 1.
- ³² Committee on the Elimination of Racial Discrimination, *General Recommendation No.30: Discrimination Against Non Citizens*, October 1, 2004, para. 14.
- ³³ Committee on the Elimination of Racial Discrimination, *General Recommendation No.30: Discrimination Against Non Citizens*, October 1, 2004, paras. 14-15.
- ³⁴ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 15.
- ³⁵ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 18.
- ³⁶ Ministry of Education. Circular No. 18, July 27, 2011 in which the Ministry ordered all educational centers to accept all children up to 8th grade even in cases where they lack identity documentation.
- ³⁷ “*Director regional de Educación niega que autorizara inscribir los haitianos ilegales*”, El Diario Digital, August 2, 2007, (www.diariodigital.com.do/?module=displaystory&story_id=18562&format=html).
- ³⁸ Communication from the Director General of Migration to the Minister of Education, Fine Arts and Culture, May 25, 2012. Also see: *Extranjeros ilegales no entrarán a las escuelas*. Diario Libre, June 11, 2012, “*Apoya no se acepten hijos de ilegales en escuelas*”, Listín Diario, June 12, 2012, <http://www.listin.com.do/la-republica/2012/6/12/235888/Apoya-no-se-acepten-hijos-de-ilegales-en-escuelas>.
- ³⁹ Please see: *Migración recula con resolución que prohíbe extranjeros ilegales en las escuelas*. Diario Libre, June 13, 2012, http://www.diariodigital.com.do/noticias/2012/06/13/i339894_migracion-recula-con-resolucion-que-prohibe-extranjeros-ilegales-las-escuelas.html.
- ⁴⁰ Massive deportations of Haitian migrants and Dominicans of Haitian descent have always been a serious issue in the Dominican Republic. In July 2012, the Inter American Commission on Human Rights submitted the case of Benito Tide Mendez et al. v. Dominican Republic to the jurisdiction of the Inter-American Court because of the need to obtain redress for the victims, the seriousness of the violations, and the failure of the State to implement the recommendation. The case concerns the arbitrary detention and summary expulsion of Benito Tide Méndez, a Dominican of Haitian descent with proof of Dominican nationality, and other Dominican nationals, as well as several Haitian long-term residents, from the Dominican Republic. The Commission found “...that phenotypical characteristics and skin color were decisive factors when individuals were selected for detention and subsequent expulsion, indicating a pattern of discrimination regarding these persons”. Full report available at: www.oas.org/en/iachr/.../12.271NdeREng.doc.
- ⁴¹ *Emildo Bueno v. the Dominican Republic* (P 816-10), a petition filed in June of 2010 by OSJI and CEJIL with the Inter-American Commission on Human Rights, is a case in point. Emildo Bueno, born in the Dominican Republic to Haitian parents, had been officially recognized as a Dominican national since his birth, at which time he was issued a Dominican birth certificate and subsequently his Dominican nationality was confirmed through the issuance of a *cédula de identidad y electoral* and Dominican passport. In 2007, Mr. Bueno sought a certified copy of his birth certificate required for his application for permanent residency in the United States. On the basis of Circular 17, the Dominican civil registry denied him copies of those documents. Although the U.S. government granted him permanent residency and he is currently residing in the United States, his Dominican passport is due to expire shortly, in which case he will be unable to travel abroad. For more information, please see <http://www.opensocietyfoundations.org/litigation/bueno-v-dominican-republic>.
- ⁴² Please see the Final Statement of the Electoral Observation Mission of the OAS in the Dominican Republic, in which the mission stated: “Likewise, the Mission is concerned by some complaints related to the recognition of the right to vote of Dominican citizens of Haitian descent”, and it recommended: “[To] take the pertinent measures to protect the right of participation of all the people born in the territory of the Dominican Republic”. Available at: http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-184/12.
- ⁴³ Since these policies have been in place, the Dominican Republic has held two presidential elections: May 2008 and May 2012.
- ⁴⁴ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 13.
- ⁴⁵ *Tercera Sala de la Suprema Corte de Justicia de la República Dominicana*, Decision to reject the third opinion recourse submitted by Emildo Bueno Oguis, No. 003-208-01043, November 2, 2011 available at http://www.suprema.gov.do/PDF_2/sentencias_destacadas/2011/Emildo_Bueno_Oguis_JCE.pdf
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