

**SUBMISSION TO THE
COMMITTEE ON THE RIGHTS OF THE CHILD:
REVIEW OF THE
DOMINICAN REPUBLIC
UNDER THE
CONVENTION ON THE RIGHTS OF THE CHILD**

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NGO Report
By the Georgetown Law Human Rights Institute¹

based on a Report by the Georgetown Law Human Rights Institute Fact-Finding Project:

LEFT BEHIND

HOW STATELESSNESS IN THE DOMINICAN REPUBLIC
LIMITS CHILDREN'S ACCESS TO EDUCATION

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TABLE OF CONTENTS

I. INTRODUCTION	3
II. SITUATION ANALYSIS	5
A. CLUSTER CIVIL RIGHTS AND FREEDOMS: BIRTH REGISTRATION, NAME AND NATIONALITY (ARTICLE 7)	5
1. Personal Identifying Documentation	5
2. Lack of Access to Documentation	6
3. The Dominican Republic’s Failure to Comply with Its Obligations under the CRC .	9
4. Recommendations	10
B. CLUSTER EDUCATION, LEISURE AND CULTURAL ACTIVITIES	11
1. The Dominican Education System	11
2. Barriers to Education	13
<i>a. Primary School</i>	<i>16</i>
<i>i. General Arbitrary Deprivation</i>	<i>16</i>
<i>ii. The Eighth-Grade National Exam</i>	<i>17</i>
<i>b. Secondary School</i>	<i>18</i>
<i>i. General Arbitrary Deprivation</i>	<i>18</i>
<i>ii. Turning Eighteen</i>	<i>20</i>
<i>iii. National Testing as a Hurdle to High School Graduation</i>	<i>20</i>
<i>iv. Proof of High School Completion</i>	<i>21</i>
<i>c. Higher Education</i>	<i>22</i>
<i>d. Cross-Cutting Issues</i>	<i>23</i>
<i>i. Transferring Schools</i>	<i>23</i>
<i>ii. Discrepancies in Written Records</i>	<i>24</i>
<i>iii. Students Discouraged from Continuing School</i>	<i>24</i>
3. The Dominican Republic’s Failure to Comply with Its Obligations under the CRC	26
<i>a. Obligations</i>	<i>26</i>
<i>b. Gaps and Shortcomings</i>	<i>27</i>
4. Recommendations	29
III. CONCLUSION	29
APPENDIX 1: RECOMMENDATIONS	31
APPENDIX 2: TERMINOLOGY	33

I. INTRODUCTION

The Georgetown Law Human Rights Institute Fact Finding Project presents this submission in preparation of the Committee on the Rights of the Child's review of the Dominican Republic at its 68th session. This submission focuses on children who are stateless or at risk of statelessness and the impact of statelessness on their access to education. Our findings indicate that statelessness in the Dominican Republic does indeed affect children's access to education and that the Dominican Republic is consequently in violation of the Convention on the Rights of the Child.

The content of this report is based on the work of the Human Rights Institute Fact-Finding Project and an accompanying, year-long human rights practicum course. During the fall of 2013, members of the Fact-Finding Project researched the issue of statelessness in the Dominican Republic and its impact on children and their right to education. In January 2014, the Institute's practicum course conducted a fact-finding mission in the area surrounding Santo Domingo and in a northern province of the Dominican Republic to investigate whether statelessness or the risk of statelessness affects the ability of children to realize their right to education. The research team interviewed ninety-five individuals, including affected persons, civil society organizations, government officials, politicians, teachers, school directors, lawyers and other relevant stakeholders. The research team worked with reputable local and international organizations to identify communities of affected persons for potential participation in the research. Prospective interviewees were predominantly selected by convenience sampling. All interviews were carried out following a robust and thorough informed consent process.

In order to preserve the anonymity and privacy of those who described personal circumstances and experiences to the research team, this submission uses pseudonyms where appropriate.

* * *

For generations, children born in the Dominican Republic to both regular and irregular migrants were recognized as citizens under Dominican law, but this has changed over the last ten years.² From 1929 until 2004 and in accordance with the principle of jus soli, anyone born in the Dominican Republic was a Dominican citizen, with the exception of children born to parents who were "in-transit," meaning they were in the country for ten days or less.³ Then, in 2004, a new migration law was passed and stated that only the children of a legal resident parent could

² Ley General de Migración, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.); *Yean & Bosico v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005); Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

³ Ley de inmigración, Ley No. 95 de 1939 (Apr. 14, 1939) (Dom. Rep.); Reglamento de migración No. 279 (May 12, 1939) (Dom. Rep.), at Section V; U.N. Human Rights Comm., *Concluding Observations of the Human Rights Comm.: Dom. Rep.*, ¶ 18, U.N. Doc. CCPR/CO/71/DOM (Apr. 26, 2001); U.N. Human Rights Comm., *Comments by the Government of the Dom. Rep. on the concluding observations of the Human Rights Comm.* (CCPR/CO/71/DOM), ¶ 57, UN Doc. CCPR/CO/71/DOM/Add.1 (May 28, 2002); An exception existed for the children of diplomats. See, e.g., Constitución de la República Dominicana, Aug. 14, 1994, art. 11 (Dom. Rep.).

qualify for Dominican nationality.⁴ Despite criticism from the international community that this would result in significant levels of statelessness, the government of the Dominican Republic began to deny citizenship to the children of irregular migrants born in the country by providing their parents with pink birth certificates, to distinguish these children as non-citizens.⁵ In the *Yean and Bosico* decision, the Inter-American Court of Human Rights found the Dominican Republic to be in violation of several rights under the ACHR, including the right to nationality and the obligation to prevent, avoid and reduce statelessness, because of the refusal to issue birth certificates to the children in that case.⁶ In 2010, the Dominican government incorporated this distinction in the Constitution, with a provision that widened the definition of “in-transit” to include any irregular immigrants.⁷ Therefore, any children born in the Dominican Republic after 2010 will not be Dominican citizens unless at least one parent is a Dominican national or legal resident.

Persons born in the Dominican Republic, but with ancestors who migrated from Haiti, have been dramatically affected by this shifting landscape. In September 2013, the Constitutional Court stripped a disputed number of Dominicans of Haitian and other ancestry of their Dominican citizenship, by retrospectively reinterpreting the provisions of a previous version of the Constitution.⁸

Despite widespread criticism,⁹ the Dominican Republic continues to justify its actions on the basis of national sovereignty and as the legitimate response to irregular migration from Haiti, while simultaneously denying the existence of a statelessness problem in the country.¹⁰ Consequently, children in the Dominican Republic continue to be born stateless or at risk of statelessness. Generations of Dominicans of Haitian descent either have no personal identifying documents, or have had previously issued paperwork confiscated because of “irregularities”.¹¹

⁴ Ley General de Migracion, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.).

⁵ Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); Junta Central Electoral, Resolution 12-2007 (Dec. 10, 2007) (Dom. Rep.).

⁶ *Yean & Bosico*, Inter-Am. Ct. H. R. ¶ 140, 172 (Sept. 8, 2005).

⁷ Constitución de la Republica Dominicana, Jan. 26, 2010, art. 18(3) (Dom. Rep.).

⁸ *See A Crisis of Nationality: Dominicans of Haitian Descent*, OPEN SOCIETY FOUNDATIONS (OSF) (Oct. 2013), <http://www.opensocietyfoundations.org/sites/default/files/factsheet-dominicans-haitian-descent-10012013.pdf>. The Inter-American Commission on Human Rights has referred to estimates of approximately 200,000 individuals being affected by the ruling. Inter-American Comm. on Human Rights (IACHR), *Annex to the Press Release: Preliminary Observations from the IACHR's Visit to the Dominican Republic* (Dec. 6, 2013), http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp [hereinafter IACHR, Preliminary Observations].

⁹ *See* Letter from Ralph Gonsalves, Prime Minister of St. Vincent, to Danilo Medina, President of the Dom. Rep. (Oct. 11, 2013), available at <http://www.slideshare.net/Stanleylucas/prime-minister-gonsalves-letter-to-pres-dr>; Press Release, U.N. High Comm'r for Refugees [UNHCR], UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent (Oct. 1, 2013), <http://www.unhcr.org/524c0c929.html>; *Yean & Bosico*, Inter-Am. Ct. H. R. (Sept. 8, 2005).

¹⁰ *See* Letter from Mr Anibal De Castro, Ambassador of the Dominican Republic to the United States, *Respuesta al artículo del periódico New York Times: "Dominicans of Haitian Descent Cast Into Legal Limbo by Court"* (last visited Mar. 4, 2014) (available online at <http://www.domrep.org/letter.html>).

¹¹ OSF, DOMINICANS OF HAITIAN DESCENT AND THE COMPROMISED RIGHT TO NATIONALITY: REPORT PRESENTED TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE OCCASION OF ITS 140TH SESSION 7 (Oct. 2010), available at

The research conducted for the report found that the Dominican Republic has arbitrarily deprived Dominicans of Haitian descent of their Dominican nationality and identification documents which has made a considerable proportion of the Dominican Republic's population stateless. Many Dominicans of Haitian descent interviewed by the research team were prevented from attending primary or secondary school because they do not have birth certificates.

The full recommendations appear at the end of each cluster and the end of the report. Our primary recommendations to the government of the Dominican Republic include:

- Issue and enforce transparent, consistent, fair, and practical procedures for the national identity card and birth certificate acquisition processes and make those procedures accessible to the public.
- Take all necessary steps to ensure equal access to education at all levels regardless of nationality and status of documentation in line with international obligations.
- Eliminate any requirements that a child must specifically present a birth certificate in order to be officially included in school records.

To access the full report by the Human Rights Fact-Finding Practicum Course and additional information on the situation in the Dominican Republic, such as legal source materials, please visit the report website at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/>. An appendix with the full set of recommendations and on terminology can be found at the end of this report.

II. SITUATION ANALYSIS

A. CLUSTER CIVIL RIGHTS AND FREEDOMS: BIRTH REGISTRATION, NAME AND NATIONALITY (ARTICLE 7)

1. Personal Identifying Documentation

The Dominican constitution enumerates the requirements for entitlement to Dominican nationality, and tangible proof of this status is demonstrated in the form of various documents issued by government agencies.¹² This section provides a brief overview of those principal documents for a better understanding of the problem.

In the Dominican Republic, three types of personal identification documents are prerequisites to the exercise of a number of fundamental rights, including the right to an education: the *certificado de nacimiento*, the *acta de nacimiento*, and the *cédula de identidad*.

The *certificado de nacimiento* is a live birth certificate issued by a hospital or medical center where a child is born. Hospitals are required to issue a *certificado de nacimiento* to parents who

http://www.crin.org/docs/DR%20Compromised%20Right%20to%20Nationality%20_IACHR%20report_.pdf
[hereinafter OSF, DOMINICANS OF HAITIAN DESCENT].

¹² CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 18 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>; Interview with José Ricardo Taveras Blanco, Director, General Directorate of Immigration, in the Dom. Rep. (Jan. 8, 2014).

can demonstrate that they are Dominican.¹³ Otherwise, the hospital or medical center issues a pink live birth certificate.¹⁴ A *certificado de nacimiento* is important because it is a prerequisite to obtaining an *acta de nacimiento*.

The *acta de nacimiento* is an official birth certificate issued by local civil registry offices. The *acta de nacimiento* functions as the primary form of identification for persons under the age of eighteen and is required when applying for a passport, getting married, obtaining health care, and seeking social services.¹⁵ To obtain an *acta de nacimiento*, parents must provide the civil registry with both the *certificado de nacimiento* and their own personal identification document, a *cédula de identidad*.¹⁶

A *cédula de identidad*, or national identity card, is the main form of personal identification for Dominicans aged eighteen and above. The *cédula* is a requirement for meaningful participation in mainstream Dominican society, as it is necessary for legal employment, to open a bank account, to register for social security, and myriad other rudimentary tasks.¹⁷ The *Junta Central Electoral* (JCE) is the government agency responsible for issuing *cédulas*. In order to obtain a *cédula* an individual must have an *acta de nacimiento* and be able to obtain an extract of it from a civil registry office.¹⁸

2. Lack of Access to Documentation

In its last Concluding Observations on the Dominican Republic, the Committee on the Rights of the Child stated that it is “seriously concerned at the large numbers of stateless children generated”

¹³ Ley No. 218-07 de Amnistía de Declaración Tardía de Nacimiento, 2d Consideration (Dom. Rep.) (Aug. 14, 2007), *available at* http://www.unicef.org/republicadominicana/Ley_No.218-07_ammistia_declaracion_nacimiento.pdf (stating in the Second Consideration that the Dominican Republic is a signatory to the Convention on the Rights of the Child and pursuant to Art. 7 and 8 the Dominican Republic is required to provide documentation of birth immediately following birth).

¹⁴ These pink certificates are issued as temporary birth certificates and registered in a separate foreigners’ registry book. They are issued in order for foreign parents to use them at a foreign embassy to obtain an official birth certificate from their country of origin. The practice of issuing pink certificates can be traced to Article 28(1) of the 2004 General Migration Law. Ley General de Migración, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.), art. 28(1).

¹⁵ See Ley No. 659 sobre Actos del Estado Civil que dicta disposiciones sobre los registros y las actas de defunción (1944).

¹⁶ *Id.*; Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 45 (2003), *available at* http://www.educando.edu.do/Userfiles/P0001%5CFile%5CLey_136-03.pdf. This process must be completed within two months of the date of birth of the child, otherwise the registration is considered to be late and further requirements then apply. (Interview with July Clemente, ASCALA, in the Dom. Rep. (Jan. 8, 2014)).

¹⁷ Telephone Interview with Paola Pelletier, Centro Bono (Feb. 6, 2014). Interviewees confirmed a *cédula* is also required to purchase real property, buy a car or purchase a cell phone. Interview with Serge in the Dom. Rep. (Jan. 6, 2014); Interview with Valentina in the Dom. Rep. (Jan. 11, 2014).

¹⁸ *Servicios y Requisitos, Inscripción para Mayores de edad*, [Services and Requirements, Registration for Age of Majority], Junta Central Electoral, [http://www.jce.gob.do/Dependencias/Cedulación/ServiciosyRequisitos.aspx#LiveTooltip\[InscripcionesMayores](http://www.jce.gob.do/Dependencias/Cedulación/ServiciosyRequisitos.aspx#LiveTooltip[InscripcionesMayores) (last visited March 8, 2014) (stating that if you are getting a *cedula* for the first time you need to bring an original birth certificate and a recent copy of birth certificate for purpose of getting a *cedula*, and a blood test).

by birth registration policies.¹⁹ Dominicans of Haitian descent face a number of obstacles when attempting to acquire a certificate of live birth, an official birth certificate, or a *cédula*. Our research found that children of Haitian descent are denied government-issued birth certificates, due to the application, in practice, of ambiguous and discriminatory criteria such as skin color and name. When they are able to obtain a certificate of live birth, Dominicans of Haitian ancestry reported being unable to obtain an official birth certificate, even where they had the other documents required. Finally, Dominican families of Haitian descent reported that, at the age of eighteen, they were unable to obtain *cédulas* from the JCE as a result of arbitrary administrative requirements, specific targeting based on ethnic origin, and a lack of transparency in JCE proceedings.

Our research suggests that there is a significant problem of under-documentation amongst Dominicans of Haitian descent.²⁰ Forty-four families of Haitian descent interviewed by the research team reported being unable to obtain certificates of live birth, government-issued birth certificates, or *cédulas* for their children, despite those children having been born in the Dominican Republic and having no other nationality.²¹ Based on the holding of the Inter-American Court of Human Rights in *Yean and Bosico* and the various pronouncements of the international community, such circumstances present clear cases of arbitrary deprivation of nationality, and illustrate the failure of the State to prevent and reduce statelessness.

Testimony obtained in the Dominican Republic confirms that arbitrary and discriminatory practices of civil registry officials have long presented and continue to be present practical obstacles for these families.²²

Families reported being given pink certificates of live birth by hospitals or medical centers, rather than the standard equivalent certificate, indicating that the state considers them to be “foreigners” and thereby rendering it impossible for parents to obtain a government-issued birth

¹⁹ CRC Comm., *Concluding Observations: Dominican Republic*, ¶ 39, U.N. Doc. CRC/C/DOM/CO/2 (Feb. 11, 2008).

²⁰ See COLUMBIA UNIVERSITY SCHOOL FOR INTERNATIONAL AND PUBLIC AFFAIRS, A DREAM DEFERRED: BIRTH REGISTRATION AND ACCESS TO EDUCATION IN THE CALLEJÓN DE LA LOMA, 3, 10 (April 2011), <http://www.dominicandream.org/SIPA%20Report.pdf>, (finding that 28.6% of children surveyed did not have a birth certificate, and that 28.9% of these cases, the parents were Dominican but one or more parent lacked the necessary documentation to declare the child. This study also identified that having a parent from Haiti was the single greatest risk factor determining whether a child born in the Dominican Republic will have a government issued birth certificate. A more general problem of under-documentation exists in the Dominican Republic. See also, *At a Glance: Dominican Republic*, UNICEF (last updated Dec. 24, 2013) http://unicef.org/infobycountry/domrepublic_statistics.html (indicating a birth registration rate of 82.4% for the Dominican Republic for the period 2004-12).

²¹ Interviews with families in the Dom. Rep. (Jan. 6-11, 2014). The research team also interviewed 17 families of Haitian descent who reported being denied certificates of live birth, government issued birth certificate or *cédulas*, despite having at least one Dominican national parent.

²² See Ley General de Migracion, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.); Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); Junta Central Electoral, Resolution 12-2007 (Dec. 10, 2007) (Dom. Rep.); CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 18 (Dom. Rep.), available at: <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>. Regarding preexisting problems, see OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 11, at 5 (describing civil registry officials turning away Dominicans of Haitian descent with valid *cédulas*, when attempting to obtain formal birth certificates for their children).

certificate for their child.²³ This is what happened to Valeria's children, despite the fact that they were born in the Dominican Republic and she had a Dominican passport as proof of her citizenship.²⁴ The hospital refused to issue a certificate of live birth for the children, simply on the basis that the parents "looked Haitian".

Alain, a Haitian immigrant who has been living in the Dominican Republic for decades, was unable to register his Dominican-born daughter and obtain a birth certificate for her, although the civil registry would not explain why.²⁵ Similarly, Dominicans of Haitian descent interviewed for this report said that JCE officials often asked for supporting documents which are not otherwise obligatory when reviewing their *cédula* applications.²⁶ For example, as a precondition to getting a *cédula*, Martina was asked to provide the *cédulas* of her parents, her eighth-grade school certificate, her high school diploma, a certificate of her live birth, and the *cédula* of one of her siblings.²⁷ Consistent with other studies, the research team received testimony indicating that Dominicans of Haitian descent encounter significant difficulties in obtaining *cédulas*, even when in possession of a government issued Dominican birth certificate.²⁸

A number of interviewees reported being unable to obtain personal identifying documents for children because of their own inability to obtain paperwork verifying their Dominican nationality, thus underlining the multi-generational impact of this problem.²⁹ For example, Astryd, a mother of nine children who came to the Dominican Republic legally from Haiti, was told by the civil registry office that "if you don't have a *cédula*, you cannot declare your children."³⁰ Consequently, all nine of Astryd's children have grown up without documentation and, according to current interpretations of Dominican law, are stateless.

It is also important to note that there is a category of children at risk of statelessness because they are of Haitian ancestry or look Haitian, even though their documents have not yet been challenged. Since the recent Constitutional Court ruling, holding that the descendants of irregular

²³ Interviews with individuals in the Dom. Rep. (Jan. 7-10, 2014).

²⁴ Interview with Valeria (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

²⁵ Interview with Alain (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

²⁶ Interviews with two affected individuals in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interviews with three individuals in the Dom. Rep. (Jan. 11, 2014).

²⁷ Interview with Martina (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

²⁸ Interview with individual in the Dom. Rep. (Jan. 6, 2014); Interviews with two individuals in the Dom. Rep. (Jan. 11, 2014); *See also* OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 11, at 9.

²⁹ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interview with individual in the Dom. Rep. (Jan. 12, 2014); Interview with July Clemente, *supra* note 16. According to Ms. Clemente, the Civil Code, Ley No. 659 sobre Actos del Estado Civil que dicta disposiciones sobre los registros y las actas de defuncion (1944), requires documentation from both parents and the live birth certificate of the child, unless two years have passed since the child was born. At that point, individual civil registries will make their own requirement for obtaining birth certificates. This aspect of the issue was explicitly acknowledged by the Inter-American Commission almost fifteen years ago. *See* INTER-AMER. COMM. ON H.R., REPORT ON THE SITUATION OF THE DOMINICAN REPUBLIC, ¶ 350, Inter-Am. C.H.R. OEA/Ser.L/V/II.104 doc. 49 rev. 1 (Oct. 1999).

³⁰ Interview with Astryd (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

immigrants are not citizens, the Dominican Republic has identified 24,392 people registered as Dominicans whose citizenship will likely be stripped from them.³¹

Unable to obtain personal identifying documents, most of the Dominicans of Haitian descent interviewed for this report have been prevented from fully participating in society and are unable to enjoy the basic rights for which possession of documentation is a practical prerequisite. Rendered stateless by their own government, they have been relegated to the outer fringes of Dominican society and often cannot obtain employment in the formal labor market, participate in civic life or exercise freedom of movement without fear of expulsion. As this submission will show, they are also unable to access the education system without significant or intractable difficulty.

3. The Dominican Republic's Failure to Comply with Its Obligations under the CRC

While determining nationality policies is a sovereign right,³² states also have obligations to apply these policies in a non-arbitrary, non-discriminatory fashion and to take action when a child is born or rendered stateless.

Article 7 CRC firmly states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality. . .
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.³³

These principles reflect Article 15 of the Universal Declaration of Human Rights.³⁴

Despite the Dominican government's protestations, UNHCR and other international bodies and agencies have viewed revocation of the Dominican nationality of persons born in the Dominican Republic as an issue of statelessness.³⁵

Although the Dominican Republic has suggested that these children should seek Haitian nationality, statelessness is determined based on a child's nationality at the moment it is assessed,

³¹ *Q&A ON THE RULING TC/0168-13*, EMBAJADA DOMINICANA EN WASHINGTON, D.C. (Nov. 22, 2013), <http://embajadadominicanaenwashington.blogspot.com/2013/11/q-on-ruling-tc0168-13.html> (last visited Mar. 5, 2014).

³² RUTH DONNER, *THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW* 121 (1994).

³³ Convention on the Rights of the Child G.A. res. 44/25, art. 7, annex, 44 U.N. GAOR Supp. (No.49) at 167, U.N. Doc. A/44/49 (1989); 1577 U.N.Y.S. 3, 28 ILM 1456 (1989) [hereinafter CRC].

³⁴ Universal Declaration of Human Rights, G.A. res. 217A (III), art. 15, U.N. Doc A/810 at 71 (1948) [hereinafter UDHR].

³⁵ Press Release, UNHCR, *supra* note 9; CRC Comm., Concluding Observations, *supra* note 19, at ¶ 39; OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 11, at 8.

not based on theoretical future applications for citizenship that may or may not be granted.³⁶ Dominican children of Haitian descent have no effective nationality *now*, and that means the state obligations owed to them as stateless children are applicable *now*.

In sum, despite its obligations under the CRC and other international and domestic legal obligations and in violation thereof, the Dominican Republic has placed children at risk of statelessness.³⁷ A series of legal changes in the Dominican Republic from 2004, including the Dominican Republic's response to the *Yean and Bosico* decision and culminating with the 2013 Constitutional Court ruling, have systematically given a veil of legislative approval to a long-standing practice of discrimination. This has had the effect of rendering thousands of Dominicans of Haitian descent stateless or at risk of statelessness, and placing them in a situation in which many are deprived of the fundamental right to education.³⁸

4. Recommendations

To the government of the Dominican Republic

- Ensure implementation of measures providing for the non-discriminatory issuance of birth certificates.
- Fully comply with the Inter-American Court of Human Rights decision in the case of *Yean & Bosico v. the Dominican Republic*.³⁹
- Reevaluate the current regularization plan in accordance with the Dominican Republic's international obligations and based on consultation with the Inter-American Commission and the broader international community.
- Remove from any regularization plan provisions requiring those entitled to nationality, such as those who were denationalized under the Constitutional Tribunal decision of Sept. 2013, to declare themselves foreign in order to be regularized.⁴⁰

³⁶ See UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, ¶ 17 & 43, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012) ("An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention."); UNHCR Expert Meeting on the Concept of Stateless Persons under International Law, May 27-28, 2010, Prato, Italy, *Expert Meeting: The Concept of Stateless Persons under International Law, Summary Conclusions*.

³⁷ Press Release, Human Rights Comm., Concluding Consideration of Dom. Rep.'s Report, Experts on Human Rights Comm. Pose Questions on Police Reform: After Two Day Discussion, Delegation Says Gov't Committed To Strengthening Human Rights Protections, Compliance with Covenant, Treatment of Migrants, 4 U.N. Press Release HR/CT/740 (Mar. 13, 2012), at 2-3 (In considering the Dominican Republic in 2012, the Human Rights Committee expressed concern regarding racial discrimination towards migrants as well as the Dominican government's attempt to gloss over the issue of revoking the nationality of someone who had been in the country for decades.).

³⁸ OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 11, at 5; See EMBAJADA DOMINICANA EN WASHINGTON, D.C., Q&A, *supra* note 31 (stating that the Civil Registry of the Dominican Republic conducted an audit that found that 24,392 undocumented foreigners reside in the DR, and at least 13,672 are of Haitian descent and could be affected by the *Sentencia*).

³⁹ *Yean & Bosico*, Inter-Am. Ct. H. R. (Sept. 8, 2005).

⁴⁰ See IACHR, Preliminary Observations, *supra* note 8.

- Ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons.⁴¹

To the Dominican Central Electoral Board (*Junta Central Electoral*)

- Issue and enforce transparent, consistent, and fair procedures for the *cédula* and birth certificate acquisition process and make those procedures accessible to the public.
- Establish an independent administrative mechanism with the right of appellate review that would allow for individuals to challenge the issuance of a certificate of live birth labeling the child as a foreigner and denials of *cédulas*.
- Cease all investigations pursuant to the 2013 Constitutional Court ruling until consultations with the Inter-American Commission and the wider international community concerning the proposed regularization plan are complete.
- Immediately and fully comply with domestic court judgments regarding individual cases of eligibility for *cédulas*.
- Immediately halt the confiscation of original documents, particularly original birth certificates, without due process of law.

B. CLUSTER EDUCATION, LEISURE AND CULTURAL ACTIVITIES

1. The Dominican Education System

Even though documents are not legally required for access to education in the Dominican Republic, school is often the first place where children encounter problems because they lack documentation.

The Dominican constitution guarantees all children the right to an education, and the government has emphasized that this includes children without documentation.⁴² Over the past two decades, the Dominican Republic has addressed the question of equal access to education several times. For example, the 2003 Code for the Protection of the Fundamental Rights of Children and Adolescents stated that “[u]nder no circumstances can children or adolescents be denied education for reasons such as . . . lack of documents proving identity . . .”⁴³ The General Education Law of 1997 establishes a universal right to free primary and secondary education.⁴⁴

⁴¹ U.N. Convention on the Reduction of Statelessness, *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975) [hereinafter 1961 Statelessness Convention]; Convention relating to the Status of Stateless Persons, *opened for signature* Sept. 28, 1954, 360 U.N.T.S. 117, (*entered into force* June 6, 1960) [hereinafter 1954 Statelessness Convention].

⁴² Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.).

⁴³ Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 45 (2003), *available at* http://www.educando.edu.do/Userfiles/P0001%5CFile%5CLey_136-03.pdf.

⁴⁴ Ley General de Educación, Ley No. 66-97 (II)(4)(m) (Apr. 15, 1997) (Dom. Rep.), *available at* <http://www.dol.gov/ilab/programs/ocft/tvpra/20100408-12.pdf>. That same year, the Dominican Republic also passed the Code of the Minor, which was meant to fulfill the country’s obligations under the Convention on the Rights of the Child. Articles 97 and 98 discuss the right to compulsory, free education and state that children should have

The 2010 Dominican constitution also affirms the right to free initial, primary, and secondary education for “everyone” in Article 63.⁴⁵ Additionally, the constitution promises a general right to equality regardless of national origin, language, family ties, color, and other factors in Article 39.⁴⁶ Education also is addressed in Article 75 on fundamental duties, which establishes that primary school education is compulsory.⁴⁷

In the Dominican Republic, educational standards and policies such as the curriculum, length of the school day, and allocation of funding are set by the Ministry of Education, although local school districts do have a substantial amount of autonomy.⁴⁸ The national system includes a set grade structure that is comprised of one year of pre-school, eight years of primary school, four years of secondary school, and then various universities and technical institutes.⁴⁹ Students take national exams in the final grade of both primary school and secondary school in order to graduate. While both private and public schools are available, all levels of basic public school are free.⁵⁰ Foreign students, however, pay a higher rate for university tuition.⁵¹

The Ministry of Education has reported that for 2011-2012 there were approximately 48,000 undocumented children in the public primary school system, including 22,732 registered as foreigners.⁵² However, it is unclear how many other undocumented children may have been denied access to a quality education.

Interpretation of how many years of education are guaranteed to non-citizens has varied, and the research carried out for this report found that there is concern that some local school officials may be confused about what the current law says.⁵³ In 2005, a directive from the Ministry of Education limited the right to education for children without documents to four years.⁵⁴ However,

equal opportunity to access and stay in school. Ley No. 14-54 Código para la Protección de Niños, Niñas y Adolescentes, ¶ I, available at <http://docs.republica-dominicana.justia.com/nacionales/leyes/ley-14-94.pdf>.

⁴⁵ CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA Jan. 26, 2010, art. 63(3) (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

⁴⁶ *Id.* at art. 39.

⁴⁷ *Id.* at art. 75.

⁴⁸ Org. for Econ. Co-Operation and Dev. [OECD], *Reviews of National Policies for Education: Dom. Rep. 2008*, ch. 2 (Feb. 20, 2008), available at http://www.oecd-ilibrary.org/education/reviews-of-national-policies-for-education-dominican-republic-2008_9789264040823-en;jsessionid=jj10c4hsc725.delta.

⁴⁹ *Id.*

⁵⁰ CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA Jan. 26, 2010, art. 75 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>. See also Ley General de Educación, Ley No. 66-97 (Apr. 15, 1997) (Dom. Rep.).

⁵¹ Seventeen interviews with families and officials in the Dom. Rep. (Jan. 6-11, 2014).

⁵² Letter from Victor R. Sanchez Jaquez, Director, National Office of Educational Planning and Development, Dominican Republic to Henry A. Nunez, Director of the Office of Free Access to Public Information (Feb. 14, 2014) (on file with author).

⁵³ Telephone Interview with Liliana Gamboa, Special Rapporteur for Statelessness in the Dominican Republic, Open Soc’y Initiative (Nov. 12, 2013).

⁵⁴ Esther Kim, *Smaller Steps Toward Progress in the Dominican Republic: Securing Equal Access to Education for Dominican-Haitian Children*, 31 B.U. INT’L. L.J. 165, 191 (2013); ROBERT F. KENNEDY CENTER FOR JUSTICE AND HUMAN RIGHTS [RFK CENTER], RIGHT TO EDUCATION OF AFRO-DESCENDENTS AND INDIGENOUS PEOPLE IN THE

Circular 18 of July 27, 2011 asserted that children should be registered for school, regardless of documentation – including schooling beyond grade four.⁵⁵

Yet, the Ministry of Education has stated that children are required to present a birth certificate in order for a school to register them in the national student database.⁵⁶ This database is important because children who are not registered in it are then not allowed to take the national exams required for graduation from primary school and secondary school.⁵⁷

Thus, while the right to education is enshrined in Domestic law, children without documentation may be unable to go to school for this and other reasons.

2. Barriers to Education

Despite the federal policy that all children, regardless of documentation, have a right to education,⁵⁸ in its last Concluding Observations on the Dominican Republic, the Committee stressed its concern about discriminatory treatment of children of Haitian descent.⁵⁹ Our research confirms this concern. Families reported that they have encountered problems keeping children in school because they lacked documents requested by school officials or their documents were not accepted.⁶⁰ For children who are stateless or at risk of statelessness, requests for documentation may occur at specific points in elementary, secondary, and tertiary education, as well as in some cross-cutting situations that may occur at any level.⁶¹ In some cases these requests are based on official policy, but in many they are the result of the arbitrary application of law and policies.

AMERICAS, REPORT PREPARED FOR A THEMATIC HEARING BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 118 (2008), available at http://www.law.virginia.edu/pdf/news/hrclinic_report.pdf.

⁵⁵ Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.).

⁵⁶ Letter from Antonio Flores Pichardo, Director, Ministerio de Educación, Dom. Rep. to Henry Núñez, Director of the Office of Free Access to Public Information (Feb. 28, 2014) (on file with author).

⁵⁷ Letter from Antonio Flores Pichardo, Director, Ministerio de Educación, Dom. Rep. to Henry Núñez, Director of the Office of Free Access to Public Information (Feb. 14, 2014) (on file with author).

⁵⁸ CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 63 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>; Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.); Interview with José Ricardo Taveras Blanco, *supra* note 12.

⁵⁹ CRC Comm., Concluding Observations, *supra* note 19, at ¶ 72.

⁶⁰ See Human Rights Council, Working Group on the Universal Periodic Review, *Compilation prepared by the Office of the U.N. High Comm'n for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council Resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, ¶ 69, U.N. Doc. A/HRC/WG.6/18/DOM/2 (Nov. 8, 2013); see also OPEN SOC'Y JUSTICE INITIATIVE (OSJI) & CTR. FOR JUSTICE & INT'L LAW (CEJIL), SUBMISSION TO THE COMM. ON THE ELIMINATION OF RACIAL DISCRIMINATION [CERD COMM.]: REVIEW OF THE DOM. REP. 9 (2013), available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/OSJI_CEJIL_DominicanRepublic82.pdf.

⁶¹ The existence of barriers to education are supported by previous reports. See U.N. Human Rights Comm., *Concluding Observations of the Human Rights Comm.: Dom. Rep.*, ¶ 22, U.N. Doc. CCPR/C/DOM/CO/5 (Apr. 19, 2012) (“The Committee regrets the serious consequences of this situation in terms of the affected persons’ access to education...”); OSJI, SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW: DOM. REP. 7 (2013), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRDOStakeholdersInfoS18.aspx> [hereinafter OSJI, Submission UPR]; CEJIL, SUBMISSION TO THE 18TH SESSION OF THE UNIVERSAL PERIODIC REVIEW: REVIEW OF THE DOM. REP., ¶ 8 (June 24, 2013), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRDOStakeholdersInfoS18.aspx>.

Although many factors may affect a child's education, this submission focuses specifically on situations where statelessness was a central factor in a child's inability to continue his or her education.

Before addressing the challenges that our research found children face in practice, it is important to provide an overview of the official laws, regulations, and policies related to education and documentation in the Dominican Republic. In response to a written request for information, the Ministry of Education stated that primary school is free and mandatory for all children and that there are mechanisms for getting around administrative requirements for documentation.⁶²

Schools are supposed to register all children in the Ministry's national database, which records each child's annual progress.⁶³ Lists of who is eligible to take the eighth- and twelfth-grade graduation exams also are based on this national database.⁶⁴ The Ministry stated that in order to avoid excluding children based on documentary requirements, children may continue their education on a provisional basis while being required to provide documents.⁶⁵ This is intended as a way to comply with the constitutional right to education for all children.⁶⁶

In order to enroll for primary school, a child accompanied by a parent or guardian must submit an enrollment form,⁶⁷ two photos, and a birth certificate.⁶⁸ However, the Ministry stated that children should still be allowed to attend school without documents, and these children should be entered into the Ministry of Education database with a notation that their documents are pending.⁶⁹

⁶² See Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (Feb. 25, 2014) (on file with author); Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 3, 2014) (on file with author); Letter from Miriam Camilo Recio, General Director, Ministry of Education of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 4, 2014) (on file with author); Letter from Victor R. Sanchez Jaquez, Vice-Minister of Education, Director of the National Office of Planning and Education Development, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 3, 2014) (on file with author).

⁶³ Letter from Elsa Rosalia Sanchez (Mar. 3, 2014), *supra* note 62, at 2.

⁶⁴ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 3.

⁶⁵ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 1; Ministerio de Educación de la República Dominicana Oficina Nacional de Planificación y Desarrollo Educativo, Dirección de Desarrollo Organizacional [Ministry of Education of the Dominican Republic National Office of Planning and Educational Development, Director of Organizational Development], Manual Operativo de Centro Educativa Pública [Operations Manual of Public Education Centers], (Dom. Rep.) (2013). See Constitución de la República Dominicana Jan. 26, 2010, art. 63(3) (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

⁶⁶ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 1.

⁶⁷ This form includes sections for providing information from the child's birth certificate or information about pending documents. Operations Manual of Public Education Centers, *supra* note 65, at 173.

⁶⁸ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 1.

⁶⁹ *Id.*; Operations Manual of Public Education Centers, *supra* note 65, at 173.

Each year, primary schools also send a list of eighth grade students who have met the requirements for graduations to the National Exam Director.⁷⁰ Based on this, officials prepare a list of children eligible to take the eighth-grade national exam, a prerequisite for completion of high school.⁷¹ The Ministry stated that a birth certificate is no longer required to take the exam, although a child should be in the national database.⁷²

This process is repeated for secondary school with additional limitations. For secondary school, a child must present a certificate of eighth grade completion, a birth certificate, two photographs, a medical certificate, a school identity card, and a grade transcript.⁷³ The Ministry of Education stated that children who do not have all of these documents are permitted to enroll in secondary school on the basis that they will later submit a complete set of documents, but children cannot enroll without any documents.⁷⁴ At the end of high school, schools again compile a list of students qualified to take another national exam that is mandatory for graduation.⁷⁵

Once a student turns eighteen, he or she also must present a *cédula* in order to stay in school, regardless of the grade the student has attained at that time.⁷⁶ However, the Ministry of Education again noted that students often can attend basic adult education classes on the assumption that they will have their documents in order by the time they graduate.⁷⁷

The Ministry also has programs intended to help children obtain documentation,⁷⁸ although it remains to be seen how the Constitutional Court ruling will affect these programs. The Ministry also stated that schools have been instructed not to impede the educations of any children,⁷⁹ and there are intervention programs for cases where a child is blocked from attending school.⁸⁰ However, our findings indicate that educators do not uniformly understand and apply these rules and that the provisional arrangements for children with pending documents do not work in a system where children increasingly struggle to obtain any form of documentation.

In practice, school officials indicated that the Ministry of Education instructs school districts to check for documents and to encourage children to obtain birth certificates, at minimum.⁸¹ Some school districts may try to help families seek Dominican or foreign documents if possible, but at least one principal noted that this is not widely advertised because then everyone would ask for help.⁸²

⁷⁰ Letter from Elsa Rosalia Sanchez (Mar. 3, 2014), *supra* note 62, at 2.

⁷¹ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 3.

⁷² Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 3-4.

⁷³ *Id.*

⁷⁴ Letter from Elsa Rosalia Sanchez (Mar. 3, 2014), *supra* note 62, at 2.

⁷⁵ Letter from Elsa Rosalia Sanchez (Mar. 3, 2014), *supra* note 62, at 2; Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 3.

⁷⁶ Letter from Miriam Camilo Recio (Mar. 4, 2014), *supra* note 62, at 2.

⁷⁷ *Id.*

⁷⁸ Letter from Rita Caballos (Feb. 25, 2014), *supra* note 62, at 1.

⁷⁹ Letter from Victor R. Sanchez Jaquez (Mar. 3, 2014), *supra* note 62, at 1.

⁸⁰ Operations Manual of Public Education Centers, *supra* note 60, at 27.

⁸¹ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

⁸² *Id.*

Having schools ask about documentation is justified by government officials as a way to ensure that schools have reliable records for registering children under the correct names and to confirm the identity of test takers.⁸³ However, as will be seen below, the requirements also can be used to keep children of Haitian descent out of school based on discrimination, limited resources, confusion about regulations, and lack of enforcement and consequences.

a. Primary School

i. General Arbitrary Deprivation

Children who are stateless or at risk of statelessness may face barriers to accessing primary school as the result of the requirement for a birth certificate for formal enrollment and arbitrary action by school officials. Still, the information collected in the execution of this initiative indicates that primary school traditionally has been somewhat more open than other levels of education. For example, one public elementary school director noted that approximately 25 of 150 students attending her school in early 2014 had no documents.⁸⁴ A teacher at another primary school said that more than 10 of 130 students at that school had no birth certificate.⁸⁵

However, problems of arbitrary denial of education in primary school still exist. Although the Ministry of Education has stated that children are allowed to attend primary school while pursuing documentation, not all schools seem to understand this policy.⁸⁶ Of those interviewed, fourteen school officials and families reported that some primary schools turn away children without birth certificates⁸⁷ and some officials have publicly stated that they are opposed to letting “Haitians” attend school.⁸⁸

As an example of the arbitrariness, one Dominican man, whose wife is from Haiti, said that school officials told him that his son could no longer attend school in the fifth grade because the son had no documents.⁸⁹ Since then, the father has been unable to get documents for his son, despite his own Dominican citizenship. Eventually, he gave up trying, and now his son is working off-and-on as the assistant to a bricklayer, instead of continuing his education.

In cases where children attended class but were not officially in the electronic enrollment system because of lack of documentation, interviews suggested that the lack of school records could result in children being forced to repeat a grade or difficulty in continuing to high school.⁹⁰

⁸³ Interview with José Ricardo Taveras Blanco, *supra* note 12.

⁸⁴ Interview with Primary School Principal in the Dom. Rep. (Jan. 8, 2014). *See also* Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

⁸⁵ Interview with Primary School Teacher in the Dom. Rep. (Jan. 8, 2014).

⁸⁶ Letter from Antonio Flores Pichardo (Feb. 14, 2014), *supra* note 57.

⁸⁷ Interviews with families and educators in the Dom. Rep. (Jan. 6-11, 2014).

⁸⁸ *Director regional de Educación niega que autorizara inscribir los haitianos ilegales* [Regional Director of Education refuses to authorize registering illegal Haitians], DIARIO DIGITAL RD (July 28, 2007), <http://www.diariodigital.com.do/arti.php?id=18562>; *See* OSJI, Submission UPR, *supra* note 61.

⁸⁹ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

⁹⁰ Interview with individual in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014).

Pressure to seek documents also can cause children anxiety and make school an unwelcoming place. Of the handful of young children interviewed with their parents, four indicated an awareness that school officials wanted documents and that their parents were worried.⁹¹

For example, at fourteen years old, Mariana already is concerned about the future of her education. She wants to be an engineer so that she can “build beautiful houses,” but she has no documents and explains that schools do not like children without documents. She is regularly called out of the classroom to the principal’s office and questioned about her lack of documents. Even though school officials have said Mariana can stay in school while her mother tries to obtain papers, officials regularly ask whether she has documents yet.⁹²

Mariana plans to stay in school as long as possible, but says it is a “bad feeling” knowing that she is unlikely to be allowed to attend much longer. In her young mind, documents and an education are already critically linked:

I would tell the president to help the people get documents, not just for them, but so that their children can have a better future. It is important because, if you are educated, you are ready to go places.⁹³

ii. The Eighth-Grade National Exam

Passage of the eighth grade national exam, required for graduation from primary school, is one of the most common barriers for children without documentation, because they must be registered in the national electronic database in order to take the exam.⁹⁴ Nearly every child or family interviewed believed that documents were required to take the exam and to proceed to high school.⁹⁵

Families often start worrying about the exam long before children reach high-school age. Camila and Luciana are both bracing for the end of primary school after the civil registry refused to give them birth certificates.⁹⁶ They both were born in the Dominican Republic and their father has a *cédula*. However, when their father went to register the two girls, the officials demanded their

⁹¹ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interviews with two individuals in the Dom. Rep. (Jan. 11, 2014).

⁹² Interview with Mariana (pseudonym) and her mother in the Dom. Rep. (Jan. 11, 2014).

⁹³ *Id.*

⁹⁴ Interview with High School Counselor in the Dom. Rep. (Jan. 9, 2014). *See also* Ordenanza 7'2004, Consejo Nacional de Educacion [National Council of Education] (Dom. Rep.) (2004), *available at* http://sitios.educando.edu.do/biblioteca/index.php?option=com_booklibrary&task=view&id=226&catid=64&Itemid=102; DIRECCIÓN GENERAL DE EVALUACIÓN DE LA CALIDAD DE LA EDUCACIÓN Y LA DIRECCIÓN DE PRUEBAS NACIONALES [GENERAL DEP'T OF QUALITY ASSESSMENT OF EDUC. AND THE DEP'T OF NAT'L TESTS], MANUAL PARA LA APLICACIÓN DE LAS PRUEBAS NACIONALES DEL NIVEL BÁSICO Y DEL NIVEL MEDIO [MANUAL FOR THE IMPLEMENTATION OF THE NATIONAL TESTS OF PRIMARY AND SECONDARY SCHOOL], (Dom. Rep.) (1st ed. 2012), *available at* http://sitios.educando.edu.do/biblioteca/index.php?option=com_booklibrary&task=view&id=382&catid=68&Itemid=104.

⁹⁵ Interviews with families, educators, and service providers in the Dom. Rep. (Jan. 6 - 11, 2014).

⁹⁶ Interview with Camila & Luciana (pseudonyms) in the Dom. Rep. (Jan. 11, 2014).

mother's documents. The officials denied their request for birth certificates, saying it was because their mother only had a migrant worker's card.

"We just want a miracle from God to get our documents, to have the opportunity to go to school," Luciana said.⁹⁷

The family of another student, Sofía, has been trying everything to get her birth certificate so that she can register for the exam.⁹⁸ She has a certificate of live birth, so her mother tried to apply for an official birth certificate for Sofía. The family took out loans to cover the expenses of the application process – primarily getting copies made and transportation to government offices. However, ultimately they were denied.

"We don't know what to do and we have spent lots of money," said Sofia, who at the time planned to show up at the first day of high school anyway in the hopes of being allowed to attend. "I am Dominican. I was born here and I've never been to Haiti. I don't know it. I've only seen it on TV."

Sofía's experiences are also already having an effect on the next generation. At seventeen years old, she has an infant son, and the hospital refused to give her son a certificate of live birth because they said Sofía was Haitian. Sofía said she is planning to try and save up money so that her son can attend private school when he is old enough and so that he does not have to face what she has been through.

b. Secondary School

i. General Arbitrary Deprivation

Although some government officials and teachers stated that children without documents can easily attend high school, several school officials and families reported that in reality children almost always must present documents to enroll.⁹⁹ Again, this is in spite of constitutional and regulatory guarantees of access to education regardless of documentation.¹⁰⁰

One principal interviewed stated that in order to enroll in high school, a student needs to present two photos, a certificate indicating completion of eighth grade, medical records, and an original birth certificate.¹⁰¹ If the child does not have a birth certificate, that particular school requires two copies of a parent's *cédula*.¹⁰² In cases where parents complain because they have no

⁹⁷ *Id.*

⁹⁸ Interview with Sofía (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

⁹⁹ This is consistent with the Preliminary Observations from the Inter-American Commission on Human Rights' visit to the Dominican Republic in December of 2013. IACHR, Preliminary Observations, *supra* note 8; *see* Interviews with High School Principals and families in the Dom. Rep. (Jan. 6-11, 2014).

¹⁰⁰ *See supra* Part II.B.1.

¹⁰¹ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁰² *Id.*

documents, some schools will reportedly allow the child to stay in school while giving the parents approximately a month to acquire documents.¹⁰³

Another school official indicated that some schools required a different set of documents or no documents at all,¹⁰⁴ although overall interviewees indicated that access to high school without documentation was substantially less common than access to primary school.

Much of a child's fate may depend on the kindness of individual teachers and school administrators who are willing to overlook missing documents or actively help children obtain them. However, like the families, even the teachers are sometimes uncertain what will be best for a child's future.¹⁰⁵

July Clemente, who works for the non-governmental organization ASCALA, recalled a near-miss where a group of gifted students in advanced-level courses were threatened with expulsion from high school because they lacked documents.¹⁰⁶ One of these students had reached the first year of high school by the age of twelve; Clemente said, "He used to say, 'It seems like the government wants me to cut sugar cane like my father did. But I want to study engineering. But if I can't study, I'm not going to finish high school.'"

Through a one-on-one meeting with the principal, Clemente was able to convince the school to keep the boy enrolled long enough for her to help his family obtain documents.

Yet, at another school, a principal has already begun making assumptions based on the recent Constitutional Court ruling. Flore said her daughter, Victoria, was only sixth months into the ninth grade when the principal came to her in December 2013 and said that Victoria could not continue at school. The principal explained that this was because the ruling means that Victoria will never be able to obtain Dominican documents as a person of Haitian descent.¹⁰⁷

"It feels bad," Victoria said. "I am young and want to study for the future – and I can't."

These contrasting cases indicate just how arbitrary decisions can be, dependent as they are on the individual whims of administrators.

Identity documents lost between the start of primary school and end of high school can also be a significant barrier to entry into high school. Children interviewed who had lost their papers reported that they have then been unable to obtain new copies as the result of Haitian appearance

¹⁰³ Interviews with two individuals in the Dom. Rep. (Jan. 12, 2014); Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁰⁴ Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

¹⁰⁵ Interview with Primary School Principal in the Dom. Rep. (Jan. 8, 2014); Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

¹⁰⁶ Interview with July Clemente, *supra* note 16.

¹⁰⁷ Interview with Flore & Victoria (pseudonyms) in the Dom. Rep. (Jan. 8, 2014).

or ancestry.¹⁰⁸ Several families said they lost birth certificates and *cédulas* in moves, storms, or fires.¹⁰⁹

For example, Francisco said his birth certificate and his parents' *cédulas* were lost when he was in the eighth grade, after his home caught fire and burned down.¹¹⁰ In addition to the trauma of the fire, he had to repeat the eighth grade because he needed a birth certificate before he could continue to high school. He tried to obtain new copies, but officials at the civil registry said his file did not exist. As a result, Francisco ended up having to drop out without ever getting past the eighth grade.

ii. Turning Eighteen

Although coming of age by definition takes the discussion out of the realm of childhood, the common inability to continue school after the age of eighteen often means that young people are unable to finish high school. This is generally the result of schools asking students to provide copies of their *cédula* when they turn eighteen.¹¹¹

This barrier to completing school means that many children are discouraged from their schooling earlier in secondary school, knowing that they will be unable to obtain a high school diploma.¹¹² This problem is compounded because many students have barely started high school or may not have even finished primary school by the time they are eighteen years old. One reason for this can be that struggles with documentation during childhood forced them to miss several years of school.

iii. National Testing as a Hurdle to High School Graduation

Those students who are stateless or at risk of statelessness and are able to remain in high school face obstacles in being allowed to sit for the twelfth-grade national exam. Students' ability to take this exam varies depending on which high school they attend. Some students reported being able to take the exam without any formal documentation¹¹³, while others were required to present official copies of their birth certificates.¹¹⁴ This is problematic because official copies of birth certificates are commonly denied to children of foreign parents and their descendants.¹¹⁵

¹⁰⁸ Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interview with family in the Dom. Rep. (Jan. 10, 2014); Interview with individual in the Dom. Rep. (Jan. 11, 2014); Interview with individual in the Dom. Rep. (Jan. 6, 2014).

¹⁰⁹ *Id.*

¹¹⁰ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹¹¹ See OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 11, at 4.

¹¹² Interview with seventeen-year-old girl in the Dom. Rep. (Jan. 8, 2014); Interview with young man in the Dom. Rep. (Jan. 11, 2014).

¹¹³ Interview with individual in the Dom. Rep. (Jan. 6, 2014).

¹¹⁴ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 8, 2014).

¹¹⁵ U.N. Human Rights Council, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance & Indep. Expert on Minority Issues, *Promotion and Prot. of all Human Rights, Civil, Political, Econ., Soc. and Cultural Rights, Including the Right to Dev.: Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance: Follow-up to and Implementation of the Durban Declaration and Programme of Action: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination,*

Furthermore, other students who did secure official copies of their official birth certificates reported being discouraged from taking the national exam by school officials, due to their inability to pursue future educational opportunities without a *cédula*.¹¹⁶

The confusion over which documents are required to take the national exam is further illustrated by accounts of advocates, practitioners, and high school principals themselves. Lawyers reported that presentation of a birth certificate is required for completion of twelfth-grade testing.¹¹⁷ One high school principal supported this understanding and suggested that even if she permitted students to attend school without a birth certificate, they would not be able to take the national exam in their final year.¹¹⁸ However, another high school principal stated that documents are not required for testing, as long as the student's name remains consistent throughout all four years of high school.¹¹⁹ These varying understandings of policies mirror the mixed experiences of students, whose ability to take the national exam depends on their respective principals' application of the rules.

Bridget Wooding of Observatorio de Migrantes del Caribe (hereinafter OBMICA) asserted that students may be able to take the national exams but might not be credited for the years in school they have completed if they are unable to provide the documentation demanded by their respective school. In these circumstances, students are prevented from obtaining a diploma.¹²⁰

Denied the opportunity to sit for the national exam, students are precluded from demonstrating their academic abilities and future potential. If blocked from the exam, students' dreams of high school graduation and higher education are regularly lost before they even begin.

iv. Proof of High School Completion

Once successfully past the twelfth-grade national exam, students face additional obstacles to high school graduation and validation of years completed in school.¹²¹ Again, in practice, students' experiences and professionals' understanding of regulations demonstrate an arbitrary

xenophobia and related intolerance, Doudou Diène, and the indep. expert on minority issues, Gay McDougall: Mission to Dom. Rep., ¶ 55, U.N. Doc. A/HRC/7/19/Add.5 & A/HRC/7/23/Add. 3 (March 18, 2008) (by Doudou Diène & Gay McDougall) (“Without exception, individuals of Haitian descent born in the Dominican Republic reported that, because of their colour or their Haitian looks or name, it is virtually impossible to obtain identity documents or even copies or renewals of previously issued documents. NGOs, community representatives and individuals described ill-treatment, insults and even ejection from registration offices of those that are or are presumed to be of Haitian descent.”).

¹¹⁶ E.g. Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interviews with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interviews with individual in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 7, 2014).

¹¹⁷ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 8, 2014).

¹¹⁸ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹¹⁹ Interview with High School Principal in the Dom. Rep. (Jan. 8, 2014).

¹²⁰ Interview with Bridget Wooding, Observatorio de Migrantes del Caribe (OBMICA) in the Dom. Rep. (Jan. 7, 2014).

¹²¹ This challenge also was noted in HUMAN RIGHTS WATCH, *ILLEGAL PEOPLE: HAITIANS AND DOMINICO-HAITIANS IN THE DOMINICAN REPUBLIC* (2002), available at <http://www.hrw.org/reports/2002/domrep/domrep0402.pdf>.

application of national policies, which requires presentation of birth certificate to receive official validation from the Ministry of Education for the years completed in school.¹²²

Without full receipt of diplomas and transcripts, students cannot prove their academic accomplishment to future employers or universities. One attorney we interviewed confirmed that many students are denied any form of certificate of completion if they lack the documents demanded by the high school – and attested to the difficulties caused by this withholding of certification, such as loss of employment and further educational opportunities.¹²³

Principals also diverge in their interpretation and implementation of policies regarding high school graduation. One principal reported that there are no obstacles for students to obtain their high school diploma, even without a birth certificate.¹²⁴ This principal firmly asserted that students are allowed to complete high school and graduate, saying:

All that come to start first grade are allowed to go to the fourth grade of secondary [twelfth grade]. They can all graduate. All that come in graduate and yes, you can get a graduate diploma without a birth certificate.¹²⁵

Another high school principal reported a different understanding of the national policy, saying, “If you can’t find the name in the system, you get in trouble and it is questioned why you are not in the system” – leading to problems when attempting to prove completion of the four years of high school.¹²⁶

If students are able to provide the documentation required by their particular school and they successfully sit for the national exam (and obtain proof of high school graduation), students may also wish to continue to university. However, students once again may face significant obstacles to the fulfillment of their scholastic potential because they lack a *cédula*.

c. Higher Education

In contrast to the capricious implementation of state regulations regarding high school enrollment, graduation, and national testing, access to university is uniformly denied to those students over the age of eighteen who are unable to obtain a *cédula*.¹²⁷ Legal experts¹²⁸ and

¹²² *Alumnos, Servicios a los Alumnos - Convalidación de Estudios* [Alumni, Services for Alumni, Recognition of Studies], MINERD: Ministerio de Educación, <http://www.minerd.gob.do/Lists/Servicios%20a%20los%20Alumnos/AllItems.aspx> (last visited March 8, 2014).

¹²³ Interview with July Clemente, ASCALA, *supra* note 16.

¹²⁴ Interview with High School Principal in the Dom. Rep. (Jan. 11, 2014).

¹²⁵ *Id.*

¹²⁶ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹²⁷ *Proceso de Admisión*, UNIVERSITY AUTÓNOMA DE SANTO DOMINGO (last visited Mar. 7, 2014), <http://www.uasd.edu.do/index.php/es/proceso-de-admision> (Admissions requirements for entrance into state universities, including certified copy of birth certificate and presentation of *cédula*).

¹²⁸ Interview with Lawyer in the Dom. Rep. (Jan. 9, 2014); Interview with Legal Expert in the Dom. Rep. (Jan. 10, 2014).

service providers¹²⁹ agree that the ability to attend university is consistently denied to those students without a *cédula*. Students reported an end to their academic careers when they tried to register for university, and were unable to produce a *cédula*, despite, in some cases, years of trying.¹³⁰

Some students reported being able to enter university prior to their eighteenth birthday – without a *cédula*. However, when they reach the age of eighteen, they reported that public universities demand they produce a *cédula* or face expulsion. One such student, Edgard, now faces being expelled following his eighteenth birthday.¹³¹ He expressed his despair at the prospect of losing another opportunity due to lack of documents:

I was expelled from the baseball academy and the choir. Nobody wants people without papers. Imagine I have my legs and arms tied: university is the only thing I have.¹³²

d. Cross-Cutting Issues

Several factors or events may affect access to education at multiple or all levels of school for children who are stateless or at risk of statelessness. This section will discuss how the added complication of transferring schools or discrepancies in written records both may create opportunities for arbitrary action. There are also indirect barriers, such as societal pressures to drop out, which are triggered by statelessness and in turn affect a child's ability to stay in school.

i. Transferring Schools

School transfers appear to be a common barrier to the education of stateless children, in large part as a consequence of how arbitrarily policies vary from school to school.¹³³ Transfers also are reportedly complicated by schools that do not keep proper records.¹³⁴

One high school principal indicated that transfer students must present a report card and certificate of good behavior from their previous school, in addition to a birth certificate.¹³⁵ Some students reported they did not have any problems with transferring schools, but families in other regions said they were suddenly confronted with new or additional document requirements or their children were told they had to repeat grades because the new school would not accept their old school records.¹³⁶ Other students were unable to provide old school records because their previous school had not formally enrolled them due to lack of documents.¹³⁷

¹²⁹ Interview with Bridget Wooding, OBMICA, *supra* note 120; Interview with July Clemente, ASCALA, *supra* note 16; Interview with Rosa Iris Diendomi Alvarez, Community Leader, Reconoci.do (Jan. 10, 2014).

¹³⁰ *E.g.* Interviews with fourteen individuals in the Dom. Rep. (Jan. 6-11, 2014).

¹³¹ Interview with Edgard (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

¹³² *Id.*

¹³³ Interview with a service provider in the Dom. Rep. (Jan. 7, 2014).

¹³⁴ *Id.*; Interview with a twelve-year-old boy and his mother in the Dom. Rep. (Jan. 9, 2014).

¹³⁵ Interview with a High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹³⁶ Interview with a High School Principal in the Dom. Rep. (Jan. 9, 2014); Interview with a twelve-year-old boy in the Dom. Rep. (Jan. 9, 2014); Interview with a seventeen-year-old girl in the Dom. Rep. (Jan. 8, 2014).

¹³⁷ Interview with a service provider in the Dom. Rep. (Jan. 7, 2014).

While being forced to repeat grades does not directly force children out of the school system, the resulting feelings of humiliation, frustration and boredom in the classroom can cause children to give up on their studies.

ii. Discrepancies in Written Records

Discrepancies in a child's school records, such as misspelled names or name changes can also cause problems for stateless children when school officials rely on these discrepancies to deny children diplomas or the opportunity to take national exams.

Three principals indicated that it is common for the name a child used to register at one school to be different from the name used at another school, or on other records.¹³⁸ This may result from mistakes made by illiterate parents, a parent getting remarried, or the family registering the child under the last name of a friend or relative who has Dominican documents. Families also may change a child's name to make it sound more Dominican.¹³⁹

When the child tries to take the national exam or enroll in high school, the name change can make it difficult to show that the child has fully completed primary school, acting as a barrier to enrollment. However, in some cases children have been able to get letters from their primary schools certifying for the Ministry of Education that both names are the same person and that the child has completed primary level education.¹⁴⁰

Parents and students also are sometimes misled or made desperate enough to consider adopting false names or documents in order to get around document requirements and overcome statelessness.¹⁴¹ Later, these efforts may sometimes backfire when the discrepancies are caught and investigated. School officials said that mistakes by parents often have tragic consequences for their children later.¹⁴² One educator said there is little advice she can give in these situations: "I say to them, do not lose hope. I advise them that the last thing you can lose is hope, and you cannot do things illegally. I tell them to keep studying until the end."¹⁴³

iii. Students Discouraged from Continuing School

A lack of educational prospects and professional employment opportunities may pressure children who are stateless or at risk of statelessness to drop out of school and can affect their sense of self-worth. Bridget Wooding of Observatorio de Migrantes del Caribe explains: "People can take exams, but might not be credited for what they have done. There are cases of self-discrimination. People do not see a point in investing in education, if they are not credited."¹⁴⁴

¹³⁸ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 8 & 11, 2014).

¹³⁹ *Id.*

¹⁴⁰ Interview with a Primary School Principal in the Dom. Rep. (Jan. 8, 2014).

¹⁴¹ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 8 & 11, 2014).

¹⁴² *Id.*

¹⁴³ Interview with a Primary School Principal in the Dom. Rep. (Jan. 10, 2014).

¹⁴⁴ Interview with Bridget Wooding, OBMICA, *supra* note 120.

Children and young adults are cognizant of how probable it is that they will be barred from attending or completing high school without proof of citizenship.¹⁴⁵ They are further conscious that without a *cédula*, it is nearly impossible for them to attend and graduate from university. Employment opportunities in the formal labor market that require high school or university-level education also require *cédulas* and are therefore also not accessible. Therefore, from some students' perspectives, pursuing education would be a waste of time that could be better spent supporting their families. Children and young adults who dropped out of high school and ceased pursuit of education expressed feelings of helplessness and surrender.¹⁴⁶ These children and young adults have internalized their oppressed position in society and made self-discriminatory choices.

For example, although Jimena was able to remain in school and take the twelfth grade national exam, her siblings decided they were not going to be able to study without a *cédula* and dropped out.¹⁴⁷ They did not see any opportunity to attend university without a *cédula* and, thus, lost their desire to study.

It seems clear to these children and young adults that life without documentation lacks any meaningful prospects in education. Valentina went so far as to take the national test and yet never completed the official graduation process because she knew she could not attend university without a *cédula*.¹⁴⁸ Decisions to drop out among people who lack documentation are particularly alarming, and may be one of the possible causes of the high rate of school dropouts among Dominicans of Haitian descent.¹⁴⁹

In summary, these findings indicate that a mix of administrative barriers and arbitrary application of the law have forced stateless children to watch their peers continue school without them.

Thirteen families interviewed said that a child was unable to take an exam because of lack of documentation¹⁵⁰ and twenty-four families interviewed said a child was unable to finish primary or secondary school because documentation was requested by school officials at another stage.¹⁵¹ These numbers do not account for additional children who decided to quit school because they believed the school would force them out eventually, or those who have been allowed to stay in school temporarily while their parents seek documents.¹⁵²

Many families interviewed sought to remedy these barriers to documentation and education through informal complaints to school and government officials and informal interventions by

¹⁴⁵ Interviews with families in the Dom. Rep. (Jan. 6-11, 2014).

¹⁴⁶ *E.g.* Interview with an individual in the Dom. Rep. (Jan. 11, 2014); Interview with an individual in the Dom. Rep. (Jan. 9, 2014).

¹⁴⁷ Interview with Jimena (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

¹⁴⁸ Interview with Valentina (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

¹⁴⁹ U.N. Econ. and Soc. Council, ICESCR Comm., *Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Dom. Rep.*, ¶ 33, U.N. Doc. E/C.12/DOM/CO/3 (Nov. 26, 2010).

¹⁵⁰ Interviews with thirteen families in the Dom. Rep. (Jan. 6-11, 2014).

¹⁵¹ Interviews with twenty-four families in the Dom. Rep. (Jan. 6-11, 2014).

¹⁵² *See supra* Part II.B.2.d.cc

third party advocates.¹⁵³ None mentioned an awareness of a mechanism for presenting complaints for the threat or violation of the right to education under the Dominican Code for the Protection of the Fundamental Rights of Children and Adolescents.¹⁵⁴ In practice, families routinely were unable to resolve the issue.

Education affects much of a child's private and public life, which makes protection of the right to education particularly important. While the Dominican school system as a whole is in a state of transition and development, children should not be turned away simply because they lack documentation, especially when Dominican law explicitly includes safeguards that are meant to ensure all children have access to education.¹⁵⁵

3. The Dominican Republic's Failure to Comply with Its Obligations under the CRC

a. Obligations

The right to education - as recognized in Article 28 CRC¹⁵⁶ and in a number of other human rights instruments¹⁵⁷ - includes a core minimum requirement of access to primary school, progressive realization of access to secondary school, and a prohibition of discrimination in access to any level of available school. Furthermore, the right to education is not only a fundamental right in itself, but it is also an enabling right that allows individuals to realize other basic civil, political, economic, social, and cultural rights.¹⁵⁸ In addition, the best interest of the child shall be a primary consideration in all actions concerning children.¹⁵⁹

According to Article 28 of the CRC, states are obligated to "make primary education compulsory and available free to all" and secondary education "available and accessible to every child".¹⁶⁰ Accessibility has three dimensions: Non-discrimination, physical and economic accessibility.¹⁶¹ The CRC also mandates that all states shall make higher education accessible to all on the basis of capacity by every appropriate means.¹⁶² Standards regarding accessibility, acceptability, and

¹⁵³ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 7 & 8, 2014); Interviews with two affected persons in the Dom. Rep. (Jan. 6 & 11, 2014).

¹⁵⁴ Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 50 (2003).

¹⁵⁵ See *supra* Part II.B.1

¹⁵⁶ See CRC, *supra* note 33, at arts. 28 & 29.

¹⁵⁷ UDHR, *supra* note 34, at art. 26; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 13-14, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, available at <http://www.refworld.org/docid/3ae6b36c0.html> [hereinafter ICESCR]; U.N. Educational, Scientific and Cultural Organization [UNESCO] Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93 [hereinafter CADE]; International Convention on the Elimination of All Forms of Racial Discrimination A/6014 (1966), art. 5 & 7, 660 U.N.T.S. 195 [hereinafter CERD].

¹⁵⁸ See U.N. Comm. on Econ., Soc. & Cultural Rights [ICESCR Comm.], *Gen. Comment No. 13: The Right to Education*, ¶ 1 & ¶ 31, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter ICESCR Comm., Gen. Comment 13]; Comm. on the Rights of the Child [CRC Comm.], *Gen. Comment No. 1: Article 29 (1): The Aims of Education*, U.N. Doc. CRC/GC/2001/1 (Apr. 17, 2001), at ¶ 1; U.N. Human Rights Comm., Gen. Comment No. 17: Rights of the Child (Art. 24), ¶ 3, U.N. Doc. Supp. No. 40 A/44/40, Annex VI (Sept. 29, 1989).

¹⁵⁹ See CRC, *supra* note 33, art. 3(1).

¹⁶⁰ CRC, *supra* note 33, at art. 28.

¹⁶¹ ICESCR Comm., Gen. Comment No. 13, *supra* note 158, at ¶ 6(b)(i)

¹⁶² ICESCR, *supra* note 157, at art. 13.

adaptability also apply, meaning that higher education must be available and affordable for all, without discrimination.¹⁶³ The only caveat is that higher education is available to all on the basis of capacity, which is assessed according to an individual's relevant experience and expertise. This binds the Dominican Republic to ensure that higher education is made available and accessible without discrimination.

The Dominican Republic also is required to guarantee the right to education to children within its jurisdiction free from discrimination on the basis of race, color, sex, language, religion, national or social origin, property, birth¹⁶⁴ or other status.¹⁶⁵ The Committee on the Rights of the Child explicitly recognizes that the right to education is guaranteed to all children, regardless of nationality or statelessness.¹⁶⁶

Discrimination can be both direct and indirect,¹⁶⁷ and the Committee on Economic, Social and Cultural Rights explicitly cites the requirement of birth certificates for school enrolment as an example of indirect discrimination against minorities or non-nationals who are unable to obtain these documents.¹⁶⁸ Logically, the same discrimination against children who are stateless or at risk of statelessness equally constitutes indirect discrimination.

b. Gaps and Shortcomings

Dominican legislation in its text is largely compliant with international obligations mandating the protection of the right to education. However, arbitrary and discriminatory practices and policies still hinder the full respect of the right to education.

What happens in practice departs significantly from laws and policies. As outlined above, domestic law and administrative practice diverge in providing for an equal right to education. According to the Ministry of Education, children are not officially enrolled in the national database when they do not have a birth certificate,¹⁶⁹ and some primary schools will deny

¹⁶³ *Id.*

¹⁶⁴ ICESCR, *supra* note 157, at arts. 2(2), 13; CRC, *supra* note 33, at arts. 2, 28; American Convention on Human Rights, art. 24 & 26, Nov. 22, 1969, OAS Treaty Series No. 36; 1144 U.N.T.S. 123; 9 ILM 99 (1969) [hereinafter ACHR]; CADE, *supra* note 157, arts. 1 & 3. *See also* CERD, *supra* note 157 at 1-2, & 5(e)(v); Charter for the Organization of the American States, arts. 3, 34, available at http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm.

¹⁶⁵ ICESCR, *supra* note 157, at art. 2(2); CRC, *supra* note 33, at art. 2(1) (explicitly mentioning "other status" as prohibited ground of discrimination); *see* ACHR, *supra* note 164, at art. 1 (also prohibiting discrimination on any other social condition); *see also* RFK Center, *supra* note 53, at 16; ICESCR Comm., Gen. Comment No. 13, *supra* note 158, at ¶ 6(b)(i) & ¶ 31-37.

¹⁶⁶ CRC Comm., *Concluding Observations: Iran*, ¶ 61(b), U.N. DOC. CRC/C/15/Add.254, 38th session (Mar. 31, 2005).

¹⁶⁷ Direct discrimination constitutes the less favorable treatment of persons compared to other persons in a similar situation based on or in relation to a prohibited ground. Indirect discrimination, on the other hand, occurs when laws, policies or practices seem to be neutral, but have a disproportionate impact on a certain group of people distinguished by prohibited grounds of discrimination. ICESCR Comm., *Gen. Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 10, U.N. DOC. E/C.12/GC/20 (July 2, 2009).

¹⁶⁸ *Id.*

¹⁶⁹ Letter from Antonio Flores Pichardo (Feb. 28, 2014), *supra* note 56.

children even informal access to school if they have no birth certificate.¹⁷⁰ Not being officially enrolled then bars children from taking national exams that are required to graduate from primary and secondary school. In addition, access to university requires a *cédula* for students over the age of eighteen and access is consistently denied to those who are unable to obtain a *cédula*.

The Dominican Republic both directly and indirectly discriminates against children of Haitian ancestry born on Dominican soil and stateless by curtailing their access to education, thereby violating its international and domestic obligations.¹⁷¹ These practices have a disproportionate impact on these groups, because they are systematically denied birth certificates and *cédulas* and are consequently barred from enjoying their right to education. The discriminatory actions of local public school officials are attributable to and the responsibility of the government of the Dominican Republic.¹⁷² Consequently, the Dominican Republic's discriminatory practices amount to a violation of the right to non-discrimination under the CRC.¹⁷³

The Dominican Republic also is obligated as a matter of international law to provide for an effective remedy for individuals who have suffered violations of fundamental rights granted by the Constitution or by law¹⁷⁴ including mechanisms addressing individual harm caused by discrimination in economic, social, and cultural rights.¹⁷⁵ When it comes to cases where an individual teacher or principal wrongly denies undocumented children access to education, there again is a gap between law and practice. The Dominican Code for the Protection of the Fundamental Rights of Children and Adolescents provides for the establishment of an administrative mechanism allowing children and their representatives to present a complaint for the threat or violation of their right to education. In practice, however, this complaint mechanism is not commonly known among affected persons and service providers¹⁷⁶ and consequently does not constitute an effective and accessible remedy. This is also in contrast to the right of all children to be heard.

¹⁷⁰ See *supra* Part III.B.1.

¹⁷¹ See CRC Comm., Concluding Observations, *supra* note 19, at ¶ 73: (stating, “the Committee is concerned about discriminatory effects on children of Haitian descent and recommends that the DR guarantees the enrolment in schools on all levels to children without a birth certificate and to make sure that they are not discriminated against in practice”).

¹⁷² See ICESCR, *supra* note 157, at art. 28; CRC Comm., *Gen. Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6), ¶ 40-41, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

¹⁷³ ICESCR, *supra* note 157, at arts. 2(2) & 13; CRC, *supra* note 33, at arts. 2 & 28; ACHR, *supra* note 164, at arts. 1, 26; CADE, *supra* note 157, at arts. 1 & 3; CERD, *supra* note 157, at arts. 2 & 5.

¹⁷⁴ UDHR, *supra* note 34, art. 8; ACHR, *supra* note 164, art. 25; CERD, *supra* note 157, art. 6 (regarding racial discrimination in violation of CERD); See International Covenant on Civil and Political Rights, art. 2, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), *opened for signature* Dec. 16, 1966, 999, U.N.T.S. 171 (entered into force March 23, 1966).

¹⁷⁵ ICESCR Comm., *Gen. Comment No. 20*, *supra* note 167, at ¶ 40.

¹⁷⁶ Interview with July Clemente, ASCALA, *supra* note 16. The availability of a complaint mechanism has not been mentioned in any of the interviews conducted in the Dominican Republic regarding access to education. Service Providers like ASCALA employ informal means that include sending letters and reaching out to principals to help students get access to school rather than utilize this complaint mechanism, which illustrates its ineffectiveness.

4. Recommendations

To the government of the Dominican Republic

- Take all necessary steps to ensure equal access to education at all levels regardless of nationality and status of documentation in line with international obligations.¹⁷⁷
- Establish and ensure meaningful access to judicial and administrative complaint mechanisms that review denials of access to education in a consistent and timely manner.
- Ratify and fully implement the Protocol of San Salvador with particular attention to Article 13(3)(b) and (c) ensuring the general availability and equal accessibility to secondary and higher education.¹⁷⁸
- Ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons.¹⁷⁹

To the Dominican Ministry of Education

- Ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.
- Establish, monitor, and enforce a uniform and accessible complaint mechanism for reporting cases of denial of access to education by school administrators.
- Eliminate any requirements that a child must specifically present a birth certificate in order to be officially included in school records.
- Fully investigate all cases of denial of school enrollment or denial of access to national examinations to determine if denial is consistent with national policies that ensure the right to education.
- Provide proof of completed levels of school to all students regardless of access to particular identification documents.
- Guarantee uniform access to national examinations for all qualified students, regardless of presentation of birth certificate, in line with current Ministry of Education official policy.
- Ensure non-discriminatory university access for all those born in the Dominican Republic.

III. CONCLUSION

Without documentation, many children of Haitian descent in the Dominican Republic live their lives in the shadows. They are unable to fully access important rights, such as the right to

¹⁷⁷ ICESCR, *supra* note 157, at arts. 2(2) & 13; CRC, *supra* note 33, at arts. 2 & 28; ACHR, *supra* note 164, at arts. 1 & 26; CADE, *supra* note 157, at arts. 1 & 3; CERD, *supra* note 157, at arts. 2 & 5.

¹⁷⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador", Nov. 16, 1999, OAS Treaty Series, No. 69 (1988), *available at* <http://www1.umn.edu/humanrts/oasinstr/zoas10pe.htm>.

¹⁷⁹ 1961 Statelessness Convention, *supra* note 41; 1954 Statelessness Convention, *supra* note 41.

education, and the inability of these children to go to school both illustrates and aggravates the problem.

With broad international consensus that citizens should not be arbitrarily deprived of their nationality, especially when this results in statelessness, the Dominican Republic is in clear breach of its international obligations. Often unable to access hospital certifications of live birth, official birth registration, certified copies of birth certificates, and national identity cards, particularly Dominican children of Haitian descent suffer detriment due to both domestic legal developments and discriminatory exercise of administrative discretion within government agencies in ways that render them unable to prove their Dominican nationality. This report concludes that statelessness or the risk of statelessness has a significantly adverse impact of the ability of children to realize their right to education in the Dominican Republic and that this disproportionately disadvantages Dominicans of Haitian descent.

The impact of this problem is multi-generational, with Dominicans of Haitian descent finding their Dominican nationality invalidated by the alleged irregularity of their parents' or grandparents' citizenship. This is a particularly cruel burden to bear for a parent who is unable to educate a child because of the revocation of his or her nationality. Siblings within the same family interviewed for this report frequently cited disparate treatment, underscoring the inconsistent application of law and policy at the administrative level.

In recent years, the Dominican Republic has made progress towards improving its public education system and meeting the Millennium Development Goal objective that all children should be able to complete a full course of primary schooling. Moreover, Dominican law includes a constitutionally-guaranteed right to education, and the Dominican Republic is under an international legal obligation to provide equal access to schools at all levels of the education system. The practical exclusion of undocumented Dominican children of Haitian descent from the school system violates these legal obligations and runs counter to the spirit of complimentary development objectives.

Following the decision of the Constitutional Court in 2013, the Dominican Republic has proposed dealing with those consequently denationalized by means of an immigration regularization plan, for which the foundations were laid in 2004, and an associated naturalization law. Dominicans of Haitian descent interviewed for this report have some awareness of these recent developments and there is a level of fear and uncertainty that any action taken will neither acknowledge their Dominican nationality nor improve their position regarding access to the education system.

The situation as documented in this submission cannot be allowed to persist. Enshrined in the CRC and other international human rights instruments and international conventions by which the Dominican Republic is bound, the rights to education and nationality are prerequisites for the realization of other fundamental rights to which all members of the human family are entitled and indispensable to the ability of children to enjoy a life in which their opportunities are not inherently limited.

APPENDIX 1: RECOMMENDATIONS

To the government of the Dominican Republic

- Take all necessary steps to ensure equal access to education at all levels regardless of nationality and status of documentation in line with international obligations.¹⁸⁰
- Ensure implementation of measures providing for the non-discriminatory issuance of birth certificates.
- Fully comply with the Inter-American Court of Human Rights decision in the case of *Yean & Bosico v. the Dominican Republic*.¹⁸¹
- Establish and ensure meaningful access to judicial and administrative complaint mechanisms that review denials of access to education in a consistent and timely manner.
- Reevaluate the current regularization plan in accordance with the Dominican Republic's international obligations and based on consultation with the Inter-American Commission and the broader international community.
- Remove from any regularization plan provisions requiring those entitled to nationality, such as those who were denationalized under the Constitutional Tribunal decision of September 2013, to declare themselves foreign in order to be regularized.¹⁸²
- Ratify and fully implement the Protocol of San Salvador with particular attention to Article 13(3)(b) and (c) ensuring the general availability and equal accessibility to secondary and higher education.¹⁸³
- Ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons.¹⁸⁴
- Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.¹⁸⁵

To the Dominican Ministry of Education

- Ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.
- Establish, monitor, and enforce a uniform and accessible complaint mechanism for reporting cases of denial of access to education by school administrators.

¹⁸⁰ ICESCR, *supra* note 157, at arts. 2(2) & 13; CRC, *supra* note 33, at arts. 2 & 28; ACHR, *supra* note 164, at arts. 1 & 26; CADE, *supra* note 157, at arts. 1 & 3; CERD, *supra* note 157, at arts. 2 & 5.

¹⁸¹ *Yean & Bosico*, Inter-Am. Ct. H. R. (Sept. 8, 2005).

¹⁸² See IACHR, Preliminary Observations, *supra* note 8.

¹⁸³ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador", Nov. 16, 1999, OAS Treaty Series, No. 69 (1988), *available at* <http://www1.umn.edu/humanrts/oasinstr/zoas10pe.htm>.

¹⁸⁴ 1961 Statelessness Convention, *supra* note 41; 1954 Statelessness Convention, *supra* note 41.

¹⁸⁵ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc. A/RES/66/138 (Jan. 27, 2012).

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- Eliminate any requirements that a child must specifically present a birth certificate in order to be officially included in school records.
- Fully investigate all cases of denial of school enrollment or denial of access to national examinations to determine if denial is consistent with national policies that ensure the right to education.
- Provide proof of completed levels of school to all students regardless of access to particular identification documents.
- Guarantee uniform access to national examinations for all qualified students, regardless of presentation of birth certificate, in line with current Ministry of Education official policy.
- Ensure non-discriminatory university access for all those born in the Dominican Republic.

To the Dominican Central Electoral Board (*Junta Central Electoral*)

- Issue and enforce transparent, consistent, and fair procedures for the *cédula* and birth certificate acquisition process and make those procedures accessible to the public.
- Establish an independent administrative mechanism with the right of appellate review that would allow for individuals to challenge the issuance of a certificate of live birth labeling the child as a foreigner and denials of *cédulas*.
- Cease all investigations pursuant to the 2013 Constitutional Court ruling until consultations with the Inter-American Commission and the wider international community concerning the proposed regularization plan are complete.
- Immediately and fully comply with domestic court judgments regarding individual cases of eligibility for *cédulas*.
- Immediately halt the confiscation of original documents, particularly original birth certificates, without due process of law.

APPENDIX 2: TERMINOLOGY

School Terms

pre-school – School for children under six years of age.

primary school – There are eight years of primary school, and it is intended for children ages six to fourteen, although it is common for children to start or finish late.

secondary school – There are four years of secondary school, and it is intended for children ages fourteen to eighteen.

higher education – This includes both public and private universities as well as technical schools.

Documentation Terms

acta de nacimiento – An official birth certificate is the primary form of personal identification for persons under the age of eighteen in the Dominican Republic.

carnet de trabajador de temporero -- A document, often referred to as just a “*carnet*,” which temporarily authorizes the presence of a migrant worker within a particular geographic area while working for a specified employer.

cédula de identidad – The national identity card required for all Dominican adults.

certificado de cédula – This is a receipt showing proof that the holder has a pending application for a *cédula de identidad*.

certificado de nacimiento – A “certificate of live birth” issued to parents at the hospital for purposes of seeking an official birth certificate.

constancia de nacimiento – A “certificate of live foreign birth,” also called a “pink certificate,” is supposed to be issued upon the birth of a non-citizen.

extranjero – Foreign.

ficha – A company ID card, typically issued by a private Dominican employer.

Junta Central Electoral (JCE) – The Central Electoral Board is the government agency responsible for issuing *cédulas*.

Oficialia de Registro – The Civil Registry keeps national records and issues official birth certificates.

Other Terms

bateye – A company town, typically associated with the sugarcane industry and Haitian migrants.

Acronyms

CARICOM – Caribbean Community and Common Market

CEDAW – Committee on the Elimination of Discrimination against Women

CERD – Committee on the Elimination of Racial Discrimination

CRC – Convention on the Rights of the Child

IACHR – Inter-American Commission on Human Rights

JCE – Junta Central Electoral / Central Electoral Board

UDHR – Universal Declaration of Human Rights

UNHCR – United Nations High Commissioner for Refugees