



Fotografía: Maribel Nuñez

## ADVOCACY MANUAL

# Asserting the Right to Nationality without Discrimination and Combating Statelessness in the Dominican Republic



Foto: Fran Alfonso

## About the Advocacy Manual

This Manual is published on the fifth anniversary of Constitutional Tribunal decision 168-13, a decision that denationalized thousands of Dominicans. It seeks to provide advocates on the issue of the right to nationality in the Dominican Republic with a recent compilation of advocacy tools and helpful strategies to call attention to the ongoing problem.

This manual collects a number of key documents recently drafted by leading civil society organizations and international organizations regarding the denial of the right to a nationality, discrimination and statelessness in the Dominican Republic. The selected texts were drafted through extensive legal analysis, investigation, research, and consultation with individuals affected by the discriminatory legal framework on nationality in the Dominican Republic; local civil society organizations; and international partners.

Dominicanos por Derechos (DxD), the Institute on Statelessness and Inclusion (ISI), the Center for Justice and International Law (CEJIL), Robert F. Kennedy Human Rights, and the Americas Network on Nationality and Statelessness (Red ANA) acknowledge the support of United Nations High Commissioner for Refugees (UNHCR) in making this publication possible.

## About the organizations

Dominicanos por Derechos (DxD),<sup>1</sup> the Institute on Statelessness and Inclusion (ISI),<sup>2</sup> the Center for Justice and International Law (CEJIL),<sup>3</sup> Robert F. Kennedy Human Rights,<sup>4</sup> and the Americas Network on Nationality and Statelessness (Red ANA)<sup>5</sup> are non-governmental organizations and networks working to promote the full enjoyment of human rights in the Dominican Republic, specifically in relation to the right to nationality without discrimination.

1. Dominicanos por Derechos (DxD) is a network of national organizations working to promote the human rights of the most vulnerable in the Dominican Republic, especially Dominicans of Haitian descent. The collaboration is made up of the following organizations: Movimiento de Mujeres Dominico-Haitiana (MUDHA), Movimiento Socio Cultural para los Trabajadores Haitianos (MOSCTHA), Centro de Desarrollo Sostenible (CEDESO), Centro para la Observación Migratoria y el Desarrollo Social en el Caribe (Observatorio Migrantes del Caribe (OBMICA)), Hermanas Misioneras de San Carlos Borromeo Scalabrinianas (ASCALA), Comisión Nacional de Derechos Humanos (CNDH), Movimiento RECONOCI.DO, Centro de Educación para el Desarrollo (CEDUCA), Centro Cultural Dominico Haitiano (CCDH), y Derechos Vigentes. For more information about DxD, please see: <https://dominicanosxderecho.wordpress.com/>.
2. ISI is an independent non-profit organization committed to an integrated, human rights-based response to the injustice of statelessness and exclusion. It is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. Between the 27th and 31st sessions of the UPR, ISI has made over 30 country-specific submissions on the human rights of stateless persons and has also compiled summaries of the key human rights challenges related to statelessness in all countries under review between the 23rd and 30th UPR sessions. For more information about ISI, please see: <http://www.institutesi.org>.
3. CEJIL is a non-profit human rights organization that utilizes international human rights law to strategically litigate in international forums, principally before the Inter-American Court of Human Rights. CEJIL has represented diverse cases from many countries in the Americas, including the Dominican Republic. For more information about CEJIL, please see: <https://www.cejil.org/>.
4. Robert F. Kennedy Human Rights was founded in 1968 by Robert Kennedy's family and friends as a living memorial to carry forward his vision of a more just and peaceful world. The organization's litigation and advocacy team advocates for the protection of human rights throughout Africa, the Americas and Asia. The organization has worked on the issue of the right to nationality for Dominicans of Haitian descent for more than a decade. For more information about RFK, please see: <https://rfkhumanrights.org>
5. Red ANA is a network of civil society organizations, academic initiatives, and individual experts committed to addressing statelessness in the Americas. Red ANA seeks to raise awareness of statelessness in the Americas, identify affected people throughout the region and advocate for the recognition and respect of the rights of stateless persons. To this end, Red ANA promotes knowledge-sharing on the subject of statelessness, in order to create a cohesive network that can best defend the human rights of stateless persons; it cooperates with States to strengthen international protection mechanisms, and exchanges information with our sister organizations around the world. For more information about Red ANA, please see: <http://www.americasns.org/>



## Who is this Manual for?

The information found in this manual is relevant for all who advocate or wish to advocate for the right to nationality for all Dominicans, including Dominicans of Haitian descent. The organizations that have drafted this manual hope it will be a useful tool for affected persons, civil society organizations at the national and international levels, international organizations, academics, and government officials.

## What can you learn from this Manual?

This manual seeks to provide an overview of the right to nationality in the Dominican Republic, with an emphasis on the denial to the right to nationality of Dominicans of Haitian descent. Dominicans of Haitian descent face structural discrimination in the Dominican Republic, and the current legal framework is an impediment to their full enjoyment of rights.

The complexity of statelessness in the Dominican Republic has complicated efforts to advocate on behalf of Dominicans of Haitian descent whose right to nationality is affected. This manual seeks to explain some of the history behind statelessness in the Dominican Republic, the legal framework the Dominican State has adopted, reactions from the international community on the issue, and ongoing violations of human rights.

## How can you make the most out of this Manual?

Each key document referenced in the Manual is preceded by a brief introduction that explains its relevance. Due to length, only excerpts of certain documents have been included in this publication. For those interested in understanding the right to nationality in greater detail, we encourage you to read these documents in their entirety. All links and references are provided.

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## I. Introduction to the Advocacy Manual

Statelessness in the Dominican Republic presents an extremely complex scenario, which has a direct impact on the lives of Dominicans of Haitian descent. The lack of access to nationality, nationality documents and appearance in the civil registry permeates almost all spheres of their lives, imposing extra obstacles to access justice, health, education, or formal employment, among others.

For decades, the Dominican State has adopted legislative measures, judicial decisions and discriminatory administrative practices that violate the human rights of Dominicans of Haitian descent. To understand statelessness in the Dominican Republic, it is key to understand the historic discrimination faced by this population.

This publication represents a joint effort by the participating national and international organizations to provide an overview of how current Dominican policies not only contravene the country's international obligations, but also increase discrimination and exclusion towards Dominicans of Haitian descent, generate new cases of statelessness and arbitrary deprivation of nationality, and serve as an impediment for this population to enjoy and exercise their rights. The publication seeks to gather various advocacy tools developed by the international community to address these state policies and practices so the reader may understand the importance of each document, its key points, and reference information to access the documents in their entirety, in order to more effectively advocate

for the right to nationality for Dominicans of Haitian descent. Upon the five-year anniversary of the Tribunal Court Decision 168/13, which denationalized thousands of Dominicans, leaving them in a state of increased vulnerability, we hope that this publication provides tools to continue searching for solutions that move towards the guarantee of human rights.

This manual compiles and summarizes multiple documents that provide details on the current status of statelessness including reports from the Inter-American Commission on Human Rights (IACHR) as well as follow-up to the recommendations made by the IACHR to the Dominican State in relation to the right to nationality; the judgments issued by the Inter-American Court of Human Rights against the Dominican State on the same issue, which require measures to stop and prevent further violations of the human rights of Dominicans of Haitian descent; and a study on the impact of Tribunal Court Decisions 168-13 and 169-14 on Dominicans of Haitian Descent who were promised restored nationality. Finally, we present a report submitted for the upcoming 2019 Universal Periodic Review (UPR) for the Dominican Republic before the Human Rights Council of the United Nations, which includes each of these reference materials, along with an analysis of how the organizations involved structured the submission to best portray the current situation in the Dominican Republic and formulated their recommendations to the government of the Dominican Republic.

## II. Glossary

**Dominicans of Haitian descent** (“personas dominicanas de ascendencia haitiana”) - this report uses “Dominicans” to refer to all Dominican citizens and “Dominicans of Haitian descent” to refer specifically to Dominican citizens of Haitian descent, thousands of whom were stripped of their Dominican nationality after Judgment 168-13. We refer to “Dominicans of Haitian descent” as “Dominicans” to underscore their right to Dominican nationality, although Judgment 168-13 deemed them foreigners in their own country.

**“Group A”** (“Grupo A”) – the first of the two groups of people affected by Judgment 168-13 as defined by Law 169-14. “Group A” refers to people who were born in the Dominican Republic prior to 2010 and were entitled to birthright citizenship who were registered as Dominican citizens in the Civil Registry before Judgment 168-13 was passed on September 23, 2013. Under Law 169-14, people in “Group A” are entitled to have their Dominican citizenship restored, recognition of their identity documents, and the right to have their identity documents issued.

**“Group B”** (“Grupo B”) - the second of the two groups of people affected by Judgment 168-13 as defined by Law 169-14. “Group B” refers to people who were born in the Dominican Republic prior to 2010 and were entitled to birthright citizen-

ship but were not registered as Dominican citizens in the Civil Registry before Judgment 168-13 was passed on September 23, 2013. Under Law 169-14, people in “Group B” could have registered themselves in the foreign registry book (self-reporting as foreigners despite their eligibility for birthright citizenship) within 90 days of the law’s passage and are theoretically eligible for naturalized Dominican citizenship after two years.

**Judgment 168-13** (“Sentencia 168-13”) – Judgment issued by the Constitutional Tribunal of the Dominican Republic, the highest court in the country, on September 23, 2013, which affirmed the retroactive application of a constitutional amendment denying birthright citizenship to children of “foreigners in transit” interpreted as Dominicans born in the country to foreign par-ents between 1929 and 2010.

**Law 169-14** (“Ley 169-14”) – Law issued by the Dominican legislature on May 23, 2014 categorizing individuals affected by Judgment 168-13 into two groups: “Group A,” those who are entitled to restoration of their Dominican citizenship and recognition or provision of their identity documents, and “Group B,” those who must elect to register as foreigners to regularize their status in the country and apply for citizenship via naturalization after two years.

### III. Inter-American Commission on Human Rights' 2017 Annual Report

The Inter-American System of Human Rights (IASHR) is composed of two bodies that are autonomous organs of the Organization of American States (OAS): the Inter-American Commission on Human Rights (IACHR)<sup>6</sup> and the Inter-American Court of Human Rights (IA Court or Inter-American Court).<sup>7</sup> We will discuss the Inter-American Court in section IV.

The Inter-American Commission on Human Rights has the mandate of promoting and protecting human rights in the Americas. Each year, the IACHR publishes an Annual Report that provides a general overview of the human rights situation in the Americas and the Commission's activities that year.<sup>8</sup> In addition, the Commission has the authority to issue reports on the situation of a particular State in the hemisphere.<sup>9</sup> The annual report is a good source for a snapshot of the most current information available on the human rights situation in the country.

Before explaining the relevance of the IACHR's most recent findings with respect to the Dominican Republic in its 2017 Annual Report, it is necessary to explain its two prior reports.

In its 2016 Annual Report, the IACHR decided to report on the Dominican Republic (together with Venezuela and Cuba) in Chapter IV.<sup>10</sup> Chapter IV is reserved for countries with serious violations of human rights. The section on the Dominican Re-

public included a general description of the human rights situation, as well as key points of concern for the IACHR. Lastly, it included recommendations for the Dominican State to address these widespread violations of human rights.<sup>11</sup>

The year prior, in 2015, the IACHR issued an exclusive report on the "Situation of Human Rights in the Dominican Republic."<sup>12</sup> In this report, the IACHR made reference to the issue of the right to nationality and the decision of the Constitutional Tribunal, TC/0168/13, on the right to equality and non-discrimination of persons of Haitian descent, their access to justice and due process guarantees, and the situation of persons who defend the rights of Dominicans of Haitian descent and Haitian migrants.<sup>13</sup>

In its 2017 Annual Report, the IACHR decided to follow up on the prescribed recommendations on the situation of the right to nationality and equality under the law in the Dominican Republic, among other issues, made in its 2015 report on the Dominican Republic and in Chapter IV of the 2016 Annual Report.<sup>14</sup> In the Annual Report, the IACHR includes the Dominican State's response to the IACHR's request for information on its recommendations, providing one of the few sources of information directly from the State. The monitoring of its own recommendations allows you to see the progress, as well as the IACHR's continued concern about the issues. The IACHR also

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6. See: <http://www.oas.org/en/iachr/>

7. See: <http://www.corteidh.or.cr/index.php/en>

8. See: IACHR, Rules of Procedure, Article 59.

9. Id. at Article 58.

10. See: IACHR, 2017 Annual Report 2017, pg. 577 – 608. Available at: <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.RD-en.pdf>.

11. Id. at p. 608.

12. See, IACHR, Situation of Human Rights in the Dominican Republic. Available at: <http://www.oas.org/en/iachr/reports/pdfs/dominicanrepublic-2015.pdf>.

13. See, IACHR, Situation of Human Rights in the Dominican Republic. Available at: <http://www.oas.org/en/iachr/reports/pdfs/dominicanrepublic-2015.pdf>.



presents new recommendations and proposals to the State on how to address the problems.

The relevance of the IACHR's monitoring is based on the fact that these recommendations are issued by one of the bodies with the greatest knowledge and experience in the hemisphere on the protection of human rights, which has closely been following the issues for decades. The IACHR is one of the most authoritative voices on the subject, so the factual and legal findings, as well as the recommendations to the State, are key to addressing the problem. This information is powerful for advocacy activities before other bodies, and even the State itself.

Following are paragraphs 19 to 55 of the 2017 report, which provide a summary of the current situation, and also present the most recent information from the Dominican State and civil society organizations on the implementation of recommendations made by the IACHR, specifically on the State's implementation of Law 169-14. The IACHR also introduces new information about groups whose rights to nationality may have been violated. Where relevant, the IACHR quotes sections of its prior reports and recommendations to reemphasize ongoing human rights violations or areas where the State has fallen short:

19. In September 2013, the Constitutional Court of the Dominican Republic issued a new interpretation of the criteria for nationality set forth in the Dominican Constitutions in force from 1929 to 2010. Under Judgment TC/0168/13, the Court interpreted the concept of "foreigners in transit" in a new way, likening this concept to a "foreigner with irregular status." In this way, the Court retroactively amend-

ed the way "foreigners in transit" had been interpreted, establishing said category as an impediment to acquiring nationality under *jus soli*. In fact, in one particular case, the Court ruled that even though the appellant had been born in Dominican territory and had been registered by the competent authorities as such at a time when the Constitution recognized *jus soli* as a way of acquiring nationality, the new interpretation of "foreigners in transit" stripped the appellant of the right to Dominican nationality. The judgment also ordered administrative transfer of all birth certificates of persons born in Dominican territory who are the children of "foreigners in transit" from 1929 to 2007 to the book of foreign birth registration. Because it came into effect retroactively, the judgment led to the arbitrary deprivation of Dominican nationality of thousands of people, mostly of Haitian descent.<sup>15</sup>

20. On this issue, the IACHR observed that the population most affected by the decision are the descendants of a large population of Haitian migrant workers born in the Dominican Republic. This population includes people who were registered in the Dominican Civil Registry as well as people who were not. Said population has solid economic, social and cultural ties to the Dominican Republic, inasmuch as they were born, have grown up and built their lives in said country. Despite being descendants of Haitian persons, the affected population can no longer be characterized as having ties to Haiti: most of them are the children or grandchildren of persons who were also born in the Dominican Republic and have lived in the Dominican Republic for generations; they do not necessarily have any family ties in Haiti; in some instances, they have never been to Haiti or

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14. IACHR, 2017 Annual Report, Chapter V, Dominican Republic: Follow-up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Available at: <http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.5RD-en.pdf>.

15. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II, Doc. 45/15, December 31, 2015, pars. 169-186.

to any other country outside of the Dominican Republic; and the Spanish language is their native tongue.<sup>16</sup> Some of the major human rights violations stemming from the arbitrary deprivation of nationality and statelessness that the affected persons are victims of include that they are unable to register their children and, therefore, their children face obstacles in continuing their grade school studies, as well as in going to college, obtaining a job, accessing health care services, marrying, entering into contractual agreements, purchasing or renting housing, and travelling both inside and outside of the country, among other things.<sup>17</sup>

21. On the issue of Judgment TC/168/13, in its response to the Commission's request for information prior to the working visit this past November, the Dominican State claimed that: Judgment TC/168/13 of the Constitutional Court did not strip descendants of foreigners with irregular migration status born in national territory of their Dominican nationality, but on the contrary, it instituted a special regime benefiting the children of non-resident foreigners, by regularizing the legal status of citizens whose birth registration had been irregularly issued.
22. Additionally, in its observations on the draft of the instant report, the State made reference to the IACHR's recommendation to adopt, within a reasonable time period, the necessary measures to overturn any rule, practice, decision or interpretation that establishes, or whose effect is, that an irregular stay of foreign parents is ground for denial of Dominican nationality to persons born in the territory of the Dominican Republic. In particular, the State noted the following:<sup>18</sup>

In fact, the Government of the Dominican Republic reiterates that its provisions of law are not meant to discriminate against any group of persons for reasons of race, color, religion or origin. The fact that it mainly impacts a particular group of persons is something that stems from a social reality in a particular historical context, as is the case in many countries which have rules of nationality with certain restrictions, without it meaning that that said countries are committing discrimination.

23. On this score, the IACHR deems it necessary to reiterate what it held in its Report on the Human Rights Situation in the Dominican Republic, in 2015:

In the Commission's view, with the new interpretation established by the Constitutional Court in Judgment TC/0168/13, the measures and policies that other Dominican authorities had been promoting for years were assimilated into the law, a situation complicated by the fact that the court's interpretation would be applied retroactively, to all persons born on Dominican soil to parents with an irregular migratory situation and as far back as June 21, 1929. Judgment TC/0168/13 brought with it a general measure that arbitrarily deprived a considerable number of persons of their Dominican nationality and left stateless all those who had no legal claim to citizenship in any other State. The persons affected by this judgment were already unable to fully enjoy other human rights, a situation only made worse by this arbitrary deprivation of nationality and the stateless condition in which it left many people.<sup>19</sup>

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16. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II., Doc. 45/15, December 31, 2015, par. 84.

17. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II., Doc. 45/15, December 31, 2015, par. 4.

18. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017. pg. 9.

19. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II., Doc. 45/15, December 31, 2015, par. 237.

24. In response to the effects of Judgment TC/0168/13, the administration of President Danilo Medina promoted, with the support of a host of political and social actors, adoption of Law 169-14, which garnered unanimous approval in Congress and came into force on May 23, 2014. The Law created two tracks to provide a solution to the effects of Judgment TC/0168/13: on the one hand, it provided for the validation of birth certificates and the restoration of nationality to persons born in Dominican territory from June 16, 1929 to April 18, 2007, whose births had been registered (“Group A”), and on the other hand, it established a special procedure to record in the birth registry of foreigners born in Dominican territory, who were never registered in the Dominican Civil Registry (“Group B”), thus making it possible for them to subsequently regularize their status as migrants and after two years, be eligible for Dominican nationality through the procedure of naturalization. Lastly, it is important to note that persons born from April 18, 2007 to January 26, 2010 were not beneficiaries of said law.<sup>20</sup>

### Group A

25. As for the situation of persons belonging to Group A, the IACHR received information from civil society organizations about implementation of Law 169-14, claiming that the Central Electoral Board unilaterally created a new registry, called the “Transcription Book,” (Libro de Transcripción), which was not provided for or authorized by Law 169-14 or any other legislation.<sup>21</sup> Accordingly, civil society organizations contended that the creation of this separate registry

introduced a worrying division between the persons belonging to Group A and other Dominicans. This new book, coupled with the cancellation or invalidation of original identity papers has made it even more difficult to obtain papers because of discrepancies between the information on their original documents and the information appearing in the Transcription Book. Consequently, at the local offices of the civil register the affected individuals are subjected to further abuses and are faced with an impediment to obtaining their papers.<sup>22</sup> In this regard, the State reported about the mechanisms for individuals who are registered in the Transcription Book to be able to have access to their Dominican identity papers, that the individuals are able to request their birth record at the Local Office of the Civil Registry where they are registered and to request their national identification card at the card-issuing center of the jurisdiction where they are residing, by proving that they are the rightful identity holder.<sup>23</sup>

26. As was explained above, Judgment TC/0168/13 ordered the Central Electoral Board (JCE) to audit the birth registration records of the Civil Register in order to identify and draw up a list of individuals that are considered “foreigners” registered in said books. In fact, in completing the audit, which encompassed records from June 21, 1929 to April 18, 2007, the Central Electoral Board ruled that a total of 61,049 persons had been irregularly registered in the Dominican Civil Registry; in other words, this figure represents everyone belonging to Group A under Law 169 of 2014.

20. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II., Doc. 45/15, December 31, 2015, pars. 12-13.

21. IACHR, Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II., Doc. 45/15, December 31, 2015, par.. 458.

22. RFK Human Rights, CEDES, AJWS, UNDEF. Sueños Postergados: La lucha de las personas dominicanas de ascendencia haitiana por recuperar su nacionalidad, [Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get their Nationality Back], May 2017, pg. 32.

23. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 8.

27. As concerns the individuals who were registered and obtained their birth certificates (Group A), Law 169-14 established a period of registration for these people and once it expired, the registration was reviewed by the Central Electoral Board through an audit and a list of individuals was finally approved on May 26, 2015. As of that date, a process of issuance of Dominican identification papers by the Central Electoral Board began, as provided for in Law 169-14.
28. With regard to the foregoing, the IACHR notes that in its observations on the draft of the instant Report, the Dominican State explained that Law 169-14 recognized and validated documents issued on behalf of persons belonging to Group A without the need for any procedural steps to be taken. And to this effect, it added that “the Dominican State recognizes as Dominicans each of these persons and therefore their nationality is not in question.”<sup>24</sup>
29. Regarding progress in the implementation of Law 169-14, the State reported that in September 2017, the Central Electoral Board (JCE) published new statistics about the total of 61,049 people appearing on the list drawn up from the audit. For this purpose, the JCE presented advancements in five categories: authorized, transcription completed, further investigation, reconstruction and declaration voided. According to the information provided by the State, each category is interpreted as follows:
- a. Authorized: This refers to declarations of birth of citizens of foreign origin, which have been validated and whose issuances have been authorized on the grounds that their parents had legal status in the country, in other words, they had an identity card, at the time of issuing them.
  - b. Transcription Completed: This refers to transcribed birth records based on the fact that the parents of the registered persons were not legally residing in the country, in other words, they did not have identity papers, at the time of issuing them.
  - c. Further Investigation: This refers to declarations of birth that require field investigations to corroborate certain information, such as the identity of the claimant, or the authenticity of the persons appearing as the parents of the registered person, among other things.
  - d. Reconstruction: This refers to declarations of birth issued in books or registers that are partially destroyed.
  - e. Declaration Voided: This refers to declarations of birth that have been annulled or nullified because of false information, such as inauthentic persons appearing as the parents of the registered person, duplication of registration, proof of birth outside Dominican territory, parents’ use of identity papers obtained through impersonation, and declarations of birth issued after the registered person has reached adult age for reasons directly attributable to him or her.<sup>25</sup>
30. With regard to the Group A population, the Central Electoral Board (JCE) provided statistics as of September 2017 for each of the categories listed above, regarding beneficiaries covered by the special regime established under Article 1.a of Law No. 169.14:

24. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017, pgs. 2 and 3.

25. Dominican Republic, Response to Questionnaire in preparation for the IACHR’s working visit, 2017, pgs. 4-5.

Category	Number	Percentage
Authorized	29,392	48.14%
Transcription Completed	27,249	44.63%
Further Investigation	3,825	6.27%
Reconstruction	556	0.91%
Declaration Voided	27	0.04%
Totals:	61,049	100.00%

Source: Junta Central Electoral<sup>26</sup>

31. The IACHR notes that this information is based on a total of 61,036 processed case files, a figure that does not match the above-cited figure of 61,049 case files. Notwithstanding, the IACHR finds it relevant to cite said information provided by the State regarding beneficiaries covered by the special regime established under Article 1.a of Law No. 169-14:

Decision of the Commission	Cases processed	Percentage	Certificates available	Certificates issued	Qualifying ID Cards
Authorized/ regularized	56,628	92.78%	56,212	20,872	19,521
Authorized	29,380	-	29,380	12,274	12,309
Transcribed	27,248	-	26,832	8,508	7,212
Declaration Voided	27	0.04%	-	-	-
In process / pending documentation	3,825	6.27%	-	-	-
In reconstruction	556	0.91%	-	-	-
Totals:	61,036	100.00%	56,212	20,872	19,521

Source: Junta Central Electoral<sup>27</sup>

32. In its observations on the draft of this report, the Dominican State clarified that the discrepancy in the figures appearing in the tables above can be explained as follows:<sup>28</sup> the figure of 61,049 cases is for the latest update done by the Central Electoral Board in September 2017; the second figure of 61,036 is the result of a more detailed, previously unpublished version, which excludes a total of 13 cases, 12 authorized ones and one transcribed case file, about which there is no specific information

26. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pgs. 5-6.

27. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pgs. 5-6.

28. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017, pg. 3.

regarding availability and issuance of birth certificates and identity cards. The State also noted that of the 61,036 cases from Group A, the Central Electoral Board lists as available in its internal system the certificates of 56,212 persons, who are able to request them and obtain them immediately. Additionally, the State reported that that 20,872 birth certificates have been issued belonging to these persons and 19,521 identification cards are eligible to be requested.<sup>29</sup>

33. For their part, civil society organizations advised the IACHR delegation that as of November 2017, the number of individuals under Group A, who have been able to gain access to their Dominican identity papers as of the time of implementation of Law 169-14 had still been impossible to determine.<sup>30</sup> For his part, the former chair of the JCE announced in October 2016 that more than 20,000 people had picked up birth certificates or identity cards, while the documentation of a group of 572 people was difficult to recover because the original records were in poor shape.<sup>31</sup> In this regard, the civil society organizations noted that the current number of people, who received identity papers, is lower than the figure given by State authorities, because in order to apply for an identity card, a birth certificate must first be submitted.<sup>32</sup>
34. In this regard, the civil society organizations claimed that, based on the figure provided by the State of the nearly 55,000 individuals who were audited and authorized to receive their papers, the majority of beneficiaries would not

have recovered their papers. This stands as evidence of the need to continue to engage in talks with a view to identify and remedy the main reasons why this is happening, as well as to discuss the need to update on an ongoing basis the number of individuals affected and further breakdown the numbers of individuals, who have received identity papers, by type of document.<sup>33</sup>

35. On this score, the IACHR emphasizes that in its observations on the draft of the instant Chapter, the Dominican State noted that:<sup>34</sup>

The Dominican State wishes to reaffirm its interest and firm commitment to each and every person identified by the audit of the Central Electoral Board as belonging to Group A, or any other person who meets the criteria defined in Law Number 169-14 for said group, but who for any reason was not in the initial audit of the Central Electoral Board, to obtain his or her birth certificate and, when appropriate (according to age), his or her identification card or identification and electoral card.

36. As for the measures taken to promote prompt and expeditious issuance of civil and identity papers for the beneficiaries of Law 169-14, the Dominican State reported that currently all information relating to the general roster of persons benefiting under the Law are available on the webpage of the Central Electoral Board (JCE) by means of a form allowing the searcher to identify the names of

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29. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017, pgs. 3 and 4.

30. IACHR, Working Visit to the Dominican Republic, Meetings with Civil Society, November 23, 2017. Internal Archive.

31. *Diario Libre*, La Junta Central Electoral dice que no tienen problemas personas amparadas con la Ley 169-14, [‘The Central Electoral Board says that persons covered by Law 169-14 do not have problems’], October 25, 2016.

32. OBMICA, Estado de las Migraciones que atañen a la República Dominicana 2016, [‘Status of Migration concerning the Dominican Republic 2016’], November 2017, pg. 241.

33. OBMICA, Estado de las Migraciones que atañen a la República Dominicana 2016, [‘Status of Migration concerning the Dominican Republic 2016’], November 2017, pg. 241.

34. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017, pg. 4.

registered persons and the main information connected to them using several search criteria. The State further explained that certificates and their corresponding events were properly digitized and approved so that registered persons are able to have access to their information whenever they so need.<sup>35</sup>

37. Even though the IACHR acknowledges that availability of a tool enabling beneficiaries to have direct access to the information on their cases is important, it also notes that the tool does not provide a list of beneficiaries, but only the ability to find known information, thus limiting access to the general public. Accordingly, the IACHR urges the Dominican State to implement measures to make information available to the general public as well as to provide access to a list showing progress in the implementation of the measures established under Law 169-14. The Commission also notes that as of the present date it still does not know with certainty the number of approved people on the audit list, who have received their identity papers through this procedure.
38. Civil society organizations reported that obstacles faced by the affected population making up Group A include the following: inability to know their registration status; lack of information about and assistance to follow the process to obtain papers; discriminatory treatment by the Dominican authorities and police; widespread abuse of criteria by JCE authorities to retain papers; discrepancies between the new registration book and the transcription book of

the JCE; suspension and suspicious voiding of valid papers; identity theft; inability to afford the documentation; a host of obstacles to obtain documentation; problems with documentation for the children of people in Group A and damaging narratives that lead to Group A status.<sup>36</sup>

39. Regarding the impact of not having identity papers, civil society organizations described how it can have an adverse effect on the everyday lives of the affected people: in declaring their children as Dominican citizens, registering their children in school, attending college, finding a formal and stable job, gaining access to public services, contracting marriage, among other things.<sup>37</sup> In this regard, civil society organizations have contended that these are the same obstacles that were identified by them in their assessments of the situation three years after Judgment 168-13 was handed down in late September 2016 and, therefore, they conclude that the JCE has not adequately collaborated to immediately deliver identity papers.<sup>38</sup>
40. As to effective enjoyment of Dominican nationality by the descendants of the Group A population, the State asserted that:
- As provided under Article 2 of Law No. 169-14, once the situation of irregularity is addressed, the Central Electoral Board (JCE) shall accredit as Dominican nationals the beneficiary persons of the Group known as 'A,' who have the same prerogatives and privileges as any other national, as established by the Constitution of the Republic. Likewise,

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35. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 8.

36. RFK Human Rights, CEDES, AJWS, UNDEF. Sueños Postergados: La lucha de las personas dominicanas de ascendencia haitiana por recuperar su nacionalidad, [Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get their Nationality Back], May 2017, pgs. 32 - 40.

37. RFK Human Rights, CEDES, AJWS, UNDEF. Sueños Postergados: La lucha de las personas dominicanas de ascendencia haitiana por recuperar su nacionalidad, [Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get their Nationality Back], May 2017, pgs. 41-42.

38. OBMICA, Estado de las Migraciones que atañen a la República Dominicana 2016, ['Status of Migration concerning the Dominican Republic 2016'], November 2017, pg. 239.

the children of beneficiary persons of Group A enjoy the same rights and prerogatives as their parents and, therefore, are registered without any other requirement than the one demanded by Law No. 659 regarding acts of civil registry, their parents being required to appear before the corresponding Office of the Civil Registry within the statutory period of time.<sup>39</sup>

### Group B

41. As for the individuals who were never registered and did not have birth certificates (Group B), Law 169-14 established a period of 180 days for them to register. Said application period expired on February 1, 2015, during which according to information provided by the State, 8,755 people registered out of a total of approximately 53,000. The Law specifies that subsequently, a period of two years must elapse after which the persons would be eligible to pursue the process of naturalization and have access to nationality.
42. Regarding the situation of the Group B population, civil society organizations expressed their concern over the low number of individuals who had obtained their documentation through the procedure established under Law 169-14. According to information provided by the organizations, the figure is 4,574 permanent residents and 6,566 certificates of foreigners. They also expressed concern over the lack of clarity regarding the chances of people, whose case files were received in incomplete form, to have access to the naturalization process; as well as the lack of information about how persons, who have a particular migration status and are eligible, can apply for naturalization.<sup>40</sup>
43. During its working visit to the Dominican Republic, the IACHR heard from civil society about its concern over the persistent lack of solutions for the children of mixed couples to have access to registration of their births, as well as for other persons affected by Judgment 168-13, who are unable to find any solution to their nationality under Law 169-14.<sup>41</sup>
44. For its part, in addressing implementation of the procedure provided for by Law 169-14 for the Group B population, the State reported to the IACHR that of the 8,755 individuals who registered during the statutory period under the law, 6,793 case files were forwarded to the Central Electoral Board by the Ministry of the Interior and Police. By November 2017, the State reported having issued 4,442 personal identity cards to people who had met the requirements established under the law.<sup>42</sup> In addition to this, the State reported that of the total number of 8,755 people in Group B, 6,577 are eligible to receive their civil papers and 5,401 have already received their birth certificates and their permanent regularization card.<sup>43</sup>
45. The State also reported to the IACHR that in coordination with the Ministry of the Interior and Police and the General Directorate of Migration, it drew up a special plan to provide sugar cane workers with identity cards, for which a total of 2,709 people registered, 1,711 of whom have already received their card.<sup>44</sup>

39. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 9.

40. OBMICA, Estado de las Migraciones que atañen a la República Dominicana 2016, ['Status of Migration concerning the Dominican Republic 2016'], November 2017, pg. 246.

41. IACHR, Working Visit to the Dominican Republic, Meetings with Civil Society, November 23, 2017. Internal Archive.

42. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 9

43. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 9

44. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 9



46. In this regard, in its observations on the draft of the instant Report, the Dominican State noted that:<sup>45</sup>

The source of the figure of 53,000 persons is from the disaggregation that had been done of the data provided by the National Migrant Survey of 2012 (ENI-2012) sponsored by the European Union and executed by the National Statistics Office (ONE) of the Dominican Republic. Over the years, ENI-2012 has been used as a primary source. However, not to detract from the importance of the surveys, we believe that a report produced by an international agency that is evaluating the situation in a State regarding issues of great complexity such as this one, must resort with certain regularity to an evaluation of the initial assumptions, comparing them not only with the accounts and anecdotes of individual cases but also with the sources, to be able to approach the issue in a balanced way and with the depth required.[...] In fact, after these figures have been used for 4 years to magnify the scale of the situation, and the State has been permanently been requesting any interested agency, institution or person to present potential cases of persons who allegedly could have benefited from Law Number 169-14, Article 6, subsection b, and did not, only two cases have come to the attention of the institutions assigned to investigate them.

47. With respect to the naturalization process, which can be pursued after expiration of the two-year waiting period es-

tablished by Law 169-14, the Dominican State reported that qualifying individuals must file an application with the Executive Branch of government through the Ministry of Interior and Police, and follow the procedure set forth under Law 1683 on Naturalization, dated April 16, 1948, amended by Law 4063.<sup>46</sup> Additionally, in its communication of November 23, 2017, the Dominican State reported that it was not aware of any application for naturalization filed by any of population registered as Group B.<sup>47</sup> In this regard, in its observations on the draft of the instant Chapter, the State reiterated its commitment to compliance with the provisions of Law 169-14, in relation to persons who did in fact register under the Group B; and indicated that it will create an expedited mechanism in the Ministry of Interior and Police so that interested parties, whose applications meet the two year requirement, can request, through a standardized communication, their naturalization.<sup>48</sup>

48. Lastly, the State reported to the IACHR about two potential cases of descendants of foreign parents with irregular migration status, who were born in the Dominican Republic and who are not registered in the Civil Registry (Group B), either because they were never registered or they were denied registration.<sup>49</sup> According to information provided by the State, an office of an international organization even recently raised the situation of these cases. Regarding these cases, the State noted that the General Director-

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45. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017, pg. 5.

46. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 10.

47. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 10.

48. República Dominicana, Observaciones al Proyecto Preliminar de Capítulo V, 2017. pág. 6.

49. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 10. Dominican Republic, Observations on the Preliminary Draft of Chapter V, 2017. Pg. 5.

ate of Migration and the National Institute of Migration are the authorities, who are now in charge of establishing the working procedure and then submit a detailed report on the documents and arguments put forward in the applications filed in these cases.<sup>50</sup>

49. As for the situation of the Group B population, in general terms, the IACHR notes with concern that only a small portion of the members of this group was able to register within the timeframe established by the Law and, more worrying still, is that they do not know with certainty whether or not the naturalization process will go their way and actually allow them access to naturalization. Likewise, the IACHR notes that the 2-year waiting period established under Law 169-14 to apply for naturalization has already lapsed and as of the date of approval of this report, there is no public access to information for the affected population to be able to know the procedure for naturalization, the stages and requirements in the process of naturalization, the number of naturalization applications filed, whether these procedures have been opened and disseminated by the State and whether the population has had access to them.
50. The IACHR also stresses the urgency of taking measures to address the situation of descendants of foreign parents with irregular immigration status, who are born in the Dominican Republic and do not appear in the Civil Registry, either because they were not registered or were denied registration under the procedure established by Law 169-14 for Group B members, especially the decision of what set of rules and regulations are applicable to this population, so that this population is able to resolve its situation of ac-

quisition of nationality and effective enjoyment of other human rights. The IACHR urges the State to take, as soon as possible, the necessary measures to provide a way to facilitate access for these individuals to obtain nationality.

51. Other population groups without effective protection of their right to nationality

In the context of the visit, the Commission received information from civil society organizations about three other population groups, who still have not been able to find a solution to their right to nationality through the Dominican State. Firstly, the IACHR received information about the situation of people born and registered in the Dominican Republic from April 18, 2007 to January 26, 2016, and who are not covered by the procedure provided for in Law 169-14 for recognition of nationality of the Group A population. The IACHR notes that Law 169-14 addresses the population born from June 29, 1929 to April 18, 2007, the date when the first Constitution was adopted, which included the exception to acquisition of nationality for persons born of parents regarded as “in transit,” and the date that the Book of Registration of Births of Children of Non Resident Foreign Mothers came into effect in the Dominican Republic (also known as the “Book of Foreign Birth Registration” or the “Book of Foreign Births” (*Libro de Extranjería*)).<sup>51</sup> Based on the foregoing, civil society organizations asserted that there still has not been a response provided for this segment of the affected population.<sup>52</sup>

52. Furthermore, the IACHR learned about the situation of individuals born in the country prior to January 26, 2010, who are registered in the Book Foreigner Birth Registrations, and who therefore are not recognized as Dominican na-

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50. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 10.

51. IACHR, Working Visit to the Dominican Republic, Meetings with Civil Society, November 2017. Internal Archive.

52. IACHR, Working Visit to the Dominican Republic, Meetings with Civil Society, November 2017. Internal Archive.

tionals. Based on the information provide by civil society organizations and affected individuals themselves, persons registered in the Book of Registration of Births of Foreigners receive a birth certificate for foreigners, so it does not vouch for any nationality. Civil society organizations contend that these individuals were equally affected by Judgment TC-168-13, because even though the Book of Registration of Births of Foreigners came into use as of April 18, 2007, the Central Electoral Board registered thousands of people who were born prior to 2007.<sup>53</sup>

53. The IACHR also received information about the third population group for whom the Dominican State continues to not ensure its right to nationality: the children of mixed families, meaning, families made up of one migrant parent and one Dominican parent, who is not of Haitian descent. Civil society organizations told the IACHR that in accordance with the principle of *ius sanguinis*, these individuals are entitled to Dominican nationality. Notwithstanding, because one of the parents, generally the mother, is Haitian and does not have identity papers, the Central Electoral Board precludes registration of the birth of the child or they are registered in the Book of Registration of Births of Foreigners.<sup>54</sup>
54. Regarding the situation of the above-cited population groups and the fact that their right to nationality is still not ensured, the Dominican State reported that under Resolution Number 02/2007, dated April 18, 2007 of the Plenary Central Electoral Board, the Book of Registration of Births of Children from Non Resident Foreign Mothers in the Do-

minican Republic was extended to children of foreigners born subsequent to enactment of Law 285-04, as well as extending the Book of Special Registration to cover the children of foreigners born prior to the aforementioned law.<sup>55</sup> For those born during this time period, who have not been able to prove that they were born in the country, the State reported that it offers the National Regularization Plan for Foreigners, established by the Executive Branch under Decree 327/13, of November 29, 2013.<sup>56</sup> Moreover, the Dominican State noted that:

Carrying out the corresponding procedures at the embassy of the country of origin of their parents to obtain their identity papers by virtue of the migratory status of their parents. In this regard, Article 18, number 3, of the Constitution of the Republic establishes that Dominicans are “persons born in national territory, with the exception of the children of foreign members of diplomatic and consular missions, foreigners who are in transit or illegally reside in Dominican territory. A person in transit is considered any foreign man or women defined as such under Dominican law.”<sup>57</sup>

55. On this score, the IACHR reaffirms its concern over the lack of measures to address the needs of the population born from April 18, 2007 to January 26, 2010, which fall outside of the scope of Law 169-14; the situation of persons born in the country prior to January 26, 2010 and whose names appear in the Book of Registration of Births of Foreigners; as well as the children of mixed families; population groups for which there still is no solution to ensure the effective enjoyment of their right to Dominican nationality.

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53. IACHR, Working Visit to the Dominican Republic, Meetings with Civil Society, November 2017. Internal Archive.

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55. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 6.

56. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 6.

57. Dominican Republic, Response to Questionnaire in preparation for the IACHR's working visit, 2017, pg. 7.

## IV. Decisions of Inter-American Court on Human Rights

One of the principle functions of the Inter-American System of Human Rights is to receive individual petitions before the Inter-American Commission of Human Rights. For those countries that have accepted the jurisdiction of the Inter-American Court, the cases may be processed by the IACHR and the Court may ultimately decide the case, and can condemn the State for human rights violations and order reparations for victims. The Court can order different types of reparations, including public acts of recognition of responsibility, payment of damages, and adoption of legislative or administrative measures to address human rights violations, among others.

In relation to the framework and policies regarding the right to nationality, the obligation not to discriminate, the prevention and reduction of statelessness, and the principle of equal protection of the law in the Dominican Republic<sup>58</sup>, two cases have reached the Inter-American Court<sup>59</sup>: the Case of the Girls Yean and Bosico,<sup>60</sup> and the Case of Expelled Dominicans and Haitians.<sup>61</sup> These cases were litigated by civil society organizations, working at both the national and international levels,<sup>62</sup> and both have resulted in binding decisions from the Inter-American Court.

Before discussing both cases and their relevance to an advocacy strategy for the right to nationality, it is important to mention that on November 4, 2014, the Dominican Constitutional Tribunal published decision TC 256-14. This decision declared that the acceptance of the Inter-American Court's jurisdiction by the Dominican Republic was not valid.<sup>63</sup> Decision TC 256-14 resulted from an action of unconstitutionality filed before the Supreme Court on November 25, 2005, shortly after the Inter-American Court decided the Yean and Bosico case.<sup>64</sup> This Constitutional Court decision violates international law, and therefore is not valid at the international level. Furthermore, the Dominican state has not advanced in any attempt to adopt this position at the international level. Consequently, Inter-American Court decisions continue to be binding upon the Dominican Republic.

As the Court's decision is binding, its judgments and own efforts to follow up on their implementation, including periodic reports on Supervision of Compliance with and ordered reparations, offer measures by which to gauge the government's progress on addressing human rights violations.

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58. The ACHR establishes in its article 20 the right to have a nationality and not be arbitrarily deprived of nationality, nor denied the right to change nationalities. Other parts of the articles 1.1 and 24 respectively establish the obligation of the state of equal treatment as equality before the law.

59. It is worth noting that the ACHR has also addressed this problem through the médium of other available mechanisms, such as visiting the country, see, for example: <https://www.oas.org/es/cidh/informes/pdfs/RepublicaDominicana-2015.pdf>

60. IACHR. *Case of Corte IDH. Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8th, 2005. Series C No. 130.

61. IACHR. *Corte IDH. Case of expelled Dominicans and Haitians*. Preliminary Exceptions, Background, Reparations and Costs. Judgment of August 28th, 2014. Series C No. 282.

62. Among them, Movimiento Mujeres Haitiano-Dominicanas (MUDHA) de República Dominicana, and Grupo de Apoyo a los Repatriados y Refugiados (GARR) of Haití.

63. Constitutional Court of the Dominican Republic. Sentence TC -0256-14 of November 4th, 2014. Available at: <https://www.tribunalconstitucional.gob.do/content/sentencia-tc025614>

64. See: IACHR. *Case of the Girls Yean and Bosico v. Dominican Republic*. Op. Cit.

## 1. Case of the Girls Yean and Bosico (2005)

This case is about two girls, Dilcia Yean and Violeta Bosico, who were born in the Dominican Republic to Dominican mothers and Haitian fathers. It is a paradigmatic case at the international level for the right to nationality, statelessness, and equal protection of the law.<sup>65</sup> The facts, as determined by the Court in its decision, relate how neither the girls' mothers nor their fathers were able to register their births under the ordinary procedure established for late registry. Consequently, the girls were unable to obtain birth certificates, and remained stateless.<sup>66</sup>

In this case, the Court considered that nationality is “a fundamental human right enshrined in the American Convention.”<sup>67</sup> It also determined that it “is a requirement for the exercise of specific rights”<sup>68</sup>, which gives it particular importance for the enjoyment of many protected rights.

The Court also established that racial discrimination and the arbitrary implementation of birth registry and nationality acquisition processes violated the American Convention on Human Rights, leaving Dominican children of Haitian descent stateless.<sup>69</sup> Because of that, the Court determined that the Dominican Republic had not complied with its “obligation to prevent, avoid and reduce statelessness.”<sup>70</sup>

Regarding statelessness, the Court expressed that:

States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.<sup>71</sup>

Taking into account the victims' situation, the Court considered that “the vulnerability arising from statelessness affected the free development of their personalities, since it impeded access to their rights and to the special protection to which they are entitled.”<sup>72</sup>

Additionally, the Court found that the principle of equal and effective protection of the law and non-discrimination required that States, when regulating nationality acquisition mechanisms, must abstain from implementing discriminatory regulations, or neutral regulations that produce discriminatory effects on different groups. Likewise, States must combat dis-

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65. IACHR. *Case of the Girls Yean and Bosico v. Dominican*. *Op. Cit.*

66. *Id.* at par. 109.

67. *Id.* at par. 136.

68. *Id.* at par. 137.

69. *Id.* at par. 172.

70. *Id.* at par. 140.

71. *Id.* at par. 142.

72. *Id.* at par. 167.

criminary practices at all levels, particularly in public bodies, and must take the necessary affirmative measures to ensure effective equality before the law.<sup>73</sup>

Based on these findings, in its 2005 ruling the Inter-American Court declared that the Dominican State violated the rights to nationality and equality before the law of the Yean and Bosico girls. Therefore, it required that the State adopt in its national legal framework legislative, administrative and other necessary measures to regulate procedures and requirements to obtain Dominican nationality, including those regarding late declarations of birth.<sup>74</sup>

Unfortunately, the Court has determined that the Dominican Republic has yet to advance substantially towards complying with this order of reparation.<sup>75</sup>

## **2. Case of Expelled Dominicans and Haitians (2014)**

The Court subsequently heard another case regarding the right to nationality and structural discrimination in the Dominican Republic, and addresses ongoing problems faced by Dominicans of Haitian descent in obtaining nationality documents.<sup>76</sup> One of the Court's key conclusions was the explicit recognition of discrimination in the Dominican Republic:

*The Court also notes the existence in the Dominican Republic at the time of the events of this case during*

*the 1990s, of a systematic pattern of expulsions of Haitians and persons of Haitian descent, including through collective actions or procedures that did not involve individualized analysis, that were based on a discriminatory concept.<sup>77</sup>*

The Court also determined that the Constitutional Tribunal Decision TC 168/13 and specific articles of Law 169 14 violated the right to nationality, the right to legal personality, the right to identity, the right to equality before the law and the obligation to prevent statelessness, to the protection of honor and dignity, to the protection of the family, among others.<sup>78</sup>

Based on this, the Court reiterated the obligation of states to prevent, avoid and reduce statelessness when regulating the acquisition of nationality. It also held again that states must provide individuals with equal and effective protection of the law.<sup>79</sup> Regarding the duty of the State to prevent and reduce statelessness, the Inter-American Court determined that States must avoid laws or practices that increase statelessness, as statelessness places individuals in situations of extreme vulnerability.<sup>80</sup>

### **Regarding the Decision TC 168/13, the Court considered that**

*the introduction of the standard of the irregular permanence of the parents as an exception to the acquisition of nationality by ius solis was discrimina-*

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73. *Id.* at par. 141.

74. *Id.* at operative point. 8.

75. IACHR. *Case of the Girls Yean and Bosico v. Dominican Republic*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 28th, 2007, of May 2009, of August 27th, 2010, and of October 10th, 2011, par. 3.

76. IACHR. *Case of Expelled Dominicans and Haitians*. *Op. Cite.*, paras. 3 to 9.

77. *Id.* at par. 171.

78. *Id.* at paras. 276, 299, 301 and 314.

79. *Id.* at par. 256.

tory in the Dominican Republic, when it was applied in a context that has previously been the Dominican Republic, when it was applied in a context that has previously been described as discriminatory towards Dominicans of Haitian origin. In addition, this group was disproportionately affected by the introduction of the differentiated criteria.<sup>81</sup>

**In relation to Law 169/14, the Court analyzed articles 6, 8 and 11 and considered that**

*[L]aw No. 169-14, in the same way as judgment TC/0168/13 on which it is based, is founded on considering that those born in Dominican territory, who are the children of aliens in an irregular situation, are aliens. In practice, this understanding, applied to persons who were born before the 2010 constitutional reform, entails a retroactive deprivation of national-ty; [...] that this is contrary to the Convention [...]*<sup>82</sup>

Therefore, the Court understood “that Law No. 169-14 created an impediment to the full exercise of the [...] right to nationality”<sup>83</sup> and that the fact that Dominicans are required to submit an application for “a plan to “regularize aliens”” [...] could lead to a “naturalization” process that, by definition, is contrary to the automatic acquisition of nationality based on having been born on the State’s territory”<sup>84</sup>. This, in turn, according to the Court

*is contrary to full respect for the right to nationality to which they should have had access since birth. Consequently, submitting the said individuals, for a limited time only, to the possibility of acceding to a process that could eventually result in the “acquisition” of a nationality that, in fact, they should already have, entailed establishing an impediment to the enjoyment of their right to nationality.*<sup>85</sup>

In conclusion, the Court indicated that the aforementioned articles of Law 169-14 violate the rights to adopt provisions of domestic law, to the recognition of the juridical personality, to a name, to a nationality, and to identity, established in the American Convention of Human rights<sup>86</sup>. Based on this evaluation, the Court’s decision ordered the Dominican Republic to, within a reasonable time, take all necessary measures to render void any rule, practice or decision that arbitrarily deprives a person of the enjoyment of the right to nationality if they were born in the Dominican Republic and do not have effective and immediate access to another nationality.<sup>87</sup>

Notwithstanding the fact that the ruling was issued in 2014, the Inter-American Court has not issued any decision monitoring compliance with its ruling nor has it convened a compliance monitoring hearing, in spite of having received formal requests. Likewise, even though the burden was upon the State to fulfill the obligation of informing the Court of its compliance with the reparations determined in the judgment, at the present time the Dominican Republic has not submitted any report.

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80. *Id.* at par. 257.

81. *Id.* at par. 318.

82. *Id.* at par. 323.

83. *Id.* at par. 324.

84. *Id.*

85. *Id.*

86. *Id.*

## V. Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back

Dreams Deferred chronicles the history of denationalization policies in the Dominican Republic, highlighting the longstanding racial and xenophobic discrimination against Haitians and those of Haitian descent at their root, and how the policies violate international law. Focusing on those in “Group A,” victims of Judgment 168-13 who were promised restored nationality and Dominican identity documents under Law 169-14, the report includes first-hand accounts from 24 victims, all Dominicans of Haitian descent, many of whom were without valid identity documents more than three years after Law 169-14 was passed. Without these documents, they are unable to vote, register for university, access basic social services, or register their children as Dominican citizens. The report concludes with recommendations for the Dominican government and the international community to ensure that the Dominican citizenship of those affected by denationalization policies is recognized and respected, and that the violations do not continue for another generation<sup>88</sup>.

What follows is an excerpt from Dreams Deferred that includes direct testimony from victims of Judgment 168-13 and Law 169-14 on the impact of these policies on their day-to-day lives as well as testimony from one victim on the obstacle she faced in the widespread abuse of discretion authorities had to withhold documents, one of the ongoing obstacles to receiving documents under Law 169-14 that the report identifies:

### 1. The Voices of Victims in “Group A”

Individuals in “Group A” tell a consistent story: Law 169-14 has not followed through on its own terms. The Central Electoral

Board (JCE) has failed to recognize the original identity documents of many people who belong to “Group A” and are not on the list of 53,827 people, and has not issued new ones to those who need them. As a result, there is overwhelming confusion about who is included in “Group A,” what documents they are entitled to, and what their citizenship status is. Interviews with people in “Group A” reveal that the obstacles and discrimination they face from the Dominican State match the serious concerns expressed by local and international advocacy communities.

The immediate and overarching impact of Judgment 168-13 and, subsequently, of Law 169-14 were the feelings of abuse, disrespect, violation, and prejudice that Dominicans of Haitian descent in “Group A” experienced. Individuals in “Group A” feel shame about their lack of legal status in the Dominican Republic.

*“In this country, I am not Dominican, I’m not Haitian, I’m not French, I’m not anything because I don’t exist, this leaf that you have in your hands means more than we do.” (Genaury, batey 8)*

*“I feel like a person that... how do I explain it to you? Someone who doesn’t have papers is equal to a dog.” (Soraida, batey 8)*

*“What do I feel? Shame, because if you don’t have a cédula [identity card] you are nobody in society, in society you are less than nothing.” (Yafreisi, batey 8)*

*“Without a cédula [identity card], without documents, I tell you, I feel bad, bad. My daughter can’t register her daughter because of my problem.” (Altagracia, batey 4)*

87. *Id.* at dispositive points 13 to 20.

88. RFK. “Dreams Deferred: The struggle of Dominicans of Haitian descent to get their nationality back” 2017. Available at: [https://rfkhumanrights.org/assets/documents/RFK\\_DR\\_Report-WEB.pdf](https://rfkhumanrights.org/assets/documents/RFK_DR_Report-WEB.pdf)



Judgment 168-13 changed the legal status of Dominicans of Haitian descent by taking away their constitutional entitlement to Dominican citizenship. But nationality is a complex and layered concept that is not captured solely by a legal grant or withholding of citizenship. We interviewed people in “Group A” and asked them what it meant to them to “be Dominican” and whether they felt integrated into their national community.

Some of the responses based the concept of nationality on having been born in the Dominican Republic:

*“For me, it means everything because when someone is born in a country, one has all of his or her life in the country all of your life in this country.” (María A, batey 8)*

or on the their parents’ and grandparents’ places of origin:

*“My mother is Dominican, I am Dominican too, because when someone is born that’s their country, I was born in Santo Domingo, my mom was born in Santo Domingo, my dad was arrayano,<sup>89</sup> they were Dominicans, I am Dominican because this is my flag.” (Yulisa, batey 5).*

But they also expressed their Dominican nationality as a negation; they are Dominican because they were not born in Haiti:

*“It’s an honor to be one (to be Dominican) because we were not born in Haiti, I studied here, I don’t know where else to link myself, only here in this country.” (Margot, batey 4).*

The majority of Dominicans of Haitian descent interviewed for this report were born in the Dominican Republic to Dominican parents and were entitled to birthright citizenship under

the Dominican Constitution. Judgment 168-13 robbed them of their legal right to citizenship. However, even without access to valid identity documents, they are Dominican because the Dominican Republic is the only homeland they have known and being Dominican is part of their identity.

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Widespread Abuse of Discretion by JCE Authorities to Withhold Documents

Once individuals arrived at the oficialías, they reported that the JCE allows officials broad discretion to introduce additional requirements not included in Law 169-14 as a prerequisite to giving documents to individuals in “Group A.” The authorities have created obstacles that require individuals to provide hard-to-get information about their parents and questioned the validity of any documentation applicants were able to provide.

*“Do you know what they did to me there in the JCE? A lady they call Luz Cruz there in the JCE inspection department sent me to look for all the children’s birth certificates, I didn’t have any money. I went to pawn a card that is still in the pawnshop to get the certificates of my children at 300 pesos<sup>90</sup> each one. I got it, I took it there to the JCE, they sent me to get my mother’s death certificate, a picture of the tomb where my mother and father are buried and still they don’t want to give me the cédula, those people in the inspection department... it’s there they are actually causing harm. I personally brought all my children, I paid my fare, they asked each one questions, the last thing they told me was that my mother isn’t my mother.” (Altagracia, batey 4)*

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89. Of Haitian and Dominican descent by being a child of mixed parentage.

90. Approximately \$6.34 USD.

“I went to the capital 2 times, they sent me to Galván, from Galván to Neyba. In the capital, they told me to look for my father’s death certificate, they told me that my parents are not registered, that it’s the mother [who was supposed to register me], my mother died when I was a little girl, it was my father who registered me and now they don’t want to declare me through his death certificate, they told me no. The cédula [identity card] is canceled because it’s my mother that had to register me, it was my dad who raised me, if I don’t have a mother I can’t get a cédula [identity card], he registered me without a mother and now they have come with this, what am I going to do if I don’t have a mother?” (Ana, batey 5).

“Each time I go there, they don’t tell me anything. I put the paper in the computer and they say that it has a problem and nothing is resolved (...) As a matter of fact, I went to the capital once and the man (JCE official) said that the man was not my father, but

my stepfather. But I don’t know another person as my father. I was born into his hand. He married my mother when I was three months old, he raised me. He is my father. And he (JCE official) said that he is doing me a favor. And I said to him that it’s not a favor that this man is my father. And there he hit his hand on the table and told me that I had to go outside.” (Euclides, batey 4)

Likewise, it was reported that JCE authorities have withheld documents or distinguish individuals’ documents on the belief that they believed the person to be Haitian, without any more information or any proof.

“I was registered here in Galván, my book is 24<sup>a</sup>, I was not declared in the foreign registry, I went many times and they never gave it to me, the original one (birth certificate) they marked with red tape, this signifies ‘don’t give it to her.’ They put red tape on it, they don’t ask you anything, they tell you that you are Haitian.” (Margot, batey 4)

## VI. It Changed Our Lives

Nos Cambio la Vida” (or “It Changed Our Lives”) is a publication of the personal memories of youth of Haitian ancestry affected by Judgment 168-13, sponsored by the Movement Reconoci.do and the Bonó Center (or the Juan Montalvo Center). This publication possesses the unique quality that its stories are written and told by the voices of those affected, and produced in scripture workshops conducted by a teacher or facilitator.

Without intermediaries, these real stories reach us from the hand of the protagonist and speak to us about the challenges

faced by thousands of Dominican youth coming mainly from the “bateyes,” or sugar cane camps. With these emotional narratives, through laughter or tears, one can better understand the suffering of many and the injustices to which they have sometimes been subjected<sup>91</sup>.

The book can be downloaded from Reconoci.do's webpage:

<http://reconoci.do/wp-content/uploads/2018/05/Nos-Cambio-la-vida-1-1.pdf>

91. Centro Bono y Reconoci.do. “Nos cambió la vida”. Available at: <http://reconoci.do/wp-content/uploads/2018/05/Nos-Cambio-la-vida-1-1.pdf> (Only available in Spanish)

## VII. Preparing an Effective Advocacy Piece:

### Submission to the United Nations Universal Periodic Review (UPR) by DxD, ISI and CEJIL

#### Background on the UPR

The Universal Periodic Review (UPR) is a UN Human Rights Council process that evaluates all the Member States of the United Nations (UN) in relation to the human rights situation in their country. This process allows each State to present the actions it has taken to improve the human rights situation in its country and fulfill its obligations<sup>92</sup>. At the same time, this procedure allows other States, to make observations and recommendations to the State under review<sup>93</sup>.

Under this mechanism, the human rights situation of all UN Member States is reviewed every 4 to 5 years<sup>94</sup>. Each year, 42 States are examined in three UPR Working Group sessions. This means that every session, 14 States are reviewed. These three sessions are usually held in January/February, May/June and October/November.

While the process is driven primarily by States, civil society plays an important role to advocate and encourage states to adopt recommendations. By making stakeholder submissions and advocating for states to make relevant recommendations, civil society can strengthen the quality and quantity of recommendations made to states under review. In order to effectively engage with the UPR process, civil society organizations must review upcoming UPR Sessions.<sup>95</sup> When advocates

note an upcoming session regarding a country of interest, they should note that civil society observations are usually required between 6 and 8 months prior to the session, on a date established by the Council.<sup>96</sup>

Following the submission of observations, advocates can undertake a variety of actions to encourage states to reflect their key issues and recommendations, for example, by meeting with state delegations that have previously made recommendations to the State under examination and sharing copies of the submission.<sup>97</sup>

#### Strategy in Preparing the Submission

In advance of the January 2019 review of the Dominican Republic by the Human Rights Council, in 2018, DXD, ISI and CEJIL made a joint submission on the right to nationality in the Dominican Republic. The submission focuses on statelessness, the right to a nationality, and discrimination faced by Dominicans of Haitian descent in the enjoyment of their human rights. It also presents a series of recommendations that these organizations requested recommended for states to take forward.

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92. For more information check: <https://www.ohchr.org/en/hrbodies/upr/pages/UPRMain.aspx>

93. *Id.*

94. For more advocacy strategies to submit a report to the UPR process, please check: <http://www.institutesi.org/Statelessness-and-UPR.pdf> (available only in English)

95. The Dominican Republic will have its third cycle review during the 32nd period of session of the Human Rights Council, which will take place in Geneva, Switzerland between January 21 and February 1, 2019. For further information, please consult the calendar at <https://www.ohchr.org/SP/HRBodies/UPR/Pages/UPRSessions.aspx>

96. For more information check: <https://www.ohchr.org/SP/HRBodies/UPR/Pages/Documentation.aspx>

97. For more advocacy strategies to submit a report of an specific country to the UPR, please check: <http://www.institutesi.org/Statelessness-and-UPR.pdf>

First, the report starts with a comprehensive review of the recommendations made in the previous cycles of the UPR, which establishes the longstanding concern of the Council and other countries on these issues. Similarly, the IACHR and the IACtHR's own past statements on the subject and monitoring of implementation of their recommendations and judgments can be used in future advocacy materials. This section closes with the perspective of civil society organizations that compliance with the majority of the recommendations has been "weak," noting that the State has also imposed additional obstacles.

Second, the report continues with an analysis of the Dominican Republic's international human rights obligations under international human rights instruments and the recent concerns expressed by various treaty-monitoring bodies with respect to the denial of the right to nationality following Judgment 168/13 and the subsequent shortcomings of Law 169-14, which are emblematic of the scope of international condemnation of the State's actions on this issue.

Third, the submission proceeds with an examination of the Dominican legal framework and the right to a nationality, which provides the necessary background for the current problems with respect to nationality and discrimination.

Fourth, the submission includes an analysis of the human rights violations that have resulted from the State's failure to comply with its domestic and international obligations, pulling from the sources identified in this guide, which creates a clear picture using the most recently available information.

Finally, the report concludes with recommendations that flow from the information contained in the prior sections. The recommendations draw on the combined expertise of the submitting organizations and is the product of extensive legal analysis, investigation, research, and consultations with affected persons, national civil society organizations, and international partners. The recommendations are geared towards the Dominican government, and vary from concrete, practical ways to ameliorate the problem, for example, "provide training to government officials" or "conduct a national census" to the more high level and emblematic, such as "formally recognize the existence of racial discrimination in the Dominican Republic." This demonstrates a combination of approaches that address the complexity of the issues of nationality and statelessness in the Dominican Republic.

Following is the report in its entirety.



**Dominicanos por Derecho**  
**The Institute on Statelessness and Inclusion**  
**The Center for Justice and International Law**

Joint Submission to the Human Rights Council at the 32<sup>nd</sup> Session of the Universal Periodic Review  
Third Cycle, January-February 2019

**The Dominican Republic**

12 July 2018

# Dominicanos por Derecho, The Institute on Statelessness and Inclusion, and Center for Justice and International Law

Joint Submission to the Human Rights Council at the 32<sup>nd</sup> Session of the Universal Periodic Review

## The Dominican Republic

### I. Introduction and focus of the submission

1. Dominicanos por Derechos (DxD)<sup>99</sup>, the Institute on Statelessness and Inclusion (ISI)<sup>100</sup>, and the Center for Justice and International Law (CEJIL)<sup>101</sup> make this joint submission to the Universal Periodic Review (UPR) on the Dominican Republic.
2. This joint submission focuses on statelessness, the right to a nationality, and discrimination faced by Dominicans of Haitian descent in the enjoyment of their human rights. This report proceeds in the following manner: first, a review of the recommendations made in the previous cycles of the UPR; second, an analysis of the Dominican Republic's international human rights obligations; third, an examination of the Dominican legal framework and the right to a nationality; fourth, an analysis of the human rights violations that have resulted from the State's failings to comply with its domestic and international obligations; and finally, recommendations. This submission draws on the combined expertise of the submitting organizations and is the product of extensive legal analysis, investigation, research, and consultations with affected persons, national civil society organizations, and international partners.

### II. Recommendations made to the Dominican Republic under the First and Second Cycles of the Universal Periodic Review

3. The right to a nationality, statelessness, and the Dominican Republic's non-compliance with its international obligations have been sources of concern during the country's reviews in previous UPR cycles. The Dominican Republic was subject to review under the first cycle of the UPR on December 1, 2009, and subsequently under the second cycle on February 5, 2014.
4. During the interactive dialogue at the Dominican Republic's first review at the Thirteenth Session of the First Cycle in 2009, many States expressed concern about the discrimination faced by individuals of Haitian descent. Bosnia and Herzegovi-

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99 Dominicanos por Derechos (DxD) is a network of national organizations working to promote the human rights of the most vulnerable in the Dominican Republic, especially Dominicans of Haitian descent. The collaboration is made up of the following organizations: Movimiento de Mujeres Dominico-Haitiana (MUDHA), Movimiento Socio Cultural para los Trabajadores Haitianos (MOSCTHA), Centro de Desarrollo Sostenible (CEDESO), Centro para la Observación Migratoria y el Desarrollo Social en el Caribe (Observatorio Migrantes del Caribe (OBMICA)), Hermanas Misioneras de San Carlos Borromeo Scalabrinianas (ASCALA), Comisión Nacional de Derechos Humanos (CNDH), Movimiento RECONOCI.DO, Centro de Educación para el Desarrollo (CEDUCA), Centro Cultural Dominicano Haitiano (CCDH), y Derechos Vigentes. For more information about DxD, please see: <https://dominicanosxderecho.wordpress.com/>.

100 ISI is an independent non-profit organization committed to an integrated, human rights-based response to the injustice of statelessness and exclusion. It is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. Between the 27th and 31st sessions of the UPR, ISI has made over 30 country-specific submissions on the human rights of stateless persons and has also compiled summaries of the key human rights challenges related to statelessness in all countries under review between the 23<sup>rd</sup> and 30<sup>th</sup> UPR sessions. For more information about ISI, please see: <http://www.institutesi.org>.

101 CEJIL utilizes international human rights law to strategically litigate in international forums, principally before the Inter-American Court of Human Rights. CEJIL has represented diverse cases from many countries in the Americas, including the Dominican Republic. For more information about CEJIL, please see: <https://www.cejil.org/>.

na inquired about the General Law on Migration's effect on vulnerable groups including Dominicans of Haitian descent; Canada noted reports of discriminatory denial of the right to a nationality for Dominicans of Haitian descent; the United Kingdom of Great Britain and Northern Ireland emphasized the importance of equality in access to healthcare, education and freedom of movement for Dominicans of Haitian descent; and the United States expressed concern about the barriers faced by Dominicans of Haitian descent in establishing their citizenship and the resulting impact this has on their opportunities for employment, education, marriage, and land ownership, as well as their access to judicial and financial services.<sup>102</sup> Three States made five recommendations to the Dominican Republic regarding statelessness, the right to a nationality, and citizenship<sup>103</sup> (see Appendix A).

5. In response to these recommendations, the Dominican Republic accepted Canada's recommendation to accede to the two UN Statelessness Conventions, but did not accept any other recommendations, including several which related directly to the discriminatory treatment and deprivation of nationality for Dominicans of Haitian descent.<sup>104</sup>
6. During the interactive dialogue at the Dominican Republic's second review at the Twenty-Sixth Session of the Second Cycle in 2014, 16 States expressed concern regarding the restrictive interpretation of nationality laws following a 2013 Constitutional Court ruling, the disproportionate impact this decision had on Dominicans of Haitian descent, and the ensuing risk of statelessness for those born in the Dominican Republic.<sup>105</sup> During the second cycle, 20 States made 26 recommendations regarding statelessness, the State's obligations to respect the right to a nationality for all, the issuance of identity documents without discrimination, and the prevention of statelessness for those at risk<sup>106</sup> (see Appendix A). These include: Mexico's recommendation to respect every person's right to nationality in accordance with the recommendations of the Inter-American Commission on Human Rights and the judgment of the Inter-American Court on Human Rights<sup>107</sup>; Norway's recommendation to seek the technical advice of the United Nations High Commissioner for Refugees to identify and prevent statelessness, and protect stateless persons, to address the challenges created by the ruling of the Constitutional Court<sup>108</sup>; and Australia's recommendation that all rights be restored retroactively to those affected by the Constitutional Court judgment and that they be given prompt and non-discriminatory means to acquire their Dominican Republic citizenship.<sup>109</sup> The significant increase in the number of recommendations and recommending states, as well as the content of the

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102 General Assembly. Draft Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/WG.6/6/L.2 (3 December 2009) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_06\\_-\\_november\\_2009/a\\_hrc\\_wg\\_6\\_6\\_l2\\_dominican\\_republic.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_06_-_november_2009/a_hrc_wg_6_6_l2_dominican_republic.pdf). Paragraphs 36, 39, 53 and 66.

103 General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/13/3 (4 January 2010) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_6\\_-\\_november\\_2009/ahrc133dominicanrepublice.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_6_-_november_2009/ahrc133dominicanrepublice.pdf).

104 UPR Info. Responses to Recommendations: Dominican Republic. Dominican Republic's responses to recommendations (as of 01.04.2010) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_6\\_-\\_november\\_2009/recommendationstodominicanrepublic2009.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_6_-_november_2009/recommendationstodominicanrepublic2009.pdf). 88.11, 89.1, 89.2, 89.4 and 89.5.

105 General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. (4 April 2014) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_18\\_-\\_january\\_2014/a\\_hrc\\_26\\_15\\_e.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_18_-_january_2014/a_hrc_26_15_e.pdf). Paragraphs 45, 50, 52, 54, 56, 57, 58, 59, 64, 65, 68, 79, 80, 83, 84 and 85.

106 Id.

107 Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendation 89.112.

108 Id. Recommendation 98.126.

109 Id. Recommendation 98.132.

recommendations received, is reflective of a further deterioration of human rights protections for Dominicans of Haitian descent between the first and second cycles.

7. The Dominican Republic accepted 3 of the recommendations made during the second cycle, took 9 recommendations under advisement, and did not support 14 of the recommendations.<sup>110</sup> For the recommendations taken under advisement, the State declared that it was taking steps to achieve compliance with these but that it was not possible to guarantee immediate compliance. For the recommendations not supported, the State declared that these were based on false premises.<sup>111</sup> 13 different States made recommendations related to statelessness and the right to a nationality that the Dominican Republic did not support.<sup>112</sup> 7 of the recommendations not supported mention statelessness, 9 emphasize the State's obligations to resolve existing situations of statelessness, and 8 relate to discrimination in access to a nationality.<sup>113</sup>
8. The Dominican Republic accepted the recommendation to consider ratifying the international human rights instruments to which it is not yet a State party,<sup>114</sup> and took under advisement recommendations to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness,<sup>115</sup> which it had already accepted in the first UPR cycle.<sup>116</sup> However, at the time of this report's submission, the State had not yet ratified these conventions.
9. Recommendations also accepted by the Dominican Republic include to effectively register births in a non-discriminatory manner<sup>117</sup> and to safeguard the fundamental rights of people of Haitian origin.<sup>118</sup> Additionally, the State expressed its desire to comply with recommendations to guarantee and ensure the full respect for the right to a nationality.<sup>119</sup>
10. While recognizing the concerns expressed by the Dominican Republic about its inability to comply immediately with recommendations, this report notes that affected persons and civil society organizations consider State progress in complying with the majority of the recommendations made in past UPR cycles weak regarding the right to a nationality, the elimination of discrimination from the Civil Registry, and the guarantee of all fundamental human rights to Dominicans of Haitian descent in compliance with domestic and international law. Rather, the State has imposed additional obstacles to the enjoyment of a number of human rights for Dominicans of Haitian descent and has further entrenched deep-rooted racial discrimination through legal reforms.

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110 General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic, Addendum. A/HRC/26/15 Add.1 (11 June 2014). [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_18\\_-\\_january\\_2014/a\\_hrc\\_26\\_15\\_add.1\\_e.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_18_-_january_2014/a_hrc_26_15_add.1_e.pdf).

111 Id.

112 Id.

113 Id.

114 Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendation 89.1

115 Id. Recommendations 89.15, 89.16, 89.17 and 89.18.

116 Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/13/3. Recommendation 88.11.

117 Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendations 98.76 and 98.109.

118 Id. Recommendation 98.122.

119 Id. Recommendations 98.18, 98.114, 98.115 and 98.119.



### III. The Dominican Republic's international obligations regarding the right to a nationality

11. While the Dominican Republic has not ratified the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, it is party to a significant number of international human rights instruments that guarantee the right to a nationality for all on a non-discriminatory basis. These include the International Covenant on Civil and Political Rights (Article 24),<sup>120</sup> the Convention on the Rights of the Child (Articles 7 and 8),<sup>121</sup> the Convention on the Elimination of All Forms of Discrimination against Women (Article 9),<sup>122</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5).<sup>123</sup> Additionally, the Dominican Republic is obligated to guarantee all rights enshrined in the International Covenant on Economic, Social and Cultural Rights without discrimination of any kind, including on the basis of “race, colour... national or social origin... birth or other status.”<sup>124</sup> Finally, the Dominican Republic is obligated to respect and promote the right to a nationality as specified in Article 20 of the American Convention on Human Rights.<sup>125</sup>
12. Numerous international bodies in charge of monitoring States' compliance with the human rights treaties listed above have expressed concern about the deprivation of nationality for those born in the Dominican Republic to parents of Haitian descent and the discrimination this segment of the population faces, particularly following Constitutional Court ruling TC/0168/13 and the subsequent enactment of Law 169-14. For example, in 2017, the Human Rights Committee expressed concern for the “situation of a large number of first-generation immigrants and their descendants, whose Dominican nationality has been denied as a result of decision No. TC/0168/13. ... the Committee is concerned about the limited scope of the Act and the additional barriers that it has created, including unreasonable procedures and requirements.”<sup>126</sup>
13. In their most recent reviews of the human rights situation in the Dominican Republic, the Committee on the Rights of the Child,<sup>127</sup> the Committee on the Elimination of Discrimination Against Women,<sup>128</sup> the Committee on the Elimination of Ra-

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120 Acceded to 4 January 1978.

121 Ratified 11 June 1991.

122 Ratified 2 September 1982.

123 Acceded to 25 May 1983.

124 Article 2.3. Acceded to 4 January 1978.

125 Ratified 21 January 1978.

126 Human Rights Committee. Concluding observations on the sixth periodic report of the Dominican Republic. International Covenant on Civil and Political Rights. (27 November 2017). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DOM/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DOM/CO/6&Lang=En). Paragraph 25.

127 Committee on the Rights of the Child. Concluding observations on the combined third to fifth periodic reports of the Dominican Republic. Convention on the Rights of the Child. (6 March 2015). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2fCO%2f3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2fCO%2f3-5&Lang=en). Paragraph 27.

128 Committee on the Elimination of Discrimination Against Women. Concluding observations on the sixth and seventh periodic reports of the Dominican Republic. Convention on the Elimination of All Forms of Discrimination against Women. (30 July 2013). [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fDOM%2fCO%2f6-7&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fDOM%2fCO%2f6-7&Lang=en). Paragraph 30.

cial Discrimination,<sup>129</sup> the Committee on Economic, Social and Cultural Rights,<sup>130</sup> and the Inter-American Commission on Human Rights (IACHR)<sup>131</sup> all expressed similar concerns regarding the denial of the right to a nationality following TC/0168/13, the shortcomings of Law 169-14, which was adopted to mitigate the impact of TC/0168/13, and the systemic discrimination faced by persons of Haitian descent. In response, in a statement made to the Committee on the Rights of the Child during its most recent review on January 13, 2015, the Dominican Republic characterized its response to TC/0168/13 as working to protect the fundamental rights and reduce the vulnerability of all persons on Dominican territory through an inclusive process carried out in accordance with international standards.<sup>132</sup> In a statement made to the Committee on Economic, Social and Cultural Rights on September 27, 2016, the Dominican Republic characterized its State obligations under the 2010 Constitution as those of effectively promoting human rights and ensuring the fulfillment of economic, social and cultural rights for all segments of its population.<sup>133</sup> These responses are emblematic of the Dominican Republic’s refusal to directly recognize the discrimination and marginalization faced by Dominicans of Haitian descent or even acknowledge the existence of a single case of statelessness<sup>134</sup> and serve to highlight the State’s use of inclusive and cooperative rhetoric while simultaneously enacting discriminatory policies and refusing international collaboration.

#### IV. The Dominican Republic’s national legal framework regarding nationality laws and human rights

14. In recent decades, the Dominican Republic has restricted the enjoyment of the right to a nationality for Dominican-born descendants of migrants through its legal framework. Beginning with the Constitution of 1929, the Dominican Republic granted citizenship through the principle of *jus soli* (“right of the soil”) to any person born in the country, with the exception of children born to foreign diplomats and children born to persons in transit.<sup>135</sup> The 1939 Migration Law established that the concept of “in transit” applied to persons in the country for ten days or fewer, with the purpose of reaching another destination.<sup>136</sup>

129 Committee on the Elimination of Racial Discrimination. Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic. International Convention on the Elimination of All Forms of Racial Discrimination. (19 April 2013). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=C-ERD%2fC%2fDOM%2fCO%2f13-14&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=C-ERD%2fC%2fDOM%2fCO%2f13-14&Lang=en). Paragraphs 7 and 19.

130 Committee on Economic, Social and Cultural Rights. Concluding observations on the fourth periodic report of the Dominican Republic. Economic and Social Council. (21 October 2016). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fDOM%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fDOM%2fCO%2f4&Lang=en). Paragraph 21.

131 Inter-American Commission on Human Rights. Situation of Human Rights in the Dominican Republic Organization of American States. (31 December 2015). <http://www.oas.org/en/iachr/reports/pdfs/dominicanrepublic-2015.pdf>. Paragraphs 4 and 16.

132 Dominican Republic. Discurso de Presentación de los informes periódicos tercero a quinto combinados de la República Dominicana ante el Comité de los Derechos del Niño. (12-13 de enero de 2015). [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DOM/INT\\_CRC\\_STA\\_DOM\\_19561\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DOM/INT_CRC_STA_DOM_19561_E.pdf).

133 República Dominicana. Presentación del 4 informe de la República Dominicana del Pacto Internacional de Derechos Económicos, Sociales y Culturales: 59 Sesión del Comité. [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/DOM/INT\\_CESCR\\_STA\\_DOM\\_25322\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/DOM/INT_CESCR_STA_DOM_25322_S.pdf).

134 Fernández, Leonel. “En República Dominicana, No Existe La Apatridia.” 18 de enero de 2016. Leonel Fernández. <https://leonefernandez.com/articulos/en-republica-dominicana-no-existe-la-apatridia/>.

135 Constitución Política de la República Dominicana, proclamada 20 de junio de 1929. Art. 8.

136 Reglamento de migración número 279, del 12 de mayo de 1939. Sección V. Proclamada en la Gaceta Oficial No. 6593. <http://www.acnur.org/fileadmin/Documentos/BDL/2001/0241.pdf?file=fileadmin/Documentos/BDL/2001/0241>.

15. In 2004, the Dominican Republic enacted Migration Law 285-04<sup>137</sup>, which in Article 36 expanded the “in transit” exemption to apply to all non-residents and established a new system for the acquisition of Dominican nationality, effectively depriving the children of those born to parents with an irregular migratory status from Dominican nationality, in violation of the Constitution in place at the time.<sup>138</sup>
16. On January 26, 2010, the Dominican Republic adopted a new Constitution, which in Article 18.3 explicitly states that children of foreigners “residing illegally in the Dominican territory” are not entitled to Dominican nationality.<sup>139</sup> At the same time, Article 18.2 states that “those who enjoy the Dominican nationality before the entry into effect of this Constitution” are Dominicans.<sup>140</sup> Furthermore, Article 74 establishes that human rights treaties, pacts, and conventions have constitutional hierarchy, and that norms concerning fundamental human rights and their guarantees should be applied in the most favorable manner for those affected.<sup>141</sup> The 2010 Constitution also recognizes that all people are equal before the law and are entitled to the same protections and treatments from institutions and authorities in the enjoyment of their rights. Furthermore, it recognizes that the State must “adopt measures to prevent and combat discrimination, marginalization, vulnerability and exclusion.”<sup>142</sup> As such, the 2010 Constitution guarantees Dominican nationality to those born on Dominican territory prior to 2010, obligates the State to respect the treaties that guarantee the right to a nationality to which it is a party, and compels the State to take actions to protect and fulfill that right in a non-discriminatory manner.
17. Nevertheless, on September 23, 2013, the Constitutional Court issued ruling TC/0168/13 (“La Sentencia”), which retroactively deprived those born in the Dominican Republic of their Dominican citizenship if their parents were irregular migrants at the time of their birth, even though they had been recognized as citizens according to the laws in effect between 1929 and 2010.<sup>143</sup> TC/0168/13 is estimated to have affected 133,770 people<sup>144</sup> born in the Dominican Republic and has had a disproportionate impact on persons of Haitian descent.<sup>145</sup> Many of those impacted had been registered in the Dominican Civil Registry (“Registro Civil”), had received official birth certificates and identity cards (“cédulas de identidad”), and had lived in the Dominican Republic all their lives, with some families residing in the Dominican Republic for as many as four generations. The Dominican Republic was the only country of nationality and of habitual residence for most of the affected

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137 Ley General de Migración Núm. 285-04, de 15 de Agosto de 2004. Proclamada en la Gaceta Oficial No. 10291.

138 Observatorio Migrantes del Caribe. Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación. OBMICA. Editora Búho: República Dominicana. Enero 2014; Ley 285/04.

139 Constitución Política de la República Dominicana, proclamada el 26 de enero de 2010. Publicada en la Gaceta Oficial No. 10561.

140 Id.

141 Id.

142 Id. Article 39.

143 Centro para la Observación Migratoria y el Desarrollo Social en el Caribe. “Estado del arte de la migraciones que atañen a la República Dominicana: 2014” OBMICA. Editora Búho: República Dominicana. Septiembre 2015.

144 Executive Committee of the High Commissioner’s Programme. Overview of the UNHCR’s Operations in the Americas. UNHCR Standing Committee: 65<sup>th</sup> Meeting (23 February 2016). <http://www.unhcr.org/56cd75a59.pdf>.

145 “La Sentencia del Tribunal Constitucional Genera Rechazo en RD.” OBMICA. <http://www.obmica.org/index.php/actualidad/23-derecho-a-nacionalidad/18-la-sentencia-del-tribunal-constitucional-genera-rechazo-en-rd>.

people. The Court ruling violated the Dominican Constitution, as well as numerous norms and protections guaranteed by international law. While 133,770 is the statistic most widely agreed upon for the number of people affected, this number is only an estimate. According to the 2012 National Immigrant Survey, 209,912 people were identified as descendants of Haitian immigrants<sup>146</sup>, and would thus be vulnerable to statelessness following TC/0168/13.

18. The Dominican government maintains that those affected by TC/0168/13 are not stateless because these individuals still have the right to a nationality, namely that of Haiti, due to their Haitian ancestry. However, an inability to prove Haitian nationality due to their parent's lack of government-issued documents ensures that there are no guarantees to Haitian nationality for those affected. Rather, the determination of statelessness is dependent on one's existing nationality (or lack thereof) rather than the nationality that one might later acquire, and an individual in the process of acquiring a nationality cannot be said to be a national of the country in question at that time.<sup>147</sup> As such, those affected are stateless. Furthermore, the profound connections to the Dominican Republic of those persons affected impose a political and moral imperative on the State to facilitate their integration into their "own country"<sup>148</sup> and Dominican society.
19. In response to national and international outcries that TC/0168/13 caused massive denationalization<sup>149</sup>, the State issued Law 169-14<sup>150</sup> ("Ley 169-14"). Law 169-14 divided those persons affected by TC/0168/13 into two groups, known as Group A and Group B. People in Group A were born on Dominican territory between June 16, 1929 and April 18, 2007 and had their births recorded in the Civil Registry, while Group B corresponded to persons born during the same period whose births were never registered, even though they were also born in the Dominican Republic.
20. According to Law 169-14, the Central Electoral Board ("Junta Central Electoral" or "JCE") would review and transcribe all civil registry records for those in Group A affected by TC/0168/13 as part of an internal audit in order to ensure that identity documents were not issued to people who had registered by providing fraudulent information. The Central Electoral Board would then either ratify existing registrations or transcribe these registrations for individuals deemed eligible.<sup>151</sup> This process was criticized by national and international organizations for a lack of transparency as to what the review process entailed and what constituted fraud. This process was also criticized for leaving people in Group A in legal limbo while their identity documents were temporarily invalidated during the audit.<sup>152</sup>

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146 Unión Europea, UNFPA y Oficina Nacional de Estadística. ENI 2012: Primera Encuesta Nacional de Inmigrantes de la República Dominicana. Santo Domingo, República Dominicana (Abril de 2013). [http://media.onu.org.do/ONU\\_DO\\_web/596/sala\\_prensa\\_publicaciones/docs/0565341001372885891.pdf](http://media.onu.org.do/ONU_DO_web/596/sala_prensa_publicaciones/docs/0565341001372885891.pdf).

147 UNHCR. Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons. Geneva, 2014. <http://www.unhcr.org/en-us/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

148 Id. Page 57.

149 "La Sentencia del Tribunal Constitucional Genera Rechazo en RD." *OBMICA*.

150 El Congreso Nacional de la República Dominicana. Ley 169-14. Consultoría Jurídica del Poder Ejecutivo.

151 Ley 169-14, art. 2 y 4.

152 Robert F. Kennedy Human Rights, American Jewish World Service, Centro de Desarrollo Sostenible, United Nations Democracy Fund. "Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back." [https://rfkhumanrights.org/assets/documents/rfk\\_dr\\_report-web\\_1.pdf](https://rfkhumanrights.org/assets/documents/rfk_dr_report-web_1.pdf). Pages 32-37.

21. For those in Group B whose births were never registered, these individuals could register during a limited time period in the Book of Foreigners (“el Libro de Extranjería”) and apply for naturalization two years after obtaining one the migratory statuses established in General Migration Law No. 285-04, so long as they did not have an existing criminal record.<sup>153</sup> The process of potential naturalization for Group B was condemned by national and international actors both in principle and in implementation, as it treated people born on Dominican territory – who had a right to nationality - as foreigners and arbitrarily deprived them of a nationality without an effective or guaranteed remedy.<sup>154</sup>
22. One source of international condemnation for Law 169-14 came from the Inter-American Court of Human Rights, which in the 2014 case *Expelled Dominicans and Haitians v. Dominican Republic*, determined that several aspects of the law contravened international human rights standards. According to the Court, “Law No. 169 represented an impediment to the full exercise of the right to nationality of the victims. In this regard, it violated the obligation to adopt domestic legal provisions, in relation to the rights to juridical personality, to a name, and to nationality... and owing to the violation of these rights taken as a whole, the right to identity, and the right to equal protection of the law.”<sup>155</sup> In response to these findings, the Dominican Republic not only failed to make substantive changes to the law in order to comply with its international human rights obligations, but instead the Dominican Constitutional Court issued a decision attempting to nullify the Court’s jurisdiction<sup>156</sup>, although this decision itself violates international law.

## V. Human rights violations resulting from the Dominican Republic’s nationality laws and their implementation

### A. Shortcomings in the implementation of Law 169-14

23. During the preparation of this submission, numerous civil society organizations acknowledged that Law 169-14 does provide a potential, although limited and fundamentally flawed, way to address the large-scale statelessness generated by TC/0168/13. These organizations then expressed concern that the Dominican Republic had conflated a human rights issue, the right to a nationality for those born on Dominican territory, with one of migration and naturalization, which can be more politically contentious, logistically challenging, and potentially xenophobic. Thus, instead of providing a solution to the mass denationalization created by TC/0168/13, the implementation of Law 169-14 by the JCE instead generated a series of obstacles for both people initially registered in the Civil Registry (Group A) and those born in the country but not registered (Group B) to overcome.<sup>157</sup>

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153 Id., art. 6, 7 y 8.

154 Inter-American Commission on Human Rights. Chapter IV.B: Dominican Republic. 2016 Annual Report. <https://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual-2016cap4B.RD-en.pdf>.

155 Inter-American Court of Human Rights. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Official Summary. 28 August 2014. [http://corteidh.or.cr/docs/casos/articulos/resumen\\_282\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/resumen_282_ing.pdf).

156 Romero, Argénida. TC declara inconstitucional vinculación de República Dominicana a CIDH. *Diario Libre*. 5 de noviembre de 2014. <https://www.diariolibre.com/noticias/tc-declara-inconstitucional-vinculacin-de-republica-dominicana-a-cidh-KGDL867841>.

157 El Congreso Nacional en Nombre de la República. “Ley No. 169-14.” Congreso Nacional. Consideración Octavo. <https://presidencia.gob.do/themes/custom/presidency/docs/gobplan/gobplan-15/Ley-No-169-14.pdf>.

24. One of the most significant concerns expressed by civil society organizations was that persons born in the Dominican Republic who comprise Group B would have to register as foreigners in their country of birth and nationality, only to later apply for Dominican citizenship through an uncertain naturalization process.<sup>158</sup> This requirement is especially problematic given the historical discrimination practiced and individual discretion exercised by officials in charge of the Civil Registry. In its 2015 Country Report, the Inter-American Commission on Human Rights (“IACHR”) observed that the most frequently reported human rights problem in the Dominican Republic related to the authorities’ refusal to issue birth certificates, which appeared in 1,360 cases, and noted that the four most frequently reported issues all related to structural problems around the right to a nationality for individuals of Haitian descent.<sup>159</sup> During the implementation of Law 169-14, people in Group B faced discrimination when trying to register in the Civil Registry during the allotted registration period, which manifested itself through openly hostile statements and the imposition of additional requirements on those registering.<sup>160</sup> OBMICA, part of the Dominicanos por Derechos network, collected testimony from persons in Group B who were turned away by officials due to their physical appearance or surnames that officials deemed to sound Haitian, as well as being required to arbitrarily produce additional witnesses and paperwork to access the process.<sup>161</sup> The registration period closed on 31 January 2015.
25. As a result of Law 169-14 and the ensuing audit of the Civil Registry records, the government reported that 61,049 individuals in Group A had been irregularly registered.<sup>162</sup> The government pledged to the IACHR that “the Dominican State recognizes as Dominicans each of these persons and therefore their nationality is not in question,”<sup>163</sup> and stated that individuals who were deemed irregularly registered could now obtain their official identity documents recognizing them as Dominican. According to the most recent figures released by the government, 20,872 birth certificates have been issued to these individuals and 19,521 identification cards are eligible to be requested<sup>164</sup>, although civil society organizations have criticized the State for its failure to publish information on the names of those eligible and if those eligible have claimed possession of their documents.<sup>165</sup>
26. Furthermore, during the process of transcribing those in Group A from the original Civil Registry to the newly created version, the State effectively segregated Dominicans of Haitian descent from the rest of the population.<sup>166</sup> In theory those

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158 Estado del arte de las migraciones que atañen a la República Dominicana: 2014.

159 Inter-American Commission on Human Rights. Situation of Human Rights in the Dominican Republic. Country Report: Dominican Republic. (31 December 2015). <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

160 “Estado del arte de la migraciones que atañen a la República Dominicana: 2014.” Pages 151-152.

161 Id. Page 153.

162 Inter-American Commission on Human Rights. Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. 2017 Annual Report. <http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.5RD-en.pdf>. Page 774.

163 Id.

164 Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 775.

165 Id. Pages 775-776.

166 “Reconocido exige al Gobierno que restituya la nacionalidad de los dominicanos desnacionalizados con la Sentencia 168-13.”

in Group A affected by TC/0168/13 should have had their right to a nationality restored. However, the small percentage of people who have actually received their identity documents, the obstacles they face in obtaining their documents and discriminatory hurdles imposed by government officials, means that many individuals officially recorded in the Civil Registry still cannot enjoy their rights as Dominican nationals. CEDES, part of the Dominicanos por Derechos network, collected testimony of persons in Group A who still cannot enjoy their rights to register the birth of their own children, study, marry, or find formal employment despite being officially recorded.<sup>167</sup> This marginalization from Dominican society and prolonged uncertainty led them to report feelings of paralysis, shame, despair, and to even contemplate suicide.<sup>168</sup>

27. With regard to Group B, of the approximately 110,000 to 145,000 individuals that the Ministry of the Interior and Police estimated could benefit from Law 169-14,<sup>169</sup> only 8,755 people registered in the regularization plan according to official reports.<sup>170</sup> The low rates of participation can be attributed to various factors, including the absence of a media campaign directed towards potential beneficiaries, the lack of training for officials who incorrectly rejected applications from those who were eligible, the low number of offices receiving applications, the limited 180-day timeframe in which to register, general lack of faith of the affected individuals in the proposed system stemming from historical and structural discrimination, and additional barriers imposed by individual offices and officials.<sup>171</sup>
28. According to the law, individuals able to register as part of Group B have to wait two years to pursue a naturalization process,<sup>172</sup> which would potentially provide them with the opportunity to enjoy the nationality of the country where they were born. The process of naturalization is discretionary and applications can be denied upon review. If approved, this naturalized citizenship limits access to political office and can be subject to suspension in certain cases.<sup>173</sup> Those able to register as part of Group B remain deprived of their nationality until able to pursue this naturalization process, and there is no guarantee that they will ever be recognized as Dominicans. As recently as November 23, 2017, the Dominican government stated to the IACHR that “it was not aware of any application for naturalization filed by any of population registered as Group B.”<sup>174</sup> The IACHR noted its concern that not only has the government not yet received applications for naturalization, but it has also not published information for the affected population about the requirements or procedure for the naturalization process.<sup>175</sup> In addition to those in Group B who could register, tens of thousands of Dominicans in Group B that could not register through Law 169-14 for reasons detailed earlier are stateless or at risk of statelessness in their country of birth.

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167 “Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back.” Pages 41-42.

168 *Id.* Pages 10 and 30.

169 Situation of Human Rights in the Dominican Republic. Country Report: Dominican Republic. Page 237.

170 Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 777.

171 Estado del arte de las migraciones que atañen a la República Dominicana: 2014. OBMICA. P.152-153.

172 El Congreso Nacional en Nombre de la República. Ley No. 169-14, art. 8.

173 Constitución Política de la República Dominicana, proclamada el 26 de enero de 2010. Articles 19, 24, 79 and 135.

174 Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 778.

175 *Id.* Page 779.

29. While the Dominican government pledged not to carry out deportations during the registration period,<sup>176</sup> that window officially ended in 2015, exposing thousands of people to the risk of deportation to a country they have never known. Between July 2015 and September 2017, 58,271 people were officially deported to Haiti and another 37,942 claimed they were deported, according to the International Organization for Migration.<sup>177</sup> Among those deported, 15,301 individuals claimed to have been born in the Dominican Republic before January 26, 2010, the date that the 2010 Constitution went into effect.<sup>178</sup> Under the International Covenant on Civil and Political Rights (ICCPR), the Dominican Republic is obligated to respect the right of individuals to enter and remain in their own country, which the Human Rights Committee has found includes “stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.”<sup>179</sup> As such, these deportations are in clear violation of the Dominican Republic’s international human rights obligations.
30. Those stateless or at risk of statelessness include people in Group A who have not yet received their nationality documents, those in Group B both waiting to access the naturalization process to regain their Dominican nationality and those eligible to participate in the registration process but unable to do so, those deported or facing deportation, and those born in the Dominican Republic between April 18, 2007 and June 26, 2010.<sup>180</sup> Furthermore, the children of parents in both Groups A and B are considered stateless due to the fact that the Dominican government does not recognize the nationality or legal residence status of their parents.
31. However, even the limited protections offered by Law 169-14 have been subject to efforts to repeal the law and have it declared unconstitutional.<sup>181</sup> These efforts have largely been led by conservative and nationalist groups, who have particularly targeted Articles 1, 2, and 8 of the law, which respectively describe its purpose, the alleged plan for transcription and regularization of status for those in Group A, and the possibility for naturalization of those in Group B after the required waiting period.<sup>182</sup> These efforts serve to underscore the law’s fragility, as it does not guarantee the right to a nationality in a permanent manner for those affected by TC/0168/13, but rather leaves its implementation up to the discretion of different national actors, many of whom have openly demonstrated hostility to this segment of the population.
32. TC/0168/13, Law 169-14, and the resulting cases of statelessness are not isolated events; rather, they are the consequences of a long legacy of systematic discrimination directed towards Dominicans of Haitian descent over multiple decades which have left them vulnerable to human rights abuses. The IACHR declared that “all Dominicans of Haitian descent, or those perceived as such, are suffering from a situation of structural discrimination, in all regards and all levels, which deprives it

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176 Taveras, Estarlin. Gobierno concluye plan naturalización especial. *El Día*. (3 de febrero de 2015). <http://eldia.com.do/gobierno-concluye-plan-naturalizacion-especial/>.

177 IOM Haiti. Monitoring Border SITREP. IOM. 28 September 2017. <https://reliefweb.int/sites/reliefweb.int/files/resources/2017-09-28-%20IOM%20DTM%20Border%20Monitoring%20-%20Situation%20Report%20.pdf>.

178 Id.

179 UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), (2 November 1999), CCPR/C/21/Rev. 1/Add. 9.

180 Concluding observations on the sixth periodic report of the Dominican Republic. Paragraph 25.

181 Menez, Wanda. Cuatro acciones buscan nulidad de la Ley 169-14. *Listín Diario*. 10 de abril de 2018. <https://www.listindiario.com/la-republica/2018/04/10/509910/cuatro-acciones-buscan-nulidad-de-la-ley-169-14>.

182 El Congreso Nacional en Nombre de la República. Ley No. 169-14, art. 1, 2 y 8.



of the enjoyment and exercise of its human rights.”<sup>183</sup> The IACHR also noted that it does not receive complaints or information on foreigners of non-Haitian descent in the Dominican Republic facing barriers in recognition of their nationality, access to the Civil Registry, or obtaining their identity documents,<sup>184</sup> which serves to further underscore the discrimination towards the population of Haitian descent.

## **B. Additional human rights violations resulting from the denial of the right to a nationality**

33. In the Dominican Republic, persons of Haitian descent who have been identified throughout this submission face serious consequences as a result of their lack of identity documents or of a nationality. These individuals face widespread discrimination and the denial of their rights to move freely within and outside of the country, participate in political life, marry, study, work in the formal economy, and receive medical assistance, among other human rights violations.<sup>185</sup> Furthermore, without identity documents, it is nearly impossible to apply for insurance, open a bank account, obtain a passport, receive a certificate of good conduct from the police, or submit a complaint to the authorities if a human rights violation is committed.<sup>186</sup>
34. The Committee on the Rights of the Child and the IACHR highlighted the effect that the denial of the right to a nationality can have on children’s education and their resulting future opportunities. The Committee stated its concern that “children who lack a birth certificate and children of Haitian descent who lack official documentation [are] not being allowed to take the national examinations required to graduate from primary and secondary education.”<sup>187</sup> During the IACHR’s most recent visit to the Dominican Republic, 620 people of the 3,342 who provided information reported cases where they themselves or their family members faced obstacles in enjoying the right to an education due to their lack of identity documents.<sup>188</sup> Furthermore, knowledge of future obstacles in accessing and completing secondary education can act as a deterrent for many children to complete or even attend primary school.<sup>189</sup>
35. Due to the fact that people who do not have identity documents cannot register the birth of their own children in the Dominican Republic, the absence of a recognized nationality is transmitted to their children, creating intergenerational statelessness. The Committee on the Elimination of Discrimination against Women noted in its most recent report on the Dominican Republic that the exception to the principle of *jus soli* for foreigners “in transit” has been applied in an excessively broad and systematic manner, to the detriment of women of Haitian descent and their children who cannot receive

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183 Inter-American Commission on Human Rights. Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. <http://www.oas.org/en/iachr/multimedia/2016/DominicanRepublic/dominican-republic.html>.

184 *Id.*

185 Centro para la Observación Migratoria y el desarrollo en el Caribe. “Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes en la República Dominicana”. OBMICA. Editora Búho: República Dominicana. Diciembre de 2017. Pág. 114.

186 *Id.*

187 Concluding observations on the combined third to fifth periodic reports of the Dominican Republic. Paragraph 57.

188 Situation of Human Rights in the Dominican Republic. Page 163.

189 Country Report on Human Rights Practices for 2017. United States Department of State: Bureau of Democracy, Human Rights, and Labor. Page 19.

Dominican nationality at birth.<sup>190</sup> Furthermore, women and girls of Haitian descent who have been denied their identity documents are especially vulnerable to violence and marginalization in many forms, including forced prostitution, human trafficking, and underage marriage.<sup>191</sup> As a result, women and girls of Haitian descent face marginalization and human rights abuses in multiple forms.

36. Additionally, due to the denial of the right to work and the systematic exclusion from access to banks, credit, and social security, those denied the right to a nationality are more likely to live in poverty.<sup>192</sup> This poverty can, in turn, create further discrimination and exclusion from Dominican society.
37. While many of the obstacles faced by persons of Haitian descent are imposed by the Dominican authorities, political parties, business owners, and other social actors also discriminate against this portion of the population.<sup>193</sup> In recent years, racist and xenophobic rhetoric against those of Haitian descent has grown and expanded within the mainstream media and flourished throughout social media.<sup>194</sup> Human rights defenders, journalists, academics, and civil society organizations that have openly condemned TC/0168/13 and defended the rights of persons of Haitian descent have faced growing hostility from a range of actors. They have been openly threatened and branded as traitors, and public demonstrations have called for “death to the traitors.”<sup>195</sup> The IACHR has expressed concern regarding these alleged threats and acts of intimidation, which have failed to elicit an official rebuke from the government and can further create an environment of intolerance, making those of Haitian descent all the more vulnerable to discrimination and exclusion.<sup>196</sup> The Dominican Republic’s failure to protect the rights and safety of Dominicans of Haitian descent and those working to defend their rights represents a failing of the State to comply with its Constitutional and international treaty obligations, as identified throughout this submission.

## VI. Recommendations

38. Drawing on the information provided in this report, the co-submitting organizations propose the following recommendations:
- a. Adequately respond to the recommendations made by international and regional mechanisms, courts and treaty bodies, and by other States in past UPR cycles, to address the discriminatory deprivation of nationality and historic and structural denial of fundamental human rights faced by persons of Haitian descent.

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190 Concluding observations on the sixth and seventh periodic reports of the Dominican Republic. Paragraph 30.

191 “Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes en la República Dominicana.” Pág 114.

192 Situation of Human Rights in the Dominican Republic.

193 Inter-American Commission on Human Rights. Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. <http://www.oas.org/en/iachr/multimedia/2016/DominicanRepublic/dominican-republic.html>.

194 Núñez, Ali. “Comunidad haitianos ‘organizados’ denuncia xenofobia y odio en la RD.” *Al Momento*. 17 de marzo de 2018. <http://almomento.net/comunidad-haitianos-organizados-rd-denuncia-xenofobia-y-odio-en-su-contra/>.

195 Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. Page 14.

196 *Id.*

- b. Fulfill its obligations under Article 18 of the Dominican Constitution, whereby those who enjoyed Dominican nationality prior to the 2010 Constitution coming into effect continue to do so.
- c. Implement a legal framework that restores the nationality of all persons affected by TC/0168/13 in a prompt and standardized manner that respects their human rights and includes all affected individuals (including Group A and Group B) without discrimination and without requiring them to legally become foreigners and later acquire Dominican nationality via a naturalization procedure.
- d. Pass comprehensive anti-discrimination legislation to legally guarantee equal access to human rights to all persons in the Dominican Republic regardless of ethnicity, socioeconomic status, sexual preference, or gender.
- e. Take steps to combat xenophobia, racism, and hate speech, and foster an environment where human rights defenders and civil society organizations can operate freely and openly to advocate for the human rights of all persons in the Dominican Republic.
- f. Provide training to and oversight of government officials to ensure that children and adults of Haitian descent do not face discrimination in registering at the Civil Registry due to the unlawful exercise of discretion by government officials or additional arbitrary regulations imposed by the Central Electoral Board (JCE).
- g. Formally recognize the existence of racial discrimination in the Dominican Republic and adopt non-discriminatory policies related to the issuance of identity documents.
- h. Conduct a national census, in collaboration with UNHCR and national human rights organizations, to identify those stateless or at risk of statelessness and publish the resulting disaggregated data.
- i. Accede to the 1954 Convention on the Status of Stateless Persons and ratify the 1961 Convention on the Reduction of Statelessness.

**Dominicanos por Derechos, The Institute on Statelessness and Inclusion & The Center for Justice and International Law**

Joint Submission to the Human Rights Council at the 32<sup>nd</sup> Session of the Universal Periodic Review

**The Dominican Republic**

**Appendix A: Previous Relevant Recommendations to the Dominican Republic under the First and Second UPR Cycles**

**Recommendations under the Thirteenth Session of the First Cycle**

Recommendation	Response by the Dominican Republic
88.11 Ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons (Canada).	Accepted.
89.1 Ensure that appropriate legal frameworks are in place in line with the international conventions governing the issue of nationality (Canada).	Not accepted. The Dominican Republic does not accept this recommendation, since nationality is already established in the Constitution and is not open to interpretation.
89.2 Cancel all retroactive measures taken to replace the principle of <i>jus soli</i> with the principle of <i>jus sanguinis</i> for the acquisition of nationality (Spain).	Not accepted. The Dominican Republic agrees that the law is not retroactive, but cannot accept the allegation that the Constitution is applied in a retroactive manner.
89.4 Adopt measures to ensure that Dominican of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancellation of birth and identity documents (United States).	Not accepted. This is not acceptable because, as noted earlier, application of the law is not retroactive in the Dominican Republic. In addition the Constitution of the Dominican Republic is not subject to interpretation as to who is or is not a Dominican.
89.5 Apply consistent and non-discriminatory citizenship policies and practices (Canada).	Not accepted. (No response provided.)

## Recommendations from the Twenty-Sixth Session of the Second Cycle

Recommendation	Response by the Dominican Republic
98.15 Consider ratifying the conventions on stateless persons (Nicaragua).	Noted (taken under advisement).
98.16 Consider acceding to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (Uruguay).	Noted (taken under advisement).
98.17 Accede, as early as possible, to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (Brazil).	Noted (taken under advisement).
98.18 Take urgent steps to ensure full respect for the right to a nationality, and ratify the August 1961 Convention on the Reduction of Statelessness, which it signed in December 1961 (Ireland).	Noted (taken under advisement).
98.76 Take all necessary measures to provide effective birth registration (Belgium).	Accepted.
98.109 Introduce effective measures to prevent discriminatory practices linked to the process of granting citizenship and civil status registration (Norway).	Accepted.
98.110 Undertake all necessary measures to immediately recognize citizenship to those who had it at the time of their birth (Slovenia).	Noted (not supported).
98.111 Apply promptly and in a non-discriminatory manner the Plan for the Regularization of Foreigners and consider, for these effects, the recommendations of the Inter-American Commission on Human Rights following its visit to the country on December 6, 2013, stating that the process, as a whole, be made in accordance with its international human rights obligations (Spain).	Noted (not supported).
98.112 Respect every person's right to nationality in accordance with the recommendations of the Inter-American Commission on Human Rights and the judgment of the Inter-American Court on Human Rights (Mexico).	Noted (not supported).
98.113 Maximize its efforts to resolve the cases of statelessness, in coordination with UNHCR and with the support, among others, of the United Nations and Inter-American multilateral systems, strengthening a national civil registration system, so as to ensure that all the inhabitants of the Dominican Republic enjoy their rights (Uruguay).	Noted (not supported).
98.114 Strengthen measures to guarantee the right to a nationality and include necessary safeguards to prevent statelessness of those born in the territory of the Dominican Republic (Argentina).	Noted (taken under advisement).
98.115 Ensure that international standards on nationality and statelessness continue to be fully applied in the country to all individuals without discrimination (Italy).	Noted (taken under advisement).
98.116 Seek the technical advice of the United Nations High Commissioner for Refugees to identify, prevent and reduce statelessness, protect stateless persons and address the statelessness situation (Brazil).	Noted (not supported).
98.117 Ensure that its treatment of all affected persons is in line with its international human rights obligations and that it seek the technical advice of the United Nations High Commissioner for Refugees to identify, prevent and reduce statelessness (Germany).	Noted (not supported).
98.118 Adopt measures to ensure that Dominicans of foreign descent keep their Dominican nationality, avoiding possible cases of statelessness (Chile).	Noted (not supported).

98.119 The Naturalization law include all persons of foreign descent proving birth in the Dominican Republic before 2010, whether registered or not, be given state identity documents (Australia).	Noted (taken under advisement).
98.122 Effectively follow up the guidelines adopted by the Dominican Republic and Haiti Joint Commission on concrete measures to safeguard the fundamental rights of people of Haitian origin (Brazil).	Accepted.
98.125 Take steps to ensure protection of the fundamental rights of all individuals born in the Dominican Republic, including the offspring of undocumented foreigners who may be at risk of becoming stateless as a consequence of Constitutional Tribunal ruling 168/13 (Canada).	Noted (not supported).
98.126 Seek the technical advice of the United Nations High Commissioner for Refugees to identify and prevent statelessness, and protect stateless persons, to address the challenges created by the ruling of the Constitutional Court (Norway).	Noted (taken under advisement).
98.127 Give a special attention to children affected by the Constitutional Court ruling ensuring the provision of their basic rights, such as education, health and protection (Portugal).	Noted (taken under advisement).
98.128 Avoid the retroactive application of the norms that could result from the execution of the Constitutional Court's judgment 168/13 and generate situations of statelessness for citizens holding the Dominican citizenship (Spain).	Noted (not supported).
98.129 Take all possible measures to improve the situation of the persons whose rights have been adversely affected by the decision of the Constitutional Court of 23 September 2013, and to ensure compliance with its obligations under international law (Switzerland).	Noted (not supported).
98.130 Take the necessary political, legislative, judicial and administrative steps to redress most urgently the unacceptable humanitarian situation created by the Constitutional Court ruling (Trinidad and Tobago).	Noted (not supported).
98.131 Implement a regularization process, in accordance with its international obligations, to prevent the arbitrary deprivation of nationality, avoid deportations of populations affected by the Tribunal's ruling, and ensure a non-discriminatory process for the acquisition of nationality by individuals born in the Dominican Republic and their descendants for whom documentation is not accessible (United States of America).	Noted (not supported).
98.132 All rights be restored retroactively to those affected by the Constitutional Court judgment and that they be given prompt and nondiscriminatory means to acquire their Dominican Republic citizenship (Australia).	Noted (not supported).
98.133 Take all necessary measures to prevent statelessness and allow all residents to fully enjoy their fundamental rights in particular persons of Haitian's descent who have been affected by the ruling of the Constitutional Tribunal of the 23rd of September 2013 (France).	Noted (not supported).