

Submission to the United Nations Human Rights Committee: Review of the Dominican Republic

MARCH 12, 2012

TABLE OF CONTENTS

Executive Summary.....	page 2
Background and Context.....	page 3
ICCPR Violations.....	page 6
Article 16.....	page 6
Article 24.....	page 7
Article 25.....	page 9
Article 26.....	page 10
Conclusions and Recommendations.....	page 11

I. Executive Summary

1. The Open Society Justice Initiative (“the Justice Initiative”) and the Center for Justice and International Law (“CEJIL”) tender this submission to the United Nations Human Rights Committee (“the Committee”) in preparation for its periodic review of the Dominican Republic on March 12, 2012. At this session, the Committee will take up the issue of “measures taken to combat racism, particularly against persons of Haitian origin.” This submission concludes that measures taken by the Dominican Republic since its last periodic review in 2001 have actually operated to increase, rather than combat, discrimination against Dominicans of Haitian descent. In particular, amendments to the country’s nationality laws and policies since 2004 have had the effect of depriving thousands of Dominicans of Haitian descent of their citizenship and permanently excluding them from the political, economic and social life of their home country.
2. The Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Since 2007, the Justice Initiative has been systematically challenging the Dominican Republic’s discriminatory nationality policies via documentation, litigation, political advocacy and legal capacity development. CEJIL protects and promotes human rights in the Americas, including the Dominican Republic, through the strategic use of the tools offered by international human rights law. Since 1999, CEJIL has engaged strategic litigation and advocacy in the Inter-American human rights systems to address the Dominican Republic’s discriminatory nationality policies and to seek redress for their victims.
3. Developments in the Dominican Republic over the last decade have led to consequent violations of fundamental rights recognized by the International Covenant on Civil and Political Rights (“the Covenant”), including equal protection before the law (Article 26), recognition as a person before the law (Article 16), equal protection before the law and political participation (Article 25). Dominican children of Haitian descent in particular have suffered extreme deprivations in violation of their right to nationality as protected by Article 24 of the Covenant. **Elaborated in greater detail on page 12 of this submission, we ask that the Committee:**
 - a. **underscore its concern that the Dominican Republic’s nationality laws and policies unfairly target Dominicans of Haitian descent with a legal right to Dominican citizenship;**
 - b. **request the immediate cessation of the retroactive application of the 2004 migration law and ensure the issuance of certified birth certificate copies and national identity cards to those Dominicans of Haitian descent born prior to the entry into force of the law;**
 - c. **ask that the Dominican Republic guarantee and make effective the right to Dominican nationality of those persons born in the country prior to the recent constitutional change; and**
 - d. **ask that the Dominican Republic recognize the right to Dominican nationality of all children born on national territory who would otherwise be stateless.**

II. Background and Context

4. In its last review of the Dominican Republic, this Committee expressed concern at the abuse of the legal notion of “transient aliens” and allegations that such persons might be born in the Dominican Republic to parents who were also born there but were nevertheless not considered to be Dominican nationals. The Committee urged the Dominican Republic to regulate the situation of everyone living in the country and grant the rights recognized by Article 12 of the Covenant.¹ This concern about the treatment of Dominicans of Haitian descent has, in the intervening years, been echoed by other United Nations treaty body monitoring bodies, including the UN Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Human Rights Council’s Working Group on the Universal Periodic Review Process.²
5. In its fifth periodic report to the Committee, the Dominican Republic responds to these concerns and recommendations by arguing that “no reports have been made to relevant institutions alleging the non-recognition of the nationality of a Dominican citizen, thus preventing the person from enjoying his or her rights.”³ The government’s dismissal of these concerns and recommendations belie the truth that, in the decade since this Committee last reviewed the Dominican Republic, Dominicans of Haitian descent have suffered a steady and devastating erosion of their fundamental human rights.
6. Until January 2010, Article 11 of the Dominican Constitution⁴ guaranteed Dominican nationality to almost everyone born on national territory. The limited exceptions to this *jus soli* nationality regime were the children of diplomats and the children of parents who were “in transit” through the country. According to legal interpretation, parents were considered to be “in transit” if they remained in the Dominican Republic for a period of 10 days or less.⁵ From the 1940s through the early part of the 2000s, in conformity with the constitutional provision, the Dominican Republic granted nationality to children of migrants and foreigners who were resident in the Dominican Republic, including children of Haitian migrants. Haitian migrant parents were systematically allowed to use workplace identification cards known as *fichas* as proof of parental identification for the purposes of birth registration. The Dominican state issued their children official birth certificates which recognized their Dominican nationality. As adults, these first-generation Dominicans of Haitian descent used these birth certificates and their recognition of nationality to obtain national identity cards (*cédulas*) and to exercise the rights attendant to nationality (political participation, education, for example).
7. Alongside those whose Dominican nationality was formally acknowledged by the Dominican state, however, there developed a multi-generational class of permanently undocumented Dominicans of Haitian descent. With no basis in then-extant legislation, some civil registry officers determined that the undocumented Haitian parents of children born in the Dominican Republic were technically “in transit” and that therefore their children did not have a right to Dominican nationality. Children whose parents were extra judicially deemed as being “in transit” were denied birth certificates and official recognition as Dominican nationals.

8. In 2004, the Dominican government modified the constitution's *jus soli* guarantee of nationality. General Law on Migration (Law No. 285-04)⁶ stipulated that “non-residents” would henceforth be considered to be “in transit.” The category of “non-residents” was defined to include temporary foreign workers, migrants with expired residency visas, undocumented foreign laborers, and people otherwise unable to prove their lawful residency in the country. In the Dominican Republic, people of Haitian descent overwhelmingly dominate all these categories.
9. The 2004 law precluded any legal links between the Dominican state and the children of “non-residents” who were born on national territory. The law, in a new, restrictive interpretation of the constitutional *jus soli* provision—made Dominican Republic-born children of “non-residents” ineligible for automatic acquisition of Dominican nationality. Under this law, an alternate birth registration procedure was established,⁷ wherein Dominican health and civil registry facilities would issue a proof-of-birth document to Dominican Republic-born children of “non-residents” which could then be used to request acquisition and proof of nationality from the “relevant” foreign embassy.
10. In 2005, the Supreme Court of the Dominican Republic declared this law constitutional, , only a few weeks after the Inter-American Court on Human Rights delivered a landmark judgment in the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic*. In *Yean*, the Court found that the Dominican Republic was misapplying the “in transit” constitutional provision to deprive children of Haitian descent of their lawful right to Dominican nationality,⁸ and that such policies discriminated against Dominicans of Haitian descent and left them vulnerable to statelessness.⁹ The Inter-American Court made clear that the “in transit” category must have a reasonable temporal limit and 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 their right to nationality.¹⁰
11. Since 2004, the Dominican government has retroactively applied the 2004 migration law to severely restrict the right to nationality of even those Dominicans of Haitian descent whom it had previously recognized as citizens. Haitian parents whose Dominican Republic-born children were granted Dominican nationality ten, twenty, and even thirty years prior have been retroactively classified as “non-resident,” regardless of the fact that the “non-resident” exception to the *jus soli* nationality guarantee was introduced into law only eight years ago. Government agents argue that because their parents were “in-transit,” and therefore, according to 2004 law, the “non-resident” at the time of their births, they never should have been covered by the Constitution's *jus soli* guarantee and nor granted Dominican nationality. Such retroactive application of the law runs counter to both international and Dominican law.
12. The course of action chosen by the Dominican government to rectify its own “mistake” in recognizing nationality of these individuals has been to severely restrict these nationals' access to Dominican identity documents that prove Dominican nationality. Since 2007, a series of internal memos circulated within the Junta Central Electoral (“the JCE” which is the government body in charge of the national civil registry), including *Circular 017* and *Resolución 12-2007*, have barred the JCE's civil registry officers from issuing certified copies of birth certificates to “children of foreign parents who have not proven their residency or legal status in the Dominican Republic,” despite the fact that unfettered access to these personal identity

documents are protected by Dominican law.¹¹ The basis for restricting issuance is the potentially “irregular” status of such birth certificates, which require further “investigation” by senior civil registry offices and a final adjudication of validity before being issued to the applicants.¹² The government has failed to establish a formal procedure whereby those persons whose documents have been deemed “irregular” are notified about their document status; most affected individuals only find out when they go to their local civil registry office to perform what had previously been a relatively easy administrative task. Nor has the government established a procedure whereby the bearers of such “irregular” documents could continue to use their documents until a final judicial adjudication is made on their status.

13. Dominicans of Haitian descent wishing to apply for a *cédula* have faced similar problems. Although they were previously issued a Dominican birth certificate which recognized their nationality, they are now being told that their *cédula* application cannot proceed because their parents were “non-residents” at the time of their birth and, as such, they never had the right to Dominican nationality. Dominicans of Haitian descent whose *cédula* applications have been blocked are instructed to come back only when their parents’ migration status has been “sorted out” – presumably if and when their parents’ are granted legal residency in the country, something which is unlikely to happen anytime soon given the stalled nature of the Dominican Republic’s migration regularization scheme.¹³
14. In January 2010, the Dominican Republic introduced widespread modifications to its Constitution, including a fundamental change to the right of nationality in the country. Article 18 of the revised constitution limits the right to Dominican nationality to: the children of Dominican mothers and fathers; those persons who “enjoyed” Dominican nationality prior to the entry into force of the revised constitution; persons born in the Dominican Republic whose parents are not diplomats or “foreigners who find themselves in transit or reside illegally on Dominican territory;” persons born abroad to Dominican mothers and fathers; persons married to Dominican citizens; and persons who meet naturalization requirements.
15. For children born in the Dominican Republic to foreign parents, acquisition of Dominican nationality is now directly dependent on their parents’ migration status. “Illegal residence” and the “in transit” status are now synonymous: a person who cannot satisfy documentary requirements for legal residence will be considered to be “in transit” no matter the length of his or her residency in the Dominican Republic. This new constitutional nationality provision directly contravenes the Inter-American Court of Human Rights’ 2005 judgment in the *Dilcia Yean and Violeta Bosico v. Dominican Republic* judgment, wherein it ordered the Dominican government not to make arbitrary rules that ignore the enduring links that long-term migrants develop with the country and to respect a reasonable temporal limit for determining who is “in transit.”¹⁴ The Court also made clear in this landmark judgment that the migratory status of parents should not be transmitted to children born on national territory, and must never constitute justification for depriving a person of a right to nationality.¹⁵

III. Violations by the Dominican Republic

16. The Dominican Republic's current nationality policies discriminate against Dominicans of Haitian descent. The policies specifically violate Articles 16, 24, 25, and 26 of the Covenant, which must be understood in conjunction with Article 2(1), which obliges all State Parties to "respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 16 violations

17. The ICCPR's Article 16 requires that "everyone shall have the right to recognition everywhere as a person before the law." In its fifth periodic report to the Committee, the Dominican Republic argues that it has protected the right to recognition as a person before the law by establishing the Immigration Registry for children born in the Dominican Republic to "non-resident" women, as this has meant that "all children born to foreign parents in the country now have official identity papers and can...be registered in the corresponding registry office."¹⁶ It also touts the JCE's Late Birth Registration Unit's efforts to rectify the documentation situation of more than half a million nationals.¹⁷ These two measures, however, do not in any way address or rectify the situation of thousands of Dominicans of Haitian descent who once enjoyed official recognition as Dominican nationals (and as persons before the law) but who are now unable to prove their legal identity.

18. The Dominican Republic has retroactively applied Migration Law 285-04 to effectively withdraw its recognition of Dominican nationality from thousands of adult Dominicans of Haitian descent because their parents were "in transit" at the time of their births. It has re-categorized these former citizens as "non-residents" without rights to Dominican nationality. This retroactive denial of nationality has manifested itself in the JCE's use of *Circular No. 017* and *Resolución 12-2007* to refuse to issue *cédulas* or provide access to certified copies of birth certificates to thousands of Dominicans of Haitian descent who were previously recognized as Dominican nationals.

19. It is a quirk of the Dominican legal, political, and economic system that nationals are constantly called upon to prove their legal identity for such varied activities as registering for primary and secondary school, obtaining health care coverage and accessing other social services, matriculating at university, altering one's civil status through marriage or other activities, and applying for *cédulas* and/or passports. Such proof comes in the form of a certified copy of a birth certificate, of which there are three distinct versions issued by JCE. Original copies of birth certificates are not sufficient for these purposes – Dominican citizens must provide current certified copies of birth certificates, date stamped by the JCE, in order to prove their legal identity for the above-mentioned purposes. Absent these documents, Dominicans of Haitian descent are prevented from enjoying of rights and activities attendant to Dominican nationality.

20. Persons unable to gain certified copies of their birth certificates have been prevented from even applying for a *cédula*. Possession of a valid *cédula* is legally mandatory; to be caught without one is to risk fines, imprisonment, and even deportation.¹⁸ *Cédulas* are required to vote and to run for political office, to matriculate at university, to pay into the Dominican social security system, to open a bank account and acquire or transfer property, to make a sworn statement, to get married or otherwise alter one's civil status, and to register the birth of one's children. Those Dominicans of Haitian descent whose physical applications for *cédulas* have been rejected have seen their rights to education, political participation, freedom of movement and access to justice severely circumscribed.
21. Many Dominicans of Haitian descent with valid *cédulas* and passports, obtained before the 2004 migration law began to be retroactively applied, will eventually encounter difficulties in renewing or replacing them, as certified birth certificate copies will be required for renewal or replacement. In the absence of these documents, they will be unable to prove their nationality or exercise rights inherent to Dominican citizenship, leaving them effectively stateless.
22. The government's refusal to issue Dominicans of Haitian descent birth certificates or *cédulas* on the basis of its retroactive interpretation of Migration Law No. 285-05 constitutes denial of their only recognition of personhood before the law, with deleterious effects upon their ability to enjoy legal and other benefits associated with nationality, as protected by Article 16 of the Covenant. There are no indications that the JCE's Late Birth Registration Unit targets in any way the serious problem of under-documentation among communities of Haitian descent.

Article 24 violations

23. Under Article 24 of the Covenant, every child is entitled to be "registered immediately after birth and shall have a name" and also has the "right to acquire a nationality." In its General Comment 17 on the rights of the child, this Committee has seen the link between a child's right to birth registration and to a name, and the enjoyment of Article 16 rights to personhood before the law. It recognized that Article 24 rights are "designed to promote recognition of the child's legal personality." In its fifth periodic report to this Committee, the Dominican government presents the Immigration Registry introduced by Migration Law 285-04 as a viable mechanism for protecting the right of every child to a name and to acquire a nationality, arguing that "all children born to foreign parents in the country can be registered in the registry office of their home country's mission and can obtain official identity papers."¹⁹ The government makes no mention of the status of second- and third-generation Dominicans of Haitian descent, who, although born to parents who were likewise born in the Dominican Republic and who were once recognized as Dominican nationals, have been denied birth registration and recognition of nationality. Their parents are not foreigners, as the Dominican Republic is their "home country," and they have no other government from which to request identity papers. The document denial suffered by adult Dominicans of Haitian descent, described above, has directly impacted the ability of Dominican children of Haitian descent to enjoy their right to nationality, birth registration, and a name.

24. Dominican law requires that mothers present either valid Dominican birth certificates (if they are under 18 years of age) or *cédulas* (if they are 18 and older) in order to register the birth of their children and have them issued a birth certificate. The mother's personal identification establishing her Dominican nationality is an absolute requirement; the only time a father's personal documents are an acceptable substitute is in the case of the mother's death.
25. Consequently, Dominican mothers of Haitian descent who since 2004 have been unable to obtain a certified copy of their birth certificate or a *cédula*, have experienced grave difficulty in registering the births of their children. A July 2010 study conducted in 14 different communities with heavy concentrations of people of Haitian descent found that of the 89 mothers of Haitian descent who had given birth since January 26, 2010, only nine had been able to register the birth of their children. The remaining 80 children went undocumented because of their parents' lack of documents, and as a consequence are unlikely to ever be able to claim any citizenship under the current legal regime.
26. Children born to Dominican mothers of Haitian descent who have been unable to obtain certified copies of their birth certificates or *cédulas* have been denied birth registration. While it is true that they have the option of registering their children in the Immigration Registry, the vast majority of affected Dominican mothers of Haitian descent have refused to do so. They do not see themselves as immigrants or foreigners – indeed, until recently, they were recognized as Dominican nationals. The viability of the Immigration Registry as a mechanism to protect the rights of every child to a name and to acquire a nationality, as presented by the Dominican government in its fifth periodic report, is limited.
27. Even those Dominican mothers of Haitian descent who possess a valid *cédula* have reported being unable to register the birth of their children. Although they meet all the documentary requirements for birth registration, they are told that because their own parents' status (i.e., the status of their children's grandparents) is under review, their children will not be issued a Dominican birth certificate until the grandparents' migration status is "resolved." The Justice Initiative recently surveyed a group of Dominican mothers of Haitian descent with valid *cédulas* who gave birth to children after January 26, 2010: out of 40 mothers, 32 have been unable to register their children. They were instead instructed to come back with certified copies of their own birth certificates, which, given the government's ongoing retroactive application of the 2004 migration law, is a practically impossible task.
28. Second-generation Dominican children of Haitian descent whose births are going unregistered are legal ghosts. Although they are born in the same country as their parents, they are unable to enjoy the rights their parents enjoyed as children. Lacking birth certificates, they face difficulties attending primary school, accessing child-specific health and social services, voting, traveling and ensuring the registration and recognition of their own children as nationals. They live under constant suspicion in the country of their birth, eternally vulnerable to detention or deportation because of their undocumented status. They are stateless – permanently excluded from Dominican social, political and economic life.
29. In justifying their discriminatory actions against Dominicans of Haitian descent, government officials consistently argue that Dominicans of Haitian descent have a right to Haitian nationality, and therefore

cannot be left stateless by its actions. This interpretation of the Haitian constitution is fundamentally incorrect. The Haitian constitution grants *jus sanguinis* citizenship only to “person[s] born of a Haitian mother or Haitian father *who are themselves native-born* Haitians and have never renounced their nationality” (emphasis added).²⁰ In order to obtain Haitian nationality, the second- and third-generation descendants of Haitian migrants would have to first reside in Haiti for a continuous five-year period, and then apply to become naturalized Haitian citizens. Dominicans of Haitian descent whose recognition of Dominican nationality has been retroactively withdrawn therefore have no recourse to an alternate nationality. Even if they had such a right in theory, as a practical matter obtaining recognition and documentation of such a citizenship would necessitate an extended process, impossible for most of them to complete because it would require moving to and residing in a different country – without any travel documents.

30. In its interpretation of the protections offered by Article 24 of the Covenant, this Committee has emphasized that States 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, and that no discrimination should be admissible under internal law between children of stateless parents or based on the nationality status of one or both of the parents.²¹ By determining that thousands of adult Dominicans of Haitian descent no longer have the right to nationality based on the retroactive categorization of their parents as having been “in transit,” and thereby preventing the children of these former nationals from being recognized as Dominican citizens, the Dominican government is guilty of precisely such differentiation. Young Dominican children are being penalized for their *grandparents’* migration status, and being made effectively stateless as a result.

Article 25 violations

31. This Committee has made clear that in the enjoyment of the rights protected by Article 25 of the Covenant (to take part in the conduct of foreign affairs, to vote and be election, and to have access to public service), no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²² However, the Dominican Republic’s policies and practices with regards to personal identification documents have made these rights ineffective for Dominicans of Haitian descent.

32. Dominicans of Haitian descent who have been unable to obtain *cédulas* were not able to participate in recent municipal, district and national elections, not to mention unable to present themselves as candidates for available political offices. Adult Dominicans of Haitian descent whose *cédula* applications were rejected prior to 2008 could not vote in the 2008 presidential elections or the 2010 congressional elections. They will not be able to participate in the upcoming May 2012 election, or any others in the future.

33. This problem of political exclusion is likely to grow exponentially worse in the coming years, as more and more children who were either barred from obtaining the certified birth certificate copy required for national identity card applications or whose birth went unregistered by the Dominican government will be

unable to obtain a national identity card. The Dominican Republic will then have to contend with a sizeable population of disenfranchised, stateless individuals who have no say in how their country is run.

Article 26 violations

34. In its General Comment 18, this Committee made clear that Article 26 of the Covenant not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It also noted that Article 26 provides in itself an autonomous right.²³ It prohibits discrimination in law or in fact in any field regulated and protected by public authorities.²⁴ Though the Dominican government may argue that its new nationality and documentation policies were put in place to “clean up” the civil registry, in practice they have had a disproportionate – and negative -- impact on Dominicans of Haitian descent.
35. Despite the seemingly neutral language of the JCE’s *Circular 017 and Resolución 12-2007*, which seeks to restrict the access of people born to “foreign parents” to personal identity documents on account of these documents’ suspected validity, these instructional memoranda appear to target Dominicans of Haitian descent for differential treatment. The Dominican Republic counts no other historic population of foreign origin who would have been granted Dominican identity documents (and nationality) in prior decades. Accordingly, the “irregular” processing of birth certificates by “foreign parents” can reasonably be understood to refer to birth certificates issued to the children of Haitian migrant workers, particularly those who relied upon *fichas* (workplace identity cards issued by Dominican companies to Haitian migrant workers, which for decades were accepted as proof of parental identity for the purposes of birth registration) to declare the births of their children born in the Dominican Republic. Reinforcing this inference, in some cases JCE officials have replaced the phrase “foreign parents” on official documents referring to *Circular No. 17* with “Haitian” parents.²⁵
36. In practice, civil registry officials have admitted to using skin color, racial features, and “Haitian-sounding names” to determine who might be should be subjected to an investigation of the validity of their personal identification documents. As noted by the United Nations’ Independent Expert on Minority Issues, “this presumption of illegality is applied only to people with dark skin and Haitian features.”²⁶ Her 2008 commentary is as true now as it was then:

All Haitians living in the Dominican Republic, regardless of distinctions, are now having their presence questioned, even if they have been issued with official documents in the past. They complain that they currently live in a climate of uncertainty and fear over their future...[B]y failing to make distinctions in the status of persons of Haitian descent, government official treat them all as illegal migrants, subject to discriminatory practices, unjustified expulsions, denial of their rights and ultimately also denial of their legitimate expectations of citizenship.²⁷

IV. Conclusions and Recommendations

37. Dominicans of Haitian descent have been alienated from their political and social community in direct consequence of the government's discriminatory nationality policies and practices. As a result, they have been and will continue to be prevented from enjoying a broad range of rights guaranteed to them by international human rights law, including the rights to political participation, equality before the law, and recognition before the law.
38. The government of the Dominican Republic has steadfastly rebuffed any internal or external criticism of its discriminatory nationality policies. During the country's 2009 review by the UN Human Rights Council's Working Group on the Universal Periodic Review, various member states recommended that the government (a) ensure that appropriate legal frameworks be aligned with international norms governing the issue of nationality; (ii) cancel all retroactive measures taken to replace the principle of *jus soli* with the principle of *jus sanguinis*, and (iii) adopt 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 documents. Having accepted a wide range of recommendations on an expansive list of human rights issues, the Dominican delegation refused all nationality-related recommendations, arguing that the country's constitution was not open to interpretation by external norms, and that, notwithstanding all evidence to the contrary, its laws were not being applied retroactively.²⁸
39. Contrary to what the Dominican government maintains before human rights monitoring bodies and its own citizens, it does not enjoy unfettered authority to regulate matters bearing on nationality. Its powers to set citizenship policies are circumscribed by legal obligations to ensure the full protection of human rights to those on its territory.²⁹ As affirmed by the Inter-American Court of Human Rights in the *Yean and Bosico v. Dominican Republic* case, states are particularly limited in their discretion to grant nationality by their obligations to ensure equal protection before the law and to prevent, avoid, and reduce statelessness.³⁰
40. One of the most important international legal restrictions on state discretion in matters of nationality is the prohibition of arbitrary deprivation of nationality. Human rights treaty bodies have recognized that deprivation of nationality on the grounds of national origin, a form of racial discrimination prohibited by international and comparative law, is a form of impermissible arbitrariness.³¹ Even when international law allows states to withdraw citizenship, such action must be accompanied by procedural and substantive safeguards. Procedural due process requires that an objective standard for deprivation of nationality be prescribed by law and that there be a meaningful opportunity for individuals to have recourse to an independent tribunal. The Dominican government's failure to provide these safeguards renders its actions arbitrary and in violation of international law.³²
41. We urge the Committee to address the nationality-related discrimination described in this submission when it conducts its periodic review of the Dominican Republic's compliance with the Convention. In its Concluding Observations, **the Committee should express serious concern about discrimination in**

access to nationality for Dominicans of Haitian descent in the Dominican Republic, and specifically call on the Dominican Republic to:

- Immediately cease all retroactive application of Migration Law 285-04 and issue *cédulas* and birth certificates to Dominicans of Haitian descent born in the Dominican Republic prior to the entry into force of the law. This requires (i) the immediate withdrawal of the *Circular 017* and *Resolución 12-2007* instructions and (ii) instruction to all civil registry officers that, as per Dominican law, all Dominican nationals should enjoy unfettered access to their identity documents.
- Develop, apply and publicize adequate procedural guarantees with respect to birth registration and other nationality-related processes. Submit all determinations and reviews of nationality to judicial review, as per Dominican law; provide written notification of the civil registry's decision to investigate the validity of an individual's identity documents and of any negative decisions made by the civil registry body; and clearly explain the JCE's investigatory procedure to persons whose documents are under investigation for suspected fraud. Establish firm deadlines for completion of investigations; establish effective appeals procedures; and implement appropriate measures for granting provisional identification for those whose documents are under investigation.
- Implement the regularization scheme detailed in Migration Law 285-04 and grant formal resident status and identity documents to Haitian migrants who entered the country under the previous migration law, which would enable their children to qualify for Dominican citizenship. Under no circumstances should this regularization scheme be applied to Dominicans of Haitian descent whose Dominican nationality was previously recognized by the government; their inviolable right to Dominican nationality was already recognized by the previous constitution and they should not be treated as migrants.
- Fully respect in the distribution of new biometric *cédulas* the right to equality before the law; do not rely on the alleged migratory status of the parents of persons who currently possess valid *cédulas*. Any allegations that the previous *cédulas* were obtained in a fraudulent manner must be accompanied by a full investigation and a judicial determination of validity.
- Clarify—through constitutional reform or a statement of intent by the legislature—that Article 18(2) of the new Constitution should be interpreted to mean that any and all individuals born in the Dominican Republic under the previous constitution have the right to Dominican nationality.
- Recognize the right to nationality of all children born in the Dominican Republic who would otherwise be stateless.

The Committee should also require the Dominican Republic to report on its implementation of efforts to eradicate discrimination in access to nationality in its future periodic reports to the Committee.

ENDNOTES

¹ UN Human Rights Committee, *Consideration of reports submitted by states parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Dominican Republic*, UN Doc. CCPR/CO/71/DOM, 21 April 2001, para. 18.

² 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, 11 February 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 ; 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 cancelation of birth and identity comments and that it “[a]pply consistent and non-discriminatory citizenship policies and practices.”

³ UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Fifth Periodic Report: Dominican Republic*, UN Doc. CCPR/C/DOM/C, 22 January 2010, para. 97.

⁴ The text of this previous constitutional text is available at <http://pdba.georgetown.edu/Constitutions/DomRep/domrep02.html>.

⁵ Immigration Act No. 95 of April 14, 1939 and Immigration Regulation No. 279 of May 12, 19239.

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

⁷ This new birth registration procedure is referenced in paragraphs 111 and 162 of the Dominican Republic’s Fifth Period Report to this Committee.

⁸ Inter-American Court of Human Rights, *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R. (Ser. C), No. 130 (2005), para. 157.

¹⁰ *Ibid*, para. 156.

¹¹ Law 659 of 1955 on Civil Status Acts, Article 31.

¹² *Circular 017*, issued in March 2007, bars civil registry officials from processing any requests related to potentially irregular birth certificates that may be been improperly issued to children of foreign parents who had not proven their residency or legal status in the Dominican Republic. *Resolución 12-2007*, issued in December 2007, authorized the provisional suspension of any state-issued identity document which contained “irregularities.” One such “irregularity” is a birth certificate issued to parents whose parents have not proven their residency or legal status.” Both memorandums can be found on the homepage of the Junta Central Electoral: <http://www.jce.gov.do>.

¹³ The 2004 General Law on Migration includes provisions that could lessen this multi-generational discriminatory impact. Articles 151-152 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, there has been no discernible move to implement these provisions. Having thus left the status of thousands of undocumented migrants and “non-residents” unresolved, the government has proceeded to implement provisions of the 2004 law pertaining to the new birth registration system to the detriment of multiple generations of Dominicans of Haitian descent.

¹⁴ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am. Ct. H.R. (Ser. C), No. 130 (2005), para. 157.

¹⁵ *Ibid*, para. 156.

¹⁶ UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Fifth Periodic Report: Dominican Republic*, UN Doc. CCPR/C/DOM/C, 22 January 2010, para. 111.

¹⁷ *Ibid*, para. 113.

¹⁸ Law No. 1625 of 1962 on Personal Identification Cédula

¹⁹ UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Fifth Periodic Report: Dominican Republic*, UN Doc. CCPR/C/DOM/C, 22 January 2010, para. 161.

²⁰ Constitution of Haiti, Article 11.

²¹ UN Human Rights Committee, *General Comment No. 17: Rights of the child (Art. 24)* : . 04/07/1989, para. 8.

²² UN Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)* : . 07/12/1996, para. 3.

²³ UN Human Rights Committee, *General Comment 18 (Thirty-seventh session, 1989): Non-Discrimination, A/45/40 vol. I (1990) 173*, para. 1.

²⁴ Ibid, para. 12.

²⁵ An example of a document containing such language is on file with the Justice Initiative.

²⁶ 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 Dominican Republic*, UN Doc. A/HRC/7/18/Add.5 and A/HRC/7/23/Add.3, 18 March 2008, para. 62.

²⁷ Ibid, para. 102.

²⁸ UN 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. 89.

²⁹ Inter-American Court of Human Rights, *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984), para. 32.

³⁰ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, September 8, 2005, Inter-Am Ct. H.R. (Ser. C) No. 30 (2005), para. 140.

³¹ The UN Committee on the Elimination of Racial Discrimination recommends that states recognize that “deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.” (UN Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination against Non-Citizens*: 01/10/2004, para. 14.) The UN Commission on Human Rights has affirmed that “arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights and fundamental freedoms.” (UN Commission on Human Rights, *Human Rights and Arbitrary Deprivation of Nationality C.H.R. res 1998/48*, UN Doc. E/CN.4/1998/48, para.2.) Article 9 of the 1961 Convention on the Reduction of Statelessness explicitly prohibits states from depriving “any persons or a group of persons of their nationality on racial, ethnic, religious or political grounds.”

³² See, for example, the UN Commission on Human Rights calling all states “to refrain from taking measure and from enacting legislation that discriminates against persons or groups of persons on grounds of race, gender, religion, or national or ethnic origin by nullifying or impairing exercise, on an equal footing, of their right to nationality, especially if this renders a person stateless, and to repeal such legislation if it already exists.” (UN Commission on Human Rights, *Human Rights and Arbitrary Deprivation of Nationality, C.H.R. Res. 1998/48*, para. 3.)