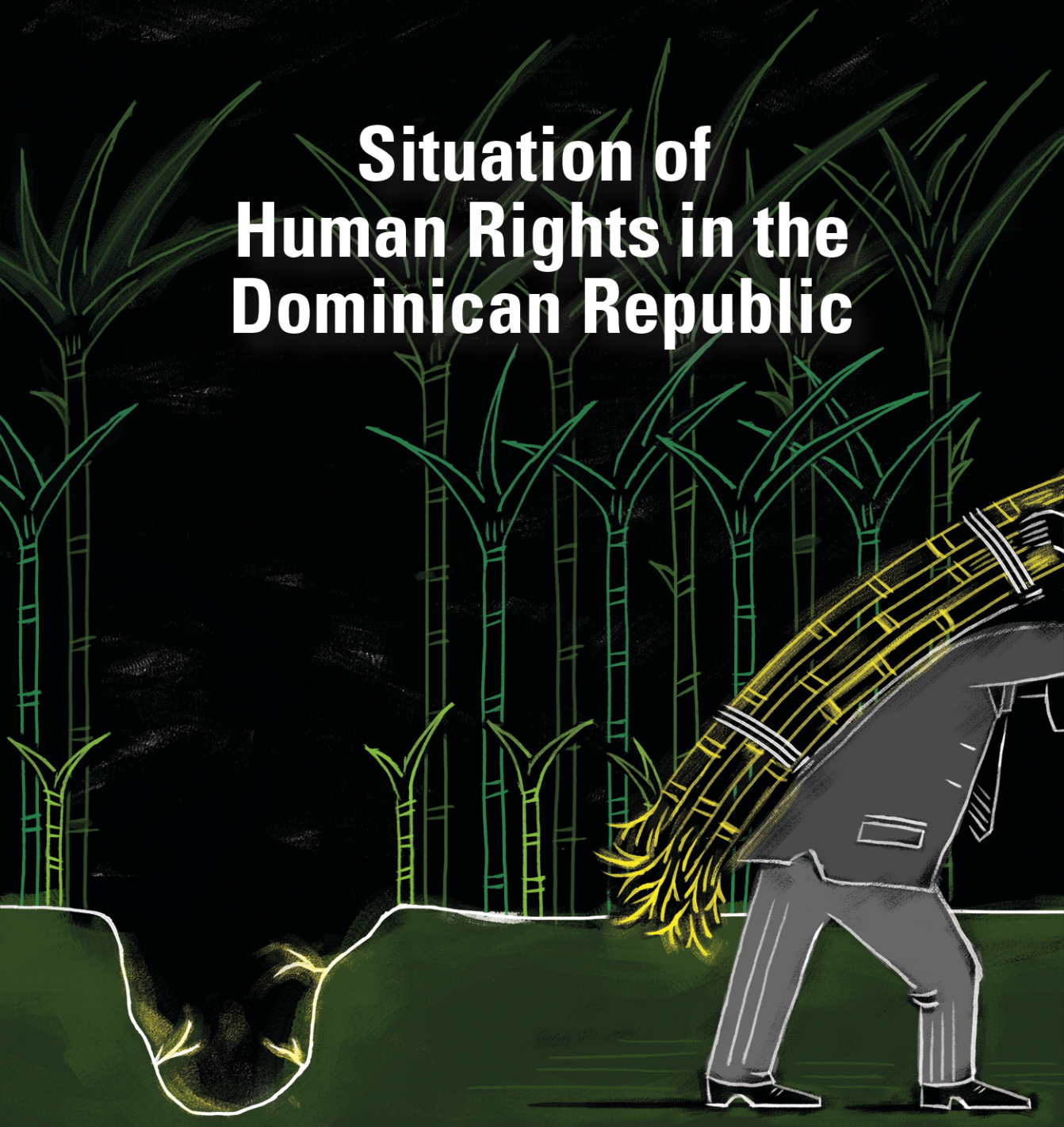
Country Report
DOMINICAN REPUBLIC

IACHR Inter-American Commission on Human Rights

# Situation of Human Rights in the Dominican Republic



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Report on the Situation of Human Rights in the Dominican Republic

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Approved by the Inter-American Commission on Human Rights on December 31, 2015

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# EXECUTIVE SUMMARY

# EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights has monitored the difficulties and obstacles that children of Haitian immigrants born since the early 1990s are encountering in Dominican territory in order to be registered and benefit from the papers that prove they are Dominican nationals, pursuant to application of the *jus soli* principle. At first, civil servants of the Civil Registry Offices would refuse to register the birth of children born in the Dominican Republic to Haitian migrants because their parents' migratory situation was irregular. The argument commonly used by the authorities was that, according to the Constitution, the children of foreigners in transit could not acquire Dominican nationality on the basis of the *jus soli* principle. The national origin and migratory status of their parents have led Dominicans of Haitian descent to encounter various forms of discrimination throughout their lives, discrimination that has not only violated their rights to nationality, juridical personality, and equality and non-discrimination, but has also precipitated the violations of their other human rights.

2. On September 23, 2013, the Dominican Republic's Constitutional Court handed down judgment TC/0168/13. Said ruling redefined, retroactively, the criteria for acquiring citizenship by application of the principle of *jus soli* by giving a new interpretation to the concept of foreigners in transit, equating this concept with that of a foreigner in an irregular migratory situation. Through this judgment, the Court retroactively changed the interpretation given to the term "foreigners in transit" in the Dominican constitutions in force between 1929-2010, all of which established said category as a constraint to acquire Dominican nationality by *jus soli*. Indeed, with regard to a particular case, the Court found that despite the fact that the appealing person was born in the Dominican Republic and had been registered by the authorities as such, at a time that the Constitution recognized the *ius soli* as a means acquiring nationality, the new interpretation of "foreigners in transit" deprived her of the right to Dominican nationality.

3. Judgment TC/0168/13 ordered the administrative transfer of all birth certificates of people born in the Dominican Republic as children of "foreigners in transit" from 1929-2007, to the birth registration book of foreigners, arbitrarily depriving of their nationality a significant number of people who enjoyed Dominican nationality, and leaving them in a situation of statelessness for considering them foreigners despite being born in Dominican territory and having identity documents that proved so.

4. The Commission considers that judgment TC/0168/13 by the Constitutional Court led to the arbitrary deprivation of nationality to all persons over whom it extended its effects on. At the same time, the ruling had a discriminatory effect, since it struck

mainly Dominicans of Haitian descent; retroactively depriving them of their nationality; and relegating them to the status of stateless persons, i.e., persons whom no State claims as its citizens under its laws. This situation has disproportionately affected people of Haitian descent, who frequently are identified as such, correct or incorrectly, based on the national origin or migratory status of their parents, skin color (especially those with a dark-colored skin), language ability or surnames, constituting a violation of the right to equality and non-discrimination. The Commission notes that over the years that it has monitored this situation and during his visit to the Dominican Republic, it has not received complaints or information on Dominicans of foreign descent, who were not of Haitian descent, who had faced barriers in recognition of their nationality, in access to the civil registry, as well as their identity documents.

5. The new interpretation of the Constitutional Court retroactively deprived of their right to Dominican nationality to tens of thousands of people who had been considered Dominican during all of their lifetime, many of which were registered at birth as Dominican nationals by the competent authorities, and who throughout their lives had been granted other identity documents such as identity cards, electoral ID cards and passports. The arbitrary deprivation of nationality and the lack of recognition of the juridical personality of the affected group has placed them in disadvantage in the enjoyment of some of their human rights, as well as in a situation of extreme vulnerability of becoming victims of violations of many other human rights. Along with this order of ideas, the Commission considers that the interpretation given by Dominican authorities regarding the right to a nationality pursuant to application of the *jus soli* principle, as it has a discriminatory impact on persons of Haitian descent born in the Dominican Republic, is not compatible with the obligations stemming from international human rights law.

6. Regarding this, the Commission observes that judgment TC/0168/13 disproportionately affected persons already subject to many forms of discrimination, especially on the basis of the criteria of race, national origin, and/or the migratory situation of their parents or their poverty. During the visit, the IACHR visited nine *bateyes* in various places of the country and observed the conditions of poverty, exclusion, and discrimination in which the inhabitants there lived. Poverty disproportionately affects persons of Haitian descent, and this situation is connected with the obstacles they encounter in terms of access to statistics registration and identity papers. Their lack of papers or the fact that these papers have been withheld, destroyed, or are being investigated, has made these persons face obstacles in terms of education, health, decent employment, entering into contracts, getting married, among others.

7. The Commission's monitoring of this situation over the years has highlighted a series of impediments preventing Haitian immigrants from regularizing their migratory situation in the country, which in turn entailed facing other obstacles to register their sons and daughters born in Dominican territory in the Civil Registry Office so that they can obtain identity documents certifying their Dominican nationality. The difficulties involving the interpretation of the clause of "in transit" foreigners by various authorities have, in practical terms, led to a situation whereby children are being impacted by the irregular migratory status of their parents,

preventing them from being registered and having their Dominican nationality certified.

8. The Commission notes that the denial of registration or refusing to deliver papers to a large number of persons born in the Dominican Republic has been a widespread practice of the Central Electoral Board over the past decades, when arbitrary deportations and collective expulsions were also recorded. Those deportations included persons born in the Dominican Republic, to whom the Dominican State had recognized their Dominican nationality by issuing birth certificates to them and national identity cards. In this context, the judgment of the Constitutional Court represented a crucial stage in the process of denationalization conducted for decades in the Dominican Republic, aimed at "protecting its national identity" by arbitrarily and retroactively restricting the right to a nationality to Dominicans of foreign descent, especially those of Haitian descent.[1]

9. The judgement TC / 0168/13 and its effects have been the subject of much concern and condemnation at national, regional and international level. After the commotion generated by judgment TC/0168/13 and in response to an invitation from the Dominican State, the Inter-American Commission conducted its sixth on-site visit to the Dominican Republic from December 2 to 6, 2013. The purpose of the visit was to observe the situation with respect to the rights to nationality, identity, equality and non-discrimination, as well other rights and related issues and problems. The Commission conducted this mission to monitor the compliance with the international commitments the Dominican Republic has freely undertaken. During the visit, the Inter-American Commission received troubling information concerning grave violations of the rights to nationality, juridical personality, equality and non-discrimination. The violations of the right to nationality, which the Commission had been observing since its on-site visit in 1991, continue unabated. Indeed, Constitutional Court judgment TC 0168/2013 has only made the situation worse.

10. During the visit, the Inter-American Commission also received deeply disturbing reports of threats made against journalists, academics, lawyers, politicians, lawmakers, human rights defenders, public figures and even high-level public servants for having criticized judgment TC/0168/13 of the Constitutional Court. These people have been called "traitors" and have been the targets of threats, and calls to "kill the traitors" have even been made publicly. The Commission is also concerned that intolerance and racist discourse might create an environment that makes persons of Haitian descent even more vulnerable to various forms of violence.

11. The discrimination, marginalization, and segregation of persons of Haitian descent who have been deprived of their Dominican nationality because of the Haitian nationality of their ancestors and/or because of the color of their skin (especially women and children), have increased their vulnerability to other forms of discrimination, exploitation, and violation of human rights, such as the right to personal integrity, the right to the protection of their honor, dignity, and private life,

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[1] IACHR, *Preliminary observations on the IACHR's visit to the Dominican Republic: December 2 to 6, 2013*. Santo Domingo, December 6, 2013, pp. 6-11.

the right to protection of the family and family life, the rights of the child, the right to education, the right to health, the right to work, the right to private property, the right to due process of law, the right to judicial protection, political rights, the right to movement and residence, as well as the right to not be arbitrarily deprived of their liberty, the right to not be expelled from the territory of which they are nationals or the right to enter in said territory, the prohibition of collective expulsions, among others.

12. In response to the effects generated by the judgment TC/0168/13, the administration of President Danilo Medina promoted, with the support of many political and social actors, the adoption of the Law 169-14, which was approved unanimously by Congress and it entered into force on May 23, 2014. The Law 169-14 divided people affected by judgment TC/0168/13 into two groups which were called Group A and Group B. In connection with persons of Group A, the law established the validation of the birth certificates and the restoration of nationality to persons born on Dominican territory between June 16, 1929 and April 18, 2007, whose births had been registered.

13. As for persons of Group B, the law established a special registration procedure in the record books of births of foreigners, applicable to those born in the Dominican Republic but who were never registered in the Dominican civil registry, enabling them to subsequently apply to the regularization of their status as migrants, and, after two years, authorizing them to apply for Dominican citizenship through regular naturalization procedure. Moreover, people born between April 18, 2007 and January 26, 2010 were not sheltered within the scope of the law.

14. According to information provided by the Dominican government, in late May 2015, a figure higher than 53,000 persons belonging to Group A had their records validated. Consequently, as expressed by the State itself, these people and their descendants will have their Dominican nationality restored and their Dominican identity documents must be issued pursuant to the provisions of Law 169-14. At the date of approval of this report, the process of delivery of documents to these people was only starting, but there were already complaints reported by some people regarding barriers in the delivery of their documents by the authorities of the Civil Registry. In this regard, the Commission considers that the State must ensure that the delivery of identity documents to these people is done without any discrimination and avoiding any kind of arbitrariness and administrative obstacles, so that these people can exercise the multiple rights associated to the right to nationality and juridical personality.

15. With respect to Group B, that is, the children of foreign parents in an irregular migratory situation, who having been born in the Dominican territory were not registered in the Dominican Civil Registry, the State has reported that 8,755 people applied for registration in the book foreigners within 180 days they had to register, which expired on 1 February 2015. The Commission notes that according to the National Immigration Survey of 2012, it was estimated that over 53,000 people were born in the Dominican Republic of foreign parents, and who were never registered

in the Civil Registry.[2] This means that many of the people who would be part of Group B would not have been registered under the procedure provided for them under Law 169-14.

16. The Commission recognizes that the Dominican government has taken action to address the situation of those affected by judgment TC/0168/13. While the Commission rejects the ground rules underlying Law 169-14, it recognizes the practical importance of the procedure for restoring the Dominican nationality to the children born in Dominican territory of non-resident foreign parents and who were registered in the books of the Civil Registry, i.e. those of Group A. However, the Commission cannot but express its rejection of the procedure that allows people born in the Dominican Republic and who under Dominican legislation were entitled to Dominican nationality, to be treated as foreigners and that the option given to them to retell their Dominican nationality is to apply for a naturalization process after a period of two years of having regularized their migratory status in accordance with the National Plan for the Regularization of foreigners in irregular migratory situation. Since the solution Law 169-14 provides for people in Group B is to consider them as foreign, tens of thousands of people and their descendants continue without having their nationality restored and hence without being effectively repaired for the arbitrary deprivation of nationality and statelessness in which they were left after judgment TC/0168/13.

17. The Commission also expresses its deep concern about the risk of being deported from the Dominican Republic of persons born in the Dominican territory who lack identification documents certifying their Dominican nationality, contrary to the provisions of the American Convention and the standards developed by the Inter-American Commission and the Court.

18. Based on its detailed examination of the situation of Dominicans of Haitian descent with respect to their rights to nationality, identity, equality, non-discrimination and other rights and related problems, as the group most affected by judgment TC/0168/13, in this report the Commission will make a number of recommendations to the State in that regard. In that spirit, the Commission urges the State to adopt the necessary measures to prevent judgment TC/0168/13 from continuing to have legal effects; to fully restore the right to nationality of those affected by judgment TC/0168/13; to void of legal effects the provisions of Law 169-14 that are based on considering as foreigners people who were born in the Dominican Republic children of irregular migrants, as this implicates a retroactive deprivation of nationality; and to take steps to stop the practices of denying Dominican nationality to persons born in the territory based on the origin of their parents or ancestor, the migratory status of their parents; among other recommendations made in this report.

19. Among the various actions that the Dominican government has made to assist the Haitian State and Haitian migrants in the Dominican Republic, the Commission considers it relevant to emphasize the importance of the actions taken by the

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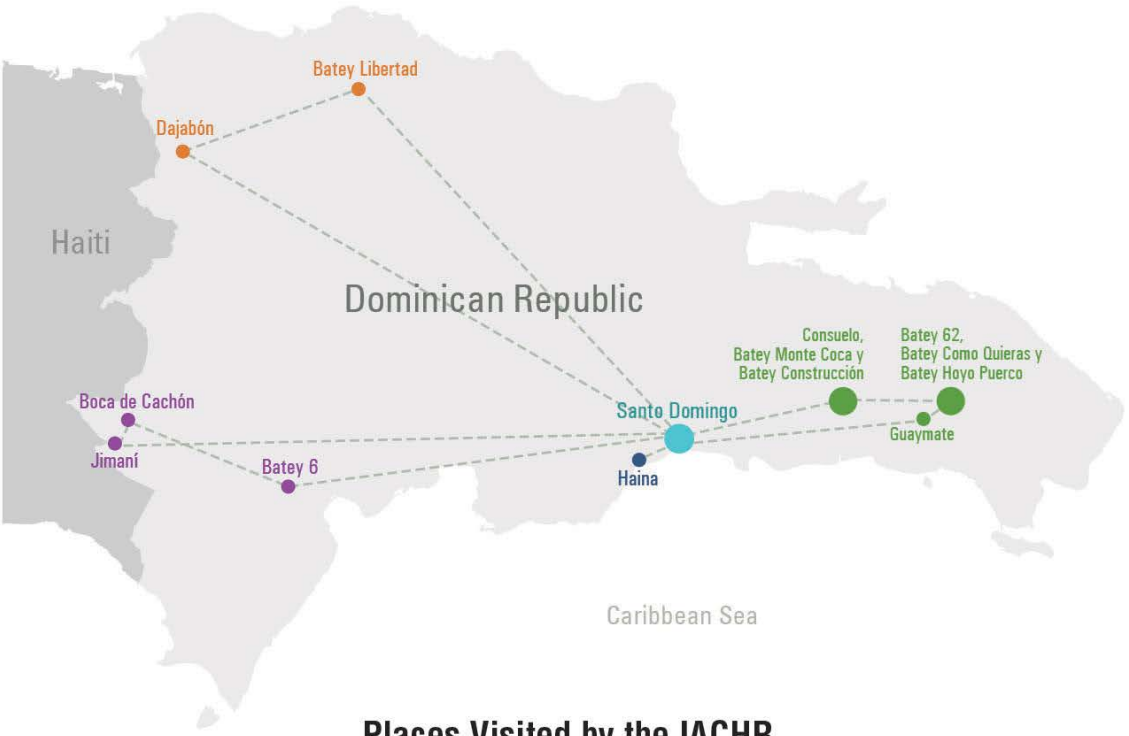
[2] This number does not include the children of these people.

Regularization Plan, under which 288.486 foreigners were enrolled in order to regularize their migratory status in the Dominican Republic, and so that promptly, most of these people are able to obtain a regular migratory status and the documentation to prove so.

20. The Commission is grateful to President Danilo Medina, his Government and the Dominican people for all their efforts that made this visit possible. The IACHR is particularly appreciative of and thankful for the support of Government authorities, the affected persons and civil society organizations, and for the information provided before, during, and after the visit. The Commission is most grateful to the 3,994 persons who provided testimony, filed complaints, and sent communications.

21. The Commission invites the State to remain receptive and responsive to the recommendations made in this report, which are intended to protect and promote human rights in the Dominican Republic. The Commission encourages the State to keep an open mind and implement the recommendations made by the present report, drafted in a constructive and cooperative spirit, for the purpose of ensuring that the current legal framework and its implementation by Dominican authorities will guarantee the effective exercise of human rights for all persons in the Dominican Republic, pursuant to its international human rights obligations.

## Map of the on-site visit of the IACHR to the Dominican Republic




## Places Visited by the IACHR

| | |
|---|---|
| Santo Domingo | Santo Domingo (National District) |
| South Route | Jimaní (Province of Independecia)<br>Boca de Cachón (Province of Independecia)<br>Batey 6 (Province of Bahoruco) |
| North Route | Dajabón (Province of Dajabón)<br>Batey Libertad (Province of Valverde) |
| East Route | Consuelo (Province of San Pedro de Macorís)<br>Batey Monte Coca (Province of San Pedro de Macorís)<br>Batey Construcción (Province of San Pedro de Macorís)<br>Batey 62 (Province of La Romana)<br>Batey Como Quieras (Province of La Romana)<br>Batey Hoyo Puerco (Province of La Romana)<br>Guaymate (Province of La Romana) |
| Haina | Immigration Detention Center of Haina<br>(Province of San Cristóbal) |

# CHAPTER 1
# INTRODUCTION

# INTRODUCTION

## *A. Scope and objectives of the report*

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "Commission" or "IACHR") is presenting this report to examine the situation with regard to the rights to nationality, legal personality, equality and non-discrimination, as well as other related human rights from the situation created by judgment TC/0168/13 of the Dominican Republic's Constitutional Court on September 23, 2013. This report will also make recommendations to ensure that the policies, laws and practices of the Dominican Republic (hereinafter the "Dominican State", "Dominican Republic" or "State") on these subjects are in compliance with the international obligations that the State voluntarily undertook in the area of human rights. The Commission is presenting this report in pursuant to its functions under Article 106 of the Charter of the Organization of American States (hereinafter the "OAS Charter"), Article 41 of the American Convention on Human Rights (hereinafter the "American Convention") and Article 58 of its Rules of Procedure.

2. This report examines a number of situations that concern the effective enjoyment of the human rights of all persons under the Dominican State's jurisdiction. The particular focus of the report is the grave situation of persons born on Dominican soil of Haitian descent or persons perceived as such in the Dominican Republic, especially since the Constitutional Court delivered judgment TC/0168/13. In that judgment, the Court established a retroactive reinterpretation of the scope of the principle of *jus soli* as set forth in the June 20, 1929 Constitution,[3] by equating the phrase "immigrants in-transit" with the phrase "migrants with an irregular migratory status". The effect of this ruling by the Constitutional Court was that persons, who had previously been Dominican nationals by virtue of the principle of *jus soli*[4], were deprived of their nationality and are now classified as stateless persons because they cannot lay legal claim to any other nationality. Since the Constitutional Court ruled that judgment TC/0168/13 had *inter comunia* effects regarding "a very large group of persons involved in situations that from the factual and legal point of view coincide or are similar" to those of Mrs. Pierre Deguis this

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3 *Jus soli,* a right granting nationality to any person born within the territory of the country in question.

4 The IACHR deems it appropriate to note that when this report refers to the term "Dominican" refers to persons from the Dominican Republic.

ruling has denationalized and created a situation of statelessness of a magnitude never before seen in the Americas.

3. Constitutional Court judgment TC/0168/13 was a critical turning point in the arbitrary denationalization of Dominicans of Haitian descent and illustrates the considerable challenges the Dominican State is facing in the area of racial discrimination and the effects that this situation has had in the form of violations of the other rights of persons of Haitian descent. The backdrop of this situation is the discrimination that Dominicans of Haitian descent have historically experienced on various fronts, and which manifests itself in a number of ways, including policies, laws and practices aimed at denying them their right to Dominican nationality on the basis of such criteria as skin color, their parents' nationality or descent, surname, command of language, and others. The report also looks at a number of problems that migrants encounter[5], particularly Haitian migrants, in respect to the use of racial profiling in immigration control operations, immigration detention, and the guarantees of due process and judicial protection in immigration proceedings conducted for the purpose of deportation or expulsion[6].

4. The information the Commission has received since the early 1990s illustrates a context of structural discrimination fostered by the activities of certain authorities, political parties, and business and social actors within the Dominican Republic. Its roots can be traced back to Haiti's occupation of the Dominican Republic in 1822 and to the rise of anti-Haitian sentiments and the various forms of discrimination that have evolved over the years targeting persons of Haitian origin. In this regard, the Commission believes that some provisions of the laws now in force and the practices of some authorities are not in compliance with the Dominican Republic's obligations as spelled out in the American Convention and other inter-American and international instruments. This was the finding of the Inter-American Court in its judgments on the *case of Expelled Dominicans and Haitians*,[7] *the case of Nadege*

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5 Throughout the report, the IACHR will use the term "migrant." The Commission will also use the expression "migrant in an irregular situation" to refer to those persons who have entered Dominican territory without the necessary documentation or have stayed past the time that they were authorized to stay. The Commission recommends that OAS Member States avoid the expressions "illegal," "illegal [im]migrant," and "illegal [im]migration" to refer to migrants whose immigration status is irregular. The use of the expressions "illegal" or "illegal [im]migrant" reinforces the criminalization of migrants and the false and negative stereotype that migrants, due to their irregular situation, are criminals. The Commission considers it necessary to specify that the irregular entry or stay of a person in a State are not criminal offenses but administrative infractions. In addition to the above, "legal" or "illegal" are not qualities that can be ascribed to human beings. For the sake of clarity, the actions of human beings can be described as "legal" or "illegal," but not the persons per se. A person's immigration status may not comply with what a given State's legal system requires, but it may not be extrapolated from that status the 'legality' or illegality' of that person.

6 The International Law Commission has defined "expulsion" as a legal act or conduct attributable to a State, whereby an alien is compelled to leave the territory of that State. For purposes of this report, the Commission used the terms expulsion, deportation, repatriation, and return will be used interchangeably to refer to the expulsion of a person who lacks the Dominican nationality in the territory of the Dominican Republic. See International Law Commission, Draft Articles on the expulsion of foreigners, adopted at its 66th session, art. 2.a.

7 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282.

*Dorzema et al.*,[8] and the *case of the Yean and Bosico girls*,[9] all of which were brought against the Dominican Republic.

5. Since its 1991 visit to the Dominican Republic, demanded by the situation of human rights violations of persons of Haitian descent in the country, mainly in the form of immigration operations and collective deportations, the Inter-American Commission observed that in many cases the persons deported were born on Dominican soil which, under the Constitution and the laws in force at the time of their birth, would have entitled them to Dominican nationality. Thus, for more than two decades now, the IACHR has been monitoring the situation of Dominicans of Haitian descent who, throughout various measures taken by the Dominican authorities, have been denied their right to Dominican nationality and other related rights.

6. In this regard, the violations of the right to nationality that the Commission observed on its most recent on-site visits continue to this day, and have been aggravated by the Constitutional Court's judgment TC/0168/13. Therefore, given the situation created by the issuance of judgment TC/0168/13 and the impact it could have on tens of thousands of people, the purpose of the Commission's visit was to examine the human rights situation in the Dominican Republic with regard to the rights to nationality, juridical personality, identity, equality, non-discrimination and other rights and related issues, all in light of the international commitments voluntarily undertaken by the Dominican State.

7. The analysis provided in this report serves as the basis for the recommendations the Commission has formulated for the Dominican Republic to ensure that its laws and practices pertaining to the rights to nationality, juridical personality, equality before the law and non-discrimination, as well as its immigration policies, complies with the international human rights standards it voluntarily undertook to observe.

## *B. On-site visit to the Dominican Republic and follow up*

8. In a note sent to the Permanent Mission of the Dominican Republic before the OAS on September 26, 2013, the Inter-American Commission consulted the Dominican State about the possibility of conducting an on-site visit from October 20 to 23, 2013. On October 4, 2013, the Permanent Mission sent to the IACHR note MP-RD-OEA 2049-13, in which it advised the Commission that it could not receive a visit from the Commission on the dates indicated, but that the Commission could request alternative dates.

9. On October 27, 2013, the Permanent Mission sent a note in which it invited the IACHR to visit the country. In response, on October 28, 2013, the Executive

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[8] I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits Reparations and Costs. Judgment of October 24, 2012. Series C No. 251.

[9] I/A Court H.R. *Case of the Yean and Bosico Girls v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130.

Secretariat of the IACHR sent a note to the Permanent Mission to express its gratitude for the invitation sent by the Dominican State, to inform that the note had been brought to the attention of the members of the Commission, and that it hoped to soon be able to inform them of the date set for the visit.

10. At the request of the Permanent Mission of Saint Vincent and the Grenadines, submitted on behalf of the States Parties to the Caribbean Community (hereinafter "CARICOM"), the situation created by judgment TC/0168/13 of the Constitutional Court was taken up at the regular meeting the OAS Permanent Council held on October 29, 2013. For his part, the OAS Secretary General stated that "the Organization should address this situation through its human rights system; this issue is within the purview of the Inter-American Commission and the Court of Human Rights (…) The IACHR has to address this issue now and we are awaiting its visit to the Dominican Republic."[10]

11. In his remarks to the Permanent Council, Mr. Cesar Pino Toribio, Legal Advisor to the Executive Branch of the Government of the Dominican Republic, reported on the scope of the judgment in question and at the close of his remarks commented that "the Inter-American Commission on Human Rights [would] be visiting the country at the Dominican Republic's invitation, serving as yet another opportunity to complete this strategy for resolving the problems resulting from the enforcement of the Constitutional Court's judgment, which, as has already been sufficiently explained, has created obligations incumbent upon the other Dominican authorities."[11]

12. On October 30, 2013, during its 149th session, the Commission held a private meeting with a high-level delegation from the Dominican government. The latter was to explain the scope of judgment TC/0168/13. At that meeting, Dr. Alejandra Liriano, Deputy Minister of Foreign Affairs, acting as representative of the Dominican State, verbally invited the Commission to make an on-site visit to the Dominican Republic. Later, on November 8, 2013, the Permanent Mission of the Dominican Republic sent note MP-RD-OEA 2194-13 in which it requested a preliminary list of the Dominican officials with whom the Commission planned to meet during its visit. On November 12, 2013, by note MP-RD-OEA 2196-13, the Permanent Mission reported that the Government of the Dominican Republic was expecting to receive the IACHR's delegation on December 2, 3, 4 and 5, 2013.

13. In response, on November 20, 2013, the IACHR's Executive Secretariat sent a note to the Permanent Mission acknowledging receipt of its earlier notes and confirming that the Commission would be making the on-site visit. On November 26, 2013, the Executive Secretariat of the IACHR sent a note to the Permanent Mission containing the proposed agenda and a list of the government officials with whom the Commission planned to meet during its visit.

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[10] See, Permanent Council of the OAS, *Acta de la sesión ordinaria celebrada el 29 de octubre de 2013*. OEA/Ser.G CP/ACTA 1944/13. Approved at the meeting of September 24, 2014, p. 26.

[11] See, Permanent Council of the OAS, *Acta de la sesión ordinaria celebrada el 29 de octubre de 2013*. OEA/Ser.G CP/ACTA 1944/13. Approved at the meeting of September 24, 2014p. 19.

14. The IACHR visited the Dominican Republic between December 2 and 6, 2013.[12] The members of the delegation were Commissioner José de Jesús Orozco Henríquez, Commissioner Tracy Robinson, Commissioner Felipe González Morales, Commissioner Dinah Shelton, Commissioner Rosa María Ortiz, Commissioner Rose-Marie Belle Antoine, and Emilio Álvarez-Icaza Longoria, the Commission's Executive Secretary; Elizabeth Abi-Mershed, Assistant Executive Secretary; Catalina Botero, Special Rapporteur for Freedom of Expression, and a support team from the IACHR's Executive Secretariat: Álvaro Botero Navarro, María Isabel Rivero, Gloria Gordon, Hilaire Sobers, Marta Tavares, Sofía Galván, Imelda González, Yuri Romaña, Catalina Martínez, Ronald Soltes, and Victoria Fernández.

15. During the visit, the Commission met with Dominican officials, affected persons, civil society organizations and international agencies headquartered in the Dominican Republic. At the meetings held with State officials, a wide range of actors provided information that was helpful in preparing this report.

16. The following are among the officials with whom the IACHR delegation met: the President of the Dominican Republic, Danilo Medina Sánchez; the Minister of the Presidency, Gustavo Adolfo Montalvo Franco; the acting Minister of Foreign Affairs, José Manuel Trullols; the Legal Advisor to the Executive Branch, César Pina Toribio; the Deputy Minister of the Presidency, Henry Molina Peña; the Advisor to the Minister of the Presidency, Josué Fiallo; the Minister of Education, Carlos Amarante Baret; the Minister of Public Health and Social Assistance, Lorenzo Wilfredo Hidalgo Núñez; the Minister of Labour, Rosa Maritza Hernández; the Minister of the Interior and Police, José Ramón Fadul; the Attorney General of the Republic, Francisco Domínguez Brito, who was accompanied by the Special Prosecutors for Human Rights, Children and Adolescents and Domestic and Gender Violence; the Director General of Immigration, José Ricardo Taveras Blanco; the Deputy Director General of Immigration, Santo Miguel Román; and the representative of the Dominican Republic to the OAS, Ambassador Pedro Vergés. The IACHR also met with Abel Martínez Durán, Speaker of the House of Deputies, and the House of Deputies' Committee on Human Rights, International Relations and Human Development; the Secretary General of the Central Electoral Board, Ramón Hilario Espiñeyra Ceballos, the National Director of the Civil Registry, Dolores Fernández, the Director General of the Office of the Inspector of the Central Electoral Board, Juan Bautista Tavares, the Legal Advisor to the Central Electoral Board, Alexis Dicló Garabito, and other officials from the Central Electoral Board; staff of the Specialized Body for Terrestrial Border Security (CESFRONT) in Jimaní and Dajabón, and officials from the Office of the Director General of Immigration at the Haina Immigration Detention Center.

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[12] In performing its function of promoting the observance and protection of human rights in the hemisphere, the Inter-American Commission has conducted 95 on-site visits and dozens of working visits to various OAS member States to observe, analyze and make recommendations aimed at protecting the human rights of persons under those States' jurisdiction.

17. The Commission would like to extend special thanks to the Dominican State for all its efforts to make this visit possible; particular mention should be made of the cooperation provided by the President of the Republic, Danilo Medina, the Ministry of the Presidency and the Ministry of Foreign Affairs. Likewise, the Commission considers necessary to recognize the commitment the Dominican State has shown for the Commission's work, through the information provided before, during, and after the visit. The Commission regrets the Constitutional Court's decision to refuse to meet with the Commission during the visit.

18. Likewise, during its visit, the Inter-American Commission's delegation also had an opportunity to interview victims of human rights violations and to meet with representatives of a considerable number of civil society organizations, human rights defenders, attorneys, and journalists. Among the civil society organizations, particular mention should be made of the *colectivo de organizaciones Dominican@s x Derecho*, the *Comité de Solidaridad con Desnacionalizados*, the Centro Bonó, *Reconoci.do*, the *Colectiva Mujer y Salud*, the *Observatorio de Migrantes del Caribe* (OBMICA) [Caribbean Migrants Observatory], the *Red de ONGs* por *la Infancia*, *Participación Ciudadana*, the *Fundación Étnica Integral* (FEI), the *Movimiento Socio Cultural de Trabajadores Haitianos* (MOSCTHA), the *Red de Encuentro Dominico Haitiano Jacques Viau* (REDHJV), the *Mesa Nacional para la Migraciones y Refugiados* (MENAMIRD), the *Centro Cultural Dominico Haitiano* (CCDH), *Soy Dominicano Como Tú,* the *Movimiento de Mujeres Dominico Haitiano* (MUDHA), the *Centro de Formación y Acción Social y Agraria* (CEFASA), the *Comisión Nacional de Derechos Humanos* (CNDH), the *Centro Cultural Dominico Haitiano* (CCDH), Open Society Justice Initiative (OSJI), World Vision, *Centro Jesús Peregrino* , Christian Aid, Catholic Relief Services (CRS), *Solidaridad Fronteriza*, *Centro Dominicano de Asesoría e Investigaciones Legales* (CEDAIL), *Coalición de ONGs por la Infancia, Plan Internacional, Fundación Institucionalidad y Justicia* (FINJUS), *Consejo Latinoamericano de Estudiosos de Derecho Internacional y Comparado* – Dominican Republic Chapter (COLADIC-RD), *Colegio de abogados de la Dominican Republic* (CARD), *Asociación Dominicana de Profesores* (ADP), *Universidad Autónoma de Santo Domingo* (UASD), *Espacio de Mu-Kien*, Committee for Latin America and Caribbean for the Defense of Human Rights of Women (CLADEM), *Colectivo de Mujeres y Salud*, *Foro Feminista, Núcleo de Apoyo a la Mujer,, Centro de Investigación para la Acción Femenina* (CIPAF), *Consejo Coordinadora de Mujeres del Cibao,, Centro de Género de Intec, Confederación Nacional de Mujeres de Campo (CONAMUCA)*, *Eulogia Familia sindicatos*, *Rufino Herrera*, *Pro-familia*, *Asociación migrantes del Sur*, *Fundación Solidaridad, Confederación Dominicana de Unidad Evangélica* (CODUE), *Centro de Orientación e Investigación Integral* (COIN), *Acción Callejera, Centro de Investigación y Acción Comunitaria* (CIAC), *Articulación Nacional Campesina,* CEAJURE, Cofradía, *Amigos Siempre Amigos* (ASA), *Trans Siempre Amigas* (Transsa), *Diversidad Dominicana*, *Alas de Igualdad*, *Red Dominicana de Personas que Viven con VIH/Sida* (Redovih), *Afroalianza*, *Asociación Afrodominicana*, *Red Afro*, *Fundación FUNCESI*, *Árbol Maravilloso*, *Grupo Saragua*, GIZ (*Deutsche Gesellschaft für Internationale Zusammenarbeit* or German Corporation for International Cooperation), *Pastoral Haitiana*, *Asociación de Trabajadores Cañeros*, *Consejo Nacional de Unidad Sindical* (CNUS), *Articulación Campesina*, and representatives of civil society including Roque Feliz, Pedro Cano, Ana Maria Belique and Father Regino Martínez. Meetings were also held with attorneys Cristóbal Rodríguez, Nassef Perdomo, Eduardo Jorge Prats,

Roberto Álvarez, Olivo Rodríguez Huerta, Noemí Méndez, Guillermo Sterling, Ricardo Rojas León, Natanael Santana and Genaro Rincón, and with journalists and academics and researchers from Dominican universities.

19. The work done by individuals and organizations is vital to promoting and protecting human rights and to building an egalitarian and discrimination-free society in the Dominican Republic. That being the case, the Commission would like to extend a special thanks to Dominican civil society organizations, human rights defenders, attorneys, journalists, and academics. The Commission is also grateful for all the cooperation it received from multiple civil society organizations as it organized and carried out its visit to the Dominican Republic. The Commission is also thankful for all the reports it received from them before, during, and after the visit.

20. The Commission also met with United Nations agencies in the Dominican Republic, which included representatives from the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the United Nations Development Programme (UNDP), UN Women, UNAIDS, the International Labor Organization (ILO), the Food and Agriculture Organization (FAO), and the Pan American Health Organization (PAHO). Also participating in these meetings were representatives of other intergovernmental organizations, such as the International Organization for Migration (IOM) and the World Bank.

21. During the visit, part of the Commission's delegation was posted at reception tables where it received persons coming to provide information on alleged human rights violations. On December 2, 3 and 5, these reception tables were located in the Professors Club at the *Universidad Autónoma de Santo Domingo* (UASD). On December 4, the Commission's delegation divided into three groups that headed south, north, and east in the Dominican Republic and received information and testimony at the following sites: 1) in the southern part of the country, complaints were received in Boca de Cachón, Jimaní, Independencia province, at Batey 6, municipality of Tamayo, Bahoruco province; 2) in the north, complaints were taken in Dajabón, Dajabón province, and in Batey Libertad, Mao, Valverde province; and 3) to the east, complaints were received near Batey Don Juan, municipality of Consuelo, San Pedro de Macorís province, and in Guaymate, La Romana province.

22. After sorting the information, communications, and testimony received during the visit, it is estimated that 3,342 persons visited the places that the Commission set up for receiving information. Of those 3,342 persons, 2,910 provided documentation and 432 gave oral testimony.[13] The following is a breakdown of the number of communications received and testimonies taken by the IACHR delegation during the visit:

| Date | December 2 | December 3 | December 4 | December 5 | December 6 |
|---|---|---|---|---|---|
| **No. of communications received and testimonies taken** | 445 | 384 | 1869 | 421 | 221 |

23. Some of the 3,342 persons who turned to the Commission made claims concerning their own situation, as well as claims that concerned other persons, usually family members. This added the names of another 1,750 persons. The Commission was able to establish that 342 of the additional names were children under the age of 18. The Commission was also able to compile information regarding the ages of 2,962 of these individuals: 1,032 were children or adolescents, 1,659 were adults between the ages of 18 and 59, and 271 were 60 or over. As for gender, 3,129 persons reported their sex: 1,750 self-identified as female, 1,378 as male and one as transgender.

24. Of the 3,342 persons who contacted the Commission, 2,940 shared information about their place of residence. Based on the information provided, it was determined that they represented 18 of the 31 provinces and the National District of the Dominican Republic. The following graph shows the number of reports received by province:

[13] Occasionally the persons who came to the Commission presented both written documentation and oral testimony.

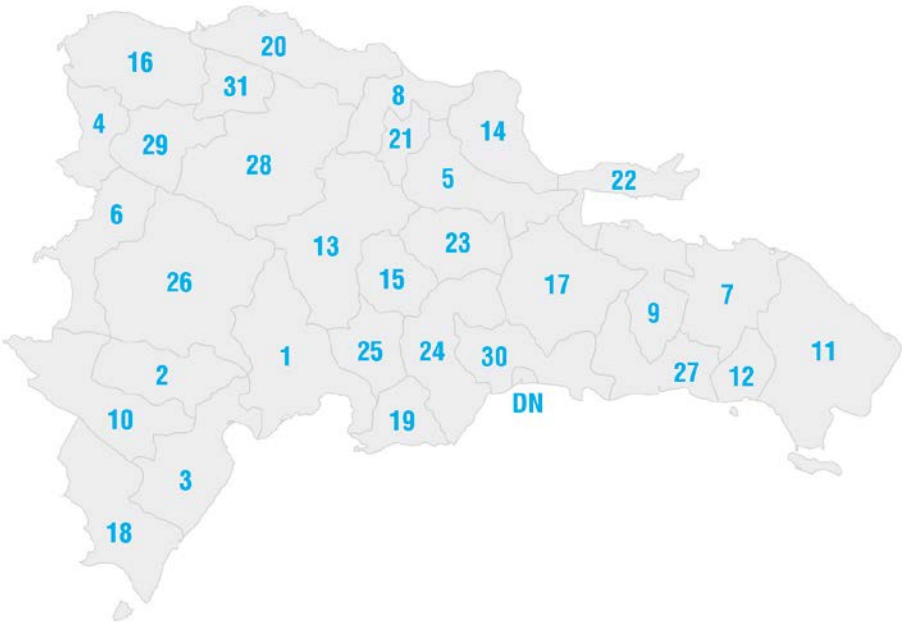


**Table on the number of communications received by the IACHR containing information by province**

| | | | | | |
|---|---|---|---|---|---|
| 1 | Azua | | 17 | Monte Plata | 491 |
| 2 | Bahoruco | 361 | 18 | Pedernales | |
| 3 | Barahona | 184 | 19 | Peravia | |
| 4 | Dajabón | 3 | 20 | Puerto Plata | 120 |
| 5 | Duarte | | 21 | Hermanas Mirabal | |
| 6 | Elías Piña | | 22 | Samaná | 2 |
| 7 | El Seibo | 267 | 23 | Sánchez Ramírez | 8 |
| 8 | Espaillat | | 24 | San Cristóbal | 6 |
| 9 | Hato Mayor | 92 | 25 | San José de Ocoa | |
| 10 | Independencia | 58 | 26 | San Juan | |
| 11 | La Altagracia | 24 | 27 | San Pedro de Macorís | 569 |
| 12 | La Romana | 367 | 28 | Santiago | 3 |
| 13 | La Vega | | 29 | Santiago Rodríguez | |
| 14 | María Trinidad Sánchez | | 30 | Santo Domingo | 138 |
| 15 | Monseñor Nouel | | 31 | Valverde | 246 |
| 16 | Monte Cristi | | DN | Distrito Nacional | 1 |

25. The first four of the top five problems most frequently reported closely correlated with the structural problem of the right to nationality of persons of Haitian descent. The situation most frequently reported had to do with the authorities' refusal to issue birth certificates, which was a complaint made in 1,360 cases. The second most frequent complaint, made in 1,086 cases, was the refusal to issue the Dominican identification document. The third most frequent complaint, cited in 722 cases, concerned persons who could not register before the Civil Registry; in 504 cases, the complaint concerned the parents' inability to register their children. The fifth most common complaint, made in 280 cases, concerned the inability of seniors to get social security.

26. Of the persons who explained what they believed were the underlying causes of their complaint, 620 attributed their problem to the fact that they were of Haitian descent; 240 blamed their parents' irregular migratory status; 50 attributed the problem to their own migratory situation, 27 blamed it on the fact that they had a foreign surname, while others attributed their situation to other problems. The Commission is deeply troubled by the fact that 1,843 of those who visited the Commission to provide information said that they had been adversely affected by the Constitutional Court's judgment TC/0168/13.

27. As a result of the situations denounced, hundreds of persons alleged that they were unable to enjoy some of the rights protected under the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also known as the "Protocol of San Salvador") and under the Dominican Republic's Constitution, such as the right to education (claimed in 620 cases), the right to work (claimed in 332 cases), the right to social security (claimed in 280 cases), and the right to health (claimed in 30 cases).

28. As previously noted, 87% (2,910 communications) of the persons received by the IACHR submitted written documentation. These documents can be divided into three main groups, as follows:

> **GROUP ONE:** written communications presented through civil society organizations, adding up to a total of 2,778 communications, accounting for 95.5% of those received.
>
> **GROUP TWO:** communications presented in such a way that they could be classified and registered with the IACHR's individual petition and case system, which resulted in a total of 28 new petitions, and 2 new petitions that also included requests for precautionary measures. Two separate requests seeking precautionary measures were also classified. Five briefs were received containing additional information related to petitions and precautionary measures already under review. The result was a total of 37 briefs accounting for 1.3% of the written communications received.
>
> **GROUP THREE:** illegible written testimony, notes with no contact information and general correspondence, for a total of 95 communications representing 3.2% of the total received.

29. On December 4, 2013, the Commission's delegation divided into three groups that visited various places in the southern, northern, eastern and western quadrants of the Dominican Republic. The group that went north was headed by Commissioner José de Jesús Orozco, Commissioner Rosa María Ortiz, and Executive Secretary Emilio Álvarez Icaza L. It visited and met with officials from CESFRONT in Dajabón. They later toured the Dominican side of the border between Dajabón in the Dominican Republic and Juana Méndez in Haiti. At the end of the day, the group traveled to *Batey* Libertad in Valverde province, where it met with civil society organizations and received testimony from affected persons.

30. The group that headed east was led by Commissioner Dinah Shelton, Commissioner Rose-Marie Belle Antoine, Rapporteur on the Rights of Afro-descendants and against Racial Discrimination, and the Commission's Assistant Executive Secretary, Elizabeth Abi-Mershed. Along the way they visited and met with thousands of persons in Consuelo, *Batey* Don Juan, *Batey* Monte Coca, and *Batey* Construcción, in San Pedro de Macorís province; and *Batey* 62, *Batey* Como Quieras, *Batey* Hoyo Puerco and Guaymate, in La Romana province.

31. For its part, the group that went south was headed by Commissioner Felipe González and Commissioner Tracy Robinson and visited with officials from CESFRONT and the Office of the Director General of Immigration in Jimaní. It also toured the border at Mal Paso, Haiti. The group then went to Boca de Cachón, where it met with a community of Haitian immigrants. The sites listed above are in the Independencia province. At the end of the day, the delegation had met with hundreds of persons of Haitian descent and with Haitians and civil society organizations in *Batey* 6, Bahoruco province. At the sites visited, information was provided directly to the Commission regarding living conditions in the *bateyes* and in the border zones.

32. Also during the visit, a Commission delegation headed by Commissioner Felipe González, Rapporteur on the Rights of Migrants, and Commissioner Rosa María Ortiz, Rapporteur on the Rights of the Child and Rapporteur for the Dominican Republic, visited the Haina Immigration Detention Center in San Cristóbal province. At the time of the visit, no one was being held in the Haina facility because, according to immigration officials, remodeling work was about to get underway.

## 1. Actions after the on-site visit to the Dominican Republic

33. Subsequent to the visit, at the request of the Permanent Mission of Saint Vincent and the Grenadines on behalf of CARICOM,[14] Commissioner Rosa María Ortiz, the Rapporteur for the Dominican Republic, addressed the OAS Permanent Council on February 19, 2014, where she gave a summary of the preliminary observations that the Inter-American Commission had presented in Santo Domingo on December 6, 2013, at the close of its on-site visit to the Dominican Republic.[15]

34. Via communications dated April 7, 2014,[16] May 27, 2014,[17] July 21, 2014,[18] July 23, 2014,[19] July 28, 2014,[20] August 22, 2014,[21] September 17, 2014,[22] September 29,

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14 CARICOM, Preliminary Observations of the Inter-American Commission on Human Rights' (IACHR) Visit to the Dominican Republic: Note from the Permanent Mission of Saint Vincent and the Grenadines on behalf of the CARICOM requesting inclusion of the item on the agenda for the regular meeting of the Permanent Council to be held on February 19, 2014. Note OEA No. 05/14. February 12, 2014.

15 OAS, Permanent Council, *Acta de la sesión ordinaria celebrada el 19 de febrero de 2014*. OEA/Ser.G CP/ACTA 1955/14. Approved at the meeting held on February 11, 2015.

16 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Nota MP-RD-OEA 0315-14: Documento explicativo de la sentencia TC/0168/13 del Tribunal Constitucional de la República Dominicana de fecha 23 de septiembre de 2013* [Note MP-RD-OEA 0315-14: Document explaining Constitutional Court judgment TC/0168/13], April 10, 2014.

17 Dominican Republic. *Nota MP-RD-OEA 0557-14: Ley 169-14 que establece régimen especial para personas nacidas en el territorio nacional inscritas irregularmente en el Registro Civil dominicano y sobre naturalización*

2014,[23] February 11, 2015,[24] February 26, 2015,[25] ,June 8, 2015[26],and October 30,2015[27] the Dominican State advised the Commission of the measures taken to address the situation involving the rights to nationality, identity, equality and non-discrimination, and other rights and related problems and issues.

35. Furthermore, in response to a request from the Dominican State, on July 24, 2014 the Commission held a meeting with Ambassador Pedro Vergés Ciman, Permanent Representative of the Dominican Republic to the OAS, and with attorneys representing the State, Luis G. Fortuño and Filiberto Agusti from the law firm of Steptoe & Johnson LLP, to discuss matters related to Constitutional Court judgment

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[Note MP-RD-OEA 0557-14: Law 169 of 2014: A special regime for persons born in Dominican territory irregularly registered in the Dominican civil registry, and on naturalization]. May 27, 2014.

18 Dominican Republic. *Nota MP-RD-OEA 0742-14: Documento en relación a las Observaciones Preliminares de la visita de la IACHR a la República Dominicana, presentadas al Consejo Permanente el 19 de febrero de 2014* [Note MP-RD-OEA 07842-14: Document pertaining to the Preliminary Observations from the IACHR's visit to the Dominican Republic, as presented to the Permanent Council on February 19, 2014], July 22, 2014.

19 Dominican Republic. *Nota MP-RD-OEA 0754-14: Palabras del Excelentísimo Señor Presidente Danilo Medina, pronunciadas en el marco del encuentro trilateral entre la República Dominicana-Haití-Unión Europea* [Note MP-RD-OEA 0754-14: Remarks delivered by His Excellency President Danilo Medina at the Dominican Republic-Haiti-European Union trilateral meeting], July 23, 2014.

20 Dominican Republic. *Decreto 250-14 contentivo del Reglamento de aplicación de la Ley 169-14* [Decree 250-14 containing Regulations for implementation of Law 169-14]. Note MP-RD-OEA 0778-14, received July 31, 2014.

21 Dominican Republic. *Nota MP-RD-OEA 0877-14: Comentarios Iniciales del Gobierno de la República Dominicana en respuesta a las observaciones preliminares de la visita in loco de la IACHR a la República Dominicana* [Note MP-RD-OEA 0877-14: The Dominican Republic's Initial Comments on the preliminary observations from the IACHR's visit to the Dominican Republic]. August 22, 2014.

22 Dominican Republic. *Nota MP-RD-OEA 0952-14: Datos de estudiantes inmigrantes en escuelas dominicanas* [Note MP-RD-OEA 0952-14: Statistics on immigrant students in Dominican schools], September 17, 2014.

23 Dominican Republic. *Nota MP-RD-OEA 0983-14: Palabras del Excelentísimo Señor Presidente Danilo Medina, pronunciadas en el marco del 69° Periodo Ordinario de Sesiones de la Asamblea General de la Organización de las Naciones Unidas* [Note MP-RD-OEA 0983-14: Speech delivered by his Excellency President Danilo Medina during the 69th regular session of the United Nations General Assembly]. September 29, 2014.

24 Dominican Republic. *Nota MP-RD-OEA 0181-15: Conferencia "La Apatridia: conceptualización y desconceptualización en el contexto de la realidad dominicana" dictada por el Presidente de la Central Electoral Board* [Note MP-RD-OEA 0181-15: Lecture on "Statelessness": Conceptualization and De-conceptualization in the context of the situation in the Dominican Republic today]. February 12, 2015.

25 Dominican Republic. *Nota MP-RD-OEA 0241-15: Declaraciones del Ministro de Relaciones Exteriores de la Dominican Republic, Su Excelencia Andrés Navarro García, ante la situación que se vivió durante las protestas que escenificaron algunos grupos en Haití y que afectó las instalaciones del Consulado dominicano en Petiónville, Ville Puerto Príncipe* [Note MP-RD-OEA 0241-15: Statements made by the Minister of Foreign Affairs of the Dominican Republic, His Excellency Andrés Navarro García, concerning the situation that arose during the protests that some groups in Haiti staged and that affected the facilities of the Dominican consulate in Petionville, Port-au-Prince], February 26, 2015.

26 República Dominicana. *Nota MP-RD-OEA 0653-15: Palabras del Doctor Roberto Rosario Márquez, Presidente de la Junta Central Electoral, el pasado 26 de mayo de 2015 en la Presentación de los Resultados de la Auditoría al Registro Civil en los años 1929 a 2007*. 8 de junio de 2015. Note MP-RD-OEA 0653-15: Remarks made by Dr. Roberto Rosario Márquez, Chair of the Central Electoral Board, May 26, 2015, in presenting the findings of the audit done of the Civil Registry Office in 1929 to 2007], June 8, 2015.

27 Dominican Republic. *Nota MP-RD-OEA 0653-15: Palabras del Doctor Roberto Rosario Márquez, Presidente de la Central Electoral Board, el pasado 26 de mayo de 2015 en la Presentación de los Resultados de la Auditoría al Registro Civil en los años 1929 a 2007* [Note MP-RD-OEA 0653-15: Remarks made by Dr. Roberto Rosario Márquez, Chair of the Central Electoral Board, May 26, 2015, in presenting the findings of the audit done of the Civil Registry Office in 1929 to 2007], June 8, 2015.

TC/0168/14 and the "Preliminary Observations from the IACHR's Visit to the Dominican Republic."[28]

36. After the visit, the IACHR convened four thematic hearings during its 150th ,153rd and 156th regular sessions. The hearings concerned the "Situation of the Right to Nationality of Dominicans of Haitian Descent affected by Denationalization Policies in the Dominican Republic,"[29] the "Human Rights Situation of Haitian Migrant Workers and their Families in the Dominican Republic",[30] and the "Progress and Challenges posed by Law 169/14 in the Dominican Republic"[31]and"the Right to Nationality in Dominican Republic" [32]. These hearings provided additional and up-to-date information on the problems examined in this report.

37. On June 30, 2015, at the request of the Permanent Mission of the Dominican Republic,[33] the OAS Permanent Council held a special meeting at which the Minister of Foreign Affairs of the Dominican Republic, Andrés Navarro, delivered a speech to inform on actions taken under the processes of the documentation of nationals and the regularization of migrants in the Dominican Republic. The OAS Secretary General, Luis Almagro, Permanent Council Chair Neil Parsan, and representatives of OAS missions also made comments.

38. On July 8, 2015, another special meeting of the Permanent Council was held, this time at the request of the Permanent Mission of Haiti. Haiti's Minister of Foreign Affairs, Lener Renauld, addressed the Permanent Council on the developments unfolding in the situation between the Dominican Republic and the Republic of Haiti. In specific, he spoke about the concerns of the Haitian State over the destabilizing effect on the country that mass deportations could have following the completion of the National Regularization Plan for Foreigners in an irregular migratory situation in the Dominican Republic. By the invitation of both the governments of Haiti and the Dominican Republic, and as approved by the Permanent Council of the OAS, a technical mission of the OAS was sent to these countries to gather information on the situation of Haitian migrants.

39. Between July 10 and 14, 2015 the OAS technical mission visited the Dominican Republic and Haiti. Later, on July 29, 2015 at the regular meeting of the Permanent Council, the Secretary General of the OAS, Luis Almagro, introduced the report

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28 Dominican Republic. *Nota MP-RD-OEA 0742-14: Documento en relación a las Observaciones Preliminares de la visita de la IACHR a la Dominican Republic, presentadas al Consejo Permanente el 19 de febrero de 2014* [Note MP-RD-OEA 0742-14: Document concerning the Preliminary Observations from the IACHR's Visit to the Dominican Republic], July 22, 2014.

29 IACHR, 150th Regular Session, March 24, 2014.

30 IACHR, 150th Regular Session, March 24, 2014.

31 IACHR, 153rd Regular Session, October 31, 2014.

32 IACHR, 156th regular session, October 23, 2015. This hearing was granted ex officio by the IACHR

33 CARICOM, Preliminary Observations of the Inter-American Commission on Human Rights' (IACHR) Visit to the Dominican Republic: Note from the Permanent Mission of Saint Vincent and the Grenadines on behalf of the CARICOM requesting inclusion of the item on the agenda for the regular meeting of the Permanent Council to be held on February 19, 2014.
Note OEA No. 05/14. February 12, 2014.

submitted to him by the Technical Mission on the situation in the border area of Republic Dominican and Haiti.[34]

## 2. Positive actions

40. Throughout the visit and subsequently to it, the IACHR has been able to observe various progress in the development of democratic institutions and the protection of human rights in the Dominican Republic. In particular, the Commission appreciates and welcomes as a very positive development the direct incorporation into domestic law at constitutional level of international human rights law and all international commitments undertaken by the State in this area, through Constitutional reform of 2010.

41. The IACHR also emphasizes the solidarity of the Dominican people. Given the devastation and death that were generated by the earthquake that struck Haiti in January 2010, the Government and the Dominican people responded in solidarity and fraternal way to provide assistance in various forms to people affected by the quake. Also, Haitians who have migrated to the Dominican Republic have contributed and contribute significantly to the economic and social development of the country.

42. The Inter-American Commission highlights the importance of public policies of general application, which have been implemented by the Dominican government to fight poverty and famine. According to figures estimated by the Ministry of Economy, Planning and Development, between September 2012 and September 2014 it achieved a reduction of poverty from 6.7%, which would put the overall poverty in the 35.5%[35]. In turn, the United Nations Food and Agriculture Organization (FAO) highlighted the actions taken by the State to halve the proportion of hungry people in recent years[36].

43. The Commission also recognizes the actions carried out by the Ministry of Foreign Affairs (MIREX), in consultation with various social sectors and civil society in the development of a National Human Rights Plan of the Dominican Republic (2015 - 2020). According to information provided by MIREX, the Plan is based on ten thematic areas, namely: 1) women's rights, 2) rights of children and adolescents, 3) rights of older adults, 4) rights of disabled persons 5) civil and political rights, 6) rights of migrants, refugees, asylum seekers and their families, 7) economic, social and cultural rights, 8) labor rights, 9) trafficking in persons, and 10) discrimination. The Commission welcomes the government's initiative to develop the plan, and urges the State to ensure that guidelines adopted in the same are consistent with international human rights standards and the obligations voluntarily undertaken by

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[34] For more information about the report see: OAS, Report of the technical mission to assess the situation in the border area of Dominican Republic and Haiti. July 29, 2015.

[35] Dominican Republic, Ministry of Economy, Planning and Development, Upgrading official estimates of monetary poverty in the Dominican Republic. 2015, p. 2.

[36] United Nations Food and Agriculture Organization (FAO), 8 June 2015. FAO awards the Dominican Republic for progress in the fight against hunger.

the State, so that the Plan can contribute to the respect and guarantee of the human rights of all people in the Dominican Republic.

44. The Commission welcomes the legislative and administrative measures that have been being taken by the Dominican State to prevent and eliminate all forms of racial discrimination, particularly stands out: a) the classification of discrimination as an offence in the Criminal Code; b) the cultural policy of the Ministry of Culture for 2008, vindicating the African contribution to the country, and its support for the campaign for tolerance and peaceful coexistence of the Office of the United Nations High Commissioner for Refugees (UNHCR), which presented the positive contributions of migrants to Dominican society; c) discontinuance of classifications such as dark-skinned Indian or light-skinned Indian in new identity documents; d) the initiative to amend the electoral law to enable Dominicans to identify themselves as "negro, mulatto"; among other measures[37].

45. With regard to the rights of the child, the Commission recognizes the importance of various measures taken by the Dominican Republic, such as: a) the inclusion of provisions on children's rights contained in the new Constitution; b) ratification of various instruments protecting children's rights; c) the National Plan for the Protection and Integral Attention to Early Childhood; d) the National Gender Equality and Equity Plan (2007–2017; and e) increasing the budget for education; among others[38].

46. On the National Plan for the Protection and Integral Attention to Early Childhood, enacted under the slogan "Quisqueya Starts With You (Quisqueya Empieza Contigo)" and validated by Decree 102-13, the Commission appreciates the initiative promoted by the Presidency of the Republic, through the General Directorate of Special Programs of the President (DIGEPEP), of approving in February 2015 a plan with seven priority lines of action to support children of 0-5 years, and their families and communities[39]. Specifically, the Commission emphasizes the articulation of strategic actions with sectors and institutions responsible for providing health services, as well as to facilitate the enrollment in the civil registry so that these children can have their birth certificates[40].

47. In addition to this Plan, on the matter of education, the Commission stresses the allocation of 4% of GDP in pre-university education in the budgets for the years 2013, 2014 and 2015; implementing the adult literacy program "Quisqueya Learns

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37 UN, Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February–1 March 2012), CERD/C/DOM/CO/13-14, paras. 4 and 18.

38 UN, Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of the Dominican Republic, CRC/C/DOM/CO/3-5, 6 March 2015, paras. 3 and 5.

39 Decree No. 102-13 that declares of national interest the protection and comprehensive care for all people between 0 and 5 years of age and the inclusion of all children from five years to early childhood education, and created the National System protection and Comprehensive Care for Early Childhood. G. O. No. 10713 of April 25, 2013; Presidency of the Dominican Republic, 7 February 2015. Adoption of the Plan for the Year for Protection and Comprehensive Early Childhood Care.

40 Guidelines National Protection Plan and Comprehensive Attention to Early Childhood "Quisqueya Starts With You", July 2013.

With You (Quisqueya Aprende Contigo)", in which 873, 263 people have registered as of July 2015, of which 40.625 are Haitians[41]; as well as the national policy for extended school day[42].

48. The Commission recognizes the importance of various legislative, public policies and programs adopted by the State in different areas to ensure the rights of people with disabilities, in particular: a) the provisions included in the Constitution on the rights of persons with disabilities; b) Law No. 05-13, Organic Law on Equal Rights of Persons with Disabilities; c) the National Accessibility Plan; and d) the Inclusive Development Program with a Community Base: Coming out of the Hideout[43].

49. The IACHR recognizes that the policies and legislative, administrative, and budgetary measures adopted by the Dominican State in the above areas also benefit Dominicans of Haitian descent. However, the Commission cannot but express its concern that those affected by the judgment TC/0168/13 of Constitutional Court, as well as by the administrative measures of the Central Electoral Board aimed at depriving them of their nationality, cannot access,in equal conditions, to the programs and policies implemented by the government in the areas indicated above.

## *C. Structure and methodology*

50. This report is divided into an executive summary and six chapters. The first chapter is an introduction to the report and explains its scope and purpose; the Inter-American Commission's visit to the Dominican Republic; the structure and methodology of the report; the way in which the present report was prepared and approved; and a summary of the Dominican Republic's observations on this report.

51. The second chapter provides general considerations on the historical background leading up to Constitutional Court judgment TC/0168/13 and the situation that followed in its wake; the constitutional and legal norms that apply to the subject of acquisition of nationality; the chief concerns and principal standards related to judgment TC/0168/13 and the right to Dominican nationality of persons of Haitian descent; and finally the IACHR's conclusions and recommendations.

52. The third chapter looks at the situations created by the situation caused by discrimination against Dominicans of Haitian descent in the Dominican Republic. This chapter examines the constitutional and legal provisions that apply in the case of discrimination against Dominicans of Haitian descent; the chief concerns raised by the various forms of discrimination against persons of Haitian descent that can be

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41 National Literacy Plan "Quisqueya Learns With You" Weekly Bulletin no. 126; Presidency of the Dominican Republic, July 22, 2015. Lenesse Louis se alfabetizó (Lenesse Louis is literate).

42 Ministry of Education of the Dominican Republic, 19 December 2014. Extended School Day is taken on as State policy.

43 UN, Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Dominican Republic, CRPD/C/DOM/CO/1M, April 17, 2015, para. 3.

attributed to judgment TC/0163/13 and the principal standards involved; and, finally, the IACHR's conclusions and recommendations.

53. The fourth chapter concerns due process guarantees and judicial protection for Dominicans of Haitian descent who are victims of various forms of discrimination within the Dominican Republic. This chapter examines constitutional and legal provisions on the subject of effective judicial protection and the guarantees of due process; the chief concerns and principal standards regarding the access to justice, judicial protection, and due process guarantees of Dominicans of Haitian descent. The chapter ends with conclusions and recommendations.

54. The fifth chapter examines the intolerance, threats, and incitation to commit violence against those who defend the right to nationality of Dominicans of Haitian descent. This chapter sets out the provisions of the Constitution and the law on the subject of freedom of expression, and the chief concerns and principal standards pertaining to journalists, lawyers, human rights defenders and other public figures who have voiced criticism of judgment TC/0168/13. It ends with conclusions and recommendations.

55. The sixth chapter addresses the various types of discrimination against Haitian immigrants and the right to due process in immigration proceedings. It explains the chief concerns and international standards that apply to the effective enjoyment of human rights by Haitian migrants in the Dominican Republic and ends with conclusions and recommendations.

56. The frame of reference for the conclusions and recommendations will be the instruments of the Inter-American Human Rights System (IAHRS) that the Dominican Republic has ratified,[44] the case law developed by the organs of the Inter-American System, the international *corpus juris* on the subject of human rights, the Constitution of the Dominican Republic, and all other relevant domestic laws.

57. The information presented in this report is based on primary and secondary sources. In the case of primary sources, during its visit to the Dominican Republic and during various public hearings and working meetings held at headquarters, the Commission received information supplied by affected persons and by officials at various levels of government, civil society organizations, human rights defenders, jurists, academics, journalists, and other international organizations working with Dominicans of Haitian descent and migrants in the Dominican Republic. As for secondary sources, for preparation of this report the Commission has used a number of authoritative reports, documents, scholarly publications, and newspaper articles

[44] The Dominican Republic has ratified the following instruments of the Inter-American Human Rights System: the American Convention on Human Rights on January 21, 1978; the Inter-American Convention to Prevent and Punish Torture on December 12, 1986; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, on January 27, 2012; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women – Convention of Belém do Pará – on January 10, 1996; the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, on February 5, 2007; it signed the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights –Protocol of San Salvador- on November 17, 1988.

available to the public, all of which examine various aspects of the situations addressed in this report.

58. As a general rule, the Commission cites all the sources of information it uses when preparing its reports. Nevertheless, as a means to protect the alleged victims and their family members, who supplied information or gave testimony during the visit, their names are not mentioned in order to protect their identity.

59. In its observations to the draft of the present report, the Dominican State indicated that "one especially surprising aspect of the report is the intention of providing a kind of "official history" of the events that have marked the evolution of Dominican history including since its foundation as an independent nation. Every aspect of Dominican history examined by the IACHR and for which it intends to ascribe a meaning or provide an interpretation has led to many considerations on the basis of various approaches, perspectives, and angles, which is what indeed occurs when one reads the output of both Dominican and Haitian historians. There is nothing to prevent the IACHR from referring to relevant historical events, but it does so as if it were dealing with the "true" history, which is a task that does not pertain to its duties or, at least, to its capacities. To quote only one example, paragraph 84 alone, where the IACHR establishes the meaning behind Haitian occupation of the eastern part of the island in 1822 ("put an end to slavery there," without any other consideration or qualification or analysis), would require a wide-ranging discussion involving historians and experts who would be able to provide the necessary perspective and strike the interpretive balance regarding these events."[45]

60. The Dominican State voiced its surprise at how the events of 1937 were established as the "backdrop" for the Haitian migratory situation in the Dominican Republic, without taking into consideration that said events "took place under a brutal dictatorship against which the Dominican people themselves had to fight to free themselves from it, including the heroic feat of a group of persons who decided to assassinate the tyrant to pave the road for liberalization and democratization of the Dominican political system. Regardless of the discussion between historians about the scope of what happened in 1937, it involves events that have deserved and continue to deserve the most complete repudiation by all sectors of the nation. Nevertheless, the continuous mention of these events, oftentimes deliberately magnified to indelibly brand the Dominican people as bearers of the worst character and values, is offensive and unacceptable for both the Dominican Government and the Dominican people themselves."[46] Along this order of ideas, the State added that "oftentimes the way history is interpreted conditions or predisposes how present events are appraised and this is what, to a large extent, has occurred with this report, which is replete with judgments about historical events which, at the least,

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[45] Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded*. December 21, 2015, p. 3. Available at: http://www.oas.org/es/cidh/docs/anual/2015/doc-es/RD.Observaciones.pdf

[46] Ibid., pp. 3-4.

require qualifications, additional information or more rigorous and objective analyses."[47]

61. With regard to the above, the Commission deems it is important to point out that the historical context that is described in the present report was drafted and checked by applying the methodology mentioned in paragraphs 57 and 58, which has also been confirmed by observations made by the Commission over the years on the basis of visits, country reports, and hearings about various human rights situations in the Dominican Republic. In view of the relationship between the historical context and the facts reviewed in the present report, the Commission has deemed it relevant to examine the above-mentioned context. The facts examined in the present report have been established in a context of discrimination against the Haitian population and persons of Haitian descent in the Dominican Republic. The Commission recalls that, in the discharge of its duties of monitoring the human rights situation of the States of the OAS, it has been apprised of various historical, social, and political contexts that have made it possible to pinpoint the alleged incidents as violations of the American Convention in the framework of the specific circumstances where they occurred or that led to them. In addition, in some situations, a review of the historical context has made it possible to characterize the facts as part of a systematic pattern of human rights violations.

62. Likewise, review of the historical context is crucial in the present report, since the Commission considers that the criterion established in judgment TC/0168/13, as well as the measures that have been adopted to enforce this judgment, has been a crucial stage in the process of historical revisionism promoted by Dominican authorities, aimed at consolidating an interpretation that establishes that persons born in the Dominican Republic of Haitian parents with an irregular migratory status do not have the right to Dominican nationality pursuant to application of the *jus soli* principle.

## *D. Preparation, approval and follow-up of the report*

63. The Commission considered and adopted the draft of the present report on October 24, 2015. According to Article 60(a) of its Rules of Procedure, it forwarded the draft of the report to the Dominican State on November 24, 2015 and requested the latter to submit its observations by December 15, 2015. By means of the communication of December 1, 2015, the State requested the Commission to grant an indefinite extension so that it could submit its observations.[48] On December 9, 2015, the Commission informed the State that an extension was granted up to December 21, 2015. Afterwards, by means of the note of December 14, 2015, the Dominican State

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47 Ibid., p. 4.

48 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1337-15: Document on the "Draft Report of the Situation of Human Rights in the Dominican Republic,"* December 1, 2015. [Document in the Commission's files].

requested a 60-day extension.[49] The IACHR granted an extension until December 21, 2015, date in which the Dominican State submitted its observations to the present report.[50] According to its Rules of Procedure, after the Commission had reviewed the State's observations, it proceeded to include those that were deemed relevant into the report.

64. The Inter-American Commission on Human Rights will continue to closely monitor the situation in the Dominican Republic as regards the promotion and protection of the human rights of all persons subject to its jurisdiction, and will pay particular attention to the measures that the State adopts to act on the recommendations made in this report. The IACHR is therefore urging the State, civil society organizations, and human rights defenders to avail themselves of the various mechanisms that the Inter-American System provides so as to be able to continue to deliver any and all information they deem relevant regarding compliance with the Commission's recommendations and the human rights situation in the Dominican Republic.

65. In furtherance of the Commission's functions as set under Article 106 of the Charter of the Organization of American States and Article 41 of the American Convention on Human Rights, the IACHR reiterates its willingness to cooperate with the Dominican State in correcting the serious problems identified that beset Dominican persons of Haitian descent with regard to their rights to nationality, identity, equality and non-discrimination, other rights and related issues, and the problems created by the Constitutional Court's judgment TC/0168/13, with the purpose of guaranteeing that all persons subject to the jurisdiction of the Dominican State are able to effectively enjoy and exercise their human rights.

## *E. Observations of the Dominican Republic on the report*

66. In its observations to the draft of this report, the Dominican State thanked the Inter-American Commission on Human Rights for giving it the opportunity to submit its observations prior to publication of the present report. The State also thanked the IACHR for recognizing, in its report, the policies, standards, and initiatives that the Dominican Government has been promoting to consolidate the protection of human rights of all persons under the State's jurisdiction.[51]

67. At the same time, the Government of the Dominican Republic repeated "its firm commitment to the protection, guarantee, and exercise of human rights of all citizens living in the national territory, including the rights of the descendants born in the country of foreign parents, which is evident in the various actions and efforts taken

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[49] Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1350-15: Document on the "Draft Report of the Situation of Human Rights in the Dominican Republic,"* December 14, 2015. [Document in the Commission's files].

[50] Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15.* December 21, 2015.

[51] Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15.* December 21, 2015, p. 2.

by the Dominican State to appropriately respond to the various problems and challenges that it is tackling in this field."[52] The State also reiterated its commitment to promoting and protecting the human rights "of foreign persons who live in the Dominican Republic under the provisions of the Constitution and laws. In that framework, the National Human Rights Plan has been drafted, a process that is now in its final stage and which was conducted in a participatory, open, and transparent fashion, and in which 700 civil society organizations and government institutions participated."[53]

68. The State also reiterated "its commitment to the full implementation of the National Plan to Regularize Foreigners so that those more than 20,000 beneficiary persons can live and work in the national territory in peace and security with all the benefits granted to them by law."[54] It also contended that it has pledged "to continue and expand its policies of inclusion and participation so that increasingly more persons can be lifted out of poverty and benefit from the material and cultural goods of society. The National Plan to Regularize Foreigners is an example of those policies, but the same can be said for what is being done by the Dominican Government in education, health, housing, infrastructure, social security, among other aspects."[55]

69. The State also informed the Inter-American Commission that "it does not and will not carry out mass expulsions, but that it will continue its policy of repatriating foreigners with an irregular status on the basis of individualized proceedings and on the basis of a treatment that protects the rights and dignity of persons. It also reiterates that it does not and will not carry out repatriations of Dominican nationals as the Dominican State has been wrongly charged of doing."[56]

70. At the same time, the Dominican State indicated that what is not always taken into account is that the Dominican Republic has the peculiar condition of sharing an island with the Hemisphere's poorest country and one of the world's poorest countries as well, which has unfortunately been affected by chronic political and institutional instability and environmental devastation that severely undermine the lives of its inhabitants, all of which entails extraordinary challenges for the Dominican Republic, which are almost never acknowledged or appreciated by relevant sectors of the international community. And despite sensationalist and biased reports that are continuously being published in certain international media by certain international organizations, what is positively noteworthy is the low level of conflict between Dominicans and Haitian migrants or persons of Haitian descent, who live together peacefully and share space without the everyday tensions that are evident in other countries hit by massive floods of migrants."[57] To which it added

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52 Ibid., p. 4.

53 Ibid., p. 17.

54 Ibid. pp. 17-18.

55 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic is forwarded."* December 21, 2015, pp. 15-16.

56 Ibid., p. 17.

57 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the*

that "the Dominican Government reiterates its policy of nondiscrimination and non-exclusion for any kind of reason, by mandate of the Dominican Constitution and it laws, and its firm commitment to continue building a society that provides opportunities for the progress and well-being of all of its inhabitants."[58]

71. Furthermore, the State regretted that the IACHR had not given greater recognition to other decisions and actions taken by Dominican public authorities aimed at continuing to build up human rights in the country. Concretely, the State expressed its surprise at the failure to focus more on the actions taken by the Dominican State in the framework of the National Plan to Regularize Foreigners with an Irregular Status, "as a result of which more than 200,000 persons have been regularized or are in the process of regularizing their migratory status in the country."[59] The State contended that the actions taken with respect to migratory regularization are "very important decisions taken by the State in a regional and global context where few States have shown the will to provide legal channels for regularizing their migrant population."[60]

72. Likewise, the State indicated that "after a collective effort such as this one [with reference to Law 169-14 and the National Plan to Regularize Foreigners], it is important to strike a fair balance about what had been achieved. And the debate should not be allowed to remain exclusively in the hands of the sectors that are the most polarized. Because there are certain organizations and media that seem intent on conjuring up in present-day Dominican Republic the fears of other historical times, which fortunately have already passed. And, on the far opposite end of the spectrum, there are also sectors that call themselves nationalistic but have a very petty vision of the Homeland and would like the Dominican Republic to be like a fortress and exclusionary."[61]

73. The State also regretted that more time had not been provided to review and comment the present report in view of the wide variety of issues, as well as information, considerations, and judgments that would have required consulting many state institutions that are tackling the problems being dealt with in the report.[62]

74. The Commission appreciates the willingness of the Dominican State to submit its comments and provide information in relation to this report. Specific observations to this report will be reflected as appropriate and in the respective sections..

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*Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic is forwarded."* December 21, 2015, p. 16.

58 Ibid., p. 16.

59 Ibid., p. 2.

60 Idem.

61 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic is forwarded."* December 21, 2015, pp. 8-9.

62 Ibid., p. 2.

CHAPTER 2

# THE RIGHT TO NATIONALITY AND JUDGMENT TC/0168/13 OF THE CONSTITUTIONAL COURT

# THE RIGHT TO NATIONALITY AND JUDGMENT TC/0168/13 OF THE CONSTITUTIONAL COURT

## *A. General considerations*

75. Since the 1980s cases that illustrate how difficult it is and the obstacles for children born on Dominican territory of Haitian migrants to be registered and obtain documentation proving their Dominican nationality, have been documented. At first, officials at the Dominican civil registry offices refused to register the births of children born on Dominican territory of Haitian migrants on the pretext of the parents' irregular migratory situation. The argument the authorities routinely used was that under the Constitution, children born of foreigners in transit did not qualify for Dominican nationality based on the principle of jus soli.

76. The practice of refusing to register children of Haitian migrants with an irregular status in the Civil Registry Office was based on criteria of racial discrimination equating in transit foreigners with migrants with an irregular status and the latter with Haitians. In the Dominican Republic, Haitians are identified on the basis of ethnic and phenotypical characteristics. In practice, the decision as to which children would be registered and granted Dominican nationality and, which children would not, by virtue of the principle of jus soli was often based on the parents' national origin or migratory situation, skin color (especially those with a dark-colored skin), command of the Spanish language, or surname[63]. Since then, this practice has gradually expanded to the point that it has now been adopted into various measures, laws, and judicial decisions taken by the other branches of the Dominican State. Within this context, the Constitutional Court's judgment TC/0168/13 of September 23, 2013, represented one more stage in a denationalization process underway in the Dominican Republic, in order to "protect its national identity" by arbitrarily and retroactively stripping Dominicans born to parents in an irregular migratory situation of their right to Dominican nationality, particularly in the case of those of Haitian descent.[64]

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63 See, Van WAAS, Laura, *Nationality Matters: Statelessness under international law*. *Intersentia*: Antwerp - Oxford – Portland, 2008, p. 100.

64 IACHR, *Preliminary observations from the IACHR's visit to the Dominican Republic: December 2 to 6, 2013*. Santo Domingo, December 6, 2013, pp. 6-11.

77. Through judgment TC/0168/13, the Constitutional Court retroactively changed the interpretation of "foreigners in transit" in the constitutions in effect from 1929 to 2010, which established that category as a restriction to the acquisition of the right to nationality by jus soli. The court stated that "foreigners in transit" refers to those individuals who do not have legal domicile in the Dominican Republic because they lack a residency permit. The Court applied this interpretation retroactively, arbitrarily depriving tens of thousands of people, mostly descendants of Haitian migrants, of their Dominican nationality. As an interpretation of general scope, the ruling expanded its effects on both those whose births were registered in the Dominican Civil Registry, as those whose births were not registered. These people usually have strong family, social, and cultural ties in the Dominican Republic, as this is their country of birth and upbringing. Many are children or grandchildren of people who were also born in the Dominican Republic; for these families the Dominican Republic has been home for generations.

78. The Commission recognizes that this situation, which it had an opportunity to probe at greater length during the on-site visit, is part of a historical problem that long precedes the current situation. It is a very complex problem with deeply embedded roots. The history leading up to judgment TC/0168/13 should therefore be examined, since in the Commission's view that judgment was the product of structural racial discrimination against persons of Haitian origin and descent in the Dominican Republic.

79. Since the early 1990s, the Inter-American Commission has monitored the problems that Dominicans of Haitian descent experience as a result of being stripped of their nationality, despite the fact that under the Constitution and the laws in force at the time of their birth, they were entitled to Dominican nationality by virtue of the principle of *jus soli*.[65] Since then, the Commission has observed how various Dominican authorities have promoted a process of denationalization against Dominicans of Haitian descent.

80. Over the course of the years, a number of practices on the part of private citizens, as well as practices, laws, policies and judicial decisions advanced by various State authorities, generated and consolidated a situation of structural discrimination against Haitian migrants that has become so deeply engrained that it now also applies to their descendants born in the Dominican Republic. The Commission observes that the victims of the various forms of discrimination against persons of Haitian descent in the Dominican Republic can be classified into two main groups: a) Haitian migrants, and b) descendants of Haitian migrants born in the Dominican Republic.

81. While the problems besetting these two groups can be traced to the same source, specifically discrimination against persons of Haitian origin and descent, the

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[65] IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, p. 271.

problems are different and should be treated separately and independently, with responses tailored to suit each problem. The Inter-American Commission recognizes that issues related to nationality and immigration are two of the most complex and controversial topic in any society.

82. Over the years, the various forms of discrimination against these two groups have materialized in affairs of state and in relations between private parties, through various measures or the lack thereof. Despite integrating various aspects of their lives into Dominican society, having established their principal family, social, and cultural ties there, Dominicans of Haitian descent nonetheless experience a generalized prejudice that, in the Dominican Republic, is more pervasive against Haitians. For the sake of clarity, it must be emphasized that this is not to say that all Dominican society discriminates against Haitians and persons of Haitian descent. Indeed, aware of this historic problem, a number of actors in Dominican society have worked to promote equal protection without discrimination for these persons for decades.

83. Since the report on its 1991 visit, the Commission observed that children did not have Dominican identification documents because their parents did not have immigration papers. Whether because the hospital officials refused to provide a record of live birth or because civil registry officers refused to register the children and provide them a birth certificate, ultimately the attitude of the State authorities made it virtually impossible for Dominicans of Haitian descent to obtain their Dominican identification documents. The pretext used as far back as 1991 was that the parents were only in possession of a document identifying them as temporary workers, which meant that they were classified as foreigners in transit, despite the fact that they had lived in the Dominican Republic for years.[66] Since that time, the IACHR has maintained that:

> (…) the prevailing law in the Dominican Republic is that of jus soli, and the exceptions established by the Dominican Constitution in its Article 11 refer to "the legitimate children of foreign residents in the country as diplomatic representatives or individuals in transit in the country." With regard to the second exception, we cannot say that the persons who have been expelled were "in transit," since many of them have lived 20, 30, and even 40 years in the Dominican Republic.[67]

84. In 1999, when it discussed this situation again in its Report on the Situation of Human Rights in the Dominican Republic, the Commission observed that one of the main problems for Haitian immigrants in the Dominican Republic was their permanently irregular migratory status. It added that "a large number of Haitians have lived in the Dominican Republic for 20, 30 or more years, without ever having legal status. Many countries grant citizenship after lengthy periods of residency,

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66 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OAS/Ser.L/V/II.81 Doc. 6 rev1, February 14th, 1992 p. 292.

67 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OAS/Ser.L/V/II.81 Doc. 6 rev1, February 14th, 1992 p. 292.

while other countries recognize at least permanent resident status, yet this is not the case of the Haitians in the Dominican Republic."[68] Elaborating, the IACHR wrote that:

> some 500,000 undocumented Haitian workers reside in the Dominican Republic. In several cases these persons have lived in the Dominican Republic for 20 to 40 years, and many were born there. Most of them confront permanent illegality, which is passed on to their children, who cannot obtain Dominican nationality, because according to the restrictive interpretation by the Dominican authorities of Article 11 of the Constitution, they are the children of "foreigners in transit." It is not possible to consider persons who have resided for several years in a country in which they have developed innumerable contacts of all types to be in transit. Consequently, numerous children of Haitian-born parents are denied fundamental rights, such as the right to nationality of the country of birth, access to health care, and access to education.[69]

85. Because so many Haitians were in an irregular migratory situation – one, in many cases, fostered by the actions and omissions of Dominican and Haitian authorities, as well as private business – Civil Registry officials, at their discretion, began to refuse to issue identification documents to children born in the Dominican Republic of Haitian migrants in an irregular migratory situation. Thus, the effects of the parents' irregular migratory status began to extend to their children, particularly when it came to recognition of Dominican nationality, even though the children were born in the Dominican Republic.

86. When it examined how this situation evolved over the years, the Commission was able to discern how the practice that Civil Registry officials initially used to refuse to register the birth of children born in the Dominican Republic of Haitian immigrants on the grounds of the latter's irregular migratory situation, gradually spread to the point of being assimilated into different measures, laws, and decisions introduced by the other branches of the Dominican State. The Inter-American Commission distinguishes the following stages in the denationalization of Dominicans of Haitian descent:

> 1. The Civil Registry officers' *de facto* refusal to register the birth of the children of Haitians in an irregular migratory situation, at least as far back as the 1980s.
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> 2. With enactment of the 2004 Immigration Act, the adoption of stricter nationality criteria that put any non-resident, including temporary workers, in the same category as a *person in transit* so that their foreign nationality would pass down to their children.

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[68] IACHR, *Report on the situation of human rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, par. 350.

[69] IACHR, *Report on the situation of human rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, par. 363.

3. The 2005 ruling of the Supreme Court of Justice by which children of persons in an irregular migratory situation were prevented from acquiring Dominican nationality based on the principle of *jus soli* recognized in the Dominican Constitution.

4. Implementation of administrative procedures introduced in 2007 by the Central Electoral Board (JCE) to suspend or retain birth certificates of persons whose parents did not have a Dominican residency permit.

5. The formal prohibition in the 2010 Constitution banning nationality in the case of the children of persons whose immigration status was irregular.

6. Judgment TC/0168/13 of the Constitutional Court, by which the Constitutional Court retroactively changed the interpretation regarding the acquisition of nationality in accordance with the principle of *jus soli* in the constitutions in effect from 1929 to 2010, by stating that people born in Dominican territory children of migrants in an irregular migratory situation were not entitled to Dominican nationality.

7. Partially, Law 169-14, by subscribing the interpretation of the Constitutional Court in the sense that the people affected were not entitled to Dominican nationality, but that by legal foresight of Dominican migration policy and the institutional and bureaucratic deficiencies Civil Registry, having been registered tens of thousands of these people in the registry and granting Dominican identity documents had made them assume that they were Dominican nationals. In turn, the mechanism provided by the law for persons born in the Dominican Republic of parents in irregular migratory situation and who were never registered in the Civil Registry, that is, the persons included in Group B, were to be registered in the books foreign births, reaffirming in that sense the measures that led to the denationalization[70].

87. Since the early 1990s, various reports and pronouncements of the Inter-American Commission,[71] national[72] and international[73] civil society organizations and other

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[70] *Dominican Republic. Nota MP-RD-OEA 0742-14: Documento en relación a las Observaciones Preliminares de la visita de la IACHR a la Dominican Republic, presentadas al Consejo Permanente el 19 de febrero de 2014 [Note MP-RD-OEA 0742-14: Document concerning the Preliminary Observations from the IACHR's Visit to the Dominican Republic], July 22, 2014.* p. 5.

[71] IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OAS/Ser.L/V/II.81 Doc. 6 rev1, February 14th, 1992; IACHR, *Report on the situation of human rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999; Dominican Republic, *Note MP-RD-OEA 0742-14: Document concerning the Preliminary Observations from the IACHR's Visit to the Dominican Republic],* July 22, 2014. p. 5.

[72] CLADEM-Dominican Republic. *Informe Alternativo Cumplimiento de la Convención de los Derechos de Niños y Niñas en la República Dominicana*. Santo Domingo, 2007; SJRM-Centro Bonó. *Derechos Vulnerados. Dominicanos/as Afectados por las Disposiciones de la JCE*. Santo Domingo, 2011; Bridget Wooding and Richard Moseley-Williams, *Inmigrantes haitianos y dominicanos de ascendencia haitiana en la Dominican Republic*. Santo Domingo, Dominican Republic: International Cooperation for Development and the Jesuit Refugee and Migrant Service, 2004; *Movimiento de Mujeres Domínico-Haitianas (MUDHA)* and the *Comité Dominicano de los Derechos Humanos*; *Coalición Nacional para los Derechos Haitianos*, "Beyond the Bateyes: Haitian Immigrants in the Dominican Republic, 1996; Americas Watch, National Coalition for Haitian Refugees. 1991. Half Measures, Reform, Forced Labour and the Dominican Sugar Industry. Washington, United States.

international bodies, such as the Committee on the Elimination of Racial Discrimination,[74] the Committee on the Rights of the Child,[75] the Office of the United Nations High Commissioner for Refugees,[76] the Office of the United Nations High Commissioner for Human Rights and others,[77] the case reports produced by the Inter-American Commission[78] and the judgments of the Inter-American Court[79] have gradually revealed the multiple practices and measures being employed by the Dominican authorities to deprive Dominican nationality from persons born in the Dominican Republic of Haitian parents in an irregular migratory situation.

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73 See, Human Rights Watch, *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*. Volume 14, Number 1 (B). April 2002; Amnesty International, Dominican Republic. *A life in transit - The plight of Haitian migrants and Dominicans of Haitian descent,* AI Index: AMR 27/001/2007, 21 March 2007; Amnesty International, *"Without any papers I'm no one": Stateless persons in the Dominican Republic*, 2015. Open Society Institute. *Dominicans of Haitian Descent and the Compromised Right to Nationality*. Report to the Inter-American Commission on Human Rights on the occasion of its 140th session. 2010; Lawyers Committee for Human Rights, A *Childhood Abducted: Children Cutting Sugar Cane in the Dominican Republic*, New York, May 1991.; World Bank, *Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000*), volume I, 2001; Marco Scuriatti, *Background Papers – A review of the Haitian Immigrant Population in the Dominican Republic*, in: World Bank, Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000), volume II, 2001; International Human Rights Law Clinic, Boalt Hall School of Law, University of California at Berkeley, *Unwelcome Guests: a study of expulsions of Haitians and Dominicans of Haitian descent from the Dominican Republic to Haiti,* 2002.

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

75 See, UN Committee on the Rights of the Child. 2001. *Concluding Observations. Dominican Republic*. Doc. CRC/C/15/Add.150, February 21, 2001.

76 UNHCR, UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent, October 1, 2013.

77 See, UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008; Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante", presented to the Commission on Human Rights at the 62nd session, March 27, 2006, UN Doc. E/CN.4/2006/73/Add.1; Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2000/48." March 9, 2001, to the Commission on Human Rights at the 57th session, DOC. UN. E/CN.4/2001/83; Report on the Technical Assistance Mission to the Dominican Republic of the Committee on Economic, Social and Cultural Rights. Dominican Republic, 12/12/97, UN Doc. E/C.12/1/Add.16/1997; United Nations Human Rights Committee. Third and Fourth Periodic Reports: Dominican Republic, 27/04/2000, CCPR/C/DOM/99/3, State Party Report; UN Human Rights Committee. 2001. *Concluding Observations Dominican Republic*. Doc. CCPR/CO/71/DOM, April 26; National Human Development Report of the Dominican Republic, Human Development Office of the United Nations Development Programme, 2005

78 See, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic,* July 11, 2003; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic).* February 11, 2011; IACHR, Merits Report No. 64/12, Case 12,271, *Benito Tide Méndez et al.* (Dominican Republic). March 29, 2012.

79 See I/A Court H.R., *Case of the Yean and Bosico Girls v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130; I/A Court H.R. *Case of Nadege Dorzema et al. v. Dominican Republic.* Merits Reparations and Costs. Judgment of October 24, 2012. Series C No. 251; I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282; I/A Court H.R. Matter of Haitians and Dominicans of Haitian-origin regarding Dominican Republic. Orders of the Inter-American Court of Human Rights dated: August 7, 2000; August 18, 2000; September 14, 2000; November 12, 2000; May 26, 2001; February 2, 2006; July 8, 2009 and December 1, 2011.

88. These practices have also been exposed and disallowed in many judgments delivered by Dominican judges, who have recognized that these persons are entitled to Dominican nationality and have so ordered the JCE to give them their identification papers.[80] For example, the Civil Chamber of the National District Court of Appeals wrote the following:

> An alien's irregular immigration status cannot be likened to the in-transit concept, as these are two entirely different conditions. Moreover, neither the regulations for enforcement of the Immigration Act, nor the 1999 report prepared by the [Inter-American] Commission [on Human Rights on the Situation of Human Rights in Haiti] make legal status a requirement for the right to nationality in one's place of birth […] More to the point, parents seeking to register their children cannot be deemed to be "in transit" when the documents in the case file show that they have been living in the country for years […] Furthermore, while it is true that the minor's parents are living in the country in an irregular migratory situation, it is also true that their immigration status cannot adversely affect their minor offspring, who can claim Dominican nationality just by demonstrating that they were born on Dominican soil and that their parents are not performing any diplomatic function in the country and are not "in transit."[81]

89. For its part, the Civil and Commercial Chamber of the Court of First Instance of San Pedro de Macorís has written that:

> The Central Electoral Board has violated such basic rights as the right to human dignity, the right to equality before the law and non-discrimination, the right to nationality, the right to identity, the right to recognition as a person before the law, the right to development of one's personality, the rights to citizenship, work and education.
>
> […]
>
> In response to the hackneyed argument (which the defendant in this case is once again invoking) to the effect that children born of parents in an irregular migratory situation cannot be considered Dominicans "because an illegal action cannot have a legal effect," then the person making this argument has to be asked whether "a child born of a woman in prison is also a prisoner, or if the child of a fugitive is born a fugitive from justice and the law."[82]

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80 See, *inter alia,* Dominican Republic, Civil Chamber of the Court of Appeals of the National District, Ruling No. 453 of October 16, 2003; Third Courtroom of the Civil and Commercial Chamber of the Court of First Instance of the National District, Ruling No. 0366-08; Civil, Commercial and Labour Chamber of the Court of First Instance of the Monte Plata Judicial District, Ruling No. 06-2011; Court of First Instance of the Civil Chamber of San Pedro de Macorís, Civil Judgment No. 10-11; Civil and Commercial Chamber of the Court of First Instance of San Pedro de Macorís, Civil Judgment No. 259-12; Civil and Commercial Chamber of the Court of First Instance of the La Romana Judicial District, Ruling No. 226/2012, Magistrate Argenis García Del Rosario.

81 Dominican Republic, Civil Chamber of the Court of Appeals of the National District, Ruling No. 453 of October 16, 2003. Judge Samuel Arias Arseno.

82 Dominican Republic, Civil and Commercial Chamber of the Court of First Instance of San Pedro de Macorís, Civil Judgment No. 259-12. Judge Luis Alberto Adames Mejía.

90. Along these lines, as it has contended in the past, the Commission deems it is necessary to reiterate that any legal practice, norm, or interpretation that supports refusal of the registration of birth and the issuance of birth certificates for children born in the Dominican Republic of Haitian migrant workers and who met the requirements for securing Dominican nationality constitutes an arbitrary deprivation of nationality and therefore a violation of Article 20.3 of the American Convention on Human Rights.[83]

91. The Commission appreciates the fact that in early October 2013, within days of Constitutional Court judgment TC/0168/13 being handed down, President Danilo Medina held a meeting in the Palacio *Nacional* with Dominicans of Haitian descent and civil society organizations dedicated to the defense of this group's basic human rights, to learn firsthand how the decision affected them, and to find a social and humane solution to the problem it created. In his remarks about the meeting, President Medina stated that "there were young people present who were pursuing their studies, walking 18 kilometers every day; when they were about to receive their high school diploma, it turned out that they had no identification document and therefore could not get their degree." He went on to say that "I said I was sorry –I didn't apologize- for everything they experienced in all this time and that I was going to launch a process of consultations to ascertain what we could do in coordination with the organs that have some authority vis-à-vis the measures that have been taken."[84]

## 1. Historical background of Haitian migration to the Dominican Republic

92. As a preliminary consideration, the Commission believes it is important to recall that the States of this hemisphere emerged after declaring their independence from European colonial powers.[85] One of the main characteristics of European colonialism in the Americas and its legacy was the creation of race-based colonial societies, where the colonists were clearly differentiated from the indigenous and Afro-descendant populations. One of the main consequences of colonialism was the multiple forms of discrimination and racism to which indigenous peoples and Afro-descendants have been subjected across the length and breadth of the American hemisphere. Slavery only served to reinforce forms of discrimination and racism against Afro-descendants. Slavery as both the foundation of many colonial economies for centuries in the Caribbean and also the root (not merely

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83 See: IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, 1999; see also; I/A Court H.R., *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 277, 293, 298, and 299.

84 See, *Hoy*, *Medina confirma pidió "excusas" a descendientes haitianos*. October 9, 2013. See, also, *Acento, Danilo buscaría solución a caso de dominicanos de ascendencia haitiana*. October 7, 2013.

85 The Commission has held that discrimination, racism, xenophobia and intolerance in the Americas have their genesis in racial and cultural preconceptions brought by European conquerors and nurtured for centuries of colonization. See IACHR, Second Progress Report of the Special Rapporteur on Migrant Workers and Their Families in the Hemisphere. 2001, para. 81.

reinforcement) of discrimination against African descendants. At the same time, slavery, in addition to sustaining the colonial economies for centuries in the Americas and Caribbean, was also at the source of various forms of discrimination and racism against persons of African descent. Attitudes of intolerance and racial discrimination were strengthened during the process of independence in the early nineteenth century, when the new authorities continued exclusion policies and deliberately stigmatized and subjected indigenous and persons of African descent.[86]

93. Despite the deep historical roots of discrimination and racism against Afro-descendants and indigenous peoples in the Americas, these problems and their consequences and causes have been largely ignored, buried, and even denied in the majority of the States of the Americas. A number of factors have conspired to make discrimination and racism an invisible phenomenon in the Americas, one being the way in which racism became engrained, both historically and culturally, from the time of slavery and colonialism up to the present day.[87] In the Commission's view, while many of the manifestations of discrimination and racism that Afro-descendants and indigenous peoples still encounter in the American hemisphere can be traced to the above-mentioned historical facts, they are also attributable to the fact that they were never acknowledged or addressed by the States that emerged from the independence movement and have to a large extent been rendered invisible until recent years. As the Commission has observed, the Afro-descendant population in the Americas has endured a history of neglect, exclusion, and social and economic disadvantage that impairs the enjoyment of their fundamental rights.[88]

94. Haiti gained its independence from France in 1804, thus becoming the second nation of the Americas to become independent, after the United State of America in 1776. The revolution that took place between 1791 and 1804 was aimed at abolishing slavery and achieved it. In addition to securing Haiti's Independence this revolutionary process was the first and only one by black slaves. As a result of the above, Haiti underwent a period of international isolation promoted by the European powers, especially France, Great Britain, and the United States, which identified the existence of a nation governed by former slaves as a threat to its slave systems. These facts are closely related to the situation of disadvantage which has been affecting the Haitian people ever since.

95. In addition to the above, historically, the bilateral ties between the Dominican Republic and Haiti have been characterized by many tensions between both States. After winning its independence from France, Haiti invaded the Dominican Republic in 1822, for the purpose of putting an end to slavery there. For the ensuing 22 years,

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86 See IACHR, Second Progress Report of the Special Rapporteur on Migrant Workers and Their Families in the Hemisphere. 2001, para. 81.

87 United Nations Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, March 18, 2008, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, p. 2..

88 IACHR, *The situation of people of African descent in the Americas,* OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 21

Haiti governed the eastern part of the island.[89] As the occupation continued and the expectations of the population were not being met, a separatist movement was established and materialized in 1844. Haiti's occupation of the Dominican Republic still has a major impact on the Dominican collective imagination.[90] Oftentimes, the arrival of migrants from Haiti to the Dominican Republic is called the "peaceful invasion" and has contributed to having various spheres of Dominican society promoting both anti-Haitian sentiments and the need to take measures to defend Dominican national identity and sovereignty.[91]

96. The Dominican Republic has historically been the destination of migrants coming from Haiti, a neighboring country that has for decades been in the grips of political instability and poverty and plagued by natural disasters. The collapse of Haiti's economy, its geographic proximity to the Dominican Republic and porous, shared border, made it easy for Haitians to move into the border provinces and central Cibao in the early 1900s.[92] During those years, the sugar industry became a permanent source of employment for Haitian migrant workers, a trend that continued until the 1980s, when the Dominican sugar industry began to decline from its peak.

97. During the United States' military occupation of the Dominican Republic (1916-1924) and Haiti (1915-1934), the United States government organized and fostered the temporary migration of Haitian farm workers into the Dominican Republic. It did this by establishing a regulated contracting system[93] in 1919 for recruiting Haitian

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89 VONK, Olivier W., *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*. Brill I Nijhoff, 2014, p. 195.

90 Regarding this, Mr. Roberto Rosario, Chair of the Central Electoral Board of the Dominican Republic, in his address delivered to the OAS Permanent Council on October 29, 2013, stated that: "The Independence of the Dominican Republic is the outcome of a battle for the freedom of the Dominican Republic against the occupation and invasion of the Haitian State." See: Permanent Council of the OAS, *Minutes of the regular session of October 29, 2013*. OEA/Ser.G CP/ACTA 1944/13. Adopted at the session of September 24, 2014, p. 31.

91 See articles by Vinicio Castillo, Pantaleón Castillo et al. CDN, *Afirman hay una invasión pacífica de haitianos en el país* [They assert that there is a peaceful invasion of Haitians in the country], January 26, 2015; Listín Diario (Vinicio A. Castillo Semán), *¿Una "natural invasión"?* [A "natural invasion"?], January 5, 2015; *Vinicio Castillo advierte RD debe crear mecanismos para detener invasión pacífica y masiva haitiana* [Vinicio Castilla advises DR it must establish mechanisms to stop the peaceful massive invasion of Haitians], June 15, 2014; Acento, *Ministro de Defensa: "Plantear un muro completo en la frontera eso es utópico"* [Minister of Defense: "Installing a complete wall on the border is utopic"], June 10, 2014; Acento, *Vinchito propone construir un muro para evitar el "peligro" de los haitianos* [Vinchito proposes building a wall to avoid the "danger" of Haitians], June 10, 2014.

92 CASTOR, Susy (Ed.), *Migración y Relaciones Internacionales: El Caso Haitiano-Dominicano*. Publisher UASD: Santo Domingo, 1987, pp. 72-73.

93 Introduced by the United States' military occupation authorities by Executive Order No. 259 concerning the farm workers brought in by the sugar companies, Official Gazette No. 2989 of February 18, 1919, and Executive Order No. 372 concerning the immigration of farm workers, Official Gazette No. 3075, December 16, 1919.

farm workers to do the cutting and clearing during the sugar cane harvest.[94] This was how the sector's demand for cheap labor was satisfied.[95]

98. The migration of Haitian workers was a decisive factor in lowering production costs by hiring cheap labor, thereby producing profits for the sugar cane industry. From the start, the use of Haitian labor to work on the sugar cane plantations "was driven by the economic advantages of using foreign laborers; their language barriers, the nationality-based discrimination they experienced, and their reliance on the employer for such basic services as housing, made them easy prey for intensive labor exploitation." [96]

99. The demand for foreign labor to work the sugar cane plantations was a principal reason why Haitian migrants became the largest foreign-born community in the Dominican Republic.[97] The majority of these migrants were taken to live in "*bateyes*", the term used to refer to the settlements located on sugar cane plantations. This population includes persons born in Haiti who migrated to the Dominican Republic and as many as three or four generations of descendants born on Dominican soil.[98] At the time of the 1935 census, there were an estimated 52,657 Haitians in the Dominican Republic; 11,586 worked and lived outside the sugar industry.[99] At that time, Haitian workers were hired by the mills through direct talks with the Haitian government. For its part, the Dominican Republic issued immigration permits and required that the workers return to Haiti once the harvest was over.

100. Between September 28 and October 8, 1937, the dictator Rafael Leónidas Trujillo ordered a massacre in which thousands of Haitians died. The scene of the massacre was mainly the border provinces, such that the event is known as the "Dominicanization of the border." Trujillo gave orders to track down and kill any Haitian on Dominican territory; the only ones spared with those working at U.S.-owned sugar mills. The massacre was clearly racist and anti-Haitian. The soldiers were ordered to kill anyone who did not have his or her identification papers or who was assumed to be Haitian because of his or her physical appearance or command of the Spanish language.[100]

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94 See, *inter alia,* Veras, Ramón Antonio, *Contratos y reclutamientos de braceros: entradas clandestinas o repatriación*. 1992, p. 110; OBMICA (Natalia Riveros), *Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación*. Dominican Republic, 2014, p. 18.

95 See, Coria M., Elba Y., "*Estudio Migratorio de Dominican Republic*", at *Instituto Centroamericano de Estudios Sociales y Desarrollo* (INCEDES) and *Sin Fronteras IAP* (Coord.), *Estudio Comparativo de la Legislación y Políticas Migratorias en Centroamérica, México y Dominican Republic*. *Sin Fronteras IAP*: Mexico, 2011, p. 560.

96 OBMICA (Natalia Riveros), p. 19.

97 According to the First Population Census, conducted in 1920, there were an estimated 47,780 foreign nationals in the Dominican Republic, who represented some 3% of the total population. Of those foreign nationals, an estimated 28,258 were Haitians, who accounted for 59.1% of the foreign-born population in the Dominican Republic. Some 30% of this population lived in the sugar *bateyes*.

98 OBMICA (Natalia Riveros), *Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación*. Dominican Republic, 2014, p. 15.

99 OBMICA (Natalia Riveros), p. 23.

100 There are no official figures on the victims of the massacre, since the killings began in secret and was not reported by the media. However, estimates range from 1,000 to 30,000 victims. According to Dominican historian Frank Moya Pons, the victims numbered 18,000; Joaquín Balaguer, former president of the

101. The massacre led to a major decline in the number of Haitian migrants, as reflected in the 1938 census which listed 18,500 Haitians living in the country. The scarcity of Haitian labor on the sugar cane plantations that the massacre caused meant that starting in 1952, under the Trujillo dictatorship, there would be a push for binational agreements between the Dominican Republic and Haiti for mass recruitment of Haitian farm workers for the Dominican sugar industry. These agreements were signed in 1952,[101] 1959[102] and 1966[103] and again triggered an increase in the Haitian population in the *bateyes*. Under these agreements, a worker was encouraged to immigrate with his wife and any of his children who were under the age of 10.

102. Many of the families that migrated under these agreements remained in the country permanently and had children born in Dominican territory. In the case of the young farm workers, their youth, unmarried status and limited employment opportunities in Haiti were decisive factors in their decision to remain and establish families in the Dominican Republic. The sugar cane industries benefited from a permanent Haitian workforce as it ensured that they would have workers for certain fieldwork that needed to be done at the end of a harvest and for the harvests that followed.[104]

103. As a result of the shortage of Haitian workers in the sugar industry, many of the Haitians in an irregular migratory situation who were stopped by Dominican military were sent directly to the sugar cane plantations and were forced to live in the *bateyes*, which were the only places they were allowed to be and where they were safe from deportation for the duration of the harvest. [105]

104. Many of these migrant workers were brought to the Dominican Republic legally, under agreements that the State Sugar Council (CEA)[106] and the Dominican State concluded with Haiti between 1972 and 1986.[107] Other migrant workers entered

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Dominican Republic, put the figure at 17,000. See, *inter alia,* MOYA PONS, Frank, *Historia de la República Dominicana, Volume 2*. Editorial CSIC, January 1, 2010, pp. 453 *et seq.*; WOODING, Bridget and MOSELEY-WILLIAMS, Richard, *Inmigrantes Haitianos y Dominicanos de Ascendencia Haitiana en la Dominican Republic*. Jesuit Refugee and Migrant Service. Santo Domingo, Dominican Republic, 2004, pp. 19-22.

101 Dominican Republic, National Congress, Resolution No. 3200 approving the agreement signed by the Dominican Republic and the Republic of Haiti on the subject of Haitian Temporary Laborers, Official Gazette No. 7391 of February 23, 1952.

102 Dominican Republic, National Congress, Resolution No. 5279 approving the agreement signed on hiring of temporary Haitian laborers in Haiti and their entrance into the Dominican Republic and its additional instrument, Official Gazette No. 8435 of December 29, 1959.

103 Dominican Republic, National Congress, Resolution No. 83 approving the agreement signed on hiring of temporary Haitian laborers in Haiti, Official Gazette No. 9018 of December 31, 1966.

104 OBMICA (Natalia Riveros), p. 25.

105 OBMICA (Natalia Riveros), p. 25.

106 The Sugar Corporation of the Dominican Republic was dissolved by Law No. 7 of 1966 and the State Sugar Council was created, in charge of directing, coordinating, auditing, and inspecting all sugar mills in the Dominican Republic.

107 The one-year and two-year contracts that the CEA and the Haitian government entered into were not submitted to the Dominican Congress for approval. See ILO, *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance of certain international labor Conventions by the Dominican Republic and Haiti with respect to the employment of*

irregularly, having been recruited by "*buscones*"[108] (street agents or "seekers") who –sponsored by the CEA and with the cooperation of the military and immigration authorities- illegally brought in Haitian workers to work in the sugar industry.[109]

105. As an additional factor, historically the Dominican State failed to supply many migrant workers with the proper documentation (immigration permits and alien identification cards), the result being that these individuals, who were regularly working for the State, had only a "*ficha*" (employee card). The CEA issued these cards, which in practice served unofficially as the migrant workers' identification documents during their stay in the Dominican Republic.

106. The difficulties that the Haitian migrant workers had with the Spanish language – many spoke Creole and/or French; the discrimination they encountered by virtue of their nationality and race; and their reliance on their employers for basic services like housing, health and education; meant that Haitian migrant workers were the victims of intensive labor exploitation and deplorable living conditions in the *bateyes*. Haitian migrant workers accepted these exploitative working conditions on the sugar plantations and the poor living conditions in the *bateyes* since these jobs were often their main hope of survival. Lack of better employment conditions in their country of origin, these workers depended on the jobs they found in the Dominican Republic.[110]

107. In fact, the creation of new nuclear families on Dominican territory was the natural consequence of the flow of Haitian migrants into the Dominican Republic in the XIX and XX centuries. In the period between the 1929 Constitution and the 2002 Constitution, the Dominican State consistently recognized all persons born in its territory as Dominican citizens; in the case of the children of migrants, citizenship was only denied to those born of migrants in transit in the Dominican Republic. Thus, as a result of the influx of migrants workers in the sugar industry, most of whom were Haitian-born, new generations of Dominican families sprang from foreign-born parents.

## 2. The roots of racial discrimination in the Dominican Republic

108. The Commission observes that while colonialism and the struggle for Dominican independence were factors that contributed to racial discrimination in the Dominican Republic, it is important to highlight that between 1930 and 1961, the

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*Haitian workers on the sugar plantations of the Dominican Republic*
(Vol. LXVI, 1983, Series B, Special Supplement); and OBMICA (Natalia Riveros), p. 41.

108 *Buscones* is the term used in the Dominican Republic to refer to those persons who offer their services to perform various functions swiftly, either legally or illegally –often by bribing State agents- in exchange for economic compensation. *Buscones* operate in a number of areas. For purposes of this report, these could include persons assigned to: a) recruit and transport irregular Haitian migrants into the Dominican Republic, b) obtain identification papers at the registry offices, or c) secure the release of some migrants in immigration detention.

109 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, pp. 280 and 287.

110 OBMICA (Natalia Riveros), p. 19.

country was ruled by the dictator Rafael Leónidas Trujillo who, by promoting a European and Hispanic identity, made racism an official policy, which he did by fueling anti-Haitian sentiments and encouraging violence against Haitians.[111]

109. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent Expert on minority issues have observed that:

> Anti-Haitian feelings can already be traced back to the Santo Domingo revolt of August 1791, which profoundly shook the slavery system, and the independence of Haiti from France in 1804, which created an extreme and enduring fear and the cultural and political demonization of Haitians in the whole hemisphere. Following Haitian independence, the Spanish ruling elites in Santo Domingo continued to foster the Hispanic identity that had been promoted against the western part of the island by presenting the colony as white, Catholic and of Hispanic roots vis-à-vis Haiti, presented as black, voodoo practitioners and with an African culture with French influence.[112]

110. The anti-Haitian sentiments and existing tension over the flow of Haitian migrants into the Dominican Republic can be traced to many historical, political, social and cultural factors and components. Dominican historian Frank Moya Pons writes that starting in 1930, during the Trujillo dictatorship, the State was less interested in highlighting any political differences with Haiti and more interested in emphasizing the racial differences between the two countries. He explains that during the Trujillo Era, the State made racism a distinctive feature of its self-definition.[113] Other historians and sociologists point out that other intellectuals and politicians in the Trujillo government, like Joaquín Balaguer[114] and Manuel Arturo Peña Batlle, would use anti-Haitianism and a Hispanic notion of the Dominican heritage and self as an official narrative in the mid twentieth century, a way to distinguish Dominicans from Haitians on the basis of racial, biological and cultural attributes.

111. Since 1929, the Constitutions of the Dominican Republic have, with very few exceptions, consistently conferred nationality on the basis of the principle of *jus soli*. Despite this fact, the official discourse surrounding the acquisition of nationality on the basis of *jus soli,* especially in the case of children born of Haitians in an irregular

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111 UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, par. 91; SAGAS, Ernesto. "A Case of Mistaken Identity: Antihaitianismo in Dominican Culture". Webster University. 1993.

112 UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, par. 91.

113 See, *inter alia,* MOYA PONS, Frank, *Antihaitianismo histórico y antihaitianismo de Estado. Lecturas: historia y memoria*. *Diario Libre*, December 5, 2009; MOYA PONS, Frank, *Dominican national identity and return migration*. University of Florida at Gainesville, Center for Latin American Studies, Occasional Paper 1, 1981; MOYA PONS, Frank, *The Dominican Republic: A National History*. Hispaniola Books, New York, 1995.

114 Joaquín Balaguer's theories and arguments are laid out in his books *La realidad Dominicana* (1943) and *La isla al revés*: *Haití y el destino dominicano* (1983).

migratory situation, has been shaped by the historical construct of the national identity and anti-Haitian rhetoric, which has resulted in laws and court rulings that assimilated the practices already established by Registry officials who refused to register or issue identification documents to the children of Haitian migrants in the belief that they were not entitled to Dominican citizenship because they were children born of Haitians in an irregular migratory situation.

112. This process of denationalization has been percolating for a number of decades. Official documents dating back to the 1960s reveal that even then the Dominican authorities were aware of the multiple problems that Haitian migrants and their children born in the Dominican Republic encountered.[115] In a 1969 memorandum, the official in charge of the Office of the Director General of Immigration, Manuel de Jesús Estrada, informed the President of the Republic, Joaquín Balaguer, that:

> The serious problem the country is facing because of the many Haitian nationals, who have passively invaded our territory in massive numbers, is compounded by the fact that they are having children with Dominican women, children who, because they were born here, are Dominicans. Their numbers are an alarming magnification of the invasion that ultimately poses a real threat to our nationality. With the passage of time, the enormous nucleus of Haitians (estimated to be some 250,000 at the present time) will increase in number for the reasons previously explained, and the day is not far off when they will number one million. If this situation is not somehow stopped in time, it will –I repeat- pose a real threat to our nationality and to the very security of the country and the State.[116]

113. In 1976, a communication from the then Secretary of the Armed Forces, Major General Juan Rene Beauchamp Javier, to the President of the Republic, Joaquín Balaguer, discussed the need to draft a law under which migrant workers could be classified as "foreigners in transit". This due to the fact that the Constitution in force at the time provided that the children of foreign nationals in transit did not qualify for Dominican nationality based on *jus soli,* therefore this change would have had the effect of limiting the acquisition of Dominican nationality in the case of children of

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115 In a 1967 communication from the Director General of Immigration concerning the problems and abuses that Haitian migrants faced when repatriated in mass numbers, he stated that: "one cannot discount the possibility that Haitian nationals could qualify to obtain their permanent residency in the country, whether because of the activities in which they engage or because they marry Dominican women and have children who were born in the country, the only exception, of course, being the latter, if the status of their presence in the country has not been defined." See, Dominican Republic, *Comunicación 06365 de Juan Estrella R., Director General de Migración al Secretario de Estado de las Fuerzas Armadas* [Communication 06365 from Juan Estrella R., Director General of Immigration, to the Secretary of State of the Armed Forces]. Santo Domingo, November 14, 1967.

116 Dominican Republic, *Memorándum de Manuel de Jesús Estrada Medina, Subsecretario de Estado, Encargado de la Dirección General de Migración al Doctor Joaquín Balaguer, Presidente de la República. Exposición sobre el grave problema que ocasiona al país la gran cantidad de haitianos existentes en nuestro territorio* [Memorandum from Manuel de Jesús Estrada Medina, Under Secretary of State in charge of the Office of the Director General of Immigration, to Dr. Joaquín Balaguer, President of the Republic, Exposition on the serious problem posed by the large numbers of Haitians present on our territory]. May 6, 1969.

migrant workers, most of whom have historically been Haitians. The communication read as follows:

> A meeting was held with officials from the Office of the Chief of Staff of the National Army where it was agreed that the Central Electoral Board, in concert with the Office of the Director General of Immigration, would prepare a draft law declaring that foreign nationals brought into the country under collective labor contracts are foreigners in transit for the duration of those contracts. This would necessitate substantial changes to the laws on Identification Documents and Immigration in this regard, to prevent permanent visas from being issued to persons who come here to work under a temporary labor contract; once the contract ends, these people would have to return to their countries of origin.[117]

114. By way of a preliminary observation in this regard, the Inter-American Commission considers that the situation concerning the right to Dominican nationality in the case of persons born on Dominican soil of parents in an irregular migratory situation exposes the nexus between the fact that their parents were migrants and the acquisition of nationality of the children.

115. The failure to regard these as separate and distinct issues has led to situations in which, based on categories under which it is forbidden to discriminate in the access to nationality, such as the fact that the parents were migrants in an irregular migratory situation, children were denied their right to Dominican nationality and that their parents' immigration status is deemed to have been passed on to them. At the time of the IACHR's 1991 visit, the authorities maintained that persons born on Dominican soil of parents in an irregular migratory situation were not Dominican citizens, despite having been born on Dominican soil, and that the principle of *jus soli* recognized in the Constitution did not apply in the case of children of persons in an irregular migratory situation.[118] The authorities maintained that "if the individual is the child of persons with irregular immigration status, his or her migratory status is also irregular, even if he or she was born here."[119]

## 3. The IACHR's monitoring of the situation of Haitian immigrants and their descendants in the Dominican Republic

116. Over the course of the years, the organs of the Inter-American Human Rights System (hereinafter the "IAHRS") have monitored the situation of Haitian migrants and their descendants in the Dominican Republic. Even before monitoring the situation of the nationality of children of Haitian migrants, the Inter-American Commission had

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117 Dominican Republic, *Comunicación 4411 del Secretario de Estado de las Fuerzas Armadas, Mayor General Juan Rene Beauchamp Javier al Presidente de la República, Joaquín Balaguer* [Communication 4411 from the Secretary of State of the Armed Forces, Major General Juan Rene Beauchamp Javier, to the President of the Republic, Joaquín Balaguer]. Santo Domingo, March 2, 1976.

118 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, p. 292.

119 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, p. 281.

already been monitoring various human rights situations in the Dominican Republic since 1965.[120] However, with its on-site visit to the Dominican Republic in 1991, the IACHR began to devote even more attention to the various situations that violated the human rights of Haitian migrants and their descendants - particularly that of the lack of documentation and irregular migratory situation that has been their lot for decades, how these situations have affected their children's claim to Dominican citizenship, and the risks they face of being summarily deported.

117. For its part, the Inter-American Court of Human Rights has delivered three judgments and approved a number of provisional measures in this regard.[121] The OAS Permanent Council has introduced the topic during its meetings.[122] This report is, therefore, the result of the effort that the organs of the Inter-American System, particularly the Inter-American Commission, have made to monitor the situation of the right to nationality in the case of Dominicans of Haitian descent in the Dominican Republic, based on information compiled during the 2013 visit and other related activities, such as requests seeking information from the State, public hearings, and work meetings.

118. As far back as the report on the 1991 visit, the Commission pointed out that children were being denied Dominican identification documents because their parents had no immigration papers. Hospital personnel refused to issue a record of live birth or the civil registry officials refused to register the children and issue them a birth certificate. This made it virtually impossible for these children to obtain their Dominican identification documents. The argument that government officials gave as far back as 1991 was that the only document the parents had was the one identifying them as temporary workers, which placed them in the category of foreign nationals in transit, even though they had lived in the Dominican Republic for years.[123] Ever since, the IACHR has maintained that:

> In many cases for which complaints have been made to the Commission, individuals expelled were born in the Dominican Republic and had the constitutional right to nationality. The government pointed out in this regard that they were not nationals, even though they might have been born on Dominican soil, because they were the offspring of illegal

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120 See, IACHR, *The situation of political refugees in America.* Report prepared by the Executive Secretariat of the Inter-American Commission on Human Rights. OEA/Ser.L/V/II.11 Doc. 7, November 2, 1965, p. 542.

121 See, I/A Court H.R., *Case of the Yean and Bosico Girls v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130; I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic.* Merits Reparations and Costs. Judgment of October 24, 2012. Series C No. 251; I/A Court H.R., *Case of expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282; I/A Court H.R. *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic regarding Dominican Republic*. Orders of the Inter-American Court of Human Rights of August 18, 2000, September 14, 2000, November 12, 2000, May 26, 2001, February 2, 2006, July 8, 2009 and December 1, 2011.

122 See, OAS, Permanent Council, *Acta de la sesión ordinaria celebrada el 29 de octubre de 2013*. OEA/Ser.G CP/ACTA 1944/13. Approved at the meeting of September 24, 2014, p. 19; and OAS, Permanent Council, *Acta de la sesión ordinaria celebrada el 19 de febrero de 2014*. OEA/Ser.G CP/ACTA 1955/14. Approved at the meeting of February 11, 2015.

123 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, p 292.

> foreigners. Nevertheless, the prevailing law in the Dominican Republic is that of jus soli, and the exceptions established by the Dominican Constitution in its Article 11 refer to "the legitimate children of foreign residents in the country as diplomatic representatives or individuals in transit in the country." With regard to the second exception, we cannot say that the persons who have been expelled were "in transit," since many of them have lived 20, 30, and even 40 years in the Dominican Republic.[124]

119. Later, on the occasion of the IACHR's on-site visit to the Dominican Republic in 1997, the Commission again observed that:

> The situation of illegality is passed on to the children, even when they have been born in the Dominican Republic. The children do not have documents because their parents don't have documents either. It is practically impossible to obtain them, either because the officers of the hospitals or civil registries refuse to issue a birth certificate or because the relevant authorities refuse to enter them in the civil registry. The argument usually given by government officials is that the parents do not possess the document identifying them as temporary workers, placing them in the category of foreigners in transit--even though they have lived in the Dominican Republic for years. [125]

120. In its 2001 Annual Report the Commission followed up on a number of situations: access to citizenship in the case of descendants of Haitian migrants, conditions in the *bateyes* where the migrant workers and their families lived, and the matter of collective expulsions. In general, the Commission observed that: the process of registering the births of the children of migrants with the registry offices is still fraught with obstacles because the authorities demand the kind of identification documents from the parents that only Dominican citizens or persons with permanent residency possess; living conditions in the *bateyes* were worse than in 1999 because the State sugar mills had been privatized; and while the figures on the number of persons deported were down, the Dominican State continued its practice of collective deportations.[126]

121. Between 1998 and 2015, the Commission held 16 thematic hearings on this problem.[127]. Furthermore, in this period the Commission also requested information

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[124] IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992.

[125] IACHR, *Report on the situation of human rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, par. 352.

[126] IACHR, *Annual Report of the Inter-American Commission on Human Rights, Chapter V .Follow-up of the Recommendations formulated by the IACHR in its reports on the Situation of Human Rights in member states: Dominican Republic.* OEA/Ser./L/V/II.114 doc. 5 rev., April 16, 2002.

[127] See, IACHR, *Hearing on the human rights situation of the migrant workers in the Dominican Republic.* 100th Session, October 7, 1998; *Hearing on Case 12,189 – Dilcia Jean and Violeta Bosico, Dominican Republic*. 104th Session, October 5, 1998; *Hearing on Case 12,189 – Dilcia Jean and Violeta Bosico, Dominican Republic.* 106th Session, March 6, 2000; *Hearing on Case 12,189 - Dilcia Jean and Violeta Bosico, Dominican Republic*. 113th Session, November 15, 2001; IACHR, *Hearing on the situation of Haitian and Dominican-Haitian Communities in the Dominican Republic.* 123rd Session, October 21, 2005; *Hearing on the situation created by the General Migration Law of the Dominican Republic.* 124th Session, March 3, 2006; *Hearing on racial discrimination in the Dominican Republic.* 127th Session, March 2, 2007; *Hearing on the Application of the 2004 Migration Law in*

from the Dominican State concerning certain developments related to this serious situation. The most recent was on February 9, 2015, when the Commission requested information from the State about an allegation to the effect that 51 persons were allegedly deported to Haiti in a collective expulsion that reportedly included 28 children said to have been born in the Dominican Republic, 14 women – some of whom were the mothers of the children, another 14 Haitian migrants, and Isabella Pomares, a Spanish nun who is 74 years old. The collective expulsion is said to have been carried out on January 27, 2015, as the group was on its way to San Juan de la Maguana to register under the procedures prescribed by Law 169-14 or the National Regularization Plan for Foreigners in an irregular migratory situation, whichever the case. When the State did not reply, the Commission reiterated its request for information on April 1, 2015. The Commission regrets that, as of the date of approval of this report, it had not yet received any reply from the State on this request of information.

122. Through the mechanism of precautionary measures, the IACHR has requested the adoption of six urgent measures of protection, detailed below, as an effective means to protect against and prevent possible serious and irreparable harm to Dominican persons of Haitian descent who were in imminent danger because of the measures taken by authorities to deny them their right to Dominican nationality and the situations created by the State's refusal to recognize their right.

123. Acting on the complaints the Commission received alleging collective expulsions of Haitians or persons so classified even when they may have been born on Dominican soil, on June 26, 1991 the Commission asked the Government of the Dominican Republic to take the necessary precautionary measures to prevent the consummation of irreparable harm to persons who were awaiting deportation. This request for precautionary measures was granted after President Balaguer's issuance of Decree 233 of June 13, 1991, which would repatriate any undocumented Haitians in the Dominican Republic over the age of 16 and under age 60, and in response to complaints of human rights violations committed against Haitian sugar cane workers employed on the plantations of the Dominican Republic's State Sugar Council.[128]

124. In 1999, the IACHR requested that the Dominican State implement three precautionary measures to protect Dominicans of Haitian descent. First, on August

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*the Dominican Republic.* 131st Session, March 10, 2008; *Hearing on the Situation of violence against children and women in the Haitian-Dominican frontier region.* 137th Session, November 3, 2009; *Hearing on the Constitution and the right to nationality in the Dominican Republic.* 140th Session, October 28, 2011; *Hearing on modification of the Civil Register in the Dominican Republic.* 141st Session, March 28, 2011; *Hearing on the judicial response in cases of denationalization in the Dominican Republic.* 143rd Session, October 24, 2011; *Hearing on the right to nationality in the case of Dominicans of Haitian descent in the Dominican Republic.* 147th Session, March 12, 2013; *Hearing on the situation of the right to nationality in the case of Dominicans of Haitian descent affected by the denationalization policy*. 150th Session, March 24, 2014; *Hearing on the human rights situation of Haitian migrant workers and their families in the Dominican Republic.* 150th Session, March 24, 2014; and *Hearing on the progress made and challenges posed by Law 169/14 in the Dominican Republic.* 153rd Session, October 31, 2014.

128 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992.

27, 1999, the Commission granted precautionary measures for the girls Dilcia Yean and Violeta Bosico, who had been denied Dominican citizenship despite having been born on Dominican soil; the denial of their right to citizenship would expose them to the imminent threat of being arbitrarily deported from their country of birth. The Commission called upon the State to take the measures necessary to prevent the Yean and Bosico girls from being deported and to ensure that Violeta Bosico was not denied her right to attend classes and receive the education provided to all other children who are Dominican citizens.[129]

125. On November 22, 1999, the Commission granted precautionary measures and requested that the Government of the Dominican Republic take the actions necessary to put an end to collective expulsions of foreigners and, where persons in the territory of the Dominican Republic were to be deported, to fully observe the requirements of due process. This request was based on information received in which the petitioners indicated that thousands of persons of Haitian origin and Dominicans of Haitian descent had been expelled by the authorities of the Dominican Republic, through collective round-ups and without legal procedures to properly determine the nationality and family ties of the expelled persons. [130]

126. On December 3, 1999, the Commission granted precautionary measures and requested that the Government of the Dominican Republic adopt, on an urgent basis, the measures necessary to guarantee the protection of Eddy Martínez, his wife Germania Pierre (María), and their two minor children, Olga and Teresa, to allow them to return to the territory of the Dominican Republic, and to give back their personal documents, which had been unlawfully seized. The Commission also requested that the Dominican Republic fully investigate the acts alleged, in accordance with its domestic legislation. According to the information received, Dominican immigration inspectors had expelled the family of Eddy Martínez, a Dominican by birth, to Haiti in a violent, illegal, and arbitrary manner, on the basis of "having mistaken them for Haitians".[131]

127. Subsequently, on July 31, 2008, the IACHR granted a request for precautionary measures for Emildo Bueno Orguís, Dielal Bueno, Minoscal De Olis Oguiza, Gyselle Baret Reyes, and Demerson De Olis Baret. All of these individuals were born in the Dominican Republic to Haitian parents and had allegedly been the target of threats and acts of violence, reportedly in retaliation for having pursued legal action to obtain documents identifying them as Dominican nationals.[132]

128. On June 10, 2013, the IACHR granted precautionary measures for Luisa Fransua, Rafael Toussaint, and another 48 individuals and their 32 children in the Dominican Republic. At that time, the beneficiaries of the measure were being denied birth records, identity and voter registration cards, or their documents were being withheld or invalidated. These actions thereby blocked their access to basic services,

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129 IACHR, PM 86/99 –Dilcia Yean and Violeta Bosico, Dominican Republic.

130 IACHR, PM 88/99 – Group of persons of Haitian origin and Dominicans of Haitian descent, Dominican Republic.

131 IACHR, PM 89/99 – Eddy Martínez Olga and Teresa Germania Pierre (María) and their two daughters, Dominican Republic.

132 IACHR, PM 195/08 – Emildo Bueno *et al.*, Dominican Republic.

allegedly impeding the exercise of their rights, especially their rights to health and education. Furthermore, because of this situation, these individuals could have been deported to Haiti at any time. The IACHR asked the Dominican Republic to take the necessary measures to ensure the protection of Luisa Fransua, Rafael Toussaint, and the other 48 individuals and their 32 children, so as to keep them from being expelled or deported from the territory of the Dominican Republic. The IACHR also asked the State to take the necessary steps so that the beneficiaries and their children would be able to obtain the identification documents that would guarantee their access to basic services like education and health, until such time as the Commission rules on the petitions before it.[133]

129. Finally, on January 30, 2014, the IACHR asked the Dominican Republic to adopt precautionary measures for the members of the Dominican Republic's "Reconoci.do" Movement, because the lives and personal integrity of its members had allegedly been threatened for criticizing Constitutional Court judgment TC/0168/13. The Commission therefore called upon the Dominican Republic to take the necessary measures to preserve the life and personal integrity of the members of the "Reconoci.do" Movement and to ensure that they would be able to engage in their activities as human rights defenders without being the target of acts of violence and harassment for performing their functions.[134]

130. In May 2000, the IACHR asked the Inter-American Court to adopt provisional measures on behalf of Haitians and Dominicans of Haitian descent, who were subject to the jurisdiction of the Dominican Republic and allegedly ran the risk of being "expelled" or "deported" collectively, in connection with the *Case of Benito Tide Méndez et al.*, which was then pending before the Commission. The Court ordered the provisional measures of protection in favor of the victims by resolution dated August 18, 2000, which was ratified by resolutions dated September 14, 2000; November 12, 2000; May 26, 2001; February 2, 2006; July 8, 2009; December 1, 2011; and February 29, 2012.[135]

131. The IACHR has also brought this problem to the attention of the Inter-American Court of Human Rights, filing three suits: one in the case of Dilcia Yean and Violeta Bosico Cofi; another in the case of Nadege Dorzema *et al.* (also known as the Guayubín Massacre case), and a third in the case of Benito Tide Méndez *et al.* (also known as the case of expelled Dominicans and Haitians).[136] The Commission has issued press releases concerning the right to Dominican nationality of persons born in Dominican territory of Haitian descent, and regarding the situation of Haitian

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133 IACHR, PM 279/12 - Luisa Fransua, Rafael Touissaint et al., Dominican Republic.

134 IACHR, PM 408/13 – Members of the "Reconoci.do" Movement, Dominican Republic.

135 I/A Court H. R. Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic. Order of the Inter-American Court of Human Rights of August 7, 2000; August 18, 2000; September 14, 2000; November 12, 2000; May 26, 2001; February 2, 2006; July 8, 2009; December 1, 2011; and February 12, 2012.

136 See, IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic,* July 11, 2003; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic)*. February 11, 2011; IACHR, Merits Report No. 64/12, Case 12,271, *Benito Tide Méndez et al.* (Dominican Republic). March 29, 2012.

migrants in the Dominican Republic.[137] The IACHR has also requested information from the State in connection with various human rights situations, pursuant to the Commission's authority under Article 41 of the American Convention on Human Rights.

132. It is important to note that subsequent to the on-site visit and as this report was being prepared, on October 22, 2014 the Inter-American Court of Human Rights reported its judgment in the *Case of Expelled Dominicans and Haitians v. Dominican Republic.*[138] In this judgment, the Inter-American Court found that the facts in this case were part of a broader context in which the Haitian population and persons of Haitian descent commonly lived in poverty and frequently suffered abusive or discriminatory treatment at the hands of the authorities, thereby heightening their situation of vulnerability. This situation is related to the difficulty they have in obtaining personal identification documents. The Court also found that, at least at the time of the events in this specific case, for a period of almost ten years starting in 1990, there was a systematic pattern of expulsions in the Dominican Republic, involving both collective actions or procedures that did not involve a case-by-case examination of the situations of Haitians and persons of Haitian descent, all of which was a function of discrimination.[139]

133. In that same case, which will be examined at greater length in this report, the Inter-American Court addressed Constitutional Court judgment TC/0168/13 as a supervening fact. The Inter-American Court wrote that by classifying as aliens any person born on Dominican soil of foreign parents in an irregular migratory situation, judgment TC/0168/13,

> given its general scope, […] constitutes a measure that fails to comply with the obligation to adopt domestic legal provisions, codified in Article 2 of the American Convention, in relation to the rights to recognition of juridical personality, to a name, and to nationality recognized in Articles 3, 18 and 20 of this instrument, respectively, and in relation to these rights, the right to identity, as well as the right to equal protection of the law recognized in Article 24 of the American Convention; all in relation to failure to comply with the obligations established in Article 1(1) of this instrument. [140]

134. It, therefore, ordered the State, *inter alia,* to "adopt, within a reasonable time, the measures required to prevent judgment TC/0168/13 and the provisions of articles

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137 IACHR, 42/15 - IACHR Expresses Its Deep Concern over the Acts of Violence in the Dominican Republic. Washington, D.C., April 29, 2015; 73/13 – IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic. Washington, D.C., October 8, 2013; 42/13 – IACHR Condemns Death of Haitian Immigrant at Hands of State Agents in the Dominican Republic. Washington, D.C., June 12, 2013.

138 When the case was processed with the Inter-American Commission and during the Inter-American Court's proceedings on it, it was referred to as *"Benito Tide Mendez et al. v. Dominican Republic"*. However, the Court decided to call it the *Case of Expelled Dominicans and Haitians v. Dominican Republic"*.

139 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C. No. 282.

140 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C. No. par. 325.

6, 8 and 11 of Law No. 169-14 from continuing to have legal effects" and to "adopt, within a reasonable time, the measures required to annul any law or regulation of any nature, whether administrative, regulatory, legal or constitutional, as well as any practice, decision, or interpretation that establishes or has the effect that the irregular status of parents who are aliens constitutes grounds for denying Dominican nationality to those born on the territory of the Dominican Republic." [141]

135. On November 4, 2014, thirteen days after issuance of the Inter-American Court's judgment in the *Case of Expelled Dominicans and Haitians v. Dominican Republic,* the Dominican Republic's Constitutional Court delivered judgment TC/0256/14 in which it declared unconstitutional the document that the Dominican Republic had deposited with the OAS General Secretariat in which it accepted the jurisdiction of the Inter-American Court of Human Rights. The Constitutional Court's judgment was based on the argument that the document had not been approved by Congress.[142]

136. In keeping with Article 62 of the American Convention, the instrument accepting the binding jurisdiction of the Inter-American Court was approved on February 19, 1999 by the then President of the Dominican Republic, Leonel Fernández, and subsequently deposited on March 25, 1999, by former Ambassador Flavio Darío Espinal, Permanent Representative of the Dominican Republic to the OAS at the time.[143]

137. It is worth recalling what the Inter-American Court wrote concerning the object and purpose of human rights treaties, such as the American Convention on Human Rights, to the effect that its object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, [144] and this requires that its provisions be applied in such a way as to exert a useful impact. Unlike the classic international treaty, intended to create subjective and reciprocal obligations among States Parties, the obligations that the States undertake upon ratifying treaties for collective protection of human rights, such as the American Convention, are essentially objective in nature and designed to protect the human rights of human beings from violations committed by a State Party. For its part, the Convention

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141 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C. No., par. 172.

142 Constitutional Court of the Dominican Republic. Available [in Spanish] at the following link: Sentencia TC/0256/14, November 4, 2014.

143 See, Dominican Republic, Instrument accepting the binding jurisdiction of the Inter-American Court of Human Rights [Document on file with the Commission]. See also, Organization of American States. Press release of March 25, 1999. Available [in Spanish] at the following link: ''Republica Dominicana Reconoce la Competencia de la Corte Interamericana de Derechos Humanos'' [Dominican Republic Accepts Jurisdiction of Inter-American Court of Human Rights].

144 In greater detail, the Inter-American Court has contended that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. See: I/A Court H.R, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29.

establishes mechanisms for the protection of the rights recognized therein, such as the Inter-American Commission and the Inter-American Court,[145] and its provisions are applied as a function of the concept of collective protection.[146]

138. As for the workings of the system of protection that the American Convention establishes, the Commission must underscore the fact that once a State agrees to the optional clause accepting the Inter-American Court's contentious jurisdiction, that State is bound by all the Convention's provisions and fully obligated to guarantee the international protection of the human rights recognized in that Convention. Article 62(1) of the American Convention provides that:

> [a] State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

139. There is no provision in the American Convention that expressly authorizes States Parties to withdraw their declaration of acceptance of the compulsory jurisdiction of the Inter-American Court. Thus, any State Party that accepted the Court's compulsory jurisdiction can only extricate itself from that commitment by renouncing the entire treaty.[147] Should that occur, Article 78 of the American Convention provides that a State's denunciation of the Convention shall take effect one year after notification of its denunciation. The Inter-American Court has also written that:

> [a]cceptance of the Court's binding jurisdiction is an ironclad clause to which there can be no limitations except those expressly provided for in Article 62(1) of the American Convention. Because the clause is so fundamental to the operation of the Convention's system of protection, it cannot be at the mercy of limitations not already stipulated but invoked by States Parties for internal reasons.[148]

140. Regarding the observance, application and interpretation of treaties, Article 26 of the 1969 Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention") establishes the principle of pacta *sunt servanda*, which states that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." Hence the Dominican State's duty to honor the obligations it has internationally undertaken concerning the human rights of all persons subject to its jurisdiction.

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145 American Convention on Human Rights (Pact of San José). November 22nd, 1969. Article 33.

146 See also in this regard, European Commission of Human Rights, Decision as to the Admissibility of Application No. 788/60, *Austria vs. Italy* case, *Yearbook of the European Convention on Human Rights*, The Hague, M. Nijhoff, 1961, p. 140; Eur. Court HR, *Ireland vs. United Kingdom* case, judgment of 18 January 1978, Series A no. 25, p. 90, par. 239; Eur. Court H.R., *Soering Case*, decision of 26 January 1989, Series A no. 161, par. 87.

147 I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999, paragraphs 40, 46 and 50.

148 I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999. par. 36.

141. Another important provision of the Vienna Convention is its Article 27, which provides that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Hence, the validity of the instrument whereby a State accepts the jurisdiction of the Court is subject to observance of the mechanism that the Convention establishes for the purpose. To invoke provisions of domestic law as justification for failure to perform international agreements is a violation of the principle of good faith, especially when this is done in the case of human rights treaties, which recognize and protect the rights of all persons subject to the jurisdiction of the States and establish organs and complementary mechanisms of protection to deal with violations of those rights.

142. The Commission also recognizes that the principle of *forum prorogatum* is both valid for and applicable to the instant case. Developed at length by the International Court of Justice,[149] the principle provides that in cases where States spontaneously engage in procedural acts that they would only perform if they recognized a court's jurisdiction, it shall be understood that by so doing these States have validly accepted that court's jurisdiction.[150] The Dominican State has appeared before the Inter-American Court in provisional measures and contentious cases brought against it. Therefore, in application of the principle of *forum prorogatum,* the Commission is reaffirming the validity of the Inter-American Court's jurisdiction.

143. Given the foregoing, the Commission stated its rejection of judgment TC/0256/14 of the Constitutional Court as it has no basis in the norms and principles of international law and is therefore without present and future legal effects in the international realm.[151] The Commission is of the view that court rulings such as Constitutional Court judgment TC/0256/14 undermine the added protection that international organs for the protection of human rights afford to all persons subject to the jurisdiction of the Dominican State and also create legal uncertainty, institutional instability, and mistrust on the part of the international community.[152]

144. The Commission observes that in November 2014, the Minister of Foreign Affairs, Andrés Navarro announced that the Ministry of Foreign Affairs would, at the end of the month, present President Danilo Medina with the possible positions that the country could take with respect to the Inter-American System as a consequence of judgment TC/0256/14[153].. Nevertheless, as of the date of approval of this report, the

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149 International Court of Justice, *Corfu Channel Case* (Great Britain vs. People's Republic of Albania). Preliminary Objections. Judgment of March 25, 1948.

150 International Court of Justice, *Case Concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda*).* Judgment of February 3, 2006.

151 IACHR, *IACHR Condemns Judgment of the Constitutional Court of the Dominican Republic.* November 6, 2014.

152 On the subject of Constitutional Court judgment TC/0256/14, the Uruguayan State observed the following: "This decision could have legal consequences that would weaken the Dominican Republic's commitment to the Inter-American Human Rights System by rendering the instruments of the system ineffective in that country." See, Eastern Republic of Uruguay, Press release (in Spanish). Montevideo, November 11, 2014.

153 In that regard, the Committee on the Rights of the Child, in its Concluding Observations to the Dominican Republic of 2015, voiced its concern that the Dominican Republic had officially rejected the judgment of the Inter-American Court in the 2014 *Case of Expelled Dominicans and Haitians v. Dominican Republic.* See:

Commission is still unaware of what position the Dominican State will take with respect to the judgment and what measures it plans to adopt to ensure the efficacy of the Inter-American Court's jurisdiction with respect to persons whose human rights are violated.[154] The IACHR must point out that under the norms and principles of international law, that judgment of the Constitutional Court has no legal effects. It therefore urges the Dominican State to reaffirm its commitment to protecting the human rights of all persons subject to its jurisdiction.

## *B. Constitutional and legal framework on the right to nationality*

### 1. Acquisition of Dominican nationality prior to Constitutional Court judgment TC/0168/13

145. In this section, the Inter-American Commission will explain the principal constitutional and legal provisions, court rulings and administrative rules that have determined how, since 1929, Dominican nationality is acquired on the basis of *jus soli*. This historical review is necessitated by the fact that the effects of Constitutional Court judgment TC/0168/13 on the acquisition of Dominican nationality extend as far back as the Constitution that entered into force on June 21, 1929: the judgment orders the Central Electoral Board to make a list, dating back to June 21, 1929, of persons who were irregularly registered in the Dominican Civil Registry because they do not meet the conditions required under the Constitution of the Republic for attribution of Dominican nationality on the basis of *jus soli.*

146. The provision on the acquisition of Dominican nationality on the basis of the principle of *jus soli* was first introduced in the Dominican Constitution of 1865, which, in its Article 5, provided that: "Dominicans are: 1) All those who were born or will be born in the territory of the Republic, regardless of the nationality of their parents." This formulation was altered with various constitutional amendments. Nevertheless, since 1929 up to –but not including- the 2010 Constitution, the Dominican Constitution provided that Dominicans would be:

> [a]ll persons born in the territory of the Republic with the exception of the legitimate children of foreigners resident in the country in diplomatic representation or in transit.[155]

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154 Committee on the Rights of the Child, *Concluding Observations on the combined third to fifth periodic reports of the Dominican Republic.* March 6, 2015, para. 27. *Diario Libre*. November 23, 2014. Canciller: Gobierno valora planteamientos de Leonel Fernández sobre sentencia de Corte IDH [Foreign Minister: Government appreciates Leonel Fernández' observations on the judgment of the I/A Court H.R.]; *El Caribe*. 22 de noviembre de 2014. Navarro descarta que en RD se violen derechos humanos [November 22, 2014: Navarro dismisses notion that human rights are violated in DR]

155 See, Constitution of the Dominican Republic. June 20, 1929. Article 8(2). In its statement of reasons, the Constituent Assembly's Drafting Committee, charged with writing that Constitution, made the following

147. Even though the position of the IAHRS has consistently been that any discrimination in access to nationality based on the parents' migratory situation is strictly prohibited, the Dominican State maintains that from the time the principle of *jus soli* was first introduced in the Dominican Constitution, it did not apply to children of persons in an irregular migratory situation because such immigrants fell within the category of persons "in transit," which was an exception under every Dominican Constitution. Thus, in order to understand how judgment TC/0168/13 reinterprets the concept of person "in transit" so as to retroactively deny Dominicans of Haitian descent their right to nationality, one must turn to immigration regulations to understand the categories under which foreign nationals are admitted into Dominican territory.

148. When discussing foreign nationals, Article 3 of Immigration Law No. 95 of April 14, 1939 provided that foreign nationals seeking to be admitted into Dominican territory would be classified as immigrants or non-immigrants. Foreign nationals applying to be admitted would be regarded as immigrants unless they fit into one of the following classes of non-immigrants:

> 1. Visitors on business or for study, recreation or diversion;
>
> 2. Persons in transit through Dominican territory while traveling abroad;
>
> 3. Persons working in some capacity on board ships or aircraft;
>
> 4. Temporary workers and their families. The foreign nationals admitted as Immigrants may reside in the Republic indefinitely. Non-immigrants will be granted only temporary entry, and such entry shall be subject to the terms prescribed in Immigration Regulation No. 279 of May 12, 1939, unless a foreign national admitted as a non-immigrant can subsequently qualify to be classified as an immigrant by meeting all the requirements that immigrants must meet. The temporary workers will be admitted into Dominican territory only when farm businesses request that they be brought in, and then only in the number and under the conditions that the Secretariat of State of the Interior and Police prescribe in order to fill those businesses' needs and to oversee their entry, temporary stay and return to the country from whence they came.

149. When elaborating upon the provisions set forth in the 1939 Immigration Law, Immigration Regulation No. 279, approved on May 12, 1939, stipulated that foreign nationals trying to enter the Republic, primarily to travel through it and bound for

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comment: "This Committee felt it was best for the country to adopt the system of *jus soli* in the Constitution, given the fact that our Republic is small in size and in population and hence a country best served by immigration, not emigration. The number of Dominicans residing or born abroad is small by comparison to the number of foreign nationals residing or born in this country, with the result that the number of Dominicans is increased more by adopting the *jus soli* system than by adopting the *jus sanguinis* system. The draft adopts the *jus soli* system as a general rule, and makes an exception for the legitimate children of foreign nationals living in the Republic in diplomatic representation or in transit in the country." See, Constitutional Court, Judgment TC/0168/13. pp. 51-52.

another foreign destination, would be grantedthe privileges of transient persons. Thus, the State will grant the privileges enjoyed by a transient person [*transeúnte*] to foreign nationals "in transit" through the territory of the Dominican Republic while traveling abroad. A period of 10 days was ordinarily considered sufficient for foreign nationals to be able to transit through the territory of the Republic. In its Section V, which deals with transient persons, Immigration Regulation No. 279 provided the following:

> a) Foreign nationals seeking to enter the Republic primarily for the purpose of traveling through the country in route to another foreign destination shall be accorded the privileges accorded to transient persons. These privileges will be granted even to a foreign national who would not qualify to enter the country as an immigrant, provided his or her entry is not contrary to health and public order. The foreign national shall be required to declare his or her destination, the means he or she has chosen for travel thereto and the date and place of his or her departure from the Republic. A period of 10 days shall ordinarily be deemed sufficient time to be able to transit through the Republic.
>
> b) A foreign national admitted for the purpose of travel through the country bound for another destination abroad shall be given a disembarkation permit valid for 10 days. No fees shall be charged for the permit, which the person to whom it was issued must keep for the duration of his or her transit through the Republic and return to the Immigration Inspector when leaving the country.[156]

150. Immigration Law No. 95 and Immigration Regulation No. 279, both of which date back to 1939, were the laws governing immigration until General Immigration Law No. 285-04 entered into force on August 15, 2004, whereupon any law or part thereof that was contrary to the new law was repealed.[157] Once the 2004 General Immigration Law entered into force, it was established that for purposes of remaining in the country, foreign nationals can be admitted as either "Residents" or "Nonresidents."[158]

151. Once the 2004 General Immigration Law entered into force, new meaning was attached to the phrase "in transit". The provision allowing 10 days "in transit" was repealed. Under Article 36 of the General Immigration Law, the following categories of persons are considered nonresident aliens:

> (…)
> 10. For purposes of application of Article 11 of the Constitution of the Republic, non-resident aliens are persons in transit.[159]

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156 Dominican Republic, Immigration Regulation No. 279, May 12, 1939, Section V.

157 Dominican Republic, General Immigration Law, No. 285-04, August 15, 2004, Official Gazette No. 10291, August 27, 2004, Article 154.

158 Dominican Republic, General Immigration Law, No. 285-04, August 15, 2004, Official Gazette No. 10291, August 27, 2004, Article 29.

159 Dominican Republic, General Immigration Law, No. 285-04, August 15, 2004, Official Gazette No. 10291, August 27, 2004. Article 36.

152. Article 36 of the 2004 General Immigration Law expanded the definition of foreign nationals "in transit" by providing that all nonresident foreign nationals, which would now include temporary workers, are regarded as persons "in transit" for purposes of the application of the article on Dominican nationality that appears in the Constitution of the Dominican Republic.[160] With that, the law provided that temporary workers were regarded as persons in transit, irrespective of how long they had been in Dominican territory; hence, their descendants could not acquire Dominican nationality as the parents now fell within one of the exceptions for acquisition of nationality in application of the principle of *jus soli.* Furthermore, article 152 of the General Immigration Law provided that a foreign national who, having entered the country with some temporary legal status, overstays the time authorized for him or her to stay shall be deemed to be "illegal".

153. The General Immigration Law also established a procedure for registering the births of children born in Dominican territory to non-resident aliens and who, according to the criterion introduced with this law, are not entitled to Dominican nationality. Health clinics that provide care to a foreign woman, who does not have documentation proving her legal residency, will have to issue a pink record of birth, containing all of the mother's personal information. This record is different from the official record of birth used in the case of Dominicans and serves as proof of birth but not nationality. Thereafter, the Central Electoral Board will record these records in the Foreigners' Registry.[161] This procedure was first implemented in 2007, when the Central Electoral Board approved the "Registry of Children Born to Foreign-Born Mothers who do not have residency status in the Dominican Republic," also known as the 'foreigners' registry'.[162]

154. The Constitution in force at the time the General Immigration Law took effect was the 2002 Constitution, Article 11(1) of which defined Dominicans as:

> [a]ll persons born in the territory of the Republic with the exception of the legitimate children of foreigners resident in the country in diplomatic representation or in transit.[163]

155. As for the meaning of the expression "in transit" for purposes of acquiring Dominican nationality, on December 14, 2005 the Supreme Court, serving as a constitutional court, delivered a judgment on the constitutionality of the 2004 General Immigration Law. In the Supreme Court's judgment, it provided an interpretation of how the term foreign national "in transit" should be understood for purposes of acquiring Dominican nationality. The Supreme Court maintained that "transient" or "in transit" foreign nationals are those who do not have a residency permit issued by the Office of the Director General of Immigration. This interpretation established an equivalency between the expressions foreign nationals "in transit" and "persons with an irregular migratory situation," irrespective of how

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160 *Ibid*., Article 36.

161 Dominican Republic, General Immigration Law, No. 285-04, August 15, 2004, Official Gazette No. 10291, August 27, 2004. Article 28.

162 Dominican Republic, Central Electoral Board, *Resolution No.02/2007*. Approved April 18, 2007.

163 Dominican Republic, Constitution of the Dominican Republic, July 25, 2002. Article 11(1).

long a person in an irregular migratory situation may have lived in Dominican territory. Consequently, the children of parents in an irregular migratory situation were not entitled to Dominican nationality by the principle of *jus soli* as their parents would be "in transit" in the country, even if they had lived in the Dominican Republic for years or even decades. Regarding the judgment in question, the Supreme Court resolved that:

> [w]hen, in its Article 11(1), the [1944] Constitution precludes Dominican nationality based on the principle of *jus soli* in the case of the legitimate children of foreign persons residing in the country as diplomatic representatives or in transit therein, this presupposes that the latter –i.e. individuals in transit- have somehow been authorized to enter and remain in the country for a specified period of time; if under this circumstance, which has obviously been legitimized, a foreigner gives birth on the national territory, her child, under the Constitution, is not born a Dominican citizen, then all the more reason why a child cannot be a Dominican citizen if born of a foreign mother whose immigration status in the country is irregular when she gives birth on Dominican soil, and hence her entry into and permanence in the Dominican Republic cannot be justified.[164]
>
> […]
>
> If, faced with some unique case, the Dominican Republic should feel obliged to grant Dominican nationality to a foreigner who is not legally within the country or to a person who was born within the national territory and would otherwise be left stateless, it would be in application of the Convention on the Reduction of Statelessness, adopted by the United Nations on August 30, 1961 and the interested party would have to strictly comply with its terms; however this Convention is not applicable in this case, as the persons concerned are, by the principle of *jus sanguine,* entitled to the nationality of their own country, which precludes any eventuality that the aforementioned Convention foresees with respect to statelessness and, by extension, precludes the obligation on the Dominican State to grant its nationality to those citizens in the hypothesis set out in the Convention. Article 11 of the Haitian Constitution categorically states that '[a]ny person born in Haiti or in a foreign country of a Haitian father or Haitian mother, is Haitian'.[165]

156. Following this reasoning, the Supreme Court decided that the Haitian Constitution should be applied before the Dominican Constitution; in this way, the Court reasoned, denying Dominican nationality in the case of the children of Haitians in an irregular migratory situation would not foster statelessness, since the Haitian Constitution provided for the principle of *jus sanguini,* i.e., that Haitian nationality conveyed from one generation to the next.

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[164] Dominican Republic, Supreme Court of Justice, serving as Constitutional Court, Judgment of December 14, 2005.

[165] Dominican Republic, Supreme Court of Justice, serving as Constitutional Court, Judgment of December 14, 2005.

157. On January 26, 2010, a new Constitution was approved in the Dominican Republic. The provision concerning the acquisition of Dominican nationality by *jus soli* was left unchanged from the Constitution of June 20, 1929 up to the 2010 Constitution. However, with the 2010 Constitution, the Supreme Court's interpretation in its 2005 judgment was formally incorporated by adding a third exception to the principle of *jus soli,* according to which the children of parents in an irregular migratory situation in the Dominican Republic would not be entitled to Dominican nationality.

158. As of the date of approval of this report, the ways to acquire Dominican nationality are established in Article 18 of the 2010 Dominican Constitution, which reads as follows:

> Dominicans are:
>
> 1) The sons and daughters of a Dominican mother or father;
>
> 2) Those who had Dominican nationality before this Constitution entered into force;
>
> 3) Persons born within the national territory, with the exception of the sons and daughters of foreign nationals who are members of diplomatic and consular representations, of foreign nationals in transit or of foreign nationals residing illegally within Dominican territory. A person in transit is any foreign national defined as such under Dominican law;
>
> 4) Persons born abroad of a Dominican father or mother, even when they have acquired, by virtue of their place of birth, a nationality distinct from that of their parents. Once they reach the age of eighteen, they may, in the presence of the competent authority, express a preference for dual nationality or renounce one of their nationalities;
>
> 5) Persons who enter into marriage with a Dominican citizen, provided they opt for their spouse's nationality and meet the requirements that the law establishes;
>
> 6) The direct descendants of Dominicans living abroad;
>
> 7) Naturalized persons, in accordance with the conditions and formalities that the law prescribes.
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> Paragraph. – The branches of government shall enforce special policies to preserve and strengthen the Dominican Nation's ties with its nationals abroad, for the essential goal of achieving greater integration.[166]

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166 Dominican Republic, Constitution of the Dominican Republic, proclaimed on January 26, 2010. Published in Official Gazette No. 10561, Article 18(3).

159. Article 18 of the 2010 Constitution, therefore, recognizes the principles of jus soli and jus sanguinis as conferring Dominican nationality automatically. It also provides that nationality can be acquired through naturalization. Under Article 18, certain categories of persons cannot invoke the principle of *jus soli* as the basis for claiming Dominican nationality; in addition to the sons and daughters of foreign nationals who are members of diplomatic and consular representations, these also include foreign nationals in transit or foreign nationals "residing illegally within Dominican territory." Thus, the 2010 Constitution added another group to those that did not qualify for Dominican nationality based on *jus soli:* the sons and daughters of foreign nationals "residing illegally within Dominican territory."

### a) Registration of birth and the Identity and Voter Registration Card

160. While Dominican nationality is conferred automatically once the requirements established in the Constitution have been met, the birth certificate issued when a birth is registered serves as proof of the acquisition of Dominican nationality. This proof of nationality is provided by the civil registry state agency, which is now regulated by the Civil Registry Office, a unit within the Central Electoral Board.[167] Article 212 of the Constitution provides that the Civil Registry and the Identity and Voter Registration Card are the competency of the Central Electoral Board, which is thus in charge of issuing birth certificates and identity and voter registration cards.

161. The birth certificate is the legal document proving the person's name and identity and is therefore necessary to establish one's identity for purposes of the law, which encompasses nationality and juridical personality. Registration of birth is governed by articles 39, 40, and 41 of Law No. 659 of July 17, 1944, on Civil Status Procedures. It is supplemented by provisions of the Civil Code and of Law 136-03, which is the Code for Protection of the Basic Rights of Children and Adolescents, Law 8-92 of April 13, 1992, Electoral Law No. 275-97 of December 21, 1997 and its amendments, the Dominican Criminal Code, the case law of the Supreme Court and the Constitutional Court, and the Constitution of the Republic.

162. This law provides that, in the case of a late declaration of birth, the Civil Registry officer may, after investigating the veracity of the declaration, decide to register or not register the birth in the corresponding registry. Veracity is established by presenting a number of documents, which are considered requirements in the case of a late declaration of birth and that, under Article 9 of Law 659,[168] must be confirmed by the JCE.

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[167] Since 1992, the Central Electoral Board (JCE) has been the government agency responsible for administration of the Dominican Republic's vital records system. It has 161 registry offices spread through the entire country and is responsible for issuing birth certificates, identity cards and passports. It is also responsible for conducting all elections for public office. The JCE currently has nine members and their alternates (who get four-year Senate appointments). The JCE is divided into three chambers: (1) the Plenary, (2) the Administrative Chamber, and (3) the Judicial Chamber.

[168] Law No. 659 of July 17, 1944, on Civil Status Procedures, provides the following in its Article 9: "Registry officials shall follow the instructions they receive from the Central Electoral Board and from the Central Registry Office and shall be under the immediate and direct supervision of the inspector prosecutors."

163. In order to obtain a birth certificate, parents must provide the registry offices with proof of their own identity and proof of the child's birth.[169] Once these documentation requirements have been met, the registry office issues the child's official birth certificate, which is the first time the child is officially identified as a Dominican national. Birth certificates are the principal means of identification for all Dominican nationals under the age of 18.

164. Upon reaching the age of 18, all Dominicans are required to apply for an identity and voter registration card. In the Dominican Republic, the identity and voter registration card serves to identify the person and prove that he or she is registered to vote, a requirement under amended Law No. 6125 of 1962, on the Personal Identification Card, and Law No. 8-92, on the Identity and Voter Registration Card. The latter amended the former in that it authorized the Central Electoral Board to combine the personal identification card and the voter registration card into a single document called the "Identity and Voter Registration Card."

165. To obtain the card, applicants must first present a certified copy of their birth certificate issued by the Central Electoral Board, specifically for the purpose of requesting the card.[170] Possession of a valid card is mandatory under the law; if one is found without the card on his or her person, one can be either fined, sent to prison or even deported.[171] In the case of adults, the Dominican identity and voter registration card is required in order to exercise many civil, political, social and economic rights. The cards are needed to vote and run for public office, to be enrolled in a university, to pay into the Dominican social security system, to open a bank account and acquire or transfer property, apply for a passport, to make a sworn statement before the courts, to marry or divorce, to register the birth of one's child, and so on.

166. Starting in 2007, the Central Electoral Board approved a number of administrative measures, specifically Circular No. 17-2007 of March 29, 2007, and Resolution No. 12-2007 of December 10, 2007, introducing an administrative procedure to temporarily suspend further issuance of vital records issued in the past that contained irregularities or defects that now made it impossible for them to be legally issued.[172] Circular 17 established, among other things, that "2. The present Administrative Chamber has received complaints that in certain Civil Registry

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169 Hospitals and other medical institutions provide documents known as *records of birth.* If the child is born at home, the parents may also provide sworn statements taken from persons who witnessed the birth.

170 This special copy of the birth certificate is known as the "*certificate of a declaration of birth for purposes of an identity card."* The JCE will not issue it until a few months before the bearer of the card is to apply for his or her identity card.

171 Article 1 of 1962 Law No. 6125 on Personal Identification Card, as amended by Law No. 17 of 1963, concerning the Personal Identity Card, made it mandatory to have the identity card, use it and carry it on its person. Under Article 32 of the same law, persons who do not comply with the requirement to have the document on one's person and to show it, shall face a penalty of imprisonment for a period ranging from 5 to 30 days. These requirements were not changed when the identity card laws were amended in 1964, 1971, 1977, 1985, 1992 and 2001.

172 Dominican Republic, Central Electoral Board, Resolution No. 12/2007, which establishes the procedure for provisionally suspending issuance of birth, marriage and death certificates that are defective or were issued improperly. December 10, 2007, Operative paragraph one.

Offices, the following were issued in the past: Birth Certificates irregularly issued with foreign parents who had not proven their residency or legal status in the Dominican Republic; 3. When any irregularity appears in the above-mentioned Civil Registry Certificates, Civil Registry Officers must refrain from issuing and signing copies, and must immediately forward the file to the Administrative Chamber, which shall proceed according to the law."

167. Subsequently, on December 10, 2007, the Plenary of the JCE issued Resolution No. 12/2007 which establishes the procedure for provisionally suspending the issuance of civil registry certificates that are flawed or drawn up irregularly. The same resolution authorizes all civil servants to provisionally suspend the issuance of flawed or irregular civil registry certificates and that they are only issued for strictly judicial purposes in proceedings to render such certificates null and void.[173] Under Resolution No. 12, any birth certificates issued at any time in the past to foreign parents who used a document that was not a national alien identification document to register their child were deemed defective. Also, any person whose parents, at the time of his or her birth, did not have a residency permit and documentation proving their residency, had his or her birth certificate provisionally suspended; in practice, this meant that the person was no longer considered a Dominican national

168. The Commission observes that these procedures were enacted to regulate the practice of registry officials in refusing to issue birth certificates for persons born in Dominican territory to foreign-born parents in an irregular migratory situation, especially those of Haitian descent. The enforcement of these administrative measures made the situation worse, since they authorized both the suspension and retroactive cancellation of identification documents belonging to Dominicans of Haitian descent, whose Dominican nationality had never before been questioned by the Dominican State.

### 3. Constitutional Court judgment TC/0168/13

169. By a vote of 11 in favor, with 2 justices dissenting, on September 23, 2013 the Dominican Republic's Constitutional Court delivered judgment TC/0168/13 in which it decided the appeal filed by Mrs. Juliana Deguis Pierre seeking review of the July 10, 2012 judgment, No. 473/2012, delivered by the Civil, Commercial and Labour Chamber of the Court of First Instance of the Monte Plata Judicial District. The case concerned Mrs. Juliana Deguis Pierre, the daughter of Haitian farm workers, who was born on April 1, 1984 in Yamasá, Monte Plata, Dominican Republic. Her father registered her birth with the Yamasá Registry Office in 1984, which issued her Dominican birth certificate.

170. In 2008, Juliana Deguis presented her original birth certificate at the Yamasá Municipal Documentation Center to apply for her identity and voter registration card. The Central Electoral Board's Documentation Center is alleged to have immediately retained Mrs. Deguis' original birth certificate and to have denied her

[173] Resolution No. 12/2007 of December 10, 2007, issued by the Plenary of the Central Electoral Board, Article 1.

application on the grounds that the registration of her birth at the Yamasá Municipal Documentation Center was irregular as she was the daughter of Haitian nationals "who have illegally and irregularly had their children's births registered in vital records, in flagrant violation of the Constitution in force at the time."[174] According to the data shown in the record of Mrs. Deguis' birth, her father and mother had documents identifying them as workers of Haitian nationality.[175]

171. When the authorities refused to issue her documents, Juliana Deguis filed a petition against the Central Electoral Board seeking constitutional relief. Her petition was filed with the Civil and Commercial Chamber of the Court of First Instance of the Monte Plata Judicial District, and it alleged that her human rights were being violated. She was petitioning the court to order that her birth certificate be returned and her identity card issued.[176] In a July 10, 2012 ruling, the court denied the petition seeking constitutional relief on the grounds that Juliana Deguis had been unable to prove her allegations since she had not introduced her original birth certificate; the court ignored the fact that the original birth certificate had been retained by the State itself at its own Documentation Center when she went there to apply for her identity and voter registration card.[177]

172. Mrs. Deguis then filed a petition for review of the decision on her petition for constitutional relief. The case finally made its way to the Constitutional Court. When it took up Mrs. Deguis Pierre's case, the Constitutional Court maintained that under domestic and international law, the Dominican Republic has the authority to determine who its citizens are.[178] Elaborating, it wrote that Dominican nationality is acquired: a) through consanguinity or *jus sanguinis;* b) through place of birth or *jus soli,* and c) through naturalization. One of the exceptions to the generic rule for applying *jus soli* is the category of foreigners in transit.

173. When it examined the category of foreigners in transit, the Constitutional Court maintained that this category is regulated in all the Dominican constitutions subsequent to 1929, including the 1966 Constitution in force at the time Mrs. Deguis' birth was registered. Article 11(1) of the 1966 Constitution provided that Dominican nationality could be acquired by any person born on the territory of the Republic, with the exception of the legitimate children of foreign residents in the country as diplomatic representatives or foreigners in transit. It also observed that with the 2010 Constitution, the category of "foreigners in transit" was expanded by adding a

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174 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, pp. 6 and 15.

175 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, p. 54.

176 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, pp. 2-4.

177 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, pp. 20-21.

178 As the basis for this power at the national level, the Constitutional Court points to the immigration-related authorities given to the National Congress (Article 37(9) of the Constitution), and to the Office of the Director General of Immigration (Article 2 of the 1939 Immigration Law). At the international level, it cites the following precedents: Advisory Opinion on the Nationality Decrees Issued in Tunis and Morocco, Permanent Court of International Justice (1923); the *Nottebohm Case* of the International Court of Justice (1955); Advisory Opinion on the Proposed Amendment to the Political Constitution of Costa Rica and the *Castillo Petruzzi Case* of the Inter-American Court of Human Rights (1984 and 1999), and various cases decided by the Court of Justice of the European Communities..

178 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.

clause to the effect that children born on national territory to foreign parents "in transit or residing in the country illegally" shall not be Dominicans.

174. According to the Constitutional Court, "foreigners in transit" fall into four groups subsequently designated as "non-immigrant foreign workers" by the 1939 Immigration Law and its Regulations. Under Article 3 of that law, the following four groups of persons are classified as non-immigrant foreign workers: a) visitors (on business or for study, recreation or diversion); b) transient persons; c) persons working in some capacity aboard ships or aircraft; and d) temporary day workers and their families. Under the 1939 Immigration Regulations, "transient" persons may remain in the country for ten days. Here the Constitutional Court wrote that "foreign nationals in transit must not be confused with transient foreign [which] is simply the second group of persons under the category of […] non-immigrant foreign workers […] in other words, *in transit."* Thus, according to the Court, "children born in the country of parents who fall into one of these four categories are not entitled to acquire Dominican nationality based on the principle of *jus soli*." [179]

175. The Constitutional Court also confirmed the Supreme Court's 2005 case law expanding the interpretation of the expression "in transit" by excluding from Dominican nationality any child of parents in an irregular migratory situation.[180] In this regard, the Constitutional Court concluded that "these persons may not claim that their children born in the country are entitled to Dominican nationality, […] as it is legally indefensible to assert that a *de facto* illegal situation creates rights." Following this line of reasoning, the Court pointed out that "foreign who do not have authorization to live in the country must be subsumed into the category of foreign in transit." It further maintained that under Dominican case law "foreigners in transit" are those who do not have a legal residency permit.[181]

176. Because the Inter-American Court's interpretation of the phrase "in transit" in the judgment it delivered in the *Case of the Yean and Bosico Girls v. Dominican Republic* could have some bearing on the case of Juliana Deguis Pierre, the Constitutional

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179 Regarding this, in its observation on the present report, the Dominican State stated that: "On September 23, 2013, the Constitutional Court of the Dominican Republic issued judgment TC/0168/13, which ruled, interpreting the constitutional system on nationality in force in the Dominican constitutional system since 1929, that persons born on Dominican territory of foreign parents with an irregular status cannot have the Dominican nationality" (underlining added). See Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded.* December 21, 2015, p. 4.

180 Dominican Republic, Supreme Court of Justice, Judgment No. 9 of December 14, 2005.

181 *Cf.* Judgment TC/0168/13. *Supra* note XX, p. 6. In its observations on the present report, the Dominican State stated that judgment TC/0168/13 of the Constitutional Court ratified the jurisprudence of the Supreme Court of Justice of December, 14, 2005, reasserting that children born on the territory of the Dominican Republic of foreigners having an irregular migratory status or in transit do not receive Dominican nationality. See: Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded.* December 21, 2015, p. 5.

Court also mentioned the arguments developed by the Inter-American Court.[182] The Constitutional Court made the following comments about the Inter-American Court's judgment: a) the Court's "erroneous interpretation" of the categories of "foreigners in transit" and "transient foreigners"; b) the margin of discretion in determining who "foreigners in transit" are, and c) the possibility that Haitians in transit and their descendants could become stateless.

177. The Constitutional Court criticized the criteria established by the Inter-American Court in the case of Yean and Bosico. In that case, the Inter-American Court, citing Section V of Regulation of Migration of the Dominican Republic No. 279 of May 12, 1939, in force when the request for late registration of birth of the victims in the case was made, held that this rule was clear in stating that the transient foreigner has the purpose of passing through the territory, for which a time limit of no more than ten days is set. In more detail, the Court noted that, to consider a person as a transient or in transit, regardless of the classification used, the State must respect a reasonable time limit, and be consistent with the fact that a foreigner who develops connections a State cannot be equated to a transient or a person in transit.[183]

178. Furthermore, inasmuch as the Inter-American Court acknowledges that "[t]he determination of who has a right to be a citizen continues to fall within a State's domestic jurisdiction"[184] and because the "question of nationality continues to be a particularly sensitive one for [the Dominican Republic]," the Constitutional Court held that the concept of "margin of discretion" could be used to determine the meaning and scope of the notion of "foreigners in transit."

179. As for the Inter-American Court's observation to the effect that the "authority of the States [to determine who has a right to be a national] is limited […] by their obligation to prevent, avoid and reduce statelessness,"[185] the Constitutional Court pointed out that the refusal […] to grant nationality to the children of foreigners in transit does not lead to statelessness, because the 1983 Haitian Constitution […] expressly provides […] that all persons born abroad to a Haitian father and mother shall obtain Haitian nationality by birth."

180. Based on the above-mentioned arguments, the Constitutional Court determined that because Juliana's parents were Haitian workers who came to the Dominican Republic as temporary day workers under the 1939 *Modus Operandi* agreement with the Republic of Haiti, her parents had to be regarded as "temporary day workers" (one of the groups of non-immigrant foreign workers) and, therefore, "foreigners in transit". It also held that Juliana Deguis had failed to prove that at least one of her parents had legal residency in the Dominican Republic either at the time of her birth or thereafter.

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182 I/A Court H.R., *Case of Yean and Bosico Girls v. Dominican Republic*. Judgment of September 8, 2005. Series C, No. 130.

183 I/A Court H.R., *Case of Yean and Bosico Girls v. Dominican Republic*. Judgment of September 8, 2005. Series C, No. 130, para. 157

184 *Ibid.,* para. 140.

185 *Ibid.,* para. 140.

181. The Court therefore resolved that because she was the daughter of Haitian nationals who, at the time of her birth, were "in transit", Juliana Deguis did not have a right to claim Dominican nationality under Article 11(1) of the 1966 Constitution in force at the time of her birth. It also held that the fact that Juliana Deguis did not have a right to Dominican nationality by *jus soli* did not render her stateless because she had a right to Haitian nationality. Based on the foregoing, the Constitutional Court resolved:

> 1. To admit the petition for review.
>
> 2. To deny the petition and revoke Judgment No. 473/2012, inasmuch as Juliana Deguis is the daughter of foreign nationals in transit, which makes her ineligible for Dominican nationality under the 1966 Constitution (in force at the time of her birth).
>
> 3. To order the Central Electoral Board, in application of Circular No. 31 issued in 2011 by the Office of the Director of Civil Registry,[186] to take the following measures: a) within a period of 10 days, hand over to Juliana Deguis the original of her certificate of declaration of birth; b) submit that document to the competent court for a determination of its validity or invalidity, and c) do likewise in all other cases similar to the one this Court has decided.
>
> 4. To order the Office of the Director General of Immigration to issue, within a period of 10 days, a special permit for Mrs. Juliana Deguis for a temporary stay in the country until the "National Plan to Regularize the Status of Illegal Aliens Living in the Country"[187] determines what conditions must be met for regularization in cases of her kind.
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> 5. To order the Central Electoral Board to: a) audit, within one year of the notification of this judgment (a period that can be extended for up to an additional one year), the births recorded with the Dominican Republic's Registry between 1929 and the present; b) enter the names of the foreigners irregularly registered on a list to be called the "List of foreigners irregularly registered into the Dominican Republic's Civil Registry"; c) assemble special annual record books of foreign births between June 21, 1929 and 2007, the date on which the Central Electoral Board put into effect the "Registry of Children Born to Foreign-Born Mothers who do not have residency status in the Dominican Republic"; e) transfer the births that appear on the "List of foreigners irregularly registered into the Dominican Republic's Civil Registry" to the record books of foreign births; and f) report the births of legally

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186 This circular concerns the decision on the issuance of birth certificates under investigation, for children born of foreign nationals. In this circular, Registry officials are instructed to hand over the birth certificates of all those persons whose case files are under investigation or review, until such time as the JCE decides whether to suspend them or declare them irregular.

187 Under Article 151 of Immigration Law No. 285-04, the Dominican Government is to prepare a national plan to regularize foreign nationals living in the country illegally, which will at least take into account the following factors: "the period of time the foreign national has been in the country"; "ties with society"; job and socio-economic circumstances; and the regularization of such persons, either individually or by family, but not collectively.

> registered foreigners to the Ministry of Foreign Affairs so that it can issue the corresponding notifications to the persons whom the births concern and to the respective consulates and/or embassies or diplomatic delegations.
>
> 6. To order the Central Electoral Board to: a) send the "List of foreigners irregularly registered into the Dominican Republic's Civil Registry" to the Minister of State of the Interior and Police so that within the 90 days following notification of the judgment, it will prepare the *National Plan to Regularize the Status of Aliens Living Illegally in the Country*, and b) present a general report to the Executive Branch concerning that report, and include recommendations.
>
> 7. To urge the Executive Branch to implement the National Plan to Regularize the Status of Aliens Living Illegally in the Country."[188]

182. As for the effects of this judgment, it is important to note that because the Constitutional Court found that the *amparo* petition went well beyond the specific violation claimed by Juliana Deguis Pierre, the Court concluded that the effects of this judgment were far-reaching, reasoning that the judgment "protects the fundamental rights of a very large group of people living in situations that, from a factual and legal standpoint, are either the same or similar" to that of Mrs. Deguis Pierre. Here, the Constitutional Court maintained that:

> [i]n cases like the one before us, the *amparo* protection goes well beyond the violation of just one person's right, as the petitioner is claiming. The *tutela* mechanism must have more expansive and binding authority allowing protection of the fundamental rights of other persons not party to the case but who find themselves in similar situations.[189]

183. While judgment TC/0168/13 was supported by a majority of 11 justices, justices Isabel Bonilla Hernández and Katia Miguelina Jiménez Martínez dissented. In her dissenting opinion, Justice Isabel Bonilla Hernández argued that she took issue with the decision the majority had adopted, mainly on their point that foreigners who had lived in the country illegally for a number of years are foreigners "in transit" or "transients". In her view, "this is a mistaken interpretation because persons in transit or transients are persons who spend only a short period of time in the country, which is not their final destination; this was not the case with the parents of the petitioner in this case." She also pointed that "to equate the status of a foreigner in transit with that of an illegal resident alien is in violation of the principle of the non-retroactivity of the law, because until the [2010] amendment the Dominican Constitution was silent on the subject of illegal resident aliens where nationality was concerned[190].."

184. For her part, Justice Katia Miguelina Jiménez Martínez based the dissenting vote she casted in the judgment in question on the fact that Juliana Deguis' parents could not

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188 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
189 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013 p. 97.
190 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
190 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.

be regarded as foreigners in transit because: a) the Dominican State had allowed them to enter the country to work under a bilateral agreement between the Dominican Republic and Haiti; b) they carried a document identifying them as temporary workers, and c) under the 1939 Immigration Law, transient alien status lasted only ten days. She also disagreed with the position that the parents' illegal status passed to their descendants, pointing out that it was not "until the 2010 Constitution that the exception to the principle of *jus soli* was expanded to include foreigners residing illegally in Dominican territory." This "shows that the "transit" concept in the 1966 Constitution did not include illegal aliens." [191]

185. As for the condition of statelessness that Juliana Deguis might ultimately face, Justice Jiménez Martínez pointed out that the Court's decision "fosters the stateless condition of petitioner Juliana Deguis, as she would have to face a proceeding; for the duration of that proceeding she would be without juridical personality and vulnerable, a situation only made worse by the fact that the petitioner does not have any ties to Haiti and is being not just denationalized but forced to become a Haitian citizen." Finally, Justice Jiménez Martínez took issue with the Constitutional Court's interpretation of this judgment's reach and argued that "it violates the principle of relativity of *amparo* judgments, which holds that their effects are *inter partes,* which means that only those who have been party to the petition stand to gain or lose." [192].

186. The Constitutional Court used the arguments it made in judgment TC/0168/13 in 16 subsequent judgments.[193] In all these cases, the petitioners, Dominicans of Haitian descent, were claiming that their rights to nationality, identity, and juridical personality had been violated. The Constitutional Court followed its own case law on the grounds that the legal arguments "must remain the same, not just in this case but in all cases in which the Central Electoral Board is being asked to issue birth, marriage, or death certificates or an identity document on the basis that the lack of these documents causes serious problems and provided the matters in question were brought before the Constitutional Court before September 23, 2013, the date on which it delivered judgment TC/0168/13." In those 16 cases, justices Isabel Bonilla Hernández and Katia Miguelina Jiménez Martínez have repeated and even elaborated upon their dissenting votes.

### 4. Decree No. 327-13: National Plan to Regularize Foreigners in an irregular migratory situation

187. As judgment TC/0168/13 held that Mrs. Juliana Deguis Pierre and many other persons caught in situations that were the same or similar to hers were not entitled to Dominican nationality and were instead entitled to Haitian nationality,

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191 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
191 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
192 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
192 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013.
193 See, Dominican Republic, Constitutional Court, judgments TC/0275/13, TC/0290/13, TC/0028/14, TC/0042/14, TC/0043/14, TC/0044/14, TC/0048/14, TC/0057/14, TC/0064/14, TC/0078/14, TC/0086/14, TC/0108/14, TC/0111/14, TC/0117/14, TC/0122/14, and TC/0309/14.

transforming them into Haitian immigrants in an irregular migratory situation in the Dominican Republic, the Constitutional Court ordered the Government to prepare and implement the National Plan to Regularize Foreigners in an irregular migratory situation (hereinafter the "Regularization Plan") within 90 days of that judgment's notification, in order to "determine what conditions must be met for regularization in cases of her kind".[194]

188. In compliance with the provisions of the General Immigration Law[195] and with judgment TC/0168/13 of November 29, 2013, President Danilo Medina approved Decree No. 327-13 establishing the National Plan to Regularize Foreigners in an irregular migratory situation. The Regularization Plan provided that any foreigner wishing to regularize his or her migratory situation should apply within 18 months of the date on which the Plan took effect, i.e., June 17, 2015.[196]

189. As to the subjects who qualified to apply for the Regularization Plan, particularly persons born in Dominican territory to foreign parents in an irregular migratory situation –who according to judgment TC/0168/13 were not entitled to Dominican nationality under the laws in force, the President maintained that the children of non-resident alien mothers listed in the Civil Registry could apply for a special process.[197]

190. The Regularization Plan also provided that a foreigner in an irregular migratory situation, who neither qualifies for nor invokes the established regularization provisions, shall be subject to deportation pursuant to the Constitution and the laws. It also established that any deportation proceeding conducted pursuant to the provisions of the General Immigration Law, its Regulations, and the Regularization Plan will respect the due process guarantees required in immigration proceedings, in accordance with the international standards governing this matter.[198] It also prohibited deportation during the execution of the Regularization Plan, and the

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194 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, sixth and seventh operative paragraphs.

195 Dominican Republic, National Congress, General Immigration Law No. 285-04, Article 151.

196 Dominican Republic, Danilo Medina, President of the Republic, Decree No. 327-13 establishing the national regularization plan for foreign nationals in an irregular migratory situation. November 29, 2013, Aricle. 3.

197 Article 8 of Decree No. 327-13 reads as follows:
Article 8. Persons subject to regularization. Any person living in the country may apply for the Plan if:
1. He or she has entered the national territory illegally, in violation of the provisions of the Dominican Republic's immigration laws and regulations, and has remained in the country under the terms and conditions stipulated in this Plan;
2. He or she has entered the Dominican Republic legally, in compliance with the immigration requirements established in the laws and regulations, and his or status has become irregular as a result of:
a. Having overstayed the period of time he or she was authorized to remain in the national territory, under the terms and conditions stipulated in this Plan;
b. Having violated the conditions under which he or she was admitted or the conditions of his or her presence on Dominican territory, under the terms and conditions stipulated in this Plan.
Paragraph. Persons born within the territory of the Dominican Republic to foreign parents in an irregular migratory situation and who are not entitled to Dominican nationality under the laws now in force, may apply for a special process whereby children born of nonresident foreign mothers may become naturalized citizens provided they are listed in the Registry.

198 *Ibid*., Article 4.

authorities were ordered not to adopt the measures provided for in articles 121 *et seq* of the General Immigration Law, with regard to foreigners in an irregular migratory situation living within the territory of the Dominican Republic and who have applied for regularization.[199] In Chapter VI of this report, the Commission will examine its concerns regarding this Plan's application to Haitian migrants.

## 5. Law 169 of 2014: A special regime for persons born in Dominican territory irregularly registered in the Dominican civil registry, and on naturalization

191. To respond to the effects of judgment TC/0168/13, President Danilo Medina introduced and Congress approved Law No. 169-14, which established a "special regime for persons born in Dominican territory irregularly registered in the Dominican civil registry, and on naturalization." Law No. 169-14 recognized that by having singled out and criticized the shortcomings in Dominican immigration policy and the Civil Registry's institutional and bureaucratic weaknesses, the Constitutional Court had found that the State itself was responsible for irregularities and problems in this area, which has been a principal factor contributing to the situation that persons who received that document from the State are now facing.[200]

192. Furthermore, Law No. 169-14 recognized that the State, through its representative bodies, is called upon to solve the problem facing persons who, although irregularly registered into the Civil Registry by the State itself, have throughout their lives acted on the assumption that they have Dominican citizenship and have thus laid down definite roots within the Dominican society.

193. Under the law, different legal regimes are established for two groups of persons: a) a special regime for children born within the national territory of nonresident foreign parents in the period between June 16, 1929 and April 18, 2007, and whose names appear in the records of the Dominican Civil Registry but were listed on the basis of documents that the current laws do not recognize as valid for those purposes (known as Group A); and b) the registration of children born in the Dominican Republic of foreign parents in an irregular migratory situation and whose names are not listed in the Civil Registry (known as Group B).[201]

194. As for the members of Group A, the law provides that the Central Electoral Board shall proceed to regularize them and/or enter into the Civil Registry any certificates of persons previously listed in the Dominican civil registry whose identification documents were either suspended or taken away; no bureaucratic procedures shall be required of the beneficiaries.

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199 *Ibid*., Article 37.

200 Dominican Republic, Law No. 169-14: A special regime for persons born in Dominican territory irregularly registered in the Dominican civil registry, and on naturalization, May 23, 2014, *consideranda* five.

201 *Ibid*., Article 1.

195. Members of Group B, or in other words, children born on Dominican soil to foreign parents in an irregular migratory situation and whose names are not listed in the Dominican Civil Registry, they may be listed in the foreigners' book contemplated in General Immigration Law No. 285-04, provided the fact of their birth is reliably supported by the means established in the rules governing this law. Once these people born on Dominican soil are listed in the foreigners' book, they are to apply for the National Plan to Regularize Foreigners in an irregular migratory situation. After a period of two years, these people may apply for Dominican citizenship through regular naturalization.

196. The Ministry of the Interior and Police is the government agency responsible for implementing Decree No. 250-14 and for processing applications to be listed in the book in which the births of foreigners are recorded. While the Ministry's estimate that the number of persons born in the country who could take advantage of the procedure established by Decree No. 250-14 was between 110,000 and 145,000, according to what President Medina reported only 8,755 persons had been recorded in that process.[202]

## *C. Principal concerns and standards regarding the right to nationality of Dominicans of Haitian descent and judgment TC/0168/13*

197. Practices, laws, and court rulings based on discriminatory criteria - such as the national origin of their ancestors, skin color, command of Spanish language, or surnames- to strip Dominicans of Haitian descent of their Dominican citizenship have left these persons in a situation of extreme vulnerability in terms of their right to nationality, a situation the Commission has been monitoring since the early 1990s. Throughout this period, the Commission has observed how the arbitrary denial of nationality in the case of Dominicans of Haitian descent, the fact that they find themselves stateless in their own country, the lack of a lasting solution that fully restores their right to citizenship, and the other rights that have been violated as a result of being denied their rights to nationality and legal personality, have left Dominicans of Haitian descent with an ever-present sense of frustration and uncertainty that has lasted for years and has even been passed down from one generation to the next.

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202 Dominican Republic, *Discurso de rendición de cuentas del Presidente Danilo Medina ante la Asamblea Nacional* [State of the Nation address delivered by President Danilo Medina before the National Assembly], Santo Domingo, February 27, 2015.

> I was becoming frustrated at their unwillingness to issue me my identity card. I gave up for a time, and then I realized that it was affecting every aspect of my life: my married life, my economic life, and my life as a mother. And I mention my life as a mother because I have a three-year-old little girl. She has been unable to go to school; I have been unable to register her; I can't get health insurance because she isn't registered and I don't have the identity card. As for marriage, I had to enter into a free union with my partner; without an identity card I'm unable to marry. He's abroad, as he is a U.S. citizen. He's asked me to marry him. He wants to be able to request that I go with him to the U.S. because he wants to be with his family: my little girl and I are his family. But I can't get married. The relationship with him has been so frustrating because he says that we should go our separate ways since he can't marry me. I can't leave the country. I'm alone with my daughter. The situation makes me feel that my life is miserable. I'm living a nightmare because I can't work, I can't study, I can't do anything. I can't take out medical insurance. I can't do anything because without the identity card, you're nobody. [203]

198. During its on-site visit, the Commission had an opportunity to analyze Constitutional Court judgment TC/0168/13, the laws enacted before and after it was handed down, and the concrete effects that its enforcement has had on persons of Haitian descent. Persons affected by judgment TC/0168/13, civil society organizations, and jurists told the Inter-American Commission that this ruling was one more phase in the process of arbitrary denationalization, which aims to strip the right to Dominican citizenship from the children of irregular migrants. They also pointed out that the judgment was clearly discriminatory on the basis of race, as it mainly affected persons born in the Dominican Republic of Haitian descent, for whom it has become virtually impossible to exercise their right to nationality.[204]

199. During a meeting with Dominican jurists, the Commission was told that prior to judgment TC/0168/13, the Dominican Republic's Constitutional Court had never delivered a ruling with such sweeping negative effects on a given group. This judgment was the first time this had happened. They also noted that with this judgment the Constitutional Council had taken a strange turn by perverting a concept applied in our hemisphere, i.e., the notion of an unconstitutional state of affairs. In other words, this was a widespread unconstitutional state of affairs, and in such cases the jurisprudence of the constitutional court can serve to benefit the persons adversely affected by declaring that a decision favorable to them applies across the board. However, what the Constitutional Court did in this case was to give general effects to a ruling that went against those adversely affected, all Dominicans

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[203] One woman's testimony to the Inter-American Commission on Human Rights, Santo Domingo, December 2, 2013.

[204] See, *Meeting the IACHR had with affected persons and civil society organizations concerning the impact of Constitutional Court judgment TC/0168/13, and during its on-site visit to the Dominican Republic.* Santo Domingo, December 2, 2013

of Haitian descent.[205] The jurists who met with the Commission also stated that this judgment violated a number of constitutional and legal norms of the Dominican legal system.[206]

200. A number of jurists observed also that for years the right to nationality has been violated countless times in practice, primarily because of the procedures routinely employed by officials at the Civil Registry and the Central Electoral Board. Judgment TC/0168/13 institutionalized and exacerbated these practices. In addition to the methods initially used to perpetrate *de facto* violations of the rights to nationality, legal personality, identity, and equality and non-discrimination, laws have been passed and court decisions handed down that are *de jure* validations of the violations of those rights. Measures that the authorities have taken at the administrative, legal, and constitutional levels and now the case law of the Supreme Court and the Constitutional Court have gradually sanctioned these violations.

201. These jurists also commented that the effect of these measures has been to segregate Dominicans of Haitian descent from the political and social community and, as a result, to cut them off from the protection that the Dominican State must guarantee them. As a result, they have not been allowed to enjoy and exercise a wide array of the rights guaranteed by the Constitution and laws of the Dominican Republic and international human rights treaties that the State has ratified. As for the impact that the arbitrary denial of nationality and the violation of the right to legal personality have had, one jurist pointed out that "[m]any human rights violations, however serious they may be, happen only once, whereas the violations that Dominicans of Haitian descent have endured are recurring violations that perpetuate themselves and are felt daily."[207] A woman who testified before the Commission expressed a similar sentiment:

> I'm from San Pedro de Macorís. Where do I begin? Well, when I was little girl I dreamed of writing a wonderful book that would be the story of my life. In the end, however, I have titled it "My terrible ordeal." The story begins with my grandparents, who migrated from Haiti to work in the sugar cane fields. My parents were born in Haiti but their parents brought them here when they moved, which is how I ended up being born here. This story of my terrible ordeal begins when I had my first child and went to register him. I was excited and happy. Right away they followed the routine, which was that the record of live birth was handed to someone and that someone was in charge of taking it to the judge. The judge is charged with checking everything and immediately ordering that the birth be registered. What happened in my case, however, was that I was sent to the judge directly. We talked and she said to me: "Look, you

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205 *Remarks by Cristóbal Rodríguez during the meeting that the IACHR held with Dominican jurists concerning Constitutional Court judgment TC/0168/13.* Santo Domingo, December 2, 2013.

206 The following were among the norms that jurists believed were violated by Constitutional Court judgment TC/0168/13: articles 5, 7, 8, 18.2, 22, 23, 24, 26, 38, 39, 74(3), 74(4), 110 and 184 of the Constitution and articles 7(5) and 7(13) of the Constitutional Court's Organic Law.

207 Intervention by Liliana Gamboa, Coordinator of the Project against Discrimination in the Dominican Republic and Open Society's Justice Initiative, within the framework of the meeting between the Commission and civil society in relation to the right to citizenship in the Dominican Republic . Santo Domingo, December 2nd , 2013.

> have a little problem. Well, for me it's a little problem but for you it's a big problem. Your parents are aliens according to what is written here, and when they registered you they used an employment card as identification." I said to her, "What are you talking about?" I myself was unaware that when they went to register my birth they used an employment card, but that's what appeared on the document, and it's in the computer. The judge tells me that I can register my son if I go to La Romana to find the certification of my mother's identification card and they give me a number, they tell me the file it's in, what record, and everything. I go and I write and I don't find anything. Supposedly my mother had an old identification card that she believed was not a legal one. However she never tried to change the card or get a new one. So I went home to investigate. I went to my father, who was closer, to see what he could do, if he could find a birth certificate. When he went they told him no, they didn't want to give it to him. I've waited a year by now. I completed my university education and have a degree in education. When I went to present my documents to the Central Electoral Board, all that was missing was the birth certificate. When I went to request it, they told me they couldn't give it to me, for the same reason the judge gave me. And so began my terrible ordeal.[208]

202. Affected persons who testified before the Commission stated that the various measures taken by the authorities to strip them of their nationality have taken a toll on every aspect of their lives, with the result that every day they endure violations of multiple human rights, particularly their civil, political, economic, social, and cultural rights. Frequently the affected persons said that because they are no longer recognized as Dominican citizens, they are unable to register their children. If the children are in school, the many obstacles placed in their way make it difficult for them to stay in school and continue their studies, not to speak of the difficulty they have being admitted to a university, finding work, getting access to health services, marrying, entering into contracts, buying property, traveling within and outside the country, and so forth.

203. The Commission observes that the immediate effect of arbitrarily depriving persons of Haitian descent of their Dominican nationality let to a situation in which individuals who ought to have been considered Dominicans were regarded instead as foreigners or migrants, which resulted in the loss of their political rights. Those who, having been stripped of their nationality, became stateless persons have suffered egregious human rights violations. The Commission is deeply troubled by the fact that the persons so affected have become even more vulnerable to human rights violations and abuses in both the public and private spheres. In this regard, the Commission is compelled to remind the Dominican State of its obligation to respect the human rights and freedoms recognized in the American Convention and in other Inter-American and universal human rights instruments, with respect to all persons subject to its jurisdiction, regardless of their nationality or their situation of statelessness.

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208 One woman's testimony to the Inter-American Commission on Human Rights. Santo Domingo, December 2, 2013.

204. The citizens of a State party do not have exclusive claim to the enjoyment and exercise of the rights recognized in the American Convention and in other Inter-American and international instruments; all persons are entitled to enjoy those rights, irrespective of their nationality or their situation of statelessness. The preambles to the American Declaration of the Rights and Duties of Man, the American Convention and the Protocol of San Salvador clearly state that "the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality" and therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.[209]

205. During the time that the Inter-American Commission has been monitoring the situation of the right to nationality of Dominicans of Haitian descent, a number of Dominican officials and political parties have repeatedly argued that matters pertaining to nationality essentially come under the State's domestic jurisdiction where the Dominican State is sovereign to decide how the question of nationality will be regulated; hence, they contend, international law does not factor it. For its part, in judgment TC/0168/13, the Constitutional Court held that "for almost a century it has been internationally accepted that the conditions for granting nationality are part of a State's sovereignty and its exclusive competence";[210] hence, "the attribution of nationality is the '*domaine réservé*' or exclusive jurisdiction of the State."[211]

206. In response to the position taken by a number of Dominican officials, and by the Constitutional Court in particular, the Inter-American Commission must point out that such a position is anachronistic and out of step with modern international law. At the international level, the right to nationality has been widely recognized as a fundamental human right. While the principal instruments of the Inter-American Human Rights System recognize the right to nationality, the regional legal instruments also widely recognize it as a human right. The international community has recognized that protection of the right to nationality is a matter of immediate importance to international law and that violation of that right compromises the State's international responsibility. One of the principal manifestations of the foregoing is the fact that the right to nationality is upheld in a number of international[212] and regional[213] instruments. The question of nationality is also

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209 See, American Declaration of the Rights and Duties of Man, Preamble; American Convention on Human Rights, Preamble; Protocol of San Salvador, Preamble.

210 *Cf*. Judgment TC/0168/13. *Supra* note XX, p. 25.

211 *Cf*. Judgment TC/0168/13. *Supra* note XX, p. 29.

212 The right to nationality is recognized in the following international legal instruments, among others: the Universal Declaration of Human Rights, Article 15; the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5, whose first paragraph and whose paragraph (iii) (d) provide that the States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights (…) the right to nationality; the International Covenant on Civil and Political Rights, Article 24(3); the Convention on the Rights of the Child (articles 7 and 8); the Convention on the Elimination of All Forms of Discrimination against Women ; the Convention on the Nationality of Married Women (Article 9), which establishes similar guarantees of the right to nationality in the case of married

regulated in the Convention on the Reduction of Statelessness, the Convention to Reduce the Number of Cases of Statelessness, and the Convention relating to the Status of Refugees.

207. Within the Inter-American Human Rights System, the right to nationality was first recognized in Article XIX of the American Declaration of the Rights and Duties of Man. Thereafter, Article 20 of the American Convention on Human Rights also recognized the right to nationality. It reads as follows:

> 1. Every person has the right to a nationality.
> 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
> 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

208. Under Article 20 of the American Convention, every person has the right to acquire, retain and change one's nationality. The right of every person to keep his or her nationality follows from the Convention provision that absolutely prohibits the arbitrary deprivation of nationality.[214] The importance that the American Convention attaches to the right to nationality is corroborated by the fact that it is among the Convention's non-derogable rights, which means that it is one of the rights that, under its Article 27(2), cannot be suspended in case of war, public danger or other emergency that threatens a State's independence or security.[215]

209. The American Convention upholds the right to nationality in two respects: in the sense of entitling the individual to a minimum of legal protection in human and other relations by establishing that individual's connection to a given State, and in the sense of protecting the individual from being arbitrarily deprived of his or her nationality because if the individual were to lose his or her nationality, he or she would be deprived of all political rights and those civil rights that are based on one's

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women; the Convention on the Rights of Persons with Disabilities, Article 18; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29.

213 See, African Charter on the Rights and Welfare of the Child, Article 6; the Arab Charter of Human Rights, Article 29; the Covenant on the Rights of the Child in Islam, Article 7; the European Convention on Nationality, Article 4; and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, Article 24.

214 In its resolution 50/152, the United Nations General Assembly also recognizes how essential the prohibition banning arbitrary deprivation of nationality is. For its part, in its resolution A/HRC/RES/10/13, the United Nations Human Rights Council recognizes that the arbitrary deprivation of nationality, especially on discriminatory grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, is a violation of human rights and fundamental freedoms.

215 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, par. 136. Here, the Inter-American Court has recognized those rights that cannot be suspended as a core of nonderogable rights. *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, par. 119; and *Case of González et al. ("Cotton Field")*, par. 244. See in this regard, *Habeas Corpus* in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 23.

nationality.[216] The State's decision to confer nationality must not be an arbitrary act. Here the Inter-American Court has written that:

> It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights.[217]

210. When addressing the right to nationality, the Inter-American Court has held that nationality, "as the political and legal bond that connects a person to a specific State, […] allows the individual to acquire and exercise rights and obligations inherent in membership in a political community. As such, nationality is a requirement for the exercise of specific rights."[218]

211. The Commission has maintained that when it comes to the acquisition of nationality, there is no uniform rule in practice or in domestic law concerning acquisition of nationality by birth, or natural-born citizenship; nevertheless, two principles are applied and nationality is conferred by birth, either by having been born within the territory of a State –the principle of *jus soli*- or being the descendant of one of its nationals – *principle of jus sanguinis*.[219]

212. Here, the Commission has found that the majority of the States of the American hemisphere use a combined system, in which nationality is conferred through combined application of the principles of *jus soli* for children born within their territory, and *jus sanguinis* for those born in some other country. This tradition – which is the system used in most countries of the American hemisphere- has been a major factor in preventing and reducing statelessness within the region.

213. The Commission concurs with the Inter-American Court's finding to the effect that while the determination of who has a right to be a national continues to fall within a State's domestic jurisdiction, it is necessary that this attribution be exercised within

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216 *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, par. 34; *Case of Gelman v. Uruguay*. *Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, par. 128; *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, para. 254.

217 *Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84, par. 32. See also Inter-American Court of Human Rights, *Case of Ivcher Bronstein*. Judgment of February 6, 2001, par. 88; *Case of Castillo Petruzzi et al.*, op. cit., para. 101.

218 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 137.

219 IACHR, Application filed with the Inter-American Court of Human Rights in Case 12,189 (Dominican Republic) on the girls Dilcia Yean and Violeta Bosico. July 11, 2003, para. 49.

the parameters established by the binding standards of international law, which the States themselves, in exercise of their sovereignty, have undertaken to observe. Thus, international human rights law has evolved such that in today's world, States must, when regulating the conferral of nationality, take the following into account: a) their obligation to prevent, avoid and reduce statelessness, and b) their duty to provide individuals with equal and effective protection of the law, without discrimination.[220]

214. Another important expression of the significance that the States attach to the right to nationality and the prevention of statelessness are the recommendations that they have made to the Dominican Republic in the Universal Periodic Review (UPR) conducted through the United Nations Human Rights Council. The Inter-American Commission observes that on February 5, 2014, just four months after judgment TC/0168/13 was handed down, and as part of the second cycle of the Universal Periodic Review of the Dominican Republic, 48 States had recommendations for the Dominican Republic; 20 of those States expressed concern and made specific recommendations pertaining to protection of the right to nationality and prevention of statelessness. Many recommendations concerned the need to restore the right to nationality to persons born on Dominican territory to foreigners, particularly Haitians, and to implement the recommendations that the Inter-American Commission had made in its preliminary observations at the end of its on-site visit in 2013.[221]

215. The Commission therefore believes that the States must make certain that when exercising their discretionary authorities in matters of nationality, they do so in a manner that comports with their international human rights obligations.[222] While the rules pertaining to nationality are, in principle, internal affairs that are up to the States to decide, with the evolution that international law has undergone since the last century, these matters are also of interest to the international community as a whole, so much so that various laws have been approved establishing international obligations incumbent upon States in this regard. At the present time, it is completely anachronistic and contrary to international law to argue any position that maintains that a given State has absolute discretion over all matters related to nationality, or even the kind of discretionary authority that would allow it to disregard obligations that it has undertaken internationally, especially its obligations in the areas of human rights and the prevention of statelessness.

216. The Commission is of the view that the effects of judgment TC/0168/13 are general in scope, in that they are intended to retroactively redefine who qualifies for Dominican nationality on the basis of the principle of *jus soli,* specifically in the case

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220 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130*,* para. 40.

221 The recommendations made to the Dominican Republic concerning the right to nationality and prevention of statelessness came from the following States: 1) Argentina, 2) Australia, 3) Belgium, 4) Brazil, 5) Canada, 6) Chile, 7) France, 8) Germany, 9) Ireland, 10) Italy, 11) Mexico, 12) Nicaragua, 13) Norway, 14) Portugal, 15) Slovenia, 16) Spain, 17) Switzerland, 18) Trinidad and Tobago, 19) United States, and 20) Uruguay. See, UN, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*. 26th Session, April 4, 2014.

222 Yearbook of the International Law Commission, 1997, Vol. II, Part One, p. 22.

of persons born to parents who, by the Constitutional Court's interpretation, came to be classified as "foreigners in transit." In that judgment the Constitutional Court ordered a general review dating back to 1929, whose purpose would be to detect "foreigners irregularly registered" in the Civil Registry,[223] persons previously recognized as Dominican nationals. Here the Commission would echo the Inter-American Court's finding with regard to the same judgment, where it wrote that:

> Regarding judgment TC/0168/13, it should be recalled that, in its case law, the Inter-American Court has established that it is aware that the domestic authorities are subject to the rule of law and, therefore, are obliged to apply the laws that are in force.[224] However, when a State is a party to an international treaty such as the American Convention, all its organs, including its judges, are also subject to that treaty, which obliges them to ensure that the effects of the provisions of the Convention are not impaired by the application of norms that are contrary to its object and purpose. The judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* a "control of conventionality" between domestic laws and the American Convention; evidently within the framework of their respective jurisdictions and the corresponding procedural regulations. In this task, they must take into account not only the treaty, but also its interpretation by the Inter-American Court, ultimate interpreter of the American Convention.[225]

217. Civil society organizations have told the Commission that judgment TC/0168/13, Law No. 169-14, regulated by Decree No. 250-14, and other laws and decisions that the Dominican authorities adopted, like Immigration Law No. 285-04, 2007 Resolution 02 of the Central Electoral Board, 2007 Circular No. 17 of the Central Electoral Board's Administrative Chamber, and 2007 Resolution No. 12 of the Board's Plenary violate Article 2 of the American Convention with respect to the State's duty to adopt such legislative measures as may be necessary to give effect to rights recognized in the American Convention, like the rights to nationality, juridical personality, name, equality without discrimination, and others.

218. On this question, the Dominican authorities underscored the fact that judgment TC/0168/13 had to be observed, since it is a ruling of the Constitutional Court binding upon the branches of government and all Dominican State agencies, and for the sake of preserving the rule of law and respecting the separation of powers.

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223 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, operative paragraph five.

224 *Case of Almonacid Arellano et al. v. Chile.* Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of García Cruz and Sánchez Silvestre v. Mexico.* Merits, reparations and costs. Judgment of November 26, 2013. Series C No. 273, footnote 76.

225 See, I/A Court H.R., *Case of expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, par. 311, citing I/A Court H.R., *Case of Liakat Alibux v. Suriname,* par. 87. See also, I/A Court H.R., Case of Almonacid Arellano et al v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, par. 124, and Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 273, footnote page 76.

219. The Commission must point out that the organs of the Inter-American System are not called upon to examine the domestic laws of each State as a function of its Constitution; instead, they must perform a "conventionality control", i.e., an analysis of the alleged incompatibility of those domestic laws, practices and decisions with the States Party's international obligations under the American Convention.[226] In this regard, both the Commission and the Court have ruled on the incompatibility of State's laws, court rulings and/or practices practice with the American Convention[227].

220. The Commission observes that the practice of "conventionality control" has been recognized by the Dominican State in its Constitution, its laws and its case law. In its Article 74(3), the Dominican Constitution provides that "the treaties, covenants and conventions on the subject of human rights, and signed and ratified by the Dominican State, have constitutional hierarchy and are directly and immediately enforceable by the courts and other organs of the State." Similarly, in its Resolution 1920-2013 the Supreme Court held that "the provisions of the American Convention on Human Rights and the interpretations thereof by the organs created as a means of protection to have competence vis-à-vis matters relating to the fulfillment of the commitments made by the States Parties thereto, are binding upon the Dominican State."

221. The Commission observes that the Constitutional Court of the Dominican Republic has drawn upon the Inter-American Court's case law and advisory opinions as the basis of any number of its own rulings, among them the following: TC/0021/12; TC/0042/12; TC/0048/12; TC/0050/12; TC/0008/13; TC/0017/13; TC/0050/13; TC/0062/13; TC/0084/13; TC/0136/13; TC/0163/13; TC/0168/13; TC/0203/13; TC/0242/13; TC/0268/13; TC/0275/13; TC/0286/13; TC/0006/14; TC/0016/14; TC/0082/14; TC/0119/14; TC/0162/14; TC/0193/14; TC/0272/14; TC/0319/14; and TC/0344/14. In the specific case of judgment TC/0050/12, the Constitutional Court held that "the single paragraph of Article 382 of the Code of Civil Procedure is unconstitutional because it violates the fundamental right to an impartial judge recognized in Article 69(2) of the Constitution of the Republic; Article 10 of the Universal Declaration of Human Rights; Article 8 of the American Convention on

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226 I/A Court H.R., Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219. Para. 49.

227 I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 2nd, 2001. Series C No. 72, par. 126; I/A Court H.R. Case of "The Last Temptation of the Christ" (Olmedo Bustos et al.) v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5th, 2001. Series C No. 73, par. 88; I/A Court H.R. Case of La Cantuta v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 29th, 2006. Series C No. 162, para. 174. ; I/A Court H.R. Case of Boyce et al. v. Barbados. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20th, 2007. Series C No. 169, para. 77 and 78.; I/A Court H.R. Case of Xákmok Kásek indigenous community v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24th , 2010. Series C No. 214, par. 313.; I/A Court H.R. Case of Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30th, 2010. Series C No. 215, para. 237.; I/A Court H.R. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31st, 2010. Series C No. 216, para. 220.; I/A Court H.R. Case of López Mendoza v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1st , 2011. Series C No. 233 par. 228; I/A Court H.R. Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28th, 2012. Series C No. 257.

Human Rights, and Article 14 of the International Covenant on Civil and Political Rights." [228]

222. Furthermore, in its observations on the present report, the Dominican State contended that "[a]ccording to IACHR's interpretation, as well as that of the Inter-American Court of Human Rights, the Dominican Republic could never have a nationality system that has any restrictive provisions based on whether or not the parents had migratory status that was regular, such as that of dozens of countries around the world, with even greater restrictions, because inevitably a restriction of that kind would exert the greatest impact on the group of persons who have that status, which in the case of the Dominican Republic turns out to be migrants from Haiti. On the basis of that interpretive approach to human rights with respect to nationality, the only option available to the country is the adoption of a totally open nationality system, which does not occur in the large majority of countries from the world's diverse regions."[229]

223. In addition, the State sustained that: "When establishing its restrictions, the Dominican State is not acting arbitrarily or for discriminatory reasons, as the IACHR seems to be alleging when referring to the issue of limitations that States have at the time of drawing up their national systems in accordance with international law. The specific reality—probably unique in the world—of the complex relationship between the two nations (the Dominican Republic and Haiti) in the context of an island, especially in connection with the demographic issues, provides enough reasons for the Dominican Republic to establish a nationality system with certain reasonable restrictions. The Dominican State has a pressing public interest in adopting the standards it has drawn up with respect to nationality, which in addition are proportional and suitable for the objective that is to be achieved, such as the one that children born in Dominican territory of foreign parents become Dominican nationals if their parents have a regular migratory status in the country. It would be very different if the standards specifically excluded a group of persons because of their national origin."[230]

224. The Dominican State reiterated that "its norms are not aimed at discriminating against any group of persons for reasons of race, color, religion, or origin. The fact that they mainly and disproportionately impact, as stated by the IACHR, a specific group of persons is something arising from a social reality in a given historical context, as that occurring in many countries that have nationality systems with certain restrictions, although this does not imply that said countries are involved in any discrimination. In addition to the above, the Dominican State contended that: "It

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228 Judgment of the Constitutional Court TC/0177/14 of August 13, 2014.

229 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded*. December 21, 2015, p. 10.

230 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded*. December 21, 2015, p. 10.

is evident that the only nationality system that is acceptable for the IACHR would be a system without any restrictions whatsoever, which is not accepted by the majority of the countries around the world. In this specific situation which we are facing, an island with two nations, what is truly arbitrary and disproportionate is that the IACHR is requiring the Dominican State to adopt certain standards and policies and does not require the Haitian State to do the same regarding this same issue of nationality."[231]

225. Contrary to what the Dominican State indicates, the Commission deems it relevant to reiterate that even when states have the authority to regulate the scope and application of rights, including the right to nationality, the restrictions or requirements established with respect to the right to nationality must conform to strict principles, among them necessity and proportionality; in other words, the restrictions must serve to satisfy a compelling public interest and must be proportionate to the interest that justify them. Furthermore, these restrictions must be prescribed by law; they must not be discriminatory and must have a legitimate purpose. And they must not imply an arbitrary deprivation of the right to nationality.[232]

226. The Commission has been monitoring this situation in the Dominican Republic and has found a number of impediments preventing Haitian migrants from regularizing their immigration status in the country, which has entailed other obstacles, making it difficult for them to register their children born on Dominican soil with the Civil Registry office and thus benefit from identity papers certifying their Dominican nationality. The Commission reiterates that civil registration is a necessary corollary, especially to ensure their recognition as persons before the law and the fuller enjoyment of their rights under the Convention.[233] Thus, it has been observed that "registration of birth is one of the fundamental rights. With registration, the child's existence and identity are legally recognized and it establishes that a child belongs to a family, a community and a nation. It proves that the child has a place (and a right to participate) in each and every one of those institutions. It opens up other rights, such as access to health services and education; it offers protection against discrimination and abandonment, determines how the child will be treated by the courts and lasts for the duration of the child's lifetime, thereby guaranteeing the individual's right to a place in his or her country's social and political life."[234]

227. Inasmuch as judgment TC/0168/13 arbitrarily and retroactively deprives persons of their nationality and disproportionately affects persons of Haitian descent born in

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231 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded*. December 21, 2015, p. 12.

232 IACHR, *Application filed with the Inter-American Court of Human Rights*, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic,* July 11, 2003, par. 51.

233 UN, Concluding Observations of the Committee on the Rights of the Child: Nicaragua. CRC/C/15/Add.36 (Ninth Session, 1995), par. 16.

234 IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic,* July 11, 2003, par. 179. See also, IACHR, *Report on the situation of human rights in the Dominican Republic,* OEA/Ser.L/V/II.104, Doc 49, rev. 1, October 7, 1999, paragraphs 363 and 364.

the Dominican Republic to parents with irregular migratory situation, the Commission concludes that the judgment is incompatible with the American Convention as it involves a violation of the rights to nationality, recognition as a person before the law and name, recognized in Convention articles 20, 3 and 18, and in relation to such rights, the right to identity and the right to equal protection before the law, recognized in Article 24 of the American Convention, all as a function of the failure to comply with the obligations established in Article 1(1) and the duty to adopt domestic legislative measures established in Article 2 of the Convention.

## 1. The arbitrary and retroactive deprivation of the right to nationality of Dominicans of Haitian descent

228. Persons affected by judgment TC/0168/13 and civil society organizations told the Commission that the judgment meant that children and descendants of migrants with an irregular migratory situation, the majority of whom have historically been of Haitian descent, were arbitrarily deprived of their nationality by virtue of the fact that the judgment classified persons who have lived in the Dominican Republic for decades as "foreigners in transit." The judgment retroactively applied the criterion established by the Supreme Court in its December 14, 2005 judgment in which it declared the 2004 General Immigration Law constitutional. That law had equated the expression "foreigners in transit" with foreigners with an irregular migratory situation. [235] The retroactive effect of this judgment lead to the mass denationalization of more than 200,000 Dominicans of Haitian descent who, because they have no other nationality, have been left stateless. Furthermore, this judgment sanctioned the violations that these individuals suffer in the effective enjoyment of their civil, political, economic, social and cultural rights.

229. With regard to judgment TC/0168/13, the Commission observes that the crux of the Constitutional Court's reasoning is based on the provision that applies in this case, which is Article 11(1) of the 1966 Constitution of the Dominican Republic, which defines Dominicans as "[a]ll persons born in the territory of the Republic with the exception of the legitimate children of foreigners resident in the country in diplomatic representation or in transit." In its interpretation of this provision, the Court brings up the problem of how the expression "or in transit" should be interpreted. To resolve that problem, the Court harkens back to the 1939 Immigration Law, which draws a distinction between immigrant foreigners and nonimmigrant foreigners. Under the latter group, the 1939 law distinguishes four different groups, one of which was that of "temporary day workers and their families". This is an important classification, since immigrant foreigners "may reside in the Republic indefinitely," whereas those classified as nonimmigrants under the law "will be granted only temporary entry." The 1939 law provides that in the case of this last category of nonimmigrants, "temporary workers will be admitted into Dominican territory only when farm businesses request that they be brought in, and then only in the number and under the conditions that the Secretariat of State of the

[235] In this regard, see also, JORGE PRATS, Eduardo, *Derecho Constitucional*. Volume I. Santo Domingo: Ius Novum, 2013, p. 624.

Interior and Police prescribes in order to fill those businesses' needs and to oversee their entry, temporary stay and return to the country from whence they came." The Constitutional Court's understanding was that the language used in the 1966 Constitution, "the [foreigners] in transit in [the country]" referred to "nonimmigrant" foreigners. In the Court's view, because the parents of Juliana Deguis Pierre had entered the Dominican Republic as "temporary day workers", they came under this last category. Therefore, the Court reasoned, Juliana Deguis Pierre would fit under the exception articulated in the article of the 1966 Constitution, which meant that she was not entitled to Dominican nationality.

230. The Commission believes it is best to begin its examination of the arguments made by the Constitutional Court in this judgment by reference to the principles, rights and obligations under the Inter-American System and that refer to the central issue in the judgment. As previously observed, under Article 20(3) of the American Convention on Human Rights, it is the obligation of the States Parties to not arbitrarily deprive anyone of his or her nationality. As will be demonstrated throughout the present report, the Commission considers that the arbitrary deprivation of Dominican nationality for persons of Haitian descent in the Dominican Republic is based on the fact that it involves persons who are descendants of persons of Haitian origin, which in turn is closely related to the problems of discrimination based on reasons of race and skin color of persons of African descent.

231. Within the States' prerogative to grant nationality, States must refrain from taking discriminatory measures and from enacting or keeping on the books any laws that arbitrarily deprives persons of their nationality by reason of race, color, sex, language, religion, political or other opinion, national or social origin, economic condition, birth or any other condition, especially when those measures and laws have the effect of converting an individual into a stateless person. Laws or measures that cause a person to lose or be deprived of his or her nationality on discriminatory grounds (i.e., for reasons of race, color, sex or religion, for example) are arbitrary and therefore represent a violation of the right to nationality.

232. The Commission observes that even if established by law, a measure intended to revoke nationality may still be arbitrary. In order for deprivation of nationality not to be arbitrary, the measure in question must serve a legitimate State purpose that is proportional to the end sought and that is not motivated by discriminatory considerations. Measures of this kind are disproportionate when other less intrusive measures are not adopted to achieve a legitimate end sought by the State. Deprivation of nationality is arbitrary when the measure used to deprive a person of his or her nationality is adopted without observing the guarantees of due process, such as denying the affected person the opportunity to challenge the measure, or if the measure is illogical given the circumstances.

233. As a general rule, the loss or deprivation of nationality is prohibited when such a measure would leave a person stateless. That prohibition is expressly set forth in the 1961 Convention on the Reduction of Statelessness, which contains a list of exceptions to these provisions in which the Convention recognizes that there are certain circumstances in which the loss or deprivation of nationality that leaves a

person stateless can serve a legitimate purpose.[236] However, even in such cases, the loss or deprivation of nationality must satisfy the principle of proportionality. The consequences of depriving a person of his or her nationality must be carefully weighed, taking into account the seriousness of the conduct or crime that is the reason for the decision to withdraw nationality. In view of the serious consequences that deprivation of nationality has when it results in statelessness, it is difficult to justify how the loss or deprivation of nationality is proportional to the situation that prompted it.[237]

234. The Commission observes that any interference in a person's enjoyment of nationality has a significant impact on his or her exercise of other human rights. Hence, any measure that leads to the loss or deprivation of nationality must satisfy certain conditions that international law establishes, especially the provisions pertaining to the prohibition of the arbitrary deprivation of nationality. In order for a measure not to constitute an arbitrary deprivation of nationality, it has to serve a legitimate end, be the least onerous measure to achieve the desired result, be proportional to the interests to be protected and not discriminatory. The restrictions or requirements established to obtain nationality must be subject to strict principles, such as necessity and proportionality; in other words, the restrictions must be geared toward satisfying a compelling public interest and must be proportional to the interests that justify it. Furthermore, these restrictions must be prescribed by law, must not be discriminatory and must serve a legitimate end.[238]

235. In effect, the rights contained in the international human rights treaties can be subject to regulations and restrictions, provided the formal and substantive limits that those treaties establish are respected. In others, the legitimacy of the ends that those restrictions are intended to accomplish must be demonstrated.[239] Here, Article 30 of the American Convention establishes the following:

> The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.[240]

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236 1961 Convention, Art. 7, paragraphs 4 and 5, and Article 8, paragraphs 2 and 3.

237 European Court of Justice of the European Union, case C-135/08, *Janko Rottman v. Freistaat Bayern*, March 2, 2010.

238 IACHR, Application filed with the Inter-American Court of Human Rights in Case 12,189 (Dominican Republic) in the case of the girls Dilcia Yean and Violeta Bosico, July 11, 2003, par. 51.

239 See, I/A Court H.R., Advisory Opinion OC-5/85, of November 13, 1985. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights),* par. 37.

240 The Court has written in this regard that: "Article 30 cannot be regarded as a kind of general authorization to establish new restrictions to the rights protected by the Convention, additional to those permitted under the rules governing each one of these. The purpose of the article, on the contrary, is to impose an additional requirement to legitimize individually authorized restrictions." Advisory Opinion OC-6/86 of May 9, 1986. "The Word 'Laws' in Article 30 of the American Convention on Human Rights", par. 17.

236. The Commission observes in this regard that in the case *sub examine* the applicable provision in Constitutional Court judgment TC/0168/13 can be traced to the Dominican Constitution that dates back to June 20, 1929, up until the 2010 Constitution, under which Dominican nationality was conferred upon all persons born within Dominican national territory, based on the principle of *jus soli,* the only exception being the legitimate children of foreigners residing in the country in diplomatic representation or those in transit through it, regardless of the parents' migratory situation. However, despite having been born on Dominican soil, Mrs. Juliana Deguis was denied this right.

237. 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.

238. Judgment TC/0168/13, also deprived of legal certainty in the enjoyment of their right to nationality to all those Dominicans who possessed national official documentation as proof of it. This was due to the fact that their birth certificates or the entries for their births in the Civil Registry books were being audited by the Central Electoral Board to determine whether any of these persons were irregularly registered. These measures violate the right to recognition as a person before the law, the right to a name and, when these violations are combined, the right to identity.

239. Furthermore, when examining the meaning that the Constitutional Court attributes to the expression "foreigners in transit", the Commission will refer to Section V of the Dominican Republic's Immigration Regulation No. 279 of May 12, 1939, which was in force at the time Mrs. Deguis Pierre's birth was registered. The 1939 provision was clear in stating that "[f]oreign nationals seeking to enter the Republic primarily for the purpose of traveling through the country in route to another foreign destination shall be accorded the privileges accorded to transient persons." This provision of the law goes on to state that "[a] period of 10 days shall ordinarily be deemed sufficient time to be able to transit through the Republic."[241]

240. Here, the Commission is reminded of what the Inter-American Court wrote in reference to the Dominican Republic, where it held that to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State

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241 Immigration Regulation No. 279 of May 12, 1939, provision V.

cannot be equated to a person in transit.[242] The Commission also notes that neither the Constitution, nor the Civil Code, nor Law No. 659 of July 17, 1944, on Civil Status Procedures, makes a distinction between children whose parents are residing in the country legally and children whose parents are residing in the Dominican Republic illegally. Hence, to impose restrictions on the right to nationality that are not stipulated in the country's positive law is a violation of the American Convention

241. The Commission considers that the interpretation that the Constitutional Court uses in judgment TC/0168/13 leads to an irrational and disproportionate outcome as it classifies as "foreigners in transit" Haitian immigrants who have lived in the Dominican Republic for thirty, forty or even fifty years and have, in the process, developed personal, family and social connections with the Dominican State.[243] Furthermore as explained in paragraphs 83 to 94 of the present report, it is important to point out that many Haitian migrants were brought into the country, either legally or illegally, as a result of measures promoted by Dominican officials and social and business sectors. During its visit, the Commission heard many testimonies from Haitian migrants who pointed out that they had entered the Dominican Republic in a regular fashion because they had been recruited to work as laborers to harvest sugar cane in the framework of binational agreements signed by the Dominican Republic and Haiti and the agreements signed by the State Sugar Council (Consejo Estatal del Azúcar—CEA) and the Dominican State with Haiti between 1972 and 1986. Other Haitian migrants indicated that they had entered the Dominican Republic as a result of recruitment by street recruiters (*buscones*), who were sponsored by the CEA and who, with the collaboration of migration authorities and the military, would irregularly pass Haitian migrant workers into Dominican territory so that they could world for the sugar industry.[244] When referring to how he had entered the Dominican Republic, one of the many Haitian migrant workers who rendered his testimony to the Commission stated that:

> They brought me here to work in the Boca Chica Sugar Plantation (Ingenio Boca Chica). I entered legally in the year [19]72. My file number is No. […]. Since 1972 I worked sowing sugar cane until that came to an end. My children were born and grew up here, but they did not let me register them because I am Haitian. Two [of my children] had to drop out of school because they don't have their papers.[245]

242. The effect of classifying as "foreigners in transit" immigrants who have lived on Dominican soil for a considerable period of time has been that the basic rights of their Dominican-born children, such as the right to nationality, the right to access to health and education, and others, have been violated.[246] The Commission also

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242 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, par. 157.

243 National Coalition for Haitian Rights. *Beyond the Bateyes: Haitian Immigrants in the Dominican Republic*, 1996, pp. 23 and 24.

244 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992, *pp. 280 and 287*.

245 Testimony of a 62 year-old Haitian migrant worker.

concludes that those persons who were arbitrarily deprived of their nationality and left stateless as a result, are now in danger of being arbitrarily expelled from the country of which they were nationals if they are unable to prove their Dominican nationality.

243. The Commission also believes that the consequences of the loss or deprivation of nationality must be carefully weighed, taking into consideration the seriousness of the conduct or crime that is the reason that measure is being considered.[247] As with any decision that deprives an individual of nationality, States have an obligation to examine carefully and on a case-by-case basis the proportionality of the measure, especially when it results in statelessness. In those cases in which nationality was acquired on the basis of fraudulent or falsified information or a misrepresentation of the facts, the State must consider the nature or gravity of the conduct taking into account the consequences that withdrawal of nationality would have.[248] Here, other factors have to be considered, such as the person's connection to the State, particularly the time elapsed between the acquisition of nationality and the perpetration of the fraud, as well as any family and social ties the person has developed.

244. The Commission observes that in judgment TC/0168/13, the Constitutional Court wrote that Article 11(1) of the 1966 Constitution and, in general, Dominican constitutional law since 1929, allowed for an exception to the acquisition of Dominican nationality based on the principle of *jus soli,* if the parents of the person born on Dominican soil were foreigners living irregularly in the country.[249] Based on that interpretation, in the fifth operative paragraph of the judgment, the Constitutional Court ordered the Central Electoral Board to take the following measures:

> (i) to conduct, within one year of the notification of this judgment (a period that can be extended for up to one additional year), a careful audit of the records of births entered into the Dominican Republic's Civil Registry between 1929 and the present, in order to then identify and assemble a documentary and/or digital list of all foreigners whose names appear in the birth records of the Dominican Republic's Civil Registry; (ii) on a second list, enter the names of foreigners irregularly registered because they did not meet the conditions required under the Constitution of the Republic for conferral of Dominican nationality on the basis of *jus soli,* which shall be called the "List of foreigners

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247 See, UN, Human Rights Council, *Human rights and arbitrary deprivation of nationality.* December 19, 2013.

248 See UN, Human Rights Council, *Human rights and arbitrary deprivation of nationality.* December 19, 2013, para. 4.

249 As to Dominican constitutional law, the representatives pointed out that the criterion used to interpret the expression "in transit" that appears in Article 11 of the 1994 Constitution, which in their view establishes an unjustified difference in treatment, was incorporated *verbatim* into the 2010 Constitution, which precludes the right to nationality in the case of children of those "residing in Dominican territory illegally" (*supra* paragraph 238). Despite this fact, they have not asserted that the Constitution has been applied or has in any way affected the alleged victims' enjoyment of their rights, nor have they alleged any violation of Article 2 of the American Convention or other provisions thereof based on the text of the 2010 Constitution. Nor do the facts of the case demonstrate a direct application of the 2010 Constitution in the case of the alleged victims or that it has had any direct impact on their situation.

> irregularly registered into the Dominican Republic's Civil Registry"; (iii) assemble special annual record books of foreigners born between June 21, 1929 and April 18, 2007, the date on which the Central Electoral Board, through Resolution 02-2007, put into effect the "Registry of Children Born to Foreign Mothers who do not have residency status in the Dominican Republic," and then administratively transfer the births that appear on the list of List of foreigners irregularly registered into the Dominican Republic's Civil Registry to the new record books of births of foreigners for the year corresponding to each birth; (iv) notify the Ministry of Foreign Affairs of all births transferred pursuant to the preceding paragraph so that it, in turn, may make the corresponding notifications both to the persons that those births concern and to the consulates and embassies or diplomatic delegations, as appropriate, for the necessary legal purposes.

245. For acquisition of Dominican nationality based on *jus soli,* the treatment that Judgment TC/0168/13 gives to persons born on Dominican soil to parents who are or were foreigners residing irregularly in the country, is different from the treatment given to others born on Dominican soil. It is important to point out that given the different ways that persons born within Dominican territory are treated, which are based on law (or the practices or decisions that determine how those laws will be enforced or interpreted), it is up to the State to show that the difference in treatment does not imply a violation of the right to equal protection before the law in the case of persons who, having been born within Dominican territory, cannot obtain Dominican nationality. Here, the Court has written that a difference in treatment is discriminatory when it has no objective and reasonable justification,[250] in other words, when it does not seek a legitimate purpose and when the means used are disproportionate to the purpose sought.[251]

246. In Judgment TC/1068/13, the Constitutional Court wrote that unlike the children of foreigners who "obtain a permit for legal residency", "foreigners […] with an irregular migratory situation […]may not claim that their children born in the country are entitled to Dominican nationality, […] as it is legally indefensible to assert that a de facto illegal situation creates rights." The Commission agrees with what the Inter-American Court wrote concerning judgment TC/0168/13 to the effect that:

> [t]he argument concerning the "illegal situation" of the alien who "is in an irregular migratory situation," refers to aliens in an irregular situation, and not to their children. In other words, the difference between those born in Dominican territory who are children of aliens is not made based on a situation

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250 *Cf. Juridical Condition and Human Rights of the Child.* OC-17/02, par. 46; *Juridical Condition and Rights of the Undocumented Migrants.* OC-18/03 of September 17, 2003, par. 84, and *Case of Norín Catrimán et al. (Leaders, members and activists of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279), para. 200.

251 *Cf. Case of Norín Catrimán et al. (Leaders, members and activists of the Mapuche Indigenous People) v. Chile,* par. 200. (The following jurisprudence is cited in that judgment: ECHR, *Case of D.H. and Others v. the Czech Republic*, No. 57325/00. Judgment of 13 November 2007, par. 196, and ECHR, *Case of Sejdic and Finci v. Bosnia and Herzegovina*, Nos. 27996/06 and 34836/06. Judgment of 22 December 2009, par. 42).

related to them, but based on the different situation of their parents as regards whether they are regular or irregular migrants. Thus, this distinction between the situations of the parents, in itself, does not explain the justification or purpose of the difference in treatment between individuals who were born in Dominican territory. Consequently, the Court understand that the arguments set forth in judgment TC/0168/13 are insufficient, because they do not explain the objective sought by the distinction examined and, therefore, they prevent an assessment of whether it is reasonable and proportionate.

247. The Commission also deems relevant to point out that one limit on the State's authority to determine who its nationals are is its duty to provide all individuals equal and effective protection before the law without discrimination. Once again, the Commission agrees with the Inter-American Court's finding in the case of the Girls Yean and Bosico v. Dominican Republic regarding the right to nationality of the children of immigrants in the Dominican Republic under the pertinent provision of the Constitution and the international principles on the protection of migrants where it wrote that:

> a) The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights; [252]
>
> (b) The migratory status of a person is not transmitted to the children, and
>
> (c) The fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born.

248. As a corollary to the foregoing, the addition of the parents' irregular migratory situation as one of the grounds for denying nationality on the basis of *jus soli,* is exposed as discriminatory when it is applied in a context that has previously been described as discriminatory against the Dominican population of Haitian descent, which also happens to be a group disproportionately affected by the introduction of the new basis for not conferring Dominican nationality on the basis of *jus soli.* [253] The

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[252] *Juridical Condition and Rights of the Undocumented Migrants.* OC-18/03 of September 17, 2003, para. 134.

[253] In addition to the comments already made concerning the context of the present case (*supra* par. 171), it is interesting to note that in judgment TC/0168/13, the Constitutional Court pointed out that the flow of immigrants from Haiti into the Dominican Republic far outnumbers that from other countries, and that a much higher percentage of the Haitian immigrants have irregular migratory status. In the judgment in question, the Constitutional Court wrote that "aliens from countries other than Haiti number 100,638, while those of Haitian origin number 668,145. […The] Haitian immigrants and their descendants […] account for 6.87% of the population living in the national territory. According to reports that appeared in the Dominican press, the Office of the Director General of Immigration of the Dominican Republic only has 11,000 Haitian immigrants legally registered, which is 0.16% of the total." The population of Haitian origin and Haitian descent in the Dominican Republic thus outnumbers those from countries other than Haiti and their descendants. Furthermore, some percentage of Haitian immigrants are not "legally registered." The difficulties that Haitians

Commission considers that the reasons underlying the interpretation and decision taken by the Constitutional Court in judgment TC/0168/13, as well as previous practices, standards, and decisions, pertain to a context of structural discrimination based mainly on racial and ethnic criteria, which have disproportionately affected Dominican persons of Haitian descent born in the Dominican Republic, especially those of African descent of darker skin color. Hence, it is a violation of the right to equal protection of the law recognized in Article 24 of the American Convention, which provides that: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

249. Furthermore, the Commission considers that one principle of the protection of human rights that must be taken into account by any public authority, such as the Dominican Republic's Constitutional Court, is that when addressing or resolving a situation that could have an impact on a person's human rights, it must always opt for the alternative most conducive to the protection of human rights. Here, the Inter-American Court has written that "when interpreting the Convention it is always necessary to choose the alternative that is most favorable to protection of the rights enshrined in said treaty, based on the principle of the rule most favorable to the human being."[254] Faced with an ambiguous legal provision that can be reasonably interpreted in two different ways, the principle of *pro persona* requires that the interpretation most favorable to the protection of human rights be selected. Consequently, no interpretation of a constitutional provision can be in violation of the principle of *pro persona,* and anyone who applies such an interpretation is acting outside the law.

250. It is contrary to international legal order and the international obligations undertaken by the Dominican State in the area of human rights that a law intended to protect the right to nationality should be interpreted in a manner that is at variance with the law's language and purpose. In other words, the exception made to the rule conferring nationality on the basis of *jus soli* in the case of children of foreigners in transit cannot be interpreted in such a way as to arbitrarily deprive persons of their nationality when they were born on Dominican territory or acquired Dominican nationality in accordance with the provisions of the Constitution and the law and the practices in force at the time of their birth, without there being a provision in the Constitution that establishes a foundation for the Constitutional Court's interpretation. Thus, the Constitutional Court's interpretation violated the *pro persona* principle. Following this line of thought, interpretations that establish limits or lead to the denial of a given right must be narrow in scope. Thus, rules that an interpreter pretends to extrapolate from a provision of the law, in violation of the *pro persona* principle, have no legal validity.

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or persons of Haitian descent have in obtaining personal identity documents and their vulnerable situation has already been discussed (*supra* par. 171).

254 See, I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5*,* par. 52; *Case of the Mapiripán Massacre v. Colombia,* par. 106*; Case of Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 84.

251. Given the close relationship between judgment TC/0168/13 and Law No. 169-14 and its Regulatory Decree No. 250-14, the Commission deems it necessary to comment on these two laws and their compatibility with the rights recognized in the American Convention.

- ***Typologies of cases of affected persons***

252. During its visit to the Dominican Republic, the Inter-American Commission received written information and oral testimony from 3,342 persons. Of these, 2,910 handed over documents and 432 gave oral testimony.[255] On occasion, the information supplied by these 3,342 persons was not just about themselves, but also about other persons, generally family members. This added another 1,750 persons. Of these 342 were under the age of 18. In one of the testimonies the Commission received, a child 11 years old said the following:

> I'm from here (the Dominican Republic) … I don't have a (birth) certificate… I'm in school, in the fourth grade. I don't feel right. I need the certificate. I need the birth certificate, I need to have it. I have an older brother who was born here (in the Dominican Republic) and he has his papers (birth certificate)…. My father is in Haiti and my mother is here. She has a birth certificate…. In school, when you don't have a birth certificate, you need it; if you have a birth certificate and you have a little problem, it gets fixed; so I feel like I'm missing something…. I feel like they (my classmates in school) are better than I am, because they have certificates and I don't… At times (my schoolmates) make me feel bad, they criticize me by saying, why don't I have the certificate? I tell them that I don't have it… I feel bad… They make fun of me. They make me feel like I'm not as good as they are… I would ask you to please do me the favor (of giving me the birth certificate) and I'd be most grateful.[256]

253. Of the five issues that figured most prominently in the testimony received, the Commission is troubled by the fact that the first four have to do with the structural problem associated with the deprivation of the rights to nationality and to recognition as a person before the law in the case of Dominicans of Haitian descent. The issue most frequently reported had to do with the Civil Registry officials' refusal to issue birth certificates. This was the complaint in 1360 cases. Next in order was the authorities' refusal to issue identity cards, reported in 1,086 cases; 722 cases involved persons who could not be registered with the Registry officials, while 504 cases involved the parents' inability to register their children's birth.[257]

254. As for the cases where the information supplied made it possible to determine the underlying causes of the complaint, in 620 cases the individuals attributed their problem to the fact that they were of Haitian descent; in 240 cases they blamed their parents' irregular migratory situation; in 50 cases, they attributed the problem to

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255 Occasionally the persons who visited the Commission presented both written documents and oral testimony, as well as any identity documents they had or copies thereof.

256 Testimony received from an eleven-year-old boy born in the Dominican Republic.

257 The fifth most common complaint filed with the Inter-American Commission was made in 280 cases and concerned the fact that seniors were unable to get social security.

their own migratory situation, while in 27 cases they blamed the fact that they had a foreign surname. Still others attributed their situation to different problems. The Commission is deeply troubled by the fact that 1,843 of those who visited the Commission to provide information said that they had been adversely affected by Constitutional Court judgment TC/0168/13.

255. The information the Commission has compiled over the course of the years,[258] confirmed by the information and testimony received during the 2013 visit, has exposed widespread practices in which Civil Registry officials either suspended further issuance or took back birth certificates or identity cards belonging to Dominicans of Haitian descent. There was no clearly defined procedure involved and the minimum guarantees of due process were not observed. Having examined this information, the Commission notes that the officials at the Civil Registry offices have refused to hand over the documents in question to persons whose surname or physical appearance made the officials suspect that they were the children of Haitian parents, even though there were no irregularities at the time their birth was declared. The children of Haitian parents encounter the same problem: when the identity cards their parents used to register them were checked, their registrations were not found.

256. Much of the testimony given before the Commission recounted how the denial or withholding of documents by officials at the Registry offices and the investigations conducted by the Central Electoral Board to determine the validity of the documents, were motivated by discriminatory considerations such as physical appearance, speech, skin color, language, surnames or the parents' origin.

> I'm 24 years old, from Bayaguana, a small province in the eastern part of the country. My mother came to this country in 1986, when she was very young. She had 7 children, and I'm one of them. I've lived a normal life like any Dominican, I went to school until I was 18. That was when my hardship began. I went to apply for my identity card, and handed over my birth certificate. They took my application, put my name in the usual book, like any other Dominican, and told me to return in three months, which is the rule here, to get the identity card. But what happened? When I went back three months later, they began making excuses: that they

[258] During the IACHR's visit to the Dominican Republic in 1991, it received testimony from many Dominicans of Haitian descent and Haitians who told of how they had been summarily expelled. In many of these summary deportations, families were broken up and property lost. Ten persons who testified stated that although they had been born in the Dominican Republic and had the identification papers to prove it, they were detained by immigration agents or military personnel, their documents were taken away or destroyed and they were subsequently summarily expelled to Haiti, a country they had never been in and where they had no ties or connections of any kind. Testimonies were taken from another 11 persons, whose immediate deportation had the effect of separating them from their children and spouses. Generally speaking, the testimony revealed that the families and children are those most affected by the summary expulsions of Dominican women of Haitian descent and Haitian women; as a result of these forced separations, parents were involuntarily separated from their children and the nuclear family was broken up. See, *Annual Report of the Inter-American Commission on Human Rights 1991. Supra* note XX, pp. 286-289.

> were out of plastic, excuses, so many excuses. So much time went by and with so many excuses, I stopped going. However, when I finished high school and was about to enroll in the university, I went back again to get the identity card. It was then that they told me they couldn't give me the card because my mother is a Haitian national.[259]

257. Using the information compiled during the visit, the following graph illustrates the most common problems that the affected persons encounter when trying to get Dominican identification records like a birth certificate, identity card or passport to prove their Dominican nationality.

**Table 1 – Case Typology**

| Type of document | Problem | Description of the problem reported in the testimony |
|---|---|---|
| Birth certificate | Refusal to register the birth from the outset | Haitian immigrant couples who were discriminated against when attempting to register their children's birth. As a result, their children born on Dominican soil never had birth certificates and have no form of identification document. |
| | | Dominicans of Haitian descent with valid identification documents who were discriminated against when attempting to register their children's birth. As a result, no Dominican birth certificate was issued for such children, who now have no identification document of any kind. |
| | | Mixed families (those in which one of the parents has an irregular immigration status and the other is a Dominican citizen with valid identification documents) who were victims of discrimination when attempting to register their children's birth. The 2004 General Immigration Law provides that their children must be registered. However, in practice the authorities frequently obstruct the registration of these children's birth on the grounds that either the father or mother, one of whom is a Haitian immigrant, does not have identification documents. |
| | Suspension or withdrawal of the original birth certificate, with the launching of a formal investigation | Civil Registry officials routinely challenge the identification documents of persons whom they believe "look" Haitian or who have Haitian surnames. Under Resolution 12-2007, the authorities launch a formal investigation that may conclude with a formal decision on the part of the Central Electoral Board concerning the document's validity. During the investigation, the birth certificates are temporarily suspended and the person cannot use them for any official purpose, not even for proving his or her identity and exercise other human rights. |

[259] One woman's testimony to the Inter-American Commission on Human Rights. Santo Domingo, December 2, 2013.

| | | |
|---|---|---|
| | Suspension or withdrawal of the original birth certificate, without any formal investigation | Civil Registry officials routinely challenge the identification documents of persons whom they believe "look" Haitian or who have Haitian surnames. Under Resolution 12-2007, the authorities launch a formal investigation that may conclude with a formal decision by the Central Electoral Council concerning the document's validity. In some cases, however, no formal investigation is ever launched and officials simply refuse to issue copies of the birth certificate at their own discretion. In the end, the Central Electoral Board never examines cases of this type, and the affected persons continue to be denied their identification documents. |
| | Refusal to issue copies of the original birth certificate | Under Resolution 12-2007, copies of birth certificates are not to be issued to any person whose documents are under formal investigation. |
| | Issuance of the birth certificate for foreigners | Civil Registry officials refuse to issue Dominican birth certificates to persons of Haitian descent, but will issue for them a birth certificate for foreigners. |
| | Transfer of the Dominican birth certificate to the Foreigners' Book | For cases covered under Resolution 12-2007, the Central Electoral Board may conclude that the birth certificate was improperly issued. In such cases, the Board files a civil action to have the birth certificate voided and orders that the record of birth be transferred to the Foreigners' Book. |
| | | In judgment TC/0168/13, the Constitutional Court orders that any record of birth deemed to be irregularly registered be transferred to the Foreigners' Book. |
| Certificate of live birth (issued by hospitals) | Refusal to issue | Hospitals refuse to issue certificates of live birth to children born to parents with valid Dominican identification documents. |
| | Issuance of a certificate of live birth for foreigners | Hospitals issue a certificate of live birth for foreigners (rather than its equivalent for Dominicans) to children born to parents with valid Dominican identification documents. |
| Identity card | Refusal to issue | Refusal to issue an identity card to persons in possession of a Dominican birth certificate under Resolution 12-2007. |
| | Suspension or retrieval of the identity card | Annulment or cancellation of the Dominican identity card in the case of persons whose identity documents are under investigation pursuant to Resolution 12-2007. |
| Passport | Suspension or retrieval of the passport | Refusal to issue a passport to persons with a Dominican birth certificate and whose identification documents are under investigation pursuant to Resolution 12-2007. |

258. On the basis of information and testimonies gathered throughout its visit, the Commission deems that the decisions taken by the civil servants of the Civil Registry Offices to deny or withhold identity documents, as well as the decisions of the Central Electoral Board to start investigations to determine the validity of the identity documents, highlight the use of racial profiling against persons born in the Dominican Republic descendants of Haitians, because these actions taken by authorities were based on discriminatory criteria, such as physical appearance, the way of talking, skin color, language, surnames or origin of parents. Along these lines, the Commission deems it is necessary to reiterate that the basic right to equal protection before the law and nondiscrimination requires States to have policies, laws, and practices aimed enforcing the law which are not unjustifiably aimed at certain individuals only on the basis of their ethnic or racial features such as skin color, accent, ethnic group or area of residence well-known for having a specific ethnic population.

- ***Figures on the affected population***

259. The Commission notes that it has been impossible to determine precisely how many persons were or are affected by judgment TC/0168/13. One of the major challenges encountered when trying to determine the actual number of persons affected is the temporal scope of the judgment, which retroactively and arbitrarily deprived persons born in the almost 78-year period between June 21, 1929 and April 18, 2007 of their Dominican nationality.

260. Another factor that makes it difficult to determine precisely how many people were affected by judgment TC/0168/13 is what Dominican officials themselves have described as the institutional weakness of authorities when it comes to vital records and immigration, who leave entire population groups –both Dominican nationals and immigrants- with no identification and immigration papers. In its observations to the draft of the present report, with reference to the figures for the affected population, the Dominican State stressed what had been stated by President Danilo Medina, when he pointed out that: "this is a complex reality, with diverse legal bases, various human groups, and many figures and interpretations. It is a reality that requires pondering, investigation, analysis, and honesty."[260] Likewise on June 26, 2015, President Danilo Medina commented that:

> [i]n the Dominican Republic's case, we have inherited a system that for decades left us with a weak government bureaucracy that has left entire population groups –both nationals and immigrants- undocumented and therefore unprotected. To put an end to this situation, we decided to take the initiative of providing everyone living in the country with the documentation appropriate

[260] Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded*. December 21, 2015, p. 8.

to their situation, whether they be Dominicans or foreigners in a regular or irregular migratory situation.[261]

261. The size of the affected population and the disproportionate impact that TC/0168/13 is having on persons born in the Dominican Republic of Haitian descent, are evident in the Constitutional Court's own commentary in the judgment, where it wrote that "[i]n the Dominican Republic, many foreigners want to obtain Dominican nationality; most of these are undocumented Haitian nationals."[262] Because this judgment redefines the acquisition of Dominican nationality on the basis of *jus soli,* the Commission observes that the Constitutional Court was clearly in error when it alluded to the many foreigners aspiring to Dominican nationality, since the only avenue available to these people to obtain nationality is naturalization.

262. The Constitutional Court then cited the figures from the First National Survey of Immigrants (hereinafter "ENI- 2012") conducted in 2012 by the Dominican State through its National Office of Statistics (*Oficina Nacional de Estadística* – ONE), with the support of the United Nations Population Fund (UNFPA) and the European Union (EU). ENI-2012 estimated the total immigrant population at 524,632 persons, in other words, 5.4% of the country's total population, estimated at 9,716,940 at the time of the survey. Of the total immigrant population, 458,233 had been born in Haiti, representing 87.3% of the immigrant population, while 66,399 persons were natives of other countries, representing 12.7% of the total.[263] According to the Constitutional Court, "[t]hese figures demonstrate the overwhelming prevalence of Haitian immigrants in the total immigrant population in the Dominican Republic."[264]

263. Furthermore, according to ENI-2012, the population born in the Dominican Republic to foreign-born parents was 244,151, representing 2.5% of the total population. Of the total number of descendants of immigrants, 209,912 were descendants of Haitian immigrants and the other 34,239 were descendants of immigrants from other countries. The population of Haitian origin in the Dominican Republic was said to be composed of 458,233 Haitian immigrants and 209,912 descendants of Haitian immigrants, for a total of 668,144 persons.[265]

264. It is worth noting here that the while the core legal issue in the judgment was the acquisition of Dominican nationality based on the principle of *jus soli,* the discriminatory effect that the judgment has on persons of Haitian origin is obvious in

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261 Dominican Republic, *Discurso de Danilo Medina, Presidente de la República Dominicana, en el marco de la XLV Cumbre del Sistema de Integración Latinoamericano (SICA)* [Address delivered by Danilo Medina, President of the Dominican Republic, at the XLV Summit of the Latin American Integration System (SICA)]. Guatemala, June 26, 2015.

262 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, p. 22.

263 Dominican Republic, National Office of Statistics, *Primera Encuesta Nacional de Inmigrantes en la República Dominicana ENI-2012: Informe General* [First National Survey of Immigrants in the Dominican Republic ENI-2012: General Report]. Santo Domingo, 2013, p. 60. See also, Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013 p. 23.

264 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, p. 22.

265 Dominican Republic, National Office of Statistics, Primera Encuesta Nacional de Inmigrantes en la República Dominicana ENI-2012: Informe General [First National Survey of Immigrants in the Dominican Republic ENI-2012: General Report]. Santo Domingo, 2013, p. 73.

passages such as the Constitutional Court's statement to the effect that "[f]oreigners from countries other than Haiti number 100,638, whereas the foreigners of Haitian origin number 668,145. Complainant Juliana Dequis (or Deguis) Pierre is just one of those 668,145 persons, so that the problem now before us concerns not just her, but many other Haitian immigrants and their descendants, who represent 6.87% of the population living within the national territory."[266] (Emphasis not in the original).

265. Since the issue at the heart of judgment TC/0168/13 is the acquisition of Dominican nationality based on the principle of *jus soli,* the Commission finds that the population group most affected by the judgment are the 209,912 descendants of Haitian immigrants. Even so, the Commission notes that this figure does not include other generations of persons of Haitian descent born on Dominican territory since 1929, whose own parents may also have been born in the Dominican Republic. The 209,912 figure that ENI-2012 came up with does not include the second, third or later generations of descendants of Haitian immigrants whose births were registered using a valid Dominican identification document.

266. These figures are confirmed by those published by the UNHCR, which estimated that at the end of 2014, there were some 210,000 stateless persons in the Dominican Republic.[267] The figure that the UNHCR gives for statelessness is based on the numbers reported by the First National Survey of Immigrants in the Dominican Republic [*Primera Encuesta Nacional de Inmigrantes en la República Dominicana*], which estimated the number of persons living in the country who belong to the first generation born on Dominican territory to immigrant Haitian parents. At the present time, no official figures are available for subsequent generations born in the Dominican Republic. This represents one the chief concerns in the area of human rights in the Dominican Republic and worldwide. The arbitrary deprivation of nationality and the stateless condition to which persons were relegated if they could not lay claim to any nationality other than Dominican, had the effect of violating many of these individuals' human rights, mainly those of Haitian descent. It also created the most significant crisis of statelessness in the history of the American hemisphere.[268]

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266 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013, pp. 23-24.

267 The ENI-2012 was conducted by the National Office of Statistics (hereinafter "ONE"), with technical and financial assistance from the European Union (hereinafter "EU") and from the United Nations Population Fund (hereinafter "UNFPA"). See UNHCR, *UNHCR Mid-Year Trends 2014*. January 2015.

268 Globally, countries with higher number of stateless persons than the Dominican Republic for 2014 were Myanmar with 810,1000, Ivory Coast with 700,000 and Letonia with 262,80. See, See, UNHCR, UNHCR Global Trends: Forced Displacements 2014. P. 44 *et seq*. Available at: http://unhcr.org/556725e69.html.

**Statelessness by country or territory** | Late 2014[269]

| | Country | Number of stateless persons |
|---|---|---|
| 1 | Myanmar | 810,000 |
| 2 | Ivory Coast | 700,000 |
| 3 | Thailand | 506,197 |
| 4 | Latvia | 262,802 |
| 5 | **Dominican Republic** | **210,000** |
| 6 | Syria | 160, 000 |
| 7 | Iraq | 120,000 |
| 8 | Russian Federation | 113,474 |
| 9 | Kuwait | 93,000 |
| 10 | Estonia | 88,076 |

267. The Constitutional Court held that judgment TC/0168/13 had effects '*inter comunis*' with respect to "a very large group of people living in situations that, from a factual and legal standpoint, are either the same as or similar" to that of Mrs. Deguis Pierre. As a result, this judgment has denationalized individuals and created a problem of statelessness on a scale never before seen in the Americas. To illustrate the size of the population affected by judgment TC/0168/13, it should be noted that of the 3,342 persons who provided information, communications and testimony during the Commission's five-day on-site visit in the Dominican Republic, 1,843 claimed to have been affected by the judgment. The ripple effect created by the Constitutional Court's decision to declare that the judgment had effects *inter comunis* touches all generations of persons born in the Dominican Republic since June 21, 1929 who are descendants of persons of Haitian origin.

268. The Commission is concerned that, having been arbitrarily deprived of their Dominican nationality, being relegated to statelessness and without any real connection to the country of their ancestors, persons born on Dominican territory of Haitian descent have been segregated and marginalized within Dominican society. As a result, they have had to contend with many obstacles or have even been denied access to education, employment, participation in political life and so on.[270] The effects of the arbitrary deprivation of nationality, loss of recognition as a person before the law, and statelessness have been multigenerational in the Dominican Republic, since these conditions have affected the children and grandchildren of the first generation of Haitian descendants born within Dominican territory who, because they did not have identity documents or their identity documents were

269 See, UNHCR, UNHCR Global Trends: Forced Displacement 2014, pp. 48 *et seq*.

270 See, Human Rights Watch, "*Illegal People": Haitians and Dominico-Haitians in the Dominican Republic.* New York, 2002.

taken away, were unable to register their own children. Thus, the Constitutional Court rendered another generation stateless.[271]

269. As previously mentioned, in operative paragraph five of judgment TC/0168/13 the Constitutional Court ordered the Central Electoral Board to audit the Registry's record books for the period from 1929 to 2007, and to send a list of persons irregularly registered with the Civil Registry to the Ministry of the Interior and Police. The Commission observes that in compliance with the judgment in question, on May 26, 2015 the Central Electoral Board presented the "Results of the Audit of the Registry for the period 1929-2007." The audit checked 116,506 volumes of records, with 16,748,568 pages containing the Dominican Republic's history of records for the period in question. The Central Electoral Board found that 53,827 books, representing a total of 10,321,799 pages, contained records of persons that needed to be checked. In the end, it was able to establish that out of all the pages audited in the Civil Registry's record books for the period in question, only 0.58% contained records with possible irregularities, while the rest, 99.42%, did not contain the kind of inconsistencies found in the 0.58%. In the words of the Chair of the Central Electoral Board, this meant that "authorization had been given for issuance or copies of around 53,000 records that identify persons." The records revealed the foreign-born parents represented a total of 103 nationalities. Of all the records audited, the country of origin of the foreign-born parents was Haiti in 68.45% of the cases; the United States in 3.93%; Spain in 2.84%, the Republic of China in 1.98%, and so on.[272]

270. According to President Danilo Medina and Foreign Minister Andres Navarro, with enforcement of the provisions of Law 169-14 regarding persons born in the Dominican Republic both of whose parents are foreign nationals in an irregular migratory situation and who were in possession of some type of document issued by the Dominican State –in other words, those in Group A- and based on the findings of the audit done by the Central Electoral Board, the identification documents of approximately 55,000 will be accepted as valid and their Dominican nationality and that of their descendants will be recognized.[273]

271. As for persons born to foreign-born parents with an irregular migratory situation and who, although born on Dominican soil, do not appear in the Civil Registry, i.e.,

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271 See also, Open Society Institute, *Dominicans of Haitian Descent and the Compromised Right to Nationality, Report presented to the Inter-American Commission on Human Rights on the occasion of its 140th Session,* 2010, p. 6.

272 Dominican Republic. *Nota MP-RD-OEA 0653-15: Palabras del Doctor Roberto Rosario Márquez, Presidente de la Junta Central Electoral, el pasado 26 de mayo de 2015 en la Presentación de los Resultados de la Auditoría al Registro Civil en los años 1929 a 2007* Dominican Republic. [Note MP-RD-OEA 0653-15: Remarks made by Dr. Roberto Rosario Márquez, Chair of the Central Electoral Board, May 26, 2015, in presenting the findings of the audit done of the Registry Office from 1929 to 2007], June 8, 2015. See also, Dominican Republic, *JCE, Informe de Auditoria al Registro Civil desde 1929 al 2007* [JCE, Report on the Audit of the Registry from 1929 to 2007], May 26, 2015.

273 Dominican Republic, *Discurso de Danilo Medina, Presidente de la República Dominicana, en el marco de la XLV Cumbre del Sistema de Integración Latinoamericano (SICA)* [Address delivered by Danilo Medina, President of the Dominican Republic, at the XLV Summit of the Latin American Integration System (SICA)]. Guatemala, June 26, 2015; Address by Andres Navarro, Foreign Minister of the Dominican Council, before the OAS Permanent Council, Washington, June 30, 2015.

those persons classified as Group B under Law 169-14, the Dominican authorities reported that 8,755 had applied to be registered in the Foreigners' Book, which will enable them to have residency immigration status in the country. Those persons who fall into this group and who, after being listed in the Foreigners' Book, have had their status regularized under the National Regularization Plan, may opt for regular naturalization two years after receiving some immigration classification.[274]

## 2. The stateless condition of persons of Haitian descent

272. As for the danger that statelessness poses, the Constitutional Court held that "based on the commentary regarding the status of foreigners in transit under Dominican law, persons born in the Dominican Republic whose parents are foreigners in transit, would only acquire Dominican nationality when they have no claim to any other nationality, in other words, when they are rendered stateless. This rule is based on the provisions of Article 1 of the Convention on the Reduction of Statelessness; Article 7 of the Convention on the Rights of the Child, ratified by the Dominican Republic on June 11, 1991, and Article 24 of the International Covenant on Civil and Political Rights."[275] In reference to the case *sub examine*, the Constitutional Court wrote the following:

> However, none of the aforementioned international mandates applies to the case before us or to any other case that is either similar or the same. In effect, the Dominican Republic's refusal to confer its nationality upon the children of foreigners in transit can never lead to statelessness. In the particular case of children of Haitian parents in transit, it is important to point out that Article 11(2) of the 1983 Haitian Constitution, which applies here, expressly stipulates that all individuals born abroad to a Haitian father and mother shall obtain Haitian nationality by birth: "A Haitian by birth is (…) 2.- Any individual born abroad to a Haitian father or mother".[276]

273. The Constitutional Court therefore ruled that as the daughter of Haitian parents, Mrs. Juliana Deguis Pierre would be entitled to Haitian nationality by virtue of the principle of *jus sanguinis,* and would thus not be left stateless and there would be no violation of Article 20(2) of the American Convention.[277]

274. In its observations on the present report, with reference to the obligation of not fostering statelessness, the Dominican State contended that it does not foster statelessness and that "this obligation is not exclusive to the Dominican State, but also pertains to the Haitian State, which is apparently not being subject to the same

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274 Dominican Republic, *Discurso de Danilo Medina, Presidente de la República Dominicana, en el marco de la XLV Cumbre del Sistema de Integración Latinoamericano (SICA)* [Address delivered by Danilo Medina, President of the Dominican Republic, at the XLV Summit of the Latin American Integration System (SICA)]. Guatemala, June 26, 2015; Address by Andres Navarro, Foreign Minister of the Dominican Council, before the OAS Permanent Council, Washington, June 30, 2015.

275 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013. pp. 75-76.

276 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013. p. 76.

277 Dominican Republic, Constitutional Court, Judgment TC/0168/13. September 23, 2013. p. 77.

scrutiny as the Dominican State when assessing fulfillment of this obligation."[278] The Dominican State also indicated that, with the adoption of "Law 169-14 the problems that certain groups of persons face with respect to the issue of nationality were addressed, and therefore it does not accept, under any circumstances, that the regulatory framework and policies of the Dominican State ha[ve] a discriminatory purpose and foster statelessness. The argument that thousands of persons were able to benefit from Category B of Law 169-14 but did not do so and, as a result, have remained in the status of statelessness, is pure speculation because the Dominican Government has not heard of any case whatsoever, let alone thousands of cases, that might have this status. The problem affecting persons who were registered in the Civil Registry Office was resolved by the above-mentioned Law, and therefore the charge being brought by the IACHR that there currently is, in the Dominican Republic, a deliberate policy to arbitrarily deprive hundreds of thousands of persons of a nationality is unacceptable"(underlining added).[279]

275. The Commission notes that even though judgment TC/0168/13 only discussed the possibility that Mrs. Juliana Deguis Pierre could obtain Haitian nationality by way of *jus sanguinis*, however, extended its effects to all persons whose cases they were similar to hers, without doing an individual analysis about whether other people in a similar situation to that of Mrs. Deguis Pierre could acquire Haitian nationality or any other nationality. This line of argument leads the Commission to conclude that judgment TC/0168/13 is clearly aimed at people of Haitian descent.[280] Regarding this, the Commission deems it is necessary to point out that any decision that might lead to the deprivation of nationality of a person must be taken on an individual basis for each person involved in the framework of a fair trial benefiting from the enjoyment of guarantees of due process of law.[281]

276. To avoid situations in which persons are left stateless, Article 20(2) of the American Convention provides that every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality, i.e. that person would be rendered stateless if he or she did not acquire said nationality. In international law, Article 1.1 of the Convention relating to the Status of Stateless Persons of 1954 defines as "stateless" to "any person who is not considered as a national by any State under the operation of its law". The definition of statelessness, contained in Article 1.1 of the Convention relating to the Status of Stateless Persons is part of customary international law.

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278 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded. December 21, 2015, pp. 11-12.

279 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. Note MP-RD-OEA 1395-15: Note whereby the note from the Ministry of Foreign Affairs with the Observations of the Dominican State on the "Draft Report of the Situation of Human Rights in the Dominican Republic" is forwarded. December 21, 2015, pp. 16-17.

280 International Law Commission, Articles on Diplomatic Protection with comments. 2006, p. 49. See also, UNHCR, Handbook on the Protection of Stateless Persons. Geneva, 2014, p. 9.

281 See: UNHCR, *Summary Conclusions of the Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality.* Tunis, October 31 to November 1, 2013, para. 61.

277. The Commission considers that Article 20.2 of the American Convention should be interpreted in the same way that the provisions of Article 7 of the Convention on the Rights of the Child.[282] By ratifying the American Convention on Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the State bonded itself to a regime that forces it to ensure, by itself or in cooperation with other States, that people have a nationality from the moment of their birth. Regarding the Case of the Yean and Bosico Girls vs. Dominican Republic, the Inter-American Court held that "the fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born" [283].

278. Here, the Commission finds that the State bears the burden of proving that a person would not be left stateless as a consequence of a legislative, administrative or judicial measure pertaining to the loss or deprivation of nationality[284].. In the case of Mrs. Juliana Deguis Pierre, the Constitutional Court's contention was that she would not have been left stateless as she had a right to claim Haitian nationality by virtue of the principle of *jus sanguinis.* The Commission is not persuaded by the argument that Mrs. Deguis Pierre would not have been left stateless because Haiti used the principle of *jus sanguinis.*

279. In the Case of Expelled Dominicans and Haitians v. Dominican Republic, the Inter-American Court held that if the State cannot be certain that a child born in its territory can obtain the nationality of another State, for example the nationality of a parent by jus sanguinis, that State has the obligation to grant it nationality (ex lege, automatically), to avoid a situation of statelessness at birth, pursuant to Article

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[282] The Convention on the Reduction of Statelessness, which was signed by the Dominican Republic on December 5, 1961, in Article 1 determines that States must grant nationality to a person born in its territory who would otherwise be stateless. It further states that nationality is granted at the time of birth, or later via application to the competent authority in the manner prescribed by the law of the "concerned State ".

[283] I/A Court H.R., Case of the Girls Yean and Bosico v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, para.156.

[284] At a meeting of international experts on statelessness convened by UNHCR, it was concluded that: "A Contracting State must accept that a person is not a national of a particular State if the authorities of that State refuse to recognize that person as a national. A Contracting State cannot avoid its obligations based on its own interpretation of another State's nationality laws which conflicts with the interpretation applied by the other State concerned." Likewise, regarding the burden of proof in proceedings that can lead to the loss or deprivation of the nationality, they concluded that: "As a general rule, the responsibility for substantiating a claim lies with the party which advances that claim. As a result, the burden lies primarily with authorities of a State that is seeking to apply rules for loss or deprivation of nationality to show that the person affected has another nationality, or that the person is covered by one of the exceptions allowed for in Article 7 of the 1961 Convention with respect to the loss, or Article 8 with respect to deprivation of nationality. On the other hand, some relevant information may be in the possession of, or can only be acquired by the individual concerned. Each individual therefore has a duty to provide a truthful and as full an account of his or her position as possible, and to submit all evidence reasonably available." Regarding this, see UNHCR, *Summary Conclusions of the Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality.* Tunis, October 31 to November 1, 2013, paras. 6 and 7. See also: United Nations, Human Rights Council, Human rights and the arbitrary deprivation of nationality. A/HRC/25/28, December 19, 2013, para. 5.

20(2) of the American Convention.[285] This obligation also applies in the hypothesis that the parents cannot (owing to the existence of facto obstacles) register their children in the State of their nationality.[286]

280. In analyzing whether those affected by the judgment TC/0168/13 are stateless, the Commission should be limited to countries with which these people have a relevant link. In this sense, the birth in the territory of a State and national birth father or mother are the most important criteria used to establish the legal bond of nationality. In this case, it has established a link with the Dominican Republic, since those affected were born in its territory, and Haiti, by descent. Then the Commission will examine whether this population may be regarded as nationals of Haiti.

281. The criteria for acquisition of Haitian nationality in effect at the time of Mrs. Juliana Deguis Pierre's birth appeared in Article 11 of the 1983 Constitution, which read as follows:

> Haitians by birth are:
>
> Any individual born in Haiti of a Haitian-born father or mother;
> Any individual born abroad of a Haitian father and mother;
> Any individual born in Haiti to a foreign father or, if the foreign father does not recognize the child, of a foreign mother provided she is a descendant of the black race.
> Subsequent recognition by a foreign-born parent shall not cause the loss or in any way alter the condition of Haitian by birth.

282. In the 1987 Constitution a similar provision was introduced in Article 11. Nevertheless the Commission notes that following the birth of Mrs. Juliana Deguis, changes were made to the Constitution and laws in Haiti that altered the nationality status of persons born under the 1983 Constitution. The first was the Decree on Haitian Nationality, issued in November 1984,[287] which spells out specific grounds for losing Haitian nationality.

> Article 26.- Haitian nationality shall be lost :
> [...]
> 3. In the case of a conflict of nationality, either by expressly choosing or actively exercising a foreign nationality.[288]

283. Haitian authorities continue to enforce the Decree on Haitian Nationality, even though the nationality clauses that were the basis for its adoption changed

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285 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C. No. 282. para. 261.

286 UNHCR Executive Committee, Guidelines on Statelessness No. 4 of 21 December 2012, para. 26. This must also be determined based on whether it can reasonably be expected that a person takes measures to acquire nationality in the circumstances of his or her specific case. For example, the children of refugees, see para. 27.

287 VONK, Olivier W., *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*. Brill I Nijhoff, 2014, p. 247.

288 Republic of Haiti, *Décret sur la Nationalité Haïtienne* [Decree on Haitian Nationality], November 6, 1984, Article 26.

significantly with the 1987 Constitution. In addition to the criteria on the acquisition and loss of nationality, the 1987 Constitution for the first time introduced a prohibition banning dual citizenship. The precise text of the pertinent provisions appears below:

> Article 11:
> Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality by birth.
>
> [...]
>
> Article 13:
> Haitian nationality is lost by:
> a. Naturalization in a foreign country;
> b. Holding a political post in the service of a foreign country;
> c. Continuous residency abroad of a naturalized Haitian without being given proper authorization by a competent official. Anyone who loses his nationality in this manner shall not recover it.
> [...]
>
> Article 15:
> Dual Haitian and foreign nationality is not permitted.

284. Article 11 of the 1987 Haitian Constitution provides that "[*a]ny person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality by birth*." In this regard the Commission observes that several generations of Dominicans of Haitian descent cannot opt for Haitian nationality because they are not direct descendants of Haitian nationals as required under the Haitian Constitution. Many of the persons affected by the judgment are children of a second generation of Dominicans of Haitian descent who have been denied their right to Dominican nationality on the grounds that they are the children of foreigners in an irregular migratory situation. This has meant that the children of these individuals have been unable to acquire their Dominican nationality and have encountered a variety of obstacles when attempting to register their births, obstacles that have also stood in the way of their descendants' effective enjoyment of their rights to nationality, juridical personality, and identity.

285. Under the Haitian Constitution, the prohibition of dual nationality denied Haitian nationality to persons who have acquired a foreign nationality, which included those persons born outside of Haiti who automatically acquired the nationality of their country of birth. Because of this prohibition, persons affected by judgment TC/0168/13, who were regarded as Dominican nationals until the judgment was handed down, are now unable to claim Haitian nationality.

286. On June 19, 2012, a constitutional amendment took effect in Haiti that eliminated the ban on dual nationality. The 2012 constitutional amendment repealed articles 12(1), 12(2), 13, 14 and 15 of Haiti's 1987 Constitution.[289] The Commission notes that this amendment does not automatically give the Haitian nationality to people who had lost or not acquired based on the prohibition of double nationality. According to the information the Commission has to the date this report was approved, the Haitian authorities were in the process of drafting a nationality law so that persons of Haitian descent affected by the ban on dual nationality, including persons born and living abroad, could apply for Haitian nationality without having to renounce any other nationality previously acquired. This would mean that persons interested in applying for Haitian nationality could acquire it in the future; however, for now, they are not considered Haitians, a factor that is of basic importance for establishing statelessness.

287. The Commission also observes that under Article 26(3) of the Decree on Haitian Nationality, a conflict of nationality, either by expressly choosing or actively exercising a foreign nationality, was one of the grounds for losing Haitian nationality. Here, the Commission notes that for many of those affected by judgment TC/0168/13, having registered one's birth as a Dominican national creates a conflict of nationalities and operates as *the active exercise of a foreign nationality,* which is one of the grounds for losing one's Haitian nationality under Article 26 of the Decree on Haitian Nationality.

288. The Commission observes that in situations like that of the children of immigrants, the former may have ties with more than one State. In cases where States have adopted different rules for acquisition of nationality, a child could be left stateless because of the resulting conflict of laws. In such cases, the Commission believes that the best course of action is to rely on the provision established on Article 1 of the Convention on the Reduction of Statelessness to resolve that type of conflict of laws, which provides that a Contracting State shall grant its nationality to a person born in its territory who would otherwise be rendered stateless.

289. Moreover, the Commission notes that, until a new law on nationality is adopted, the enforcement of the law on Haitian nationality will, in practice, remain complex and problematic. The acquisition of Haitian nationality can be especially difficult in situations where the parents of the person concerned lack identity documents are no longer alive, or if said person cannot obtain proof of Haitian nationality.

290. In addition to the foregoing, the interpretation of the criteria for nationality used by the Haitian authorities is crucial in determining whether a person is a Haitian national for purposes of defining statelessness. The Commission takes note of the statement made by the Haitian State, through its Ministry of Foreign Affairs, on October 2, 2013, when, in reference to Judgment TC/0168/13, it declared the following: The Commission takes note of the statement made by various officials of

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289 VONK, Olivier W., *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*. Brill I Nijhoff, 2014, pp. 248-249.

the Haitian State in which they have referred to those affected by judgment TC/0168/13 and rendered stateless.

291. After judgment TC/0168/13 was issued the TC / 0168/13, the Ministry of Foreign Affairs of Haiti issued a statement fixing the position of the Government of Haiti in relation to that judgment and stating that it "could render stateless a considerable number of Dominicans Haitian descent ", while noting that the judgement went against the decision of the Inter-American Court in the case of Yean and Bosico vs. Dominican Republic of 2005.[290] Subsequently, the Ministry of Haitians living abroad issued a statement in which they deplored the decision of the Dominican government to comply with judgment TC/0168/13, saying that compliance of it would affect the interests of more than 210,000 Dominicans of Haitian descent placing them in a situation of statelessness.[291]

292. Also, the Minister of Foreign Affairs of Haiti, Mr. Lener Renauld, in his intervention before the Permanent Council of the OAS on July 8, 2015, said that Haiti would not receive any person other than a Haitian migrants in an irregular situation referring to the eventual resumption of deportations from the Dominican Republic, and that there was "a great risk that Haiti receives thousands of denationalized persons."

293. The Commission considers that the fact that the Haitian authorities refer to those affected by the judgment of the Constitutional Court as stateless persons is a form of recognition by the Haitian authorities that the members of this population are not considered Haitian nationals in accordance with applicable law in Haiti. The Haitian authorities have indicated that they do not consider those affected by the judgment to be Haitian nationals.

294. In light of the arbitrary deprivation of nationality resulting from judgment TC/0168/13 and for the reasons explained above regarding the acquisition of Haitian nationality, the Commission concludes that anyone who held Dominican nationality exclusively prior to said judgment and was not considered a national by any other State would be left stateless, under its law, according to the definition in Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons.

### 3. The right to identity of persons of Haitian descent

295. The IACHR noted during its on-site visit that the birth certificate issued by the Civil Registry Office, as an entity of the Central Electoral Board, is the official legal document attesting to a person's name and identity and is therefore necessary to secure a legal identity, which includes both nationality and juridical personality. The Commission also heard testimony from several people who indicated that the identity document was essential in the Dominican Republic in order to gain access to

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290 Republic of Haiti, Ministry of Foreign Affairs, Official position of the Government of Haiti on Judgment TC/0168/13 adopted by the Dominican Constitutional Tribunal. October 2, 2013.

291 Republic of Haiti, Ministère des Haïtiens vivant à l'Etranger, Position officielle du Ministère des Haïtiens vivant à l'Etranger. October 24, 2013. [Available only in French].

innumerable rights—from education, health, social security, voting, housing or rent, and cultural and scientific activities. The presentation of a birth certificate or, failing that, an Identity and Voter Registration Card is required to fully enjoy these rights.

296. Likewise, in those cases where immigration officers use racial profiling in their work to detain people born on Dominican soil and prevent them from presenting documents to provide evidence of their status, the officers are unaware of the victims' identity since they do not allow the victims to identify themselves nor do they consider the documents presented. Similarly, this situation affects other rights, such as the right to a name, to the recognition of juridical personality, and to nationality, which in turn affects the right to identity as a whole. [292]

> What I ask is that this stops, that the [the government] give us our documents. Now the new thing that they've created is that we are going to receive a document that says we are Dominicans but only half Dominican, a document that allows you study at university as a foreigner, we cannot acquire a passport because we are not foreigners. We do not want that document that they are going to give us because we feel Dominican, we have always been Dominican and we will remain Dominican (...) I have no identity, I am nobody, I am a zero to the left, I am nobody because I have no identity card.[293]

297. The Commission understands that the lack of recognition of identity can mean that persons do not have legal proof of their existence, thereby impeding the full exercise of their civil, political, economic, social, and cultural rights.[294] In this regard, it observes with concern that the problem in the Dominican Republic regarding the recognition of Dominicans of Haitian descent caused by the Civil Registry's refusal to issue them the corresponding official documents based on the migratory situation and nationality of their parents entails a breach of the right to identity of these individuals.

298. The Commission has also recognized the validity and application of the right to identity in the specific case of Dominicans of Haitian descent. In this connection, in the Report on the Merits in the Case of Benito Tide Méndez *et al.*,[295] it underscored that recognition of the identity of persons is one of the means whereby observance of the rights to juridical personality, a name, nationality, civil registration, and family relations is facilitated, among other rights recognized in international instruments,

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292 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282. par. 274.

293 One woman's testimony to the Inter-American Commission on Human Rights. Santo Domingo, December 2, 2013.

294 Organization of American States. Resolution AG/RES. 2362 (XXXVIII-O/08), whereby the General Assembly adopted the Inter-American Program for Universal Civil Registry and the "Right to Identity." Resolution adopted at the fourth plenary session, on June 3, 2008.

295 IACHR, Report on the Merits No. 64/12, Case 12.271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, para. 224.

such as the American Declaration of the Rights and Duties of Man and the American Convention. Non-recognition of identity can mean that a person has no legal proof of his or her existence, thus hampering the full exercise of his or her civil, political, economic, social, and cultural rights.[296]

299. The Commission recognizes that the right to identity is an autonomous right that, like all human rights, is universal, inalienable, interdependent, and indivisible. This right encompasses the development of an authentic individual, through family, social, territorial, ethnic, and cultural ties, as well as the protection of an individualized identity. Accordingly, the Commission emphasizes that birth registration is an effective part of an effective civil registry system that recognizes the existence of the person before the law, establishes family ties, and records the most important events in an individual's life, from birth to marriage and death.[297]

300. Indeed, recognition of civil identity by the State is what allows people to be considered as persons within a society and a political community. This right to the recognition of existence and civil identity is the means of exercising other political, civil, economic, social, and cultural rights, and often the right to access certain public services.[298]

301. For its part, the Inter-American Court has established that the right to identity can be conceptualized, in general, as the collection of attributes and characteristics that allow for the individualization of the person in a society, and, as such, it encompasses a number of other rights according to the subject it treats and the circumstances of the case.[299] Thus, personal identity is intimately linked to the person in his or her specific individuality and private life, both of which are based on a historical and biological experience, as well as on the way each individual relates to others through the development of social and family ties.[300]

302. With regard to the link between the right to identity and registration in the civil registry system, the Inter-American Court established that it is necessary, as a

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296 See, *inter alia,* OAS, "Inter-American Program for Universal Civil Registry and the 'Right to Identity,' " resolution AG/RES. 2286 (XXXVII-O/07) of June 5, 2007; resolution AG/RES. 2362 (XXXVIII-O/08) of June 3, 2008; and resolution AG/RES. 2602 (XL-O/10), on follow-up to the program, of June 8, 2010. In this regard, the Inter-American Juridical Committee considered that the American Convention on Human Rights, although it did not address the right to identity expressly by that name, does cover, as has been seen, the right to a name, the right to nationality, and the right to protection of the family. In this respect, *cfr*. Inter-American Juridical Committee, Opinion "on the scope of the right to identity," resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, pars. 11.2, 12, and 18.3.3, ratified by resolution CJI/RES.137 (LXXI-O/07) of August 10, 2010.

297 Inter-American Juridical Committee, Opinion "on the scope of the right to identity," resolution CJI/doc. 276/07 rev. 1, August 10, 2007, ratified by resolution CJI/RES.137 (LXXI-O/07), of August 10, 2010.

298 Permanent Council of the Organization of American States, Explanation of the Rights Associated with Recognition of Identity for the Purposes of the Working Group to Prepare an Inter-American Program for a Universal Civil Registry and the "Right to Identity." Working Group to Prepare an Inter-American Program for a Universal Civil Registry and the "Right to Identity." Committee on Juridical and Political Affairs. OEA/Ser.G, CAJP/GT/DI/INF 20/08, February 4, 2008.

299 I/A Court H.R. (2011). Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No.221, par. 122.

300 I/A Court H.R. (2011). Case of Contreras *et al.* v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2001 Series C No. 232, par. 113.

guarantee of the right to identity and of the exercise of other rights, for the States to ensure proper registration of the births that take place on their soil.[301] The Commission considers that, although the recognition of civil identity forms part of international human rights law, this does not mean that States lose their discretion in implementing it. Thus, the right to official recognition of existence and of civil identity and to be treated as a member of society does not predetermine the means by which states regulate access to nationality, immigration, or identification systems.[302]

303. In the Case of Expelled Dominicans and Haitians v. Dominican Republic, the Inter-American Court found that the State violated their rights to recognition of juridical personality, to nationality, and to a name, embodied in articles 3, 20, and 18 of the American Convention on Human Rights, and, owing to these violations taken as a whole, the right to identity, in relation to the obligation to respect rights without discrimination; and therefore, with regard to the Civil Registry and the right to identity, it ordered the Dominican Republic:

> to adopt, within a reasonable period of time, the legislative and even, if necessary, the constitutional, administrative or any other type of measures required to regulate a simple and accessible procedure to register births, to ensure that all those born on its territory may be registered immediately after birth, regardless of their descent or origin, and the migratory situation of their parents.[303]

304. Indeed, judgment TC/0168/13 constitutes a genuine, effective obstacle to the full enjoyment of the right to identity of all persons on Dominican soil, specifically those of Haitian descent. Moreover, the Commission considers that said judgment results in noncompliance with the special function of the Civil Registry to register all persons—without discrimination—after birth in the corresponding registers so as to guarantee the set of civil, political, economic, and social rights that result from possessing a civil identity and from being recognized by a State.

## 4. Obstacles to the effective enjoyment of rights stemming from the lack of recognition of juridical personality: inhuman and degrading conditions in the *bateyes*

305. During its visit, the Commission visited nine *bateyes*: *Batey* Libertad, in the province of Valverde; *Batey* Don Juan, *Batey* Monte Coca, and *Batey* Construcción, in the

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301 I/A Court H.R. (2014). Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, p. 105.

302 Permanent Council of the Organization of American States, Explanation of the Rights Associated with Recognition of Identity for the Purposes of the Working Group to Prepare an Inter-American Program for a Universal Civil Registry and the "Right to Identity." Working Group to Prepare an Inter-American Program for a Universal Civil Registry and the "Right to Identity." Committee on Juridical and Political Affairs. OEA/Ser.G, CAJP/GT/DI/INF 20/08, February 4, 2008.

303 I/A Court H.R. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282. p. 172

province of San Pedro de Macorís; Batey 62, *Batey* Como Quieras, *Batey* Hoyo Puerco, and *Batey* Guaymate, in the province of La Romana; and *Batey* 6, in the province of Bahoruco. In the course of these visits, the IACHR observed the conditions of poverty, exclusion, and discrimination in which their inhabitants lived who were for the most part sugar cane cutters.

306. Since its early years, the Commission has observed with great concern the living conditions in the bateyes and the working conditions of the cane cutters during the sugarcane harvest in the Dominican Republic.[304] During its visit to that country in 1991 and again in 1997[305] and in its 2001 follow-up report,[306] the IACHR noted that the working and living conditions in the country were extremely harsh.

307. During its visits to the *bateyes* in December 2013, the Commission observed that living conditions were extremely precarious and that some of the situations the inhabitants experienced, even though they might be similar to those of persons living in poverty in the Dominican Republic, were inhuman and degrading. Human rights organizations informed the Commission that persons living in the *bateyes*, most of whom are Haitian immigrants and their descendants born in the Dominican Republic, continued to be victims of racial and ethnic discrimination and human rights violations.

308. The Commission also received information to the effect that sugarcane plantation workers living in the *bateyes* still faced restrictions on their right to freedom of movement and residence as they were obliged to live in *bateyes* that were enclosed and monitored by armed guards and where women were allowed in only on weekends, in many cases to offer sexual services to the workers.

309. The Commission was also informed that in some cases the cane cutters continued to be paid in vouchers rather than in cash. These vouchers were not accepted in local establishments but could only be used in company stores. It was also reported that wages were very low and that the workers and their families could barely subsist.

310. In general, the Commission observed precarious conditions in the *bateyes*—the areas where the cane cutters live. Although the lodgings are provided free of charge, they are inadequate, with neither electricity nor waste water evacuation. Overcrowding and the lack of hygiene, drinking water, and latrines constitute serious problems. These deficiencies create conditions conducive to illnesses like diarrhea, malaria, and tuberculosis.

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304 In a report published in 1965, the IACHR, referring to living conditions in the *bateyes*, said "[t]hese workers (cane cutters) live in barracks (*bateyes*) that are overcrowded, without sanitation or drinking water….Some of them do not have beds or take turns using them. They have little or shabby clothing and some do not have shoes and cannot walk to work. Most are seriously undernourished and many, especially the children, require medical care." See, IACHR, *The Situation of Political Refugees in the Americas."* Report prepared by the Executive Secretariat of the Inter-American Commission on Human Rights. OEA/Ser.L/V/II.11 Doc. 7, November 2, 1965, p. 542.

305 During its visit in 1997, the Commission visited four *bateyes*: San Joaquín, Culata, and Mata los Indios, on the outskirts of Santo Domingo, and *Batey* Nº 5, in the province of Barahona, pars. 18, 335, and ff.

306 IACHR, *Follow-Up Report on Compliance with the Recommendations of the IACHR on the Situation of Human Rights in the Dominican Republic*, 2001.

311. As concerns living conditions in the *bateyes*, the Commission observed that the hygiene conditions in many of them were inconsistent with minimum decent standards of living, given that they did not have drinking water and that the septic tanks were located very close to the barracks where people lived. It was generally apparent both outside the *bateyes* and inside the lodgings and barracks that in some cases people were living in overcrowded conditions, with several persons or families sharing small rooms with sand floors and cooking with firewood in the same rooms. Some people had to share mattresses or did not even have a mattress to sleep on.

312. The Commission was also informed that, during the rainy season, many of these *bateyes* were cut off from major roads and highways that would enable the people living there to get to other parts of the country, given that many of the roads to *bateyes* located inside sugar plantations are made of sand and flood during the rains. This has resulted in serious problems when people have had to be moved from the *bateyes* because of serious health issues or taken to a hospital or specialized medical center. The Commission also observed there were no medical clinics.

313. The delegations who visited the *bateyes* were able to observe how many of the people were living in overcrowded conditions without sanitation, since there was a lack of clean water and latrines. These deficiencies created conditions for various diseases, which were frequently reported. The medical clinics were in poor condition and usually at considerable distances from the *bateyes*.

314. As concerns the situation in the *bateyes*, the Committee on the Elimination of Racial Discrimination, in its concluding observations on the thirteen and fourteenth periodic reports of the Dominican Republic, said the following in March 2013:

> [T]he arduous living conditions of migrants of Haitian origin, particularly on the sugar plantations, are still a source of concern on account of the limited access to health services, housing, sanitation, drinking water and education (art. 5 (e) (iv) and (v)). The Committee recommends that the State party step up its efforts to guarantee progressive access to health, sanitation, drinking water and education for the population, and in particular the dark-skinned population of African descent and to continue to improve living standards on the sugar plantations.[307]

315. The deplorable living conditions in the *bateyes*, reflected in the failure to guarantee economic, social, and cultural rights, create a tragic cycle in which a future of poverty is almost inescapable for the persons living there. The Commission considers that the threats posed by the living conditions of persons in the *bateyes* reflect what is known in economic terms as "poverty traps," that is, the persistence of the poverty of a person, family, or society owing to a vicious circle in which the present situation, for example, obstacles to access to education, health service, decent housing, sanitation, drinking water, recreation, and employment, compounds

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[307] Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteen and fourteenth periodic reports of the Dominican Republic. CERD/C/DOM/CO/13-14. March 1, 2013, par. 14.

the poverty situation and ultimately results in these persons and their families continuing to be poor since they do not have the knowledge and skills to get out of or overcome their situation.

## 5. Impact on the right to humane treatment of the persons affected

316. Affected persons who offered their testimony to the IACHR during the visit repeatedly commented that the fact that Dominican authorities did not recognize their nationality had a serious emotional and psychological impact on them and their families, inasmuch as they did not have any other nationality. On numerous occasions, the people who testified before the Commission burst into tears when describing the uncertainty and vulnerability they felt because their Dominican nationality was not recognized.

> It brings me to tears knowing that I was born here and that I can't work anywhere. I'm not from here, I'm not from there. I'm a nobody […] In school, I feel uncomfortable whenever the teacher talks about the Constitutional Court's ruling. If I'm not from here or from Haiti, where am I from?[308]

317. During the visit, the Commission was able to observe that the fact that some of the people affected spoke the language of their parents or grandparents was also a factor that contributed to their exclusion and victimization. In some of the testimony received by the Commission, a Haitian women brought her grandson, who was about 10 years old, to testify since her Spanish was limited. The child ended up giving most of the testimony. Whenever the child said a word in French, his grandmother scolded him saying that he could not speak that language in public.

318. The loss of self-esteem and the profound trauma frequently experienced by stateless persons have been extensively documented.[309] One study on the living conditions of 15 Dominicans of Haitian descent who were affected by Circular No. 17-2007 and Resolution No. 12-2007 established that "the psychological and identity-related effects have a very serious impact on the lives of the persons affected. Each episode of discrimination, rejection, negation, etc., is part of their memories and makes it difficult for them to move forward in any area of their lives. This leads to morale

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308 A 15-year-old youth born in the Dominican Republic. Testimony received by the IACHR during the onsite visit to the Dominican Republic. Santo Domingo, December 3, 2013.

309 CONKLIN, William E. *Statelessness: The Enigma of an International Community*. Hart Publishing: Oxford and Portland, 2014, p. 133, citing UN Ad Hoc Committee on Refugees and Stateless Persons, A Study on Statelessness. August 1, 1949, UN Doc E/1112/Add.1, s 3; and McDOUGAL, MS; LASSWELL, HD; and CHEN, LC. "Nationality and Human Rights: The Protection of the Individual in External Arenas" (1974) *83 Yale Law Journal*, pp. 901-903.

problems, questions about identity, and problems in interpersonal relations that cause damage at all levels."[310]

319. In the Inter-American Court Case of the Girls Yean and Bosico v. the Dominican Republic, the expert report of psychologist Débora E. Soler Munczek following her interview of the girls Dilcia Yean and Violeta Bosico, along with their next of kin, determined that the environment of discrimination and stigmatization against those of Haitian descent residing in the Dominican Republic had permeated the psychological structure not only of the girls Dilcia Yean and Violeta Bosico and their families but also of the community as a whole. The self-esteem and self-perception of the two girls and their conception of trust, personal safety, and the world around them had been affected significantly owing to the environment of discrimination and stigmatization. Even though the families were more relaxed now that they had received birth certificates issued by the State, their fear of deportation persisted.[311]

320. In that connection, the Inter-American Court has recognized the situation of vulnerability in which Dominicans of Haitian descent who have been deprived of their Dominican nationality find themselves. The Court has also acknowledged that the absence of a birth certificate has effects on the effective enjoyment of other rights, for example, the right to education, and causes suffering and insecurity for the person affected.[312] Likewise, the Inter-American Court has considered the situation of vulnerability that the State imposed on Dominicans of Haitian descent, owing to the very real fear that they could be expelled from the Dominican Republic, of which they were nationals, owing to the lack of birth certificates, and to the various difficulties they faced to obtain these documents. This caused uncertainty and insecurity among their family members, resulting in a violation of their right to humane treatment, established in Article 5 of the American Convention, in connection with Article 1.1 thereof.[313]

321. In this connection, the Commission notes with concern that the measures aimed at arbitrarily denying nationality to Dominicans of Haitian descent and the resulting statelessness of those who did not have another nationality have damaged the psychological integrity of these persons and have at the same time promoted their social ostracism. The historical demographic composition of the *bateyes*, or of places that were previously *bateyes*, is a clear reflection of how the social ostracism of Dominicans of Haitian descent and of Haitians has been manifested.

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310 CIVOLANI HISCHNJAKOW, Katerina. *Vidas Suspendidas: Efectos de la Resolución 012-07 en la población dominicana de ascendencia haitiana* [Suspended lives: Effects of Resolution 012-07 on the Dominican population of Haitian descent]. Centro Bonó: Santo Domingo, 2011, p. 76.

311 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C, No. 130, par. 85.

312 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C, No. 130, par. 204.

313 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C, No. 130, pars. 205-206.

## *D. Conclusions and recommendations*

322. The historical facts concerning conflicts with the Haitian population and the development of racial ideologies are the foundations of judgment TC/0168/13 of the Constitutional Court, which represents a crucial stage in the State's objective "to protect its national identity." To this end, based on discriminatory and disproportionate considerations with retroactive effect, the Dominican State has chosen to arbitrarily deprive the right to nationality and juridical personality to Dominicans of foreign origin, in particular those of Haitian descent.

323. The Commission reiterates its concern about the various forms of discrimination against Dominicans of Haitian descent in their access to and possession of identity documents that prove their Dominican nationality. The discretionary practices of State officials, primarily of the Central Electoral Board, Civil Registry officials, the Office of the Director General for Immigration, and other security officials, together with the adoption of administrative, legal, and constitutional reforms and judicial decisions of the Constitutional Court and the Supreme Court of Justice, have resulted in a violation of the rights to juridical personality, nationality, equality before the law, and the principle of nondiscrimination against Dominicans of Haitian descent. These measures have caused that many of these people who did not have a nationality other than the Dominican one have become stateless.

324. The Commission notes with concern that the legislative and constitutional measures governing the right to nationality in the Dominican Republic have been changing into a process geared toward denationalizing the children of Haitian immigrants whose migratory situation is irregular and even those with a regular migratory situation. The legal framework and the implementation of its provisions have worsened over time through the different stages beginning in the 1980s.

325. The serious nature of the facts covered in this chapter indicates that the situation of Dominicans of Haitian descent, rather than improving, has worsened over the years as a result of legislative, judicial, administrative, and constitutional practices and measures adopted by various Dominican authorities, which, instead of ameliorating the situation of those affected, have managed to perpetuate the violations of their human rights. In this regard, the Inter-American Commission is of the view that the magnitude and protracted nature of this problem and of the repeated, ongoing violations of multiple human rights of the Dominicans of Haitian descent point to the existence of an inconventional state of affairs. The situation of Dominicans of Haitian descent reflects multiple, widespread violations of their rights as recognized in the American Convention and other relevant inter-American instruments.

326. In this context, the interpretation adopted by the Constitutional Court in judgment TC/0168/13 involved the judicial assimilation of the measures and policies that other Dominican authorities had been promoting for years, exacerbated by the fact that said interpretation would be applied retroactively to all persons born in the Dominican Republic of immigrant parents in an irregular situation since June 21, 1929. Judgment TC/0168/13 gave rise to a general measure that arbitrarily deprived a large number of persons of their Dominican nationality and left stateless

all those who were not considered nationals of any other State, pursuant to its legislation.

327. In the Commission's view, the Constitutional Court's interpretation of the term "foreigners in transit" and the retroactive effect the Court gave that interpretation have led to an unreasonable, discriminatory and disproportionate result by considering as "foreigners in transit" Haitian immigrants who have lived in the Dominican Republic for 30, 40, or 50 years and who, for that reason, have developed personal, family, and social ties with the Dominican State.[314]

328. The situation of vulnerability of Dominicans of Haitian descent as a result of the arbitrary deprivation of their Dominican nationality and their juridical personality requires the Dominican State to implement all necessary policies and measures to overcome that situation of vulnerability and to improve the conditions of this population group, so that its members may be guaranteed their right to nondiscrimination, respecting and ensuring their rights as recognized in the American Convention.

329. The process of denationalization of persons born in the Dominican Republic of Haitian migrant parents in an irregular situation has shown that the actions of diverse Dominican officials have been aimed at changing and reinterpreting the scope of the constitutional provision, in effect without interruption since the Constitution of June 20, 1929, on the acquisition of Dominican nationality through application of the principle of *jus soli*, first of all likening foreigners in transit to migrants in an irregular situation and, since the 2010 Constitution, expressly including as persons ineligible to acquire Dominican nationality, in addition to the children of foreigners in transit, the children of migrants in an irregular situation residing on Dominican soil. Along these lines, the Commission notes that the criterion established in judgment TC/0168/13, as well as the measures adopted to implement that judgment, come to constitute a crucial stage in this type of historical revisionism promoted by the Dominican authorities.

330. The Commission is of the general view that Dominicans of Haitian descent must have their Dominican nationality fully restored and must be guaranteed the effective enjoyment of all their human rights, without any form of discrimination, as would be the case for any Dominican national.

331. In light of the foregoing conclusions, the Inter-American Commission on Human Rights makes the following recommendations to the Dominican Republic:

1. Adopt, within a reasonable period of time, the necessary measures to nullify any norm of any kind, whether constitutional, legal, regulatory, or administrative, as well as any practice, decision, or interpretation, that establishes or has as a result that the irregular status of foreign parents will

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[314] National Coalition for Haitian Rights. *Beyond the Bateyes: Haitian Immigrants in the Dominican Republic*, 1996, pp. 23 and 24.

cause the denial of Dominican nationality to persons born in the territory of the Dominican Republic.

2. Adopt, within a reasonable period of time, legislative measures and, if necessary, constitutional, administrative, and any other types of measures required to regulate an accessible, non-discriminatory and simple birth registration process, in order to ensure that all persons born on its soil may be registered immediately after their births, irrespective of their descent or origin or of the migratory situation of their parents.

3. Adopt, as soon as possible, the necessary measures to prevent Judgment TC/0168/13 and the provisions of Articles 6, 8, and 11 of Law No. 169-14 from continuing to have legal effect.

4. Adopt, as soon as possible, the necessary measures to guarantee the right to nationality of those persons who already had that right under the domestic legal system in force between 1929 and 2010. The measures to guarantee the right to nationality of the persons adversely affected by judgment 168-13 should be general and automatic. Such mechanisms should be simple, clear, rapid, and fair. They may not be discretionary or be implemented in a discriminatory fashion. The mechanisms must be economically accessible.

5. Guarantee that persons who had the right to Dominican nationality but were not included in the Dominican Civil Registry are not required to register as foreigners, as stipulated in Article 6 of Law No. 169-14.

6. Adopt, as soon as possible, the necessary measures to ensure that Dominicans of Haitian descent who were registered have the necessary documentation to prove their identity and Dominican nationality. Moreover, the State must adopt the necessary measures to put an end to any administrative investigations and to any civil and criminal judicial proceedings under way concerning registration and documentation.

7. Adopt, as soon as possible, any necessary measures to ensure that Dominicans of Haitian descent who were not registered are, as appropriate, duly registered and have the necessary documentation to prove their identity and Dominican nationality.

8. Carry out, within a reasonable period, ongoing, permanent training programs on topics related to said population with a view to ensuring that: (a) racial profiles do not in any way constitute the grounds for detention or expulsion; (b) strict observance of due process guarantees during any proceedings related to the expulsion or deportation of foreigners; (c) expulsions of persons of Dominican nationality are not carried out, under any circumstances; and (d) no collective expulsions of foreigners are carried out.

9. Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

CHAPTER 3

# RIGHT TO EQUALITY AND NON-DISCRIMINATION OF DOMINICANS OF HAITIAN DESCENT

# RIGHT TO EQUALITY AND NON-DISCRIMINATION OF DOMINICANS OF HAITIAN DESCENT

## *A. General considerations*

332. Racism and racial and ethnic discrimination have historical roots in slavery and European colonialism in the Americas. In the case of the Dominican Republic, the Inter-American Commission has been involved in following up on the diverse manifestations of racism and discrimination against persons of African descent in the Americas since the early 1990s, especially Haitian migrants and Dominicans of Haitian descent, through actions carried out by both individuals and State officials.

333. Over the years, the Commission has received extensive information on situations in which officials of the Central Electoral Board, the Civil Registry, the Office of the Director General of Immigration, and State security forces have been directly involved in the commission of discriminatory acts based on racial criteria against persons of Haitian origin. As already established in the present report, these persons are usually persons of African descent and dark-skinned. In this context, building a national origin is interconnected with race, ethnic origin, and skin color. At present, the extreme vulnerability of persons of Haitian origin in the Dominican Republic is one of the main human rights concerns in the region. In the Inter-American Commission's view, discrimination against persons of Haitian origin in the Dominican Republic is the principal reason behind the violation of numerous human rights of these persons.

334. According to the results of the 2006 Latin American Public Opinion Poll, conducted by the Latin American Public Opinion Project of Vanderbilt University and used by the National Statistics Office of the Dominican Republic,[315] 67.6 percent of the population considered itself mulatto or Indian, 18.3 percent black, and 13.6 percent white.[316] In a similar vein, at a hearing before the IACHR, the State's representatives also said "that 73 percent of the population in the Dominican Republic is mulatto

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315 The 2002 and 2010 population censuses in the Dominican Republic did not include the ethnic-racial variable. The National Statistics Office said that this would have to be corrected in the future to close the gap with other Latin American and Caribbean countries as well as to address the difficulties involved in the building of societies characterized by a historical denial of their ethnic-racial diversity. See: Dominican Republic, National Statistics Office, *La variable étnico racial en los censos de población en la República Dominicana* [The ethnic racial variable in population censuses in the Dominican Republic]. 2012, p. 22.

316 See, Dominican Republic, National Statistics Office, *La variable étnico racial en los censos de población en la República Dominicana,* 2012, p. 20.

and 16 percent black, which suggests that almost 90 percent of the population is dark-skinned."[317]

335. The data collected during the visit indicates that the dominant perception among most Dominicans is that their mulatto skin tones distinguish them from the darker-skinned Dominicans and Haitians.[318] The widespread phenotypic perception in the Dominican Republic is that persons of Haitian origin are black with broad noses and black, generally short, frizzy hair, which is known as "bad hair."

336. At the meetings during the visit and at the hearings before the IACHR,[319] the authorities emphatically denied the existence of racism and racial and ethnic discrimination in the Dominican Republic. Several authorities said that Haitians were fully integrated in the country, to the extent that some authorities said that their level of integration was such that people of Haitian origin worked for them, either as drivers, security guards, gardeners, or household help. Regarding this, the Commission observes that these jobs are usually associated with low incomes and a lower social stratum. Likewise, the authorities said that judgment TC/0168/13 did not have a discriminatory impact on persons of Haitian origin since it applied across the board to all children of undocumented migrants in transit.

337. For its part, the information the Commission received directly from persons it met with in Santo Domingo, as well as from the *bateyes* and border areas, showed the segregation and marginalization to which Dominicans of Haitian descent and Haitian migrants were subjected, as well as the tension and abuse they faced because of their own or their families' national origin, the color of their skin, their phenotypic traits, or their linguistic ability to speak Spanish.

338. As regards discrimination in access to nationality, the information gathered during the visit enabled the IACHR to systematize the most frequent problems faced by those affected in trying to obtain Dominican identity documents, with the different types of differentiated treatment identified as follows:

- Haitian migrant couples who were discriminated against when trying to register their children's births. Consequently, their children who were born on Dominican soil never obtained a birth certificate and lack any form of identity documents.
- Dominicans of Haitian descent with valid Dominican identity documents who were discriminated against when registering their children's births. As a result, their children were not issued Dominican birth certificates and do not have any identity documents.

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317 IACHR, Thematic Hearing "Racial Discrimination in the Dominican Republic." 127th period of sessions, March 2, 2007.

318 See: United Nations Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall: Addendum: Mission to Dominican Republic. March 18,* 2008, A/HRC/7/19/Add.5; A/HRC/7/23/Add.3, p. 2.

319 IACHR, Thematic Hearing "Racial Discrimination in the Dominican Republic." 127th period of sessions, March 2, 2007; IACHR, Thematic Hearing "The Constitution and the Right to Nationality in the Dominican Republic." 140th period of sessions, October 28, 2010.

- Mixed families (families where one of the parents is in an irregular migratory situation and the other a Dominican national with valid identity documents) who were discriminated against when registering their children's births.
- Civil Registry authorities who systematically question the identity documents of persons who, in their view, "look" Haitian or have Haitian surnames.
- Civil Registry authorities who refuse to issue Dominican birth certificates to persons of Haitian descent but, conversely, issue birth certificates for foreigners.
- The refusal of hospitals to issue Dominican certificates of live birth to the children of parents with valid Dominican identity documents because they "look" Haitian and yet issue certificates of live birth to foreigners.

339. As a preliminary consideration, the Commission deems it is necessary to point out that Article 1.1 of the American Convention on Human Rights provides that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth, or any other social condition." At the same time, Article 24 of the American Convention establishes the principle of equality before the law, on the basis of which: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

340. In keeping with the foregoing, the Commission and the Inter-American Court have repeatedly maintained that the right to equality and nondiscrimination is the central, basic axis of the inter-American human rights system.[320] The Commission has also noted that there are different concepts of the right to equal protection and non-discrimination.[321] One concept is the prohibition against any arbitrary difference in treatment—where difference in treatment understood as distinction, exclusion, restriction, or preference—[322] and another is related to the obligation of ensuring conditions of true equality for groups that have historically been excluded and are at greater risk of discrimination.[323]

341. In turn, in its Declaration on Race and Racial Prejudice (Article 2.2), UNESCO established that Racism includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory

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320 IACHR, Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile, September 17, 2010, para. 74. I/A Court H.R. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, par. 173.5.

321 IACHR, Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile, September 17, 2010, para. 80.

322 United Nations, Human Rights Committee, General Comment 18, *Non-discrimination*, 10/11/89, CCPR/C/37, para. I/A Court H. R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, par. 92; Fourth Progress Report of the Office of the Rapporteurship on Migrant Workers and their Families in the Hemisphere, OEA/Ser.L/V/II.117, doc. 1 rev. 1, IACHR Annual Report 2002, March 7, 2003, par. 58.

323 IACHR, Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile, September 17, 2010, para. 80.

relations between groups are morally 'and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

342. Moreover, in Article 2.2 of the Declaration on Race and Racial Prejudice, adopted on November 27, 1978, UNESCO held that:

> [r]acism includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

343. The Commission underscores that the fact that historical problems such as racism and racial and ethnic discrimination are denied and rejected by different sectors of Dominican society—particularly political and economic elites—means that these issues mainly kept out of the public conversation and that public policies are not adopted to deal with these ills, which have grievous effects on the lives of hundreds of thousands of people in the Dominican Republic. The disavowal and disregard of these issues and the failure to adopt policies to address them have enabled discrimination against Dominicans of Haitian and African descent to manifest themselves in myriad aspects of their lives and to mutate over time, leading to the denial and violation of a multitude of their human rights.

## *B. Constitutional and legal framework for equality and non-discrimination*

344. With regard to the normative framework for equality and nondiscrimination, the Dominican legal system fully recognizes, both constitutionally and legally, the right to equality and the principle of non-discrimination. In this regard, Article 39 of the Dominican Constitution recognizes the right to equality and establishes that:

> All persons are born free and equal before the law; they receive the same protection and treatment from the institutions, authorities, and other persons and enjoy the same rights, freedoms, and opportunities, without any discrimination for reasons of gender, color, age, disability, nationality, family

ties, language, religion, political or philosophical opinion, or social or personal condition. In consequence:

1. The Republic condemns any privilege and situation that tends to undermine the equality of Dominicans, amongst whom there should be no differences other than those resulting from their talents or their virtues;

2. No entity of the Republic may confer titles of nobility or hereditary distinctions;

3. The State must promote legal and administrative conditions to make equality real and effective and must adopt measures to prevent and combat discrimination, marginalization, vulnerability, and exclusion;

4. Women and men are equal before the law. Any act is prohibited whose purpose or effect diminishes or annuls the recognition, enjoyment, or exercise in conditions of equality of the fundamental rights of women and men. Necessary measures shall be promoted to guarantee the eradication of gender inequality and discrimination;

5. The State must promote and guarantee the balanced participation of women and men in candidacies for popularly elected posts at management and decision-making levels in the public sphere, in the administration of justice, and in State oversight bodies.

345. In addition to the foregoing, various legal provisions elaborate on this right as well as on the principle of nondiscrimination. In this connection, Article 336[324] of the Criminal Code establishes that:

> Art. 336.- Discrimination comprises any distinction made among physical persons because of their origin, occupation, age, sex, family circumstances, health status, disabilities, customs, political opinions, trade union activities, occupation, or actual or assumed membership or non-membership in a specific ethnic group, nation, race, or religion. Discrimination also comprises any distinction made among legal entities because of their origin, age, sex, family circumstances, health status, disabilities, customs, political opinions, or trade union activities, or the actual or assumed membership or non-membership of the members or any of the members of the legal entity in a specific ethnic group, nation, race, or religion.
>
> Art. 336-1.- The discrimination defined in the preceding article committed against a physical person or legal entity is punishable by a two-year prison term and a fine of 50,000 pesos, when it consists of: 1.- the refusal to provide a good or service; 2.- obstruction of the normal exercise of any economic activity; 3.- the refusal to hire, punish, or dismiss a person; 4.- subordination of the provision of a good or service to a condition based on one of the elements set

[324] The Criminal Code in force was amended by Law 24-97, which included the provisions on discrimination.

> out in the preceding article; 5.- subordination of an offer of employment to a condition based on one of the elements set out in the preceding article.

346. Likewise, the Commission takes note of the enactment of a new Criminal Code in the Dominican Republic, to enter into force in December 2015,[325] which defines the offense of discrimination and punishes it as follows:

> Article 182. Discrimination. Any unequal or offensive treatment of natural persons owing to their origin, age, sex, sexual preference or orientation, color, family circumstances, health status, disability, custom, political opinion, trade union activity, or membership or non-membership in a specific ethnic group, nation, race, or religion, constitutes discrimination.
>
> Paragraph. Similarly, any unequal treatment of natural persons by one, several, or all members of a legal entity owing to any of the aforementioned circumstances constitutes discrimination.
>
> Article 183. Punishment for discrimination. Discrimination shall be punishable by one day to one year of simple prison and a fine of three to six minimum public-sector salaries, when it results from any of the following acts: (1) the refusal to provide a good or service to the victim;(2) obstruction of the normal exercise of any economic activity by the victim; (3) the refusal to hire, punish, or dismiss a person; (4) subordination of the provision of a good or service to a condition based on one of the elements set out in the preceding article; (5) subordination of an offer of employment to a condition based on one of the elements set out in the preceding article.
>
> Article 184. Liability of legal entities for discrimination. Legal entities may be declared criminally liable for discrimination under the terms established in Articles 7 to 12 of this code, in which case they shall be sanctioned with the penalty established in Article 42.
>
> Article 185. Institution of criminal proceedings. Discrimination shall be prosecuted through public action upon private complaint.

347. As concerns birth registration, the Code for the System of Protection of the Fundamental Rights of Children and Adolescents, Law No. 136-03, establishes that all children and adolescents are entitled to be registered in the Civil Registry immediately after birth,[326] and addresses equality and nondiscrimination as follows in its Principle IV:

> The provisions of this Code apply equally to all children and adolescents, without any discrimination whatsoever on the basis of race; color; sex; age; language; thought; conscience; religion; beliefs; culture; political or other opinion; economic position; social, ethnic, or national origin; disability; disease;

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[325] Law No.550-14, establishing the Criminal Code of the Dominican Republic and promulgated on December 19, 2014, was published by the Executive in Official Gazette No.10788.

[326] Code for the System of Protection of the Fundamental Rights of Children and Adolescents (Law 136-03), Art. 5.

birth; vulnerability; or any other condition of the children or adolescents; their parents, representatives or guardians; or their family members.

348. In regard to labor issues, the Labour Code provides in principle VII that "any discrimination, exclusion or preference based on sex, age, race, color, national extraction, social origin, political opinion, trade union membership or religious belief is prohibited, unless otherwise provided by law for protection to the worker. Any distinction, exclusion or preference based on the inherent requirements of a particular job are not included in this prohibition. "

349. In turn, with regard to education, the General Education Law No. 66-97, article 4 recognizes the right to education as a permanent and inalienable human right, which must be guaranteed without any type of discrimination, such as distinctions by nationality, race, sex, creed, economic and social position or of any other nature.

350. However, the Inter-American Commission observes that the Dominican Republic does not have a General Antidiscrimination Law.

## *C. Main concerns and standards on the forms of discrimination affecting Dominicans of Haitian descent as a result of Judgment TC/0168/13*

351. According to information provided by civil society, in the Dominican mindset "blacks are Haitians" and "Haitians are illegal." [327] Consequently, when speaking about persons of African descent or blacks, Dominicans do not classify themselves as such but rather according to different skin-color categories, which range from light Indian, dark Indian, dark, mulatto, etc. The information collected by the IACHR indicates that there is a general lack of awareness about the African roots of Dominican identity. Thus, the practices of the civil registers, circulars, resolutions, laws, and judgments whose main effect has been to deny Dominican nationality to persons of African descent in order to preserve "Dominican identity" were denounced and documented.

352. By ordering the administrative transfer of all birth certificates of persons whose parents may have been "in transit" to the book of foreigners, judgment TC/0168/13 has a disproportionate effect on a clearly identifiable population group, Dominicans of Haitian descent. This is obviously because the Haitian population constitutes the largest group of immigrants in the Dominican Republic. In response to questions about how these "irregular" certificates were identified, various organizations told the Commission that Civil Registry officials had said that they identified the persons "by surnames that sounded Haitian" or by their "Haitian appearance or accent" when said persons went to the Civil Registry to request copies of their documents.

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[327] Information presented by civil society in meeting with IACHR in Santo Domingo, Dominican Republic, 2 December 2013.

353. For their part, at every meeting held with the State, all officials firmly denied the existence of racism or discriminatory practices in the country against Dominicans of Haitian descent, Haitians, or persons of African descent in general. State representatives said that civil society organizations and the international community had wanted to present a situation of discrimination. However, they clarified that persons of Haitian origin were not discriminated against because they were integrated into many activities. The State agents also emphasized the solidarity the Dominican people had shown in response to the earthquake in Haiti in January 2010,[328] indicating that following the earthquake more than 57,000 Haitians came to the Dominican Republic. [329]

354. In its observations on this report, the Dominican State also said that "[i]n one form or another, discrimination and racism pervade many—perhaps all—societies in their own particular way, depending on their history, socio-cultural makeup, and determinants produced by phenomena such as migration, which is having such a great impact on our societies around the world. There are tensions everywhere."[330] It added that "the constitutional and legal basis for protection of equality and nondiscrimination has grown increasingly consolidated in the Dominican Republic, that there are no public policies designed or implemented to exclude any group on the basis of their race or color, and in no sense is there any systematic practice of discrimination against any group. Of course, there are sectors of society that, because of poverty, do not yet receive many services and benefits but that affects individuals of different races, color, and ethnicities."[331]

355. In view of the information received, the Commission cannot fail to express its concern about the racial and ethnic discrimination also suffered by Dominicans of African descent (specifically those who are not of Haitian descent). The Commission notes the relationship between skin color and the prejudice suffered by Afro-Dominicans for that reason. In particular, the IACHR points to situations in which some Dominicans have been "confused" with "Haitians" because of their skin color and phenotypic traits and consequently have been summarily expelled from their own country.

356. Accordingly, it bears noting that discrimination against Dominicans of Haitian descent and Haitians has made the racial discrimination that exists against

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328 On January 12, 2010, an earthquake measuring 7.0 on the Richter scale, with its epicenter in Port-au-Prince, the capital of Haiti, was recorded. According to official figures, it left a toll of 316,000 dead, 359,000 injured, and over 1.5 million displaced from their homes.

329 IACHR, Thematic Hearing "The Constitution and the Right to Nationality in the Dominican Republic." 140th period of sessions, October 28, 2010.

330 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 15.

331 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 15.

Dominicans of African descent even more invisible.[332] In this respect, the Commission notes various forms of racial discrimination against persons of African descent in the Dominican Republic, drawing a distinction between the three groups affected: Dominicans of African descent, Dominicans of Haitian descent, and Haitians. Colonial racist ideologies led to the creation of a hierarchy of human beings based on skin color. As a result of miscegenation, different cultural identities known as "mestizo," "mulatto," and "Indian," among others, were created, in order to deny Afro-descendancy. The denial and concealment of the Afro-descendant legacy are apparent in the discrimination by both race[333] and ethnic group.[334]

357. Throughout its visit, the Commission was able to observe questions related to racial self-identification, which reflected a lack of awareness and training about self-identification categories, which would encourage the population of African descent to identify itself. The Commission expresses its profound concern over the State's firm denial of the existence of racial discrimination, especially against the dark-skinned population of African descent. Said denial hinders the State's commitment to fight racism and racial discrimination.

358. The Commission also notes that the Dominican Republic does not have statistics disaggregated by race/ethnic group. Even though the country's most recent census was conducted in 2010, the ethnic-racial variable was not included in either the 2002 or 2010 censuses. Following the last census, in 2012, the National Statistics Office published a study called "*The Ethnic-Racial variable in population censuses in the Dominican Republic,*" in which it stated that this would have to be corrected in

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[332] In 2000, at the Santiago Conference, the preparatory meeting for the III World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Durban, South Africa, the States of the Americas agreed on the definition of the term "Afro-descendant" as a person of African origin who lives in the Americas and in the region of the African diaspora as a result of slavery, who have historically been denied the exercise of his or her fundamental rights. Subsequently, the Durban Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 "saw the emergence of a new subject of international law: people of African descent, a name used initially to refer to the "children of the African diaspora who survived the Transatlantic Slave Trade." The term "Afro-descendants" refers to all groups identified as black, mulatto, dark skinned, mixed-race, light-brown skinned, etc., some of which constitute euphemisms established in racist contexts. Today, this concept also comprises the hundreds of thousands of African migrants spread throughout the world, including Europe, as well as their descendants. *See* elements of the definition of the term Afro-descendant at the 2000 Santiago conference. *See also*, OAS, Department of International Law. Secretariat for Legal Affairs. Roberto Rojas Dávila, *Introduction to the Afro-descendant Topic.* Available at: http://www.oas.org/dil/esp/afrodescendientes_ejecutadas_taller_transversalizacion_usa_2011_presentaciones_Roberto_Rojas.ppt. More recently, the CERD has stated that people of African descent are those referred to as such in the Durban Declaration and Programme of Action and who identify themselves as people of African descent. United Nations, CERD, General Recommendation XXXIV, CERD/C/GC/34, October 3, 2011, par. 1. *See also*, Murillo, Pastor. Presentation at the panel on the enjoyment of human rights of persons of African descent. Geneva, Switzerland, March 2, 2011. Cited by: Atchebro, Daniel. *Afrodescendiente, del rechazo al reconocimiento* [Afro-descendant, from rejection to acceptance]. Office of the Representative of the Office of the United Nations High Commissioner for Human Rights in Colombia.

[333] The IACHR uses the term "racial" not because it adheres to theories claiming the existence of different races in the human species, but rather in line with the nomenclature of Article 1 of the American Convention on Human Rights, in which race is a social construct that uses certain visible biological traits for classification purposes.

[334] As a group that shares racial identity, customs, territory, beliefs, a world view, language or dialect and symbolic forms, etc.

the future "to close the gap with other Latin American and Caribbean countries as well as to address the difficulties involved in the building of societies characterized by a historical denial of their ethnic-racial diversity." [335]

359. The Commission is concerned about the accusations of discriminatory or offensive conduct against dark-skinned persons, whether Haitian or Dominican, and persons of Haitian descent by officials in various public offices. Likewise, the IACHR underscores the complaints received from persons who have been targeted as a result of judgment TC/0168/13 because they look "Haitian."

360. The Commission takes note of what was established by the Committee on the Elimination of Racial Discrimination and urges the State to recognize that deprivation of citizenship on the basis of race or descent is a breach of States' obligation to ensure non-discriminatory enjoyment of the right to nationality.[336]

## 1. Structural discrimination against persons of Haitian descent

361. In the course of the visit, civil society organizations informed the Commission that "Haitian migrants, Dominicans of Haitian descent, and persons of African descent in general are not only victims of structural discrimination, inasmuch as they are the poorest of the poor and marginalized, but also that they are subjected to open hostility and aggression by individuals, without the State having adopted effective measures to prevent those actions, which are based on racial profiling and the gender, age, sexual orientation, or disability of the persons affected." The organizations also told the IACHR that judgment TC/0168/13 had exposed Dominicans of Haitian descent to great risk and stigmatization since they had been segregated as "the group that has been stripped of its nationality and will be deported".[337]

362. The population of African descent has historically been in a vulnerable position in the Dominican Republic. The problem of racism and negrophobia in the country goes back to colonial times. To maintain productive relations with the European and North American countries, which had not yet abolished slavery, the first governors of the island negotiated racial paradigms, basing the idea of Dominican identity on the racial differentiation of Haitians and Africans and on a raceless awareness that excluded the development of an Afro-descendant identity.[338]

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335 See: Dominican Republic, National Statistics Office, *La variable étnico racial en los censos de población en la República Dominicana* [The ethnic-racial variable in population censuses in the Dominican Republic]. 2012, p. 22.

336 Committee on the Elimination of Racial Discrimination. General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent, October 3, 2011, par. 48.

337 Information provided by civil society at a meeting of the IACHR in Santo Domingo, Dominican Republic, on December 2, 2013.

338 See: Torres-Saillant, Silvio. The Tribulations of Blackness: Stages in Dominican Racial Identity Latin American Perspectives, Vol. 25, No. 3, Race and National Identity in the Americas. (May, 1998), pp. 126-146; Moya Pons, Frank. *Historia de la República Dominicana* [History of the Dominican Republic], Volume 2. Editorial CSIC, January 1, 2010; Moya Pons, Frank. *Antihaitianismo histórico y antihaitianismo de Estado. Lecturas: historia y memoria* [Historical Anti-Haitianism and State Anti-Haitianism. Readings: History and Memory]. *Diario Libre*,

363. During its visit, the Commission observed that the Dominican population of Haitian descent was largely Afro-descendant. The IACHR received extensive information about the existence of prejudice and racial discrimination against blacks in the Dominican Republic, whether of Haitian origin or not, which is deeply rooted in Dominican society and is seen in such areas as language, interpersonal relations, and prototypes of social aesthetics and physical beauty, among others. This is reflected in the intersection of various forms of discrimination against the Dominican population of Haitian descent, on the one hand based on the resistance to the "negritude" inherent in Dominican society and, on the other hand, based on a rejection of the Haitian population owing to the ideology of anti-Haitianism. In that connection, the Commission notes that of the 3,342 people who provided it with information during the visit, 887 said that the human rights violations that they had suffered had to do with the fact that they themselves, their parents, or their grandparents were of Haitian descent. One Haitian migrant who provided testimony to the Commission during the visit said:

> I have been living here [in the Dominican Republic] since [19]98. I have worked in the fields and in construction without papers. In 2012 I was given a visa to be in the country, which was renewed in 2013 ... My three children [who are 9, 5 and 2 years old] were born here but I was not given a Dominican birth certificate for them; rather they were registered in the foreign residents book. We want help. As a Haitian you cannot say or claim anything; if we claim, we get insulted. As Haitians we have no assurances. It is unbearable. There is no problem for white foreigners, but there is for black Haitians. We are all the same: if a white man cuts a black man he bleeds the same red blood. This is the first time that I have spoken about it. The situation is very hard because we cannot even vote. It is an abuse, all they do to us.[339]

364. The Commission observes that the Dominican Government, in its 2007 report to the Committee on the Elimination of Racial Discrimination, [340] recognized that Dominicans of African origin were victims of inequalities and difficulties. In that regard, the report points out that "most Dominicans of African origin are in the lower strata of society" and that "those of African cultural origin are among the main victims of violations to economic, social and cultural rights."[341]

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December 5, 2009; Moya Pons, Frank. Dominican National Identity and Return Migration. University of Florida at Gainesville Center for Latin American Studies. Occasional Paper 1, 1981; Moya Pons, Frank. The Dominican Republic: A National History. Hispaniola Books, New York, 1995; IACHR, 127th regular period of sessions, Thematic Hearing "Racial Discrimination in the Dominican Republic," March 2, 2007; IACHR, 123rd period of sessions, Thematic Hearing "Situation of the Haitian and Dominican-Haitian Communities in the Dominican Republic," October 21, 2005.

339 Testimony of a Haitian migrant from Guayubín, Monte Cristi Province, to the Inter-American Commission. Santo Domingo, December 4, 2013.

340 CERD/C/DOM/12.

341 UN, Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Dièn*e*, and the independent expert on minority issues, Gay McDougall: Addendum: Mission to Dominican Republic*.* A/HRC/7/19/Add.5; A/HRC/7/23/Add.3, March 18, 2008, par, 171.

365. Both the Commission and the Inter-American Court have consistently stated that a situation exists in the Dominican Republic in which Haitians and persons of Haitian descent born on Dominican soil, who often live in poverty and are undocumented, are often subjected to pejorative and discriminatory treatment, at the hands of both officials and individuals, which exacerbates their vulnerability. This situation of vulnerability is also reflected in the discriminatory attitudes and use of racial profiles against Haitians and Dominicans of Haitian descent by State officials, which are factors underlying the selective detentions and collective and summary expulsions of these people.[342]

366. In the Commission's view, the source of the multiple violations now faced by persons of Haitian origin in the Dominican Republic is the systematic, longstanding denial of their human rights through measures adopted on the basis of discriminatory criteria, such as skin color, their national origin or that of their ascendants, and poverty. The Commission notes with concern that the assessment made in the preceding paragraphs indicates that racial discrimination and racism are deeply rooted in the Dominican Republic and that, consequently, the population of African descent is suffering from a situation of structural discrimination, in all regards and at all levels, which deprives it of the enjoyment and exercise of its human rights.

367. In a general sense, the Committee on the Elimination of Racial Discrimination has recognized that "[r]acism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them."[343] For its part, the IACHR has maintained that, notwithstanding the different manifestations of discriminatory attitudes, the information consistently suggests that the population of African descent in the Americas suffers from a situation of structural discrimination; which is borne out in indicators of poverty, political participation, criminality, and access to quality housing, health care, and education, among other things. The structural discrimination is also reflected in the collective mindset and in the continuing stereotyping of and prejudice against persons of African descent.[344]

368. The Inter-American Commission realizes that, while there are multiple ways in which discrimination may be expressed, structural or systemic discrimination refers to the set of norms, rules, routines, patterns, attitudes, and standards of behavior, both *de jure* and *de facto*, that give rise to a situation of inferiority and exclusion against a group of persons in a generalized sense, with these traits perpetuated over time and even generations. In other words, these are not isolated, sporadic, or episodic cases; rather it is discrimination that emerges from a historical,

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342 IACHR, Report on the Merits No. 64/12, Case 12.271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, pars. 269 and 270; I/A Court H.R. Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 282, para. 171.

343 Committee on the Elimination of Racial Discrimination, General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent, 79th session, CERD/C/GC/34. October 3, 2011, para. 6.

344 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, paras. 42, 46.

socioeconomic, and cultural context.[345] Its generalized nature refers to its quantitative aspect, i.e., the large-scale nature of the problem, whereas its systemic nature refers to the way decisions, practices, policies, and the culture of a society are adopted. From this viewpoint, structural discrimination does not have a strict or narrow definition.

369. In view of the foregoing, the Commission considers that in cases involving structural patterns or practices, an overall assessment must be made of the proposed situation in terms of the historical, material, temporal, and spatial circumstances surrounding it.[346] Indeed, since 1991 the Commission has been able to observe the grave human rights violations affecting people of African descent in the Dominican Republic, especially Haitian immigrants and Dominicans of Haitian descent.[347]

370. The Commission notes with concern that the assessment made in the preceding paragraphs indicates that racial discrimination and racism are deeply rooted in the Dominican Republic and that, consequently, the population of African descent—whether a minority or majority percentage of the population—is suffering from a situation of structural discrimination, in all regards and at all levels, which deprives it of the enjoyment and exercise of its human rights.

## 2. Intersectoral discrimination against persons of Haitian descent

371. The Commission has noted how the structural vulnerability of persons of Haitian origin in the Dominican Republic is compounded when, in addition to being migrants or their descendants, other factors for discrimination against them converge, such as race, ethnicity, color, national origin, linguistic skills, age, sex, and

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345 See, *inter alia*, I/A Court H.R. Case of González *et al.* ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No.205; I/A Court H.R. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214; I/A Court H.R. Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 282. See also, Committee on the Elimination of Racial Discrimination. General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent, 79th session, CERD/C/GC/34. October 3, 2011; IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011; Stavenhagen Rodolfo, *El derecho de sobrevivencia: la lucha de los pueblos indígenas en América Latina contra el racismo y la discriminación* [The right to survival: the struggle of indigenous peoples in Latin America against racism and discrimination] BID/IIDH, 2001; Pelletier, Paola, *La "Discriminación Estructural" en la evolución Jurisprudencial de la Corte Interamericana de Derechos Humanos* ["Structural discrimination" in the evolution of the case law of the Inter-American Court of Human Rights] *Revista del Instituto de Derechos Humanos,* No.60, July–December 2014.

346 See, IACHR, Report on the Merits No. 64/12, Case 12.271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, par. 53; I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010 (Preliminary Objection, Merits, Reparations and Costs. Series C No. 220, par. 63, citing I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*, Judgment of May 26, 2010 (Preliminary Objections, Merits, Reparations and Costs). Series C No. 213, para. 50.

347 IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1991.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992. Chapter V: Situation of Haitians in the Dominican Republic. IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 59.

poverty level, which, when they are present at the same time, result in those persons being the subject of intersectoral discrimination.[348]

372. Hence, the Commission observes that the population of African descent is affected by multiple levels of discrimination. While it is true that the notion of racial discrimination is distinct from the concept of social inequality, the Commission has highlighted the close connection between poverty and race and between race and class and how these categories intertwine and deepen the vulnerability of the population of African descent. In particular, the IACHR notes with concern the special situation of vulnerability of women of African descent, who have suffered a triple historical discrimination based on their sex, extreme poverty, and race. [349]

373. In fact, when a woman's race is factored into her experience, the double burden of sex and racial discrimination and related intolerance becomes evident. Areas of particular concern include the disadvantages faced by minority women in access to the labor market, trafficking in women, and race-based violence against women constitute some of the Commission main concerns.

> We were born here [in Dominican Republic], we don't even know what color is the land of Haiti. I have a birth certificate, but they [the government] don't want to give the identification card, because my parents are Haitians. My sister [15 years] and brother [9 years] do not have birth certificates. I finish school in two years and I need to have the identification card to work. I'm really worried that if I cant get a job then I would have to prostitute myself.[350]

374. Also noteworthy is the situation of children who were reported to suffer from their families' fear of being discriminated against and rejected, either by the State itself and its institutions or by persons with whom they have lived for years in neighborhoods and communities. The Commission also received abundant information on the effects for these people have to live with the uncertainty generated by having been deprived of their Dominican nationality and fear that they could be deported at any time with no possibility of return to their homes.

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348 On intersectoral discrimination, *see*, IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13 (2013), par. 83; IACHR, *Observations on the Advisory Opinion of the Inter-American Court of Human Rights: Migrant children and adolescents.* February 17, 2012, par. 16; and IACHR, Report on *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*. OEA/Ser.L/V/II. Doc. 63 (2011), para. 308.

349 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 13.

350 Testimony of a Dominican woman of Haitian descent before the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

> Immigration [agents] does not respect us all. They arrived at 3 am to get us out of the house. I was only wearing short pants and naked for the rest. At 5 [he, his wife and three children born in the Dominican Republic] they put us in the truck and drove to the border Dajabon [and there they were expelled to Haiti]. On August 14, 2013, my employer came looking for me in his car at the border. He arrived at 12 pm. When I returned from Haiti I found nothing. They had taken all our stuff. The people who did this were 3 [agents] from Immigration. We wanted to denounce this but Immigration [agents] threatened us. The neighbor had a tank of gas, a stove, and a Dominican took her and chopped off her arm. [...] all my neighbors were taken away. Now we are afraid that they will come again to take us. [...] My children were born here [in the Dominican Republic], but do not have a birth certificate and because of that the doctor does not want to take them in at the hospital.[351]

375. Although Dominican law recognizes that the right to education must be guaranteed without any discrimination, including those based on distinctions by nationality, race, economic and social position or of any other nature, during and after the visit, the Commission received many testimonies and information from families and children and adolescents of Haitian descent born in the Dominican Republic that, as a result of judgment TC/0168/13 and the existing situation, were prevented from continuing their studies at school or in college due to not having a birth certificate or an identification card required by teachers or their schools authorities. The Committee notes with deep concern that out of the 3,342 people who provided information and testimonies during the visit, 620 situations where these people or their relatives had faced obstacles in regard to the right to education were recorded.

> My daughter [17 years old] was born here [in the Dominican Republic], but as I had no papers, I could not get her birth certificate. Two years ago, as she did not have the certificate [of birth] she could not continue studying. At school they let her study only until the eighth [grade]. My daughter has already a two year old daughter that she could not register either because she still doesn't have her certificate. [352]

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351 Testimony of a Haitian migrant on his behalf his wife and three children born in the Dominican Republic, before the IACHR in Batey Libertad, Dominican Republic, December 4, 2013.

352 Testimony of a Haitian woman on her behalf, and on behalf of her daughter and granddaughter, before the IACHR in Batey Libertad, Dominican Republic, December 4, 2013.

376. The information received by the Commission consistently indicated that upon reaching the eighth grade children and adolescents were required to present their birth certificate in order to continue their secondary education, which represented an insurmountable obstacle for children and adolescents of Haitian descent born in the Dominican Republic who were not registered in the Civil Registry and therefore did not have a birth certificate. The application of discriminatory school policies has caused for many of these people the violation of their right to education. In turn, the obstacles they have faced have led many of these people to be forced into work in informal jobs, which, in turn, has limited their ability to improve their socio-economic situation and that of their families.

> I was born in a hospital in Mao [in the Province of Valverde, Dominican Republic] in 1999. My mom and dad are Haitians. My dad had Haitian papers [identity documents] when he came. When I was born at the hospital they were given a certificate of birth. [My parents]they attempted to plead several times, but those of the Administrative Office [Civil Registry] said no because they were foreigners. The only thing I have [as document] of identity is the medical referral of the hospital. [...] I am now studying my second year of high school but [at school] they are already asking me for birth certificate, but they don't give it to me. I want you to help me stay in school. I feel bad because in the street they call me damn, dirty and treat me badly. [...] We are all equal and that's not right. I have as much right to be Dominican [sic] as the others. I just want to study. This is not fair. [353]

377. The impact on people of Haitian descent born in the Dominican Republic that the deprivation of their rights to nationality, juridical personality, identity and civil registration has carried is clearly reflected in the obstacles that have generated in the effective enjoyment of their education rights. The Commission notes with concern that the obstacles faced by these people to continue their education prevents them from fully realizing their life projects and remain caught in a poverty trap, which is palpable in a circle of other multiple deprivation. The obstacles in access to education prevent these people to escape poverty and perpetuate indefinitely once the obstacles to break this vicious circle. The violation of the right to education is of utmost concern to the Commission since this right acts as a catalyst necessary for the realization of other civil, political, economic, social and cultural rights.[354]

378. The Commission considers important to note that the right to education is a human right, which is recognized in Article 26 of the American Convention, Article 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), as well as in other

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353 Testimony of a 15 year old woman born in the Dominican Republic, before the IACHR in Batey Libertad, Dominican Republic, December 4, 2013.

354 Georgetown University - Institute of Human Rights at Georgetown Law, Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education. Washington D.C., 2014, p. 4.

international instruments to which the Dominican State is party. Therefore, in compliance with its international obligations on human rights, the Dominican government should take all necessary measures to guarantee these people access to education, without discrimination on grounds of national origin or migratory situation of their parents, race, color, language ability, stateless or other social condition. In this regard, the State must remove any requirement that forces a child to submit a birth certificate in order to be officially included in the school records.

379. The Commission also expresses its concern about reports of racial discrimination in access to places, services, and facilities intended for public use, including those of a recreational nature.[355] On this point, the Commission welcomes the "Resolution on the Elimination of Discrimination in Access to Restaurants, Bars, and Other Recreational Facilities," issued by the Office of the Attorney General of the Republic, which recognizes that "it has identified violations of basic rights, incidents of discrimination and exclusion, and restrictions regarding access to, and the enjoyment of, some restaurants, bars, and other establishments of this type on the basis of skin color, race, clothing, hairstyle, and the physical appearance of citizens, acts that have been classified as criminal offenses, which the present resolution seeks to eradicate, correct, and prosecute."[356]

380. The information described reveals that Dominicans of Haitian descent, as well as Dominicans of African descent, face important obstacles regarding their civil, political, economic, social, and cultural rights. Therefore, such deficiencies must be tackled by the States through measures specifically designed to ensure equality and non-discrimination for people of African descent.[357]

381. Generally speaking, according to the information provided to the Commission during its visit, the abuses against persons of African descent were committed by State agents primarily in connection with immigration detention for purposes of summary expulsions. In other words, racial profiling was used to identify people who "looked Haitian" in order to detain and deport them, irrespective of their nationality or migratory situation. The information received by the Commission indicated that was a situation of impunity for Migration agents and officers of the security forces accused of engaging in these practices.

382. One of the main concerns raised by civil society organizations during and after the visit was the situation of uncertainty in which persons affected by judgment TC/0168/13 find themselves, in that they feel that they are at constant risk of being deported to Haiti as a result of the judgment. The affected persons fear that the

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355 See: *Acento*. May 17, 2013. *Jóvenes rechazadas por color de piel someten dueños del bar "La Chismosa"* [Youths turned away because of skin color file suit against owners of "La Chismosa" bar]; *Listín Diario*. July 31, 2007. *Embajada de EEUU prohíbe a sus empleados visitar Discoteca "Loft"* [U.S. Embassy bans staff from visiting "Loft" night club]; *Diario Digital*. September 18, 2006. *Discriminación en discoteca habría provocado muerte* [Discrimination in discothèque may have caused death]; *El Nacional*. August 31, 2014. *Racismo en bares, discotecas y restaurantes* [Racism in bars, night clubs, and restaurants].

356 Office of the Attorney General of the Republic. Resolution on the Elimination of Discrimination in Access to Restaurants, Bars, and Other Recreational Facilities, May 15, 2013.

357 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, par. 102.

immigration authorities will identify them according to their Dominican-Haitian profile and, since they do not have documentation to prove their Dominican nationality, they will be deported to Haiti.

383. In this regard, the Commission defined the practice of "racial profiling" or the establishment of racial profiles as a "repressive tactic [which is] adopted for supposed reasons of public safety and protection and is motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions, and it tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes."[358]

384. The Commission concurs with the recommendation of the Committee on the Elimination of Racial Discrimination, which, in its General Recommendation No. 31, said that States should take the necessary steps to prevent questioning, arrests, and searches which are in reality based solely on the physical appearance of a person, that person's color or [physical] features or membership in a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.[359]

385. Finally, in denying the existence of racism and discrimination against Dominicans of Haitian and of African descent in the various areas presented, the State points out that there are no complaints about it even though the Criminal Code criminalizes the conduct. In this regard, the Commission has maintained that the lack of complaints or cases of discrimination does not prove the lack of situations of racial discrimination; rather it may reveal that victims have inadequate information concerning their rights, or that there is a lack of trust in the police and judicial authorities, or that the judicial authorities are insufficiently alert to or aware of situations involving racism, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, among other barriers related to access to justice.[360]

386. In light of the regulatory framework presented, the Commission recalls that it has established that the simple promulgation of laws without practical effect does not guarantee the full enjoyment and exercise of rights.[361] For its part, the Court has ruled as a consistent standard of jurisprudence that the formal existence of legal provisions is not sufficient to guarantee equality. Rather, such provisions must be

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358 IACHR, Report No. 26/09 (Admissibility and Merits), Case 12.440, Wallace de Almeida (Brazil), March 20, 2009, para. 143.

359 CERD, General Comment No. XXXI, U.N. Doc. CERD/C/GC/31/Rev.4 (2005), para. 20.

360 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, par. 121; United Nations, CERD, General Comment No. XXXI, U.N. Doc. CERD/C/GC/31/Rev.4 (2005).

361 IACHR, Report No. 36/09 (Admissibility and Merits), Case No. 12.440 Wallace de Almeida (Brazil), March 20, 2009, paras. 147 and 148; IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, par. 68; IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 198.

effective, that is, they must yield the results or responses needed for the protection of the rights embodied in the American Convention.[362]

387. In this regard, the Inter-American Commission notes with concern the absence of general anti-discrimination legislation, and accordingly recommends that the Dominican Republic adopt comprehensive legislation to prohibit discrimination on the grounds of race, color, descent, or national or ethnic origin[363] and ensure that legislative and political measures on immigration do not discriminate on grounds of race, color, national origin, or language. [364]

## *D. Conclusions and recommendations*

388. Historical discrimination against persons of African descent in the Dominican Republic is a matter of great concern for the Inter-American Commission. During its visit, the IACHR noted that the Dominican population did not identify itself as a population of African descent, even though 80 percent of Dominicans consider themselves "mixed race" or "black."[365]

389. Included among the population of African descent in the Dominican Republic is the group of Dominicans of Haitian descent or those perceived as such who have been affected by various administrative, legal, constitutional, and judicial measures aimed at revoking their Dominican nationality even though they were born on Dominican soil. The Commission notes that during the years in which it has followed this situation, and during its visit to the Dominican Republic in December 2013, it did not receive any complaints or information on Dominicans of foreign descent, other than those of Haitian descent, who had encountered difficulties in having their nationality recognized or in gaining access to the Civil Registry or to their identity documents.

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362 I/A Court H.R. Case of Acevedo Jaramillo *et al.* v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 157, par. 213; Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, par. 170; Case of Ximenes Lopes v. Brazil. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, par. 4; Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, par. 184; Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, par. 93; Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100. pars. 117 and 142; Case of Garrido and Baigorria v. Argentina. Reparations. Judgment of August 27, 1998. Series C No. 39, par. 69; Case of Trujillo Oroza v. Bolivia. Reparations. Judgment of February 27, 2002. Series C No. 92, par. 96; Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, par. 151; Case of the "Five Pensioners" v. Peru. Merits. Judgment of February 28, 2003, par. 164; Case of Hilaire, Constantine and Benjamin *et al.* v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002, par. 112.

363 United Nations, Concluding observations of the Committee on the Elimination of Racial Discrimination. CERD/C/DOM/CO/12. May 16, 2008, par. 9.

364 United Nations, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/DOM/CO/13-14. March 1, 2013, par. 11.

365 United Nations, Committee on the Elimination of Racial Discrimination. Ninth report of the Dominican Republic to the Committee on the Elimination of Racial Discrimination. CERD/C/DOM/12, June 8, 2007, par. 3.

390. The Commission reiterates that the deprivation of nationality for reasons of race, descent, or migratory situation, among other categories, is a breach of the State's obligation to guarantee enjoyment of the right to nationality without discrimination. As already established, judgment TC/0168/13 discriminates against persons with regard to their access to nationality because of the immigration status of their parents, which cannot be transmitted to their children.

391. In addition to legislation that establishes a discriminatory restriction on access to nationality because of the migratory situation of the parents, the Commission notes that practices exist in the Dominican State—most of them carried out by Civil Registry officials—which are intended to deny access to rights and services for reasons of race, color, descent, or national or ethnic origin. In this respect, the IACHR recalls that international human rights law not only prohibits policies and practices that are deliberately discriminatory in nature, but also those whose effect is to discriminate against a certain category of persons, even when discriminatory intent cannot be shown.[366]

392. The Commission has recognized that even when equality is ensured as a matter of law, this does not equate to a guarantee of equality of opportunity or treatment.[367] Therefore, affirmative action measures are useful tools to remedy the persistent conditions of *de facto* discrimination as long as those conditions persist, and until equality of opportunities is achieved. Given that affirmative action measures aim at resolving the situation of historical discrimination affecting a particularly at risk group, these measures do not constitute discrimination.[368]

393. Indeed, the elimination of formal obstacles and the adoption of affirmative action measures to promote equality for people of African descent are essential prerequisites to ensure true equality for the population of African descent, especially the Dominican population of Haitian descent in the Dominican Republic.[369]

394. As concerns racial profiling, the Inter-American Commission is concerned that racial profiling is used as a selective and discretionary mechanism for denying Dominican

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366 IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II., Doc. 78/10, December 30, 2010, para. 95.

367 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 250.

368 United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 20, "Non-discrimination in economic, social and cultural rights (art. 2, par. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20, July 2, 2009, par. 8(b). The Committee on Economic, Social and Cultural Rights has said that "[e]liminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations." IACHR, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-discrimination, Annual Report of the Inter-American Commission on Human Rights, 1999, OEA/Ser.L/V/II.106. Doc. 3, April 13, 2000, Chapter VI. IACHR, The Road to Substantive Democracy: Women's Political Participation in the Americas, OEA/Ser.L/V/II. Doc. 79, April 18, 2011, par. 36. IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, par. 227.

369 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 251; United Nations, CERD, General Recommendation XXXIV, CERD/C/GC/34, October 3, 2011, paras. 7, 18.

identity documents, for immigration detention, and for investigating people, all of which has a direct impact on persons of African descent, in particular those of Haitian origin. In this regard, the IACHR cautions that the State must eliminate these practices. To this end, the Commission considers it vital both to modify institutionalized stereotypes concerning the Afro-descendant population and to apply appropriate sanctions against State authorities who, in the performance of their duties, violate human rights on the basis of racial profiling.[370]

395. The IACHR considers it essential for the Dominican Republic to adopt positive measures to eradicate racial and ethnic discrimination and provide effective guarantees of the human rights of persons of Dominican persons ofAfrican descent, especially the Dominican population of Haitian descent, Afro-Dominicans, and Haitian migrants. To that end, it is necessary to have appropriate, disaggregated information and to assign sufficient and specific human and financial resources not only to neutralize racial prejudice and stereotypes but also to improve the living conditions of persons of African descent with respect to health, housing, education, and employment, especially emphasizing the multiple discrimination that affects Afro-descendant women. [371]

396. Based on the foregoing conclusions, the Inter-American Commission on Human Rights issues the following recommendations to the State of the Dominican Republic:

1. Officially and publicly recognize the existence and the historical, social and cultural impact that racism and racial discrimination have had in the Dominican Republic, and express firmly, its political will to fight it. Policies and legal strategies to end the demonstrations and expressions of racism and structural racial discrimination should be adopted.

2. Adopt urgent measures, designed to resolve the situation of structural discrimination affecting the population of African descent, in particular persons of Haitian origin or descent.

3. Adopt comprehensive laws to combat racism, racial discrimination and xenophobia and the protection and promotion of the rights of minorities. The government should strictly implement such laws and take firm measures to prevent discriminatory practices.

4. Implement measures to raise awareness through the education system towards the Dominican population about the historical legacy of colonization and slavery and the complex history that has characterized relations between the Dominican Republic and Haiti. Such awareness is essential to eliminate stigma and negative stereotypes that blacks are constantly confronted with, whether they are Dominicans, Dominicans of Haitian descent, stateless persons of Haitian descent, or Haitians. In this regard, the Commission urges

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370 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 17.

371 IACHR, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 22.

the Dominican State to revise curricula and textbooks, particularly history, to appropriately reflect the issues related to the human, cultural and social advantages of multiculturalism and the contributions of different ethnic groups to the construction of the national identity of the Dominican Republic.

5. Adopt all necessary measures to guarantee that its policies and laws on nationality and immigration identify and eradicate the use of racial profiles as grounds for denying Dominican nationality to persons born in the territory of the Dominican Republic or as grounds for detention or arbitrary expulsion.

6. Adopt ongoing, permanent training programs to ensure that racial profiles are not in any way used as a pretext for denying Dominican nationality to persons born in the territory of the Dominican Republic or the pretext for detaining or expelling them.

7. Identify and eradicate the use of racial profiling as a valid mechanism for denying Dominican identity documents, for immigration detention, and for investigating people.

8. Adopt positive measures to eliminate racial discrimination and to guarantee that Dominicans of Haitian descent, Afro-Dominicans, and Haitian immigrants have access to basic services on an equal basis with the rest of the population. In particular, to adopt positive measures to guarantee their effective access to health care, maternal and reproductive health, housing, education, and employment.

9. Take all necessary measures to ensure to persons of Haitian descent access to education, without discrimination on grounds of national origin or migratory situation of their parents, race, color, language ability, stateless or other status social. In regard, the State must remove any requirement that children and adolescents must present a birth certificate in order to be officially included in the school records.

10. Implementar las medidas que sean necesarias para garantizar la igualdad de acceso a todos los niveles de enseñanza, independientemente de la nacionalidad y la documentación, en consonancia con las obligaciones internacionales, en particular a los niños de ascendencia haitiana y a los niños que carecen de un acta de nacimiento, y les permita presentarse a los exámenes necesarios para graduarse de la educación primaria y secundaria.

11. Adopt affirmative action policies on behalf of people of African descent in order to remedy or rectify historical injustices, remedy social and structural discrimination, create diverse and proportionally representative groups, provide disadvantaged communities with role models that can offer the necessary motivation and incentives, and put an end to vicious and prejudicial stereotypes.

12. Adopt necessary mechanisms for promoting the self-identification of its population of African descent. To carry out awareness campaigns and training

on self-identification categories to encourage the population of African descent to identify itself, in particular, by including the variable "Afro-descendancy" in all public registers and specifically in population censuses and household surveys.

13. Permanently include the ethnic-racial variable in population censuses in the Dominican Republic as well as in official surveys and information gathering tools. Through the above instruments, collect statistical data disaggregated by ethnicity, color, national origin, gender and socioeconomic status of the population in order to define racial discrimination effective policies. Generate estimates for the Afro-descendent population.

14. Empower the Ombudsman to act in accordance with the Principles relating to the status and functioning of national institutions for protection and promotion of Human Rights ("Paris Principles") Principles, and thus dispose of available authority and independence to fully fight all forms of discrimination based on race, ethnicity, national origin, sex, age, disability, immigration status, sexual orientation and gender identity, and any other conditions.

15. Urge the media to launch a wide and institutional process to assess their role in creating perceptions, images, and prejudices, and promote their role in combating racism and xenophobia and promoting tolerance and coexistence.

CHAPTER 4

# ACCESS TO JUSTICE AND DUE PROCESS GUARANTEES FOR DOMINICANS OF HAITIAN DESCENT

# ACCESS TO JUSTICE AND DUE PROCESS GUARANTEES FOR DOMINICANS OF HAITIAN DESCENT

## *A. General considerations*

397. During its visit, the Commission identified a number of concerns related to access to justice for protection of the right to nationality, the right to juridical personality, and the right to identity, particularly in the case of those affected by judgment TC/0168/13. The Commission was told of the many obstacles that Dominicans of Haitian descent encounter in their attempts to obtain an effective response in administrative and court proceedings concerning their rights to nationality, juridical personality, and identity, all resulting from the implementation of Circular No. 17-2007 of March 29, 2007 issued by the Administrative Chamber of the Central Electoral Board (hereinafter "Circular 17") and Resolution No. 12-2007 of December 10, 2007, issued by the Plenary of the Central Electoral Board (hereinafter "Resolution 12"). [372]

398. Access to justice is the first line in the defense of human rights. The American Declaration and the American Convention have upheld the basic principles and obligations associated with the right of access to adequate judicial protection. Article XVIII of the American Declaration and articles 8[373] and 25[374] of the American

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372 See, *Preliminary Observations from the IACHR's Visit to the Dominican Republic, 2013,* Supra, note XX, p. 14.

373 Article 8 (Right to a Fair Trial) of the American Convention on Human Rights provides

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

Convention provide that everyone shall have the right to simple and prompt recourse and to a hearing by a competent, independent, and impartial court, with due process guarantees and within a reasonable time, for protection against violations of their rights.

399. In general terms, effective access to justice must be viewed from a dual perspective that includes both the physical possibility of taking action before the courts, and the real prospect of obtaining a prompt response under the relevant laws in force on the subject.[375]

400. The Inter-American Commission has established that the right to an effective judicial remedy, protected under Article 25 of the American Convention and interpreted in conjunction with the obligations set forth in articles 1(1) and 2 thereof, must be understood as "the right of every individual to go to a tribunal when any of his rights have been violated (whether [it be] a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation".[376]

401. For its part, the Inter-American Court has held that any person whose human rights have been violated has "the right […] to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention."[377] The IAHRS has recognized the key role that

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e. the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
g. the right not to be compelled to be a witness against himself or to plead guilty; and
h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

374 Article 25 (Right to Judicial Protection) of the American Convention provides that:
1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b. to develop the possibilities of judicial remedy; and
c. to ensure that the competent authorities shall enforce such remedies when granted.

375 IACHR, Bolivia, 2007 – *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. OEA/Ser.L/V/II. Doc. 34, June 28, 2007, para. 55

376 IACHR, Report No. 5/96, Case 10,970, Merits, *Raquel Martín de Mejía* (Peru), March 1, 1996, p. 22.

377 I/A Court H.R., *Case of Barrios Altos v. Peru,* Judgment of March 14, 2001. Series C No. 75, para. 48.

realization of the right of access to justice plays in ensuring human rights in general and social rights in particular. It has established a series of standards to help steer the workings of judicial systems in the region.[378]

402. The Commission observes that the lack of protection that Dominicans of Haitian descent experience as a result of structural discrimination is the principal obstacle standing in the way of their access to justice. As will be described in detail in the respective sections of this report, the Commission learned of practices that leave Dominicans of Haitian descent without judicial protection and without the necessary guarantees of due process in proceedings that lead to the arbitrary deprivation of their nationality, as well as in summary proceedings that result in their deportation, and, in general, such practices touch upon various areas of their lives in judicial and administrative proceedings.

## *B. Constitutional and legal framework*

403. In its Constitution, laws, and jurisprudence, the Dominican State has recognized the rights to effective judicial protection and to due process as fundamental rights. Article 69 of the 2010 Constitution recognizes the State's obligation to protect and guarantee the right to effective judicial protection and due process, as follows:

> Article 69: Effective judicial protection and due process. In the exercise of one's legitimate rights and interests, every person has the right to obtain effective judicial protection, with observance of due process, consisting of the following minimum guarantees: 1) The right to accessible and prompt justice, free of charge; 2) The right to a hearing within a reasonable time and by a competent, independent and impartial court previously established by law; 3) The right to the presumption of innocence and to be treated as such until one has been found guilty in a judgment not subject to appeal; 4) the right to a public, oral and adversarial proceeding, with equal standing and with full respect for the right of defense; 5) No person shall be tried twice for the same crime; 6) No one shall be forced to testify against oneself; 7) A person must be tried in accordance with laws that predate the act with which said person is charged, before a competent court and in accordance with all the procedures that the law prescribes for each case; 8) Any evidence obtained in violation of the law is null and void; 9) Any judgment may be appealed in accordance with the law. The sentence imposed by the higher court shall not be more onerous than the sentence imposed when the only party challenging the verdict is the person convicted; 10) the rules of due process shall apply to all types of judicial and administrative proceedings.

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[378] IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 50.

404. Furthermore, Resolution 1920-2003 of November 13, 2003 of the Supreme Court recognized that "for the sake of ensuring due process of law, these principles and standards must be observed so that persons are able to mount a proper defense and make their case in the same manner and at all stages in the process. These guarantees are the minimum rules that must be observed not only in criminal proceedings, but also in proceedings conducted for a determination of civil, labor, administrative, fiscal, disciplinary or any other rights or obligations, provided they have some bearing on the matter under consideration."

405. The interpretation of the Dominican Republic's Constitutional Court has been that "when the constituent decided that the guarantee of due process should apply to every case, whether judicial or administrative, they did so mindful that they were abandoning long-standing restrictions that excluded proceedings classified as administrative."[379]

406. In its Article 72, the 2010 Constitution also recognizes the petition for *amparo* relief, and reads as follows: "Every person has the right to file a petition for *amparo* relief, either personally or through someone acting on his or her behalf, seeking immediate protection of any fundamental rights not protected by *habeas corpus,* when those fundamental rights are violated or threatened by the actions or omissions of either a public authority or private persons, the purpose being to compel compliance with or enforcement of a law or administrative act in order to protect collective or common rights and interests. By law, the petition seeking *amparo* relief is to be given preferential and prompt attention in public proceedings, free of charge and not subject to formalities." The regulations governing the *amparo* proceeding are set forth in Organic Law No. 137-11 Governing the Constitutional Court and Constitutional Proceedings.

407. Under Law No. 137-11, the writ granting *amparo* relief is fully enforceable.[380] Therefore, should the *amparo* ruling be challenged, its effect would not be suspended unless the Constitutional Court so ordered, acting on a well-founded request from the interested party.[381]

408. The laws governing the Civil Registry are Law No. 659 of July 17, 1944, on Civil Status Procedures, supplemented by provisions of the Civil Code; Law 136-03 the Code for Protection of the Fundamental Rights of Children and Adolescents; Law 8-92 of April 13, 1992; Electoral Law No. 275-97 of December 21, 1997 and its amendments; the Dominican Criminal Code; and the Constitution.

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379 Constitutional Court Judgment TC/0011/14 of August 13, 2014, p. 16.

380 Organic Law No. 137-11 Governing the Constitutional Court and Constitutional Proceedings, Article 71.

381 Organic Law No. 137-11 Governing the Constitutional Court and Constitutional Proceedings, Article 54(8).

## *C. Principal concerns and standards relating to access to justice, judicial protection and due process guarantees*

409. Prior to publication of Constitutional Court judgment TC/0168/13, the IACHR had received information concerning a generalized practice on the part of the Central Electoral Board of retaining, indefinitely suspending, or refusing to issue identification documents -such as the birth certificate, identity and voter registration cards or both- in the case of Dominicans of Haitian descent or persons perceived as such.[382] These came to be institutionalized practices regulated with enactment of Circular 17 and Resolution 12 of the Central Electoral Board, both issued in 2007. Circular 17 and Resolution 12 authorized Registry officials to suspend and retain vital records without having to notify the persons affected.

410. At the meeting the Commission held with officials from the Central Electoral Board during the former's visit to the Dominican Republic, the Secretary General of the Central Electoral Board, Dr. Ramón Hilario Espiñeyra Ceballos, stated that the JCE definitively took over the Civil Registry in 2007, whereupon it issued a number of provisions and resolutions to "pull together a number of different sets of instructions on the subject of the Civil Registry and combine them into several documents." He mentioned that one such document was the "famous circular we issued, while another was a set of regulations; the purpose was to address the various types of problems created by irregularities found in the records; a single instrument –the famous Resolution No. 12-2007- was the legal instrument authorizing verification of those records."[383]

411. During its visit, the Commission spoke with multiple persons who said that without the identity card, they had no way to get access to the judicial system or to follow up on a judicial process. One mother told the Commission that because neither she nor her son had documentation proving that they were born in the country, she was unable to file suit against the boy's father seeking child support.

412. In the *bateyes,* members of the communities mentioned the documentation problem, and also raised issues such as geographic accessibility and the costs associated with seeking justice. The Commission has also received information on multiple petitions seeking *amparo* relief that were decided in the petitioners' favor and in which the Central Electoral Board was ordered to provide identity documents to the persons affected by enforcement of Circular 17 and Resolution 12; nevertheless, the JCE has not complied with the courts' orders.

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382 See, IACHR, *Hearing on the modification of the Civil Registry in the Dominican Republic.* 141st Session, March 28, 2011; *Hearing on the Judicial Response in Cases of Denationalization in the Dominican Republic.* 143rd Session, October 24, 2011; *Hearing on the right to nationality in the case of Dominicans of Haitian Descent in the Dominican Republic.* 147th Session, March 12, 2013.

383 Information supplied by the State at a meeting with the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

413. The Commission notes that the obstacles obstructing access to justice in the case of Dominicans of Haitian descent did not begin with judgment TC/0168/13. In 2008, the IACHR granted precautionary measures for Emildo Bueno Orguís, Dielal Bueno, Minoscal De Olis Oguiza, Gyselle Baret Reyes, and Demerson De Olis Baret, all of whom were born in the Dominican Republic to Haitian parents and had been the victims of threats and violence in retaliation for the court cases they brought to obtain identity documents recognizing them as Dominicans.[384]

414. As for the right to effective judicial protection, the organs of the Inter-American System have pointed out that States have an obligation to provide suitable and effective judicial remedies for the protection of social rights, in both their individual and their collective dimensions, and must guarantee the necessary means to enable effective enforcement of the judgments that each State's judicial branch hands down.[385] Among the components of due process in the judicial system are the right to a well-founded decision on the merits of the matter; the right to a proceeding within a reasonable period of time; and the need to ensure an expeditious *amparo* proceeding, among others.[386]

415. The organs of the Inter-American System have observed that under the principle of non-discrimination recognized in Article 1(1) of the American Convention, members of at-risk groups must be guaranteed access to justice, making it imperative "that States offer effective protection that considers the particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions."[387]

416. With the above in mind, the IACHR observes with concern that the procedures authorized under Circular 17 and Resolution 12 and the precedent set by judgment TC/0168/13 may have made it materially impossible for Dominicans of Haitian descent to have access to suitable and effective judicial mechanisms for protection of their rights. This is largely due to the fact that judgment TC/0168/13 sets out a standard for interpreting the rights to nationality, identity, and equality and non-discrimination in the case of Dominicans of Haitian descent that is inimical to respect for and protection of those rights. Thus, access to justice would be an ineffective remedy as it would be illusory and too onerous for the affected persons because of the State's failure to ensure that the judicial authorities take proper action on the remedy.[388] Thus, the Inter-American Court has repeatedly underscored the fact that:

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384 IACHR, PM 195/08 – *Emildo Bueno et al.,* Dominican Republic.

385 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights.*

386 IACHR, *Access to justice for women victims of sexual violence in Mesoamerica.* OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 29.

387 IACHR. *Truth, Justice and Reparation – Report on the Situation of Human Rights in Colombia,* December 31, 2013, para. 203; I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 184; and *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 200.

388 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights,* para. 251.

> [a] remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.[389]

417. The Commission observes that judgment TC/0168/13 put into place a structurally discriminatory system that prevents the other branches of government from properly addressing the particular vulnerability of persons affected by the judgment. Based on comments made by State representatives present at all of the meetings, the judgment "is a precedent binding upon all branches of government and all organs of the State."

### 1. Due process and judicial protection in proceedings in which Dominicans of Haitian descent are ultimately deprived of their nationality

418. The information received by the Commission indicates that Circular 17 institutionalized and regulated the State practice of refusing to issue birth certificates to persons born on Dominican territory to foreign parents in an irregular migratory situation, particularly those of Haitian descent. Circular 17 stated, *inter alia,* that:

> *2. This Administrative Chamber has received complaints to the effect that in the past, some Registry offices issued the following: birth certificates in an irregular manner to foreign parents who did not prove residency or legal status in the Dominican Republic; 3. If there is any irregularity present in the above-mentioned vital records, the Registry officials must refrain from issuing them or signing copies thereof and shall immediately send the file to this Administrative Chamber, which will proceed according to the law.*

419. Of the situations reported during the visit, the Commission observes with concern that the one of the most often denounced had to do with the Registry officials' refusal to issue birth certificates. There were 1,360 such cases. Next were the 1,086 cases involving the authorities' refusal to issue an identity card. The Commission received multiple testimonies from persons whose identification papers, birth certificates, and/or identity cards were unilaterally suspended by administrative means pursuant to Circular 17, without the JCE providing them with any written or oral notification of said suspension or informing them that the JCE's Administrative Chamber had their documents under investigation. The persons affected by Circular 17 only learned that their documents had been suspended when they went to the Registry office to request an excerpt or duplicate of the birth certificate for some

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389 Cf. I/A Court H.R., *Case of Ivcher Bronstein.* Judgment of February 6, 2001. Series C No. 74, para. 137; *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9, para. 24 and others.

purpose, or to handle some matter pertaining to their identity and voter registration card.

> Throughout my entire life, my documents had never been a problem for me. That changed in 2007. When I went to get a certified record to enroll in high school, secondary school, they told me to come back for it in 15 days. When I went with my friends, who were enrolling in school with me, they were given the certified record but I wasn't. They didn't want to give me one. I told them that I was registered with the El Seybo Registry Office; I told them "you have to give me my documents." They told me they couldn't give me the documents because my parents "are Haitian". [390]

420. The Commission notes that the procedures that the JCE established with Circular 17 are not only contrary to international standards on due process, but also contrary to the Dominican Republic's own laws. Specifically, Law 659 on Civil Status Procedures provides that any person may request a copy of the certificates on file in vital records, which shall be deemed authentic unless a judge declares them to be false.[391]

421. In its articles 8 and 25, the American Convention recognizes the rights to judicial guarantees and judicial protection, respectively. With regard to the right to judicial guarantees, the American Convention establishes, as a general clause, that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. Hence, any administrative proceeding that can affect a person's right to nationality must be governed by the minimum procedural guarantees recognized in Article 8 of the American Convention.

422. For their part, the organs of the Inter-American System of Human Rights have been clear in underscoring the fact that the guarantees of due process of law apply with equal force in administrative proceedings. Thus, the Commission has established that States have an obligation to have clear rules to govern the conduct of their agents, precisely in order to avoid improper margins of discretion in the administrative realm, which might encourage arbitrary or discriminatory practices.[392] For its part, the Inter-American Court has held that "[i]t is a human right to obtain all the guarantees which make it possible to arrive at fair decisions, and the administration is not exempt from its duty to comply with this obligation.

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390 Testimony of a man born in the Dominican Republic of Haitian descent, given before the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

391 Law No.659 on Vital Records, of July 17, 1944, Article 31.

392 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights*, para.97.

The minimum guarantees must be observed in administrative processes [and in any other procedure] whose decisions may affect the rights of persons."[393]

423. When interpreting the provisions of the American Convention, the organs of the IAHRS have made headway toward identifying certain minimum standards of due process of law that must govern administrative proceedings of the kind established by JCE Circular 17 and Resolution 12, or any proceeding that can affect the right to nationality or the right to recognition as a person before the law. The following are some of those procedural guarantees: 1) prior notification of the existence of the proceeding; 2) a hearing for a determination of the rights at stake; 3) the right to be assisted by counsel; 4) the right to put on a defense and to have a reasonable period of time to prepare and formalize the arguments and produce the relevant evidence; 5) the right to have the proceedings and decisions in writing; 6) a reasonable period for the proceedings; 7) the right to effective judicial review of administrative decisions; 8) the right to a reasoned judgment; 9) the right to have the administrative proceedings made public, and others.[394]

424. Further, when an appeals process is available to someone who loses or is deprived of his or her nationality, the effects of the decision should be suspended once the appeal is filed, whereupon the person would continue to have nationality and to exercise the associated rights until the appeal is decided. The State must not only provide the possibility for filing appeals and the necessary procedural guarantees, but also ensure that an effective remedy is available when the conclusion reached is that the decision relative to nationality was illegal or arbitrary. This remedy must include the possibility of restoring nationality.[395] The State must also offer adequate reparations for all the attendant violations of the rights of the person in question.[396]

425. The Commission is of the view that the procedures that JCE Circular 17 and Resolution 12 put into place involve violation of multiple Convention-protected minimum guarantees of due process for the affected persons recognized in the American Convention. Because these procedures were unilaterally instituted and the affected parties were not given any notification –either orally or in writing- that their documents were being suspended and that the JCE had them under

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393 I/A Court H.R., *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series No. 72, para. 127; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants,* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 125.

394 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards adopted by the Inter-American System of Human Rights*, para.97; IACHR, *Access to justice for women victims of sexual violence in Mesoamerica,* OEA/Ser.L/V/II. Doc. 63, December 9, 2011. See also, United Nations, *Human Rights and Arbitrary Deprivation of Nationality*. A/HRC/13/34, para. 43.

395 See, United Nations, *Human Rights and Arbitrary Deprivation of Nationality*. A/HRC/13/34, para. 46, and the Convention on the Rights of the Child, Art. 8. Note that if persons responsible for another also lose or are deprived of nationality, their nationality must also be restored.

396 African Commission on Human and Peoples' Rights, communications Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, *Malawi African Association and Others v. Mauritania*, May 11, 2000, recommendation 2 concerning identity documents; Inter-American Court of Human Rights, Series C, Case No. 130, *Girls Yean and Bosico v. Dominican Republic,* September 8, 2005; see also, the compensation scheme for the "erased" in Slovenia after the ruling by the European Court of Human Rights; and the Council of Europe, Committee on Legal Affairs and Human Rights, "Access to nationality and the effective implementation of the European Convention on Nationality", October 1, 2013.

investigation, the affected persons had no way of knowing that their documents had either been suspended or canceled until they went to a civil registry office to request an excerpt or duplicate of their birth certificate for some purpose or requirement associated with their identity and voter registration card. The enforcement of Circular 17 resulted in the suspension and/or retroactive cancelation of the identity documents of Dominicans of Haitian descent, whose Dominican nationality the Dominican State had never before called into question.

*i. Prior notification of the existence of the process and the right to legal representation*

426. During the visit, the IACHR received numerous reports to the effect that the affected persons were not clearly informed of the procedure established by Circular 17 for the JCE to investigate their identity documents. The information the Commission received indicates that the affected persons had no role in the investigation process, even when they expressly asked the Registry officials to be allowed to participate in it. It was also reported that the JCE's final decision is based on evidence produced and presented by the JCE itself, and that the administrative proceeding is not conducted by a competent, impartial and independent body that would ensure equality of arms.[397]

427. Furthermore, the fact that the JCE failed to set any time limit on the investigation process meant that the affected persons were deprived of their right to nationality both arbitrarily and indefinitely; many were left stateless. Moreover, the affected persons had no opportunity to challenge the administrative decisions until the JCE had concluded its investigation.[398] In this regard, Judge Eddy Olivares, a principal member of the Central Electoral Board, filed a request with the JCE Plenary in which he asked that Circular 17 be voided, and argued that:

> To accept Circular No. 017 as both good and valid would be to endow one of our chambers with the authority to strip any citizen of his nationality by arbitrarily nullifying the registration of his birth, thereby ignoring the statute of limitations and non-retroactivity, which are two of the main principles of the legal system.[399]

428. Following his 2007 visit to the Dominican Republic, the United Nations Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance concluded that:

> The Government should put in place effective measures to stop discriminatory practices linked to granting citizenship and civil status registration, including birth certificates and identity cards, and to bring administrative procedures in this regard into conformity with due process requirements. In particular, oversight over local civil registry offices should be dramatically increased;

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397 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

398 Open Society Justice Initiative, *Ilegalidad permanente: discriminación contra los dominicanos de ascendencia haitiana en el acceso a la nacionalidad*, 2008, p. 13.

399 *Diario Libre*. June 25, 2008. *Juez JCE dice es ilegal circular norma actos de oficiales civiles*.

> Circular 017 of the Central Electoral Board should be withdrawn and replaced with one which encourages an official attitude of facilitation and trust; officials should be given notice that acts of racial discrimination in the exercise of official functions will be severely punished; any denial of request to issue documents should be in writing and contain a full explanation for the denial; all denials of documentation or orders for deportation should be subject to appeal to the courts of general jurisdiction.[400]

429. Subsequently, on December 10, 2007, the Plenary of the Central Electoral Board issued Resolution No. 12/2007 which established the procedure for provisionally suspending issuance of any vital records certificates that were either invalid or irregular. This resolution also authorized any official to temporarily suspend the issuance of vital records certificates that were either invalid or irregular and which were only to be issued for strictly judicial purposes, to be used in proceedings seeking to have those certificates nullified.[401]

430. The Commission notes that like Circular 17, Resolution 12 authorizes Registry officials to suspend the certificates *ex officio,* without requiring notification of the affected persons. It is important to note that Resolution 12 allows the interested parties "to request that the temporary suspension of vital records certificates be lifted", to which end they must file an application with the JCE's Office of the National Director of Civil Registry, which is in the capital of the Dominican Republic. Their application must include all supporting documents required of applicants; however, Resolution 12 neither indicates nor exhaustively enumerates these documents, thereby reversing the burden of proof. Likewise, Resolution 12 does not specify the procedure, its duration, or the kind of decision that will be taken on the request to lift the temporary suspension.[402]

431. With regard to Resolution 12, the Commission takes note of the statement made by Judge Aura Celeste Fernández, a principal member of the Central Electoral Board, in a request filed with the Plenary of the JCE asking that Resolution 12 be revoked. Judge Fernández points out that "Law 659 on Civil Status Procedures does not contain any specific provision authorizing the JCE to order Registry officials to withhold vital records certificates."[403] Judge Fernández also wrote that to withhold a certificate of birth, marriage, death or other civil status is a violation of the legal right of defense and presumption of innocence set forth in the Constitution.[404]

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400 UN, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, and the Independent Expert on Minority Issues, Gay McDougall, on Their Mission to Dominican Republic (23 -29 October 2007). A/HRC/7/19/Add.5 A/HRC/7/23/Add.3, March 18, 2008, para. 129.

401 Resolution No. 12 of December 10, 2007, issued by the Plenary of the JCE, Art. 1.

402 Information provided at the Thematic Hearing*: Judicial Response in Cases of Denationalization in the Dominican Republic.* Held at IACHR headquarters, October 24, 2011, during the IACHR's 143rd Session.

403 *Hoy*. June 29, 2008. *JCE suplanta a la justicia.*

404 *Hoy*. June 29, 2008. *JCE suplanta a la justicia.*

432. According to information the Commission received, only in exceptional cases do JCE officials explain the process whereby persons whose documents are considered "invalid" or "irregular" are investigated. In general, registry officials instruct the affected persons that they are to return at a later date to check on the status of their request or that their documents are being processed at JCE headquarters in the capital of the country. With the enforcement of Resolution 12, many people who go to the Registry office to apply for their birth certificate leave the office having given up all hope of ever obtaining it.[405]

433. The lack of any written notification about the process, the lack of information about the remedies available to challenge these measures, and the cost implicated by the process make it difficult for affected Dominicans of Haitian descent to legally challenge the measures taken by the Civil Registry.[406]

434. The IACHR was repeatedly told that the Registry Offices do not offer any information to the affected persons, which means that the latter have to make multiple trips to the capital –sometimes traveling from the farthest corners of the country- to request information about the refusal to provide them their identification documents. The JCE's Office of the National Director of Civil Registry does not offer any such information, either. The problem is compounded by the fact that most of those affected live in remote places, like *bateyes,* and are persons of scant financial resources. The Commission also received complaints to the effect that the supporting documents presented by affected persons in their applications to have the temporary suspension on vital records0 lifted are also retained or destroyed by State officials.[407]

435. The IACHAR deems important to emphasize that prior notification of the very existence of a proceeding is vital to the protection of due process of law, and represents an essential component of the guarantee of due process. In the *Ivcher Bronstein* case, the Commission argued that: "*Mr. Ivcher was deprived of his nationality title arbitrarily. When the resolution that annulled this title was issued, Mr. Ivcher was never summoned, he did not receive any prior detailed communication on the matter being examined by the authorities, with information on the corresponding charges; he was not informed that the nationalization file had been mislaid, he was not asked to submit copies in order to reconstruct it, nor was he allowed to present witnesses to support his position; in brief, he was not allowed to exercise the right of defense."*[408] The Commission therefore held that Mr. Bronstein had been arbitrarily deprived of his nationality and that the case involved a violation of Article 8 of the American Convention.

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405 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

406 Information provided at the Thematic Hearing*: Judicial Response in Cases of Denationalization in the Dominican Republic.* Held at IACHR headquarters, October 24, 2011, during the IACHR's 143rd Session.

407 Information provided at the Thematic Hearing*: Judicial Response in Cases of Denationalization in the Dominican Republic.* Held at IACHR headquarters, October 24, 2011, during the IACHR's 143rd Session

408 I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 98.

436. The Commission has thus established that States must respect the right of defense during an administrative proceeding, which is also a guarantee of effective judicial protection. The IACHR has held that in certain administrative proceedings, the absence of an attorney is an important consideration when examining the question of judicial protection, since an attorney is able to advise his or her clients of their rights to file judicial actions immediately in order to avoid the consummation of any violation that could result from the administrative proceeding.[409] The States therefore have an obligation to respect the affected persons' prerogative to appoint a legal representative during the course of administrative proceedings.

*ii. The right to an administrative proceeding held within a reasonable time*

437. Another element that plays a key role in guaranteeing due process of law in administrative proceedings is the right to a have proceedings held within reasonable time. In some circumstances, the way in which mechanisms for the determination of rights are crafted and function has a direct effect on those rights. Hence the importance of ensuring the "reasonable time" guarantees in proceedings held to determine obligations in the area of economic and social rights. Excessively lengthy proceedings could obviously cause irreparable harm to the exercise of these rights.[410] The Court has written that a protracted delay in an administrative proceeding is, in principle, a violation of Article 8 of the American Convention; to disprove that conclusion, the State must adequately demonstrate that the duration of the proceeding was due to the complexity of the case or the conduct of the parties.[411]

438. In October 2011, the National Director of the Civil Registry emitted Circular 32-2011 instructing Civil Registry officials to continue issuing birth certificates to the children of foreign nationals under investigation until such time as the plenary of the Central Electoral Board had decided, based on the relevant investigation, whether the certificates were valid and had either suspended them provisionally and requested a court to nullify them, or had recognized their validity.

439. The Commission received testimony to the effect that in implementing Resolution 12 and Circulars 17 and 32-2011, the Central Electoral Board established what it called an administrative process for the suspension and issuance of birth certificates in the case of Dominicans of Haitian descent. The testimony emphasized that persons whose circumstances are similar may get different responses. Thus, when an affected person goes to a civil registry office, the civil registry official may, at his discretion, either: 1) turn the person away, saying that his or her birth certificate is one of those affected by Resolution 12 and then take no further action or offer any additional information; 2) advise the person that his or her birth certificate has been

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409 IACHR, Report No.49/99, Case 11,610 *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz*, Mexico, April 13, 1999, paragraphs 74, 75 and 123.

410 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 156.

411 I/A Court H.R., *Case of the Yakye Axa Indigenous Community.* Judgment of June 17, 2005. Series C No. 125, paragraphs 66, 71, 86, and 88.

suspended, provide him or her with a formal paper of some sort and refer him or her to the central registry office so that he or she can apply to have the suspension lifted; or, after 2011, 3) provide the person with a copy of the suspended birth certificate while the legal action seeking nullification of the certificate is processed.[412]

440. According to the UNHCR, loss and deprivation of nationality may only take place in accordance with law and accompanied by full procedural guarantees, including the right to a fair hearing by a court or other independent body. It is essential that the decisions of the body concerned be binding on the executive power. The person affected by deprivation of nationality has the right to have the decision issued in writing, including an explanation of the reasons for the deprivation. Deprivation decisions are only to enter into effect at the moment all judicial remedies have been exhausted.[413]

441. Because of the discretion exercised by the JCE and its arbitrary conduct in retaining, suspending or issuing birth certificates for Dominicans of Haitian descent or persons perceived as such, various organizations stepped forward to represent the victims and filed *amparo* petitions with the Dominican courts asking the courts to order the JCE to issue the identity documents to their bearers. The *Movimiento por un Registro Civil Libre de Discriminación* [*the Movement for a Civil Registry Free of Discrimination*] filed six *amparo* actions, which the courts agreed to hear and then ordered that the birth certificates be issued. In response to the court orders, the JCE appealed 5 of the 6 court rulings. Even though the remedy did not have suspensive effects, the JCE disobeyed the court orders in 4 of the cases and refused to issue the birth certificates.[414]

442. Furthermore, starting in 2010, a coalition of civil society organizations[415] filed around 300 *amparo* actions, all for the purpose of getting the courts to order the JCE to issue identity documents to their bearers.[416] The organizations told the Commission that in those judgments delivered in favor of the plaintiffs, the *amparo* judge imposed a coercive fine ("*astreinte*"[417]) to compel the JCE to comply with the court ruling as soon as possible. In most cases, the fine was set at one thousand Dominican pesos per day of noncompliance; in other cases, the fine was as much as ten thousand Dominican pesos.

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412 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

413 UNHCR, *Expert Meeting Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality*. Geneva, 2013, para. 26.

414 Information provided at the Thematic Hearing*: Judicial Response in Cases of Denationalization in the Dominican Republic.* Held at IACHR headquarters, October 24, 2011, during the IACHR's 143rd Session.

415 Among those civil society organizations are the following: the *Fundación Étnica Integral, Inc*. (LA FEI), the *Movimiento de Mujeres Domínico-Haitiano, Inc*. (MUDHA), *Alas de Igualdad, Inc*. (ALAS), the *Comisión Nacional de Derechos Humanos* (CNDH), the *Centro Cultural Domínico-Haitiano* (CCDH), the *Movimiento Social Cultural de Trabajadores Haitianos, Inc*. (MOSCTHA), the *Comité Dominicano de Derechos Humanos* (CDDH), the *Colectiva Mujer y Salud, Inc*. (COLECTIVA), and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM).

416 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

417 A civil fine that the judge imposes to compel compliance with a court order.

443. In contempt of the court's express order and despite the fine set, the JCE refused to issue birth certificates for the affected persons, arguing that it had appealed the decision. Given this situation, the organizations representing the affected persons petitioned the *amparo* judges who had issued the orders, to determine how much the JCE owed by virtue of its failure to comply with the court order for more than a year. Despite this request, the courts remained silent and did not order the JCE to pay for the delay in complying with the court ruling. The organizations expressed to the IACHR the following: "We are concerned by the posture the Judicial Branch has taken regarding enforcement of its own decisions."[418]

444. It is important to point out that the majority of the appeals to challenge the *amparo* rulings, filed with either the Supreme Court under *Amparo* Law No. 491-08 or with the Constitutional Court under Law No. 137-11, have been pending since 2010. Some final judgments were handed down in 2013 and 2014. However, the organizations representing the affected persons tell the Commission that no final decisions have been handed down on many of the appeals filed to challenge the *amparo* rulings.[419]

445. The Commission also received information to the effect that there is no uniformity in the administration of justice, either in proceedings held to hear *amparo* actions or in the rulings handed down, even though the procedure is prescribed by law. This is attributed to the fact that there are no special courts to take cognizance of human rights violations; instead, *amparo* actions are taken up by judges in the ordinary courts, who on occasion follow ordinary court procedure and not the procedure for *amparo* actions.[420]

446. The organs of the IAHRS have made clear that the enforcement of a judgment must be regarded as an integral part of the process and, therefore, must be factored in when determining whether the process has been conducted within a reasonable time period. This is because the right of access to justice demands that the final solution of any dispute take place within a reasonable period of time.

447. Under Article 25 of the American Convention, States parties undertake to develop, in law, the possibilities of judicial remedy and to ensure that the remedy is properly enforced by their judicial authorities.[421] However, the IACHR has written that this obligation does not end with enactment of an effective remedy that leads to a proceeding with due guarantees, but includes also the duty to design and implement mechanisms that ensure effective enforcement of the judgment handed down by the judiciary in each State.[422]

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418 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

419 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

420 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

421 I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al).* Judgment of November 19, 1999, Series C No. 63, para. 237.

422 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 296.

448. The IACHR has also highlighted the singular characteristics of a judgment enforcement proceeding in which it is the State that is required to carry out the judgment. Thus, it noted that the obligation of the State to guarantee the enforcement of judicial rulings takes on special importance when it is the State itself that must carry out the ruling, whether this is to be done through the executive, legislative or judicial branch, at the provincial or municipal level, through the central administration or the decentralized structure, through public enterprises or institutes, or any similar body, since such bodies are part of the State and generally enjoy procedural privileges, such as freedom from embargo for their assets. The IACHR has seen cases in which these bodies may be inclined to use their power and privilege in an attempt to ignore judicial rulings that go against them.[423]

449. The Commission has stated that "[w]hen an organ of the State does not wish to carry out a judicial ruling that has gone against it, it may try to ignore the ruling by simply failing to observe it, or it may opt for more or less elaborate methods that will lead to the same objective of rendering the ruling ineffective, while trying to maintain a certain appearance of formal validity in its proceedings."[424] Along these lines, the IACHR emphasizes that:

> The right to effective judicial protection provided for in Article 25 of the American Convention, and specifically the States' obligation as set forth in subparagraph 2(c), which is "to ensure that the competent authorities shall enforce such remedies when granted," means that the States must enforce such decisions immediately and in good faith, without the affected parties having to file additional actions seeking enforcement of judgments handed down in criminal, administrative or other cases, or having to pursue similar actions that are, in the final analysis, indicative of delays in immediate compliance with a judgment that protects fundamental rights.[425]

450. Without a doubt, the enforcement of a judgment is also part of due process of law, and as such, States must guarantee that enforcement takes place within a reasonable period of time. Thus, the right of access to justice implies that the final resolution of any dispute or controversy must come within a reasonable period. The IACHR is disturbed by the reports it received during its visit concerning the JCE's failure to comply with every one of the court rulings delivered in favor of the affected persons, which it did by retaining their identity documents on the pretext of having appealed the judgments, even though those judgments were immediately enforceable, appeals notwithstanding.

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423 *Cf. Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 300.

424 IACHR, Report No. 110/00, Case 11,800, *César Cabrejos Bernuy,* Peru, December 4, 2000, paras. 31 and 33.

425 Application that the IACHR filed with the I/A Court H.R. in Case 12.034, "Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Álvarez Hernández, Reymert Bartra Vásquez and Maximiliano Gamarra Ferreyra v. Peru, para. 99.

*iii. The obligation to provide legal aid*

451. One observation was that the provision of the law that states that an *amparo* action can be brought at no cost to the petitioner is a legal fiction, since the *amparo* actions filed were only possible because of the strategic litigation waged by civil society organizations. This problem is said to be compounded by excessive formalities and unnecessary technicalities, which only serve to encumber effective judicial protection since an individual on his or her own would be hard-pressed to file an *amparo* action without the assistance of counsel.[426]

452. Both the Inter-American Court and the Inter-American Commission have addressed the State's obligation to provide legal aid. The IACHR has argued that under the American Convention, the State is obligated to provide effective access to constitutional motions, which includes providing free legal aid when persons do not have the means to bring such actions on their own.[427] The Inter-American Commission has written that constitutional actions are substantively and procedurally complex and can only be effectively brought if legal aid is provided.[428]

453. For its part, in Advisory Opinion OC-18/03, the Inter-American Court established that the refusal to provide free legal aid to persons without means is a violation of due process and of the right to effective judicial protection. In that opinion, the Court set out the standard in the following terms: "[t]he right to judicial protection and judicial guarantees is violated for several reasons: owing to the risk a person runs, when he resorts to the administrative or judicial instances, of being deported, expelled or deprived of his freedom, and by the negative to provide him with a free public legal aid service, which prevents him from asserting the rights in question."[429]

454. In general, the civil society organizations told the IACHR that when the *amparo* actions were filed to obtain the birth certificates of the affected persons, the JCE countered by filing cases seeking nullification of the birth certificates of most of the plaintiffs in the *amparo* actions who were seeking to have their nationality restored. They underscored the fact that most of those affected live in *bateyes* in rural areas, and hence are unaware of the actions brought against them in the ordinary courts to have their birth certificates nullified.[430]

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426 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

427 IACHR, Report No. 41/04, Case 12,89, Merits, *Whitley Myrie*, Jamaica, October 12, 2004. See also, IACHR, Report No. 55/02, Case 11,765, Merits, *Paul Lallion*, Grenada, October 21, 2002, paragraphs 91-99; IACHR, Report No. 56/02, Case 12,158, Merits, *Benedict Jacob*, Grenada, October 21, 2002, paras. 99 to 107; IACHR, Report No. 49/01, Cases 11,826 *(Leroy Lamey*), 11,843 (*Kevin Mykoo*),11,846 (*Milton Montique*), 11,847 (*Dalton Daley*), Jamaica, April 4, 2001, among others.

428 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 91.

429 I/A Court H.R., *Juridical condition and rights of undocumented migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 126.

430 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

455. The IACHR has also drawn attention to another economic obstacle of great relevance in terms of access to justice: the location of administrative offices and courts. In that regard, another area of concern for the Commission is that too few courts and advocacy services are available to victims nationwide, which means that victims have to rely heavily on their own economic and logistical resources to file a complaint and then participate in the judicial proceeding.[431]

456. The Commission observes that under judgment TC/0168/13, the Administrative Law Court [*Tribunal Contencioso Administrativo]* has jurisdiction to take up *amparo* actions filed to challenge the actions of the JCE.[432] While this is the most suitable forum, its only location is in the capital of the Dominican Republic, thereby limiting access to justice for the affected persons, most of whom live in remote rural areas, such as the *bateyes,* and are persons of limited means.

*iv. Limits on the State's discretionary authority*

457. Following enactment of Law 169-14, which expressly orders the JCE to issue birth certificates and identity cards to all those persons who were at some time registered in the Civil Registry and show proof of their Dominican nationality, the Commission has continued to receive complaints about the degree of discretion that the authorities exercise when issuing birth certificates, identity and voter registration cards and passports or renewing passports for Dominicans of Haitian descent. The JCE continues to refuse to issue birth certificates to the beneficiaries of the special regime, by establishing requirements and procedures that are arbitrary violations of the provisions set forth in Law 169-14.[433]

458. The Commission was informed in this regard that the JCE is creating duplicate birth records by entering birth certificates into a newly created book called the "Transcriptions Book" which lists, in general and ex officio, all the birth certificates of Dominicans of Haitian descent who had at one time been listed in the Civil Registry's regular book of birth records. The newly issued birth certificates have a different folio, book, and certificate number from the original birth certificates. It has been observed that no provision of Law 659 on Civil Statues Procedures allows for the creation of this new "Transcriptions Book"; hence, there is uncertainty as to whether other State powers will recognize the validity of the certificates entered into the Transcriptions Book, given that the latter is not the original record of a person's birth. Thus, for example, for purposes of issuing passports the Office of the Director General of Passports does not accept as valid any certificates that come from the transcriptions book, arguing that it is does not constitute a certificate of birth.[434]

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431 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 78

432 Constitutional Court judgment TC/0168/13 of September 23, 2013, p. 18.

433 Centro Bonó, October 2, 2014. *Comité de Solidaridad con las Personas Desnacionalizadas: objetivos de Ley 169-14 están lejos de alcanzarse.*

434 IACHR, 154th Session, Working meeting held on March 21, 2015. PM 279/12 - *Luisa Fransua, Rafael Touissaint et al.,* Dominican Republic.

459. Under the pretext of duplicate records of birth certificates in the case of Dominicans of Haitian descent, the JCE has filed legal actions in court to have the original birth certificates nullified, even though the duplicate birth certificates were the JCE's own creation when it ordered that the records of birth be transferred from the Civil Registry's regular book of birth records to the "Transcriptions Book." The concern is that if the courts agree to nullify the birth certificates entered into the Civil Registry's regular book of birth records, the identification documents that these people now have (identity and voter registration card, driver's license, passport, medical insurance, and others) would have no validity, because the original record of birth on which they were based has been nullified.

460. Furthermore, there are still cases of persons who go to the registry offices in their communities only to discover that their documents have been cancelled pursuant to Constitutional Court judgment TC/0168/13, despite the terms of Law 169-14 that provide otherwise.[435] There are also still cases of persons who have been issued documents pursuant to Law 169-14, and yet are unable to register their children: when they go the Civil Registry offices, the offices tell them that they cannot register their children because they are of Haitian descent. Finally, there is a group of persons whose births were originally recorded in the regular civil records book but to whom no type of identity document was ever issued, neither a birth certificate nor an identity card, in violation of Law 169-14.

461. The State released information to the effect that in application of Law 169-14, 55,000 persons in Group A "have had their documentation recognized by the Central Electoral Board and with that their Dominican citizenship."[436] The IACHR reiterates the point that the underlying rationale of Law 169-14 does not fully meet the international standards on the right of nationality, a right to which every person born on Dominican territory is entitled; its underlying premise is that these individuals were entered into the Civil Registry books on the basis of documents that the laws in force at the time of the registration did not recognize as valid for the purpose, a premise that is contrary to that established by the organs of the IAHRS. While the Commission values the fact that the measure is a means of restoring the right to nationality to the persons in Group A, it regrets that similar provisions have not been adopted for those in Group B.

462. The Inter-American System of Human Rights has decided in favor of the need to limit and regulate the so-called State's discretion. The Inter-American Court has been emphatic in maintaining that:

> [i]n any subject matter, even in labor and administrative matters, the discretionality of the administration has boundaries that may not be surpassed,

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435 Centro Bonó, October 21, 2014. *Reconoci.do denuncia JCE actúa al margen Ley 169-14.*

436 Dominican Republic, *Discurso de Danilo Medina, Presidente de la República Dominicana, en el marco de la XLV Cumbre del Sistema de Integración Latinoamericano (SICA)* [Address delivered by Danilo Medina, President of the Dominican Republic, at the XLV Summit of the Latin American Integration System (SICA)]. Guatemala, June 26, 2015; *Hoy*. June 25, 2015, *Comité de Solidaridad celebra devolución de documentos a 55 mil personas desnacionalizadas*.

> one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects.[437]

463. The *Case of the Girls Yean and Bosico* was a clear example of the need to establish limits and rules to which the government must adhere. Both the IACHR in its application, and the Court in its judgment, determined that the restriction on the margins of discretion of the State authorities were necessitated by the Dominican government's discriminatory treatment of children born in Dominican territory to Haitian parents in the case of a late declaration of birth. Here, the Inter-American Court wrote that:

> the peremptory legal principle of the equal and effective protection before the law and non-discrimination determines that, when regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights (…) The Court considers that, by applying to the children requirements that differed from those requisite for children under 13 years of age in order to obtain nationality, *the State acted arbitrarily, without using reasonable and objective criteria*, and in a way that was contrary to the superior interest of the child, *which constitutes discriminatory treatment to the detriment of the children Dilcia Yean and Violeta Bosico*. This situation placed them outside the State's juridical system and kept them stateless, *which placed them in a situation of extreme vulnerability, as regards the exercise and enjoyment of their rights*. (…) In accordance with the obligation arising from Article 2 of the American Convention, the Court considers that *the requirements for obtaining nationality must be clearly and objectively established previously by the competent authority*. Likewise, *the law should not provide the State officials applying it with broad discretionary powers, because this creates opportunities for discriminatory acts.* [438]

464. The absence of any mechanism or procedure by which to file a legal appeal to challenge a decision by the Civil Registry and the discriminatory actions of the Civil Registry officials who did not allow the girls to get their birth certificates, caused the IACHR and the I/A Court H.R. to underscore the fact that the administrative process must be based on clear and objective norms that tend to narrow the sphere of discriminatory authority and thereby avoid any violation of the prohibition against discrimination.

465. Both during and after its visit, the Commission observed that abuses of discretionary authority and discriminatory practices are still present in the Civil Registry offices and have become even more widespread since judgment TC/0168/13 and Law 169-14, as registry officials are using both to claim broad discretionary authority in order to restrict the right of nationality in the case of Dominicans of Haitian descent. This,

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437 I/A Court H.R., *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C No. 72, para. 126.

438 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, paras. 141, 166, and 191.

in turn, makes it all the more difficult to use administrative or judicial remedies to challenge those *de facto* actions and thus remedy the violation of fundamental rights.

### 1. Access to justice and judicial protection in the case of Dominicans of Haitian descent who experience multiple forms of discrimination in many areas of their daily lives

466. The Inter-American Commission is concerned that Dominicans of Haitian descent cannot obtain judicial protection because they cannot avail themselves of the courts, even for matters unrelated to their identification papers; they cannot exercise their right to justice either because they do not have birth certificates or identity cards or because they encounter discrimination based on race, ethnicity, language, phenotype, or other characteristics. These practices leave Dominicans of Haitian descent without judicial protection and without the guarantees of due process in various areas of their lives, such as citizen security, work, education, and others.

> On November 17, 2013, I was accosted by a woman, who threatened to hit me. I went to the Neyba prosecutor's office to file a complaint. When I arrived there, they asked whether I had my identity card, and I said no. The person who was there to receive the complaint told me that I could not file a complaint unless I had an identity card. She advised me to find an attorney to file the complaint for me. Because the court is near the prosecutor's office, I ran into an attorney there and asked if he could file the complaint for me. I explained the situation to him. He asked me for my identity card. Because I don't have the card, I was unable to file the complaint. [439]

467. The information received by the Commission indicates that while the Dominican Code of Criminal Procedure only requires that the complainant's or plaintiff's general identification data be requested, in cases involving Dominicans of Haitian descent or persons perceived as such, criminal justice officials interpret this rule on a discretionary basis. Despite this fact, during the Commission's visit the Attorney General of the Republic, Francisco Domínguez Brito, stated that no type of document is required to avail oneself of the criminal justice system.[440]

468. The Commission was also concerned by information supplied by the National Public Defender Office of the Dominican Republic (*Oficina Nacional de Defensa Pública* - ONDP), regarding the "highly troubling situation created by the Constitutional Court's Judgment 168-2013, specifically with respect to its potential consequences

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439 Testimony a woman gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

440 Information supplied by the State at a meeting with the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

for our clients, the majority of whom are the subject of criminal prosecutions and whose undocumented immigration or citizenship status is currently without a concrete solution, leading many of them to marginalization, crime, and social exclusion."[441]

469. Elaborating, the ONDP said that there are fundamental causes for "the situation where the effective exercise of the right to mount a defense and of access to justice is threatened for our clients and all foreigners, among which Haitian Dominicans, Haitian descendants, or Haitians are most vulnerable." For one thing, Haitian Dominicans without identity documents and Haitians with irregular immigration status are "likely to be drawn to crime because they are unable to gain access to the labor market, much less attain a level of education that would allow them to lead a dignified life with the attendant possibility of obtaining social security and/or any other state assistance program. For another, people who have committed crime due to a lack of identity documents cannot enjoy the prerogatives of noncustodial measures available under the code of procedure. Worse yet, upon obtaining their release as a result of having served their sentence or through the appropriate appeals, they are unable to exercise it for lack of an identity document."[442]

470. The IACHR has observed that Afro-descendant women encounter even more challenging obstacles to their access to justice because they are particularly exposed to violations of their rights based not only on racism but on gender as well. The Commission has also found that the obstacles such women must overcome to be able to avail themselves of adequate and effective remedies to redress the violations they suffer are even more daunting because these women must contend with a combination of various forms of discrimination: discrimination by virtue of their sex, discrimination based on their ethnic or racial origin and/or discrimination by virtue of their socio-economic condition.[443]

471. The Commission observes that the labor courts have been more flexible in practice, as they have allowed complaints to be filed using various identity documents, even though articles 509 and 513 of the Labour Code specifically require that the brief with which a complaint is filed and the brief of rebuttal are to specify the parties' names, surnames, and identity card.[444] The IACHR is nonetheless concerned that in those cases in which the JCE has withheld the identity documents of Dominicans of Haitian descent, the latter cannot be enrolled in the social security system. Thus, they do not have social security benefits and are prevented from filing a legal claim to them.

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441 Dominican Republic, Oficina Nacional de Defensa Pública, communication ONDP/437/2013. Santo Domingo, 9 de diciembre de 2013, pp. 1-2. [Documento en archivo de la Comisión].

442 Dominican Republic, Oficina Nacional de Defensa Pública, communication ONDP/437/2013. Santo Domingo, 9 de diciembre de 2013, p. 2. [Documento en archivo de la Comisión].

443 IACHR, *Access to Justice for Women Victims of Violence in the Americas*. OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 195.

444 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

472. The Commission makes note of Judgment TC/0123/13, issued on the *amparo* action filed to challenge the May 25, 2012 Circular No. 007475 that Mr. José Ricardo Taveras Blanco, Director General of Immigration under the Ministry of Interior and Police, sent to Lic. Josefina Pimentel, Minister of Education, ordering that schools not enroll the children of foreigners whose migratory situation in the country has not been regularized. [445] The *amparo* case was brought by seven civil society organizations to claim the rights to education, equality, nationality and other rights for 54 thousand children who would be affected by Circular No. 007475 as they would not be permitted to enroll in school for lack of a birth certificate.

473. While the circular in question was reportedly revoked by mutual agreement between the Office of the Director General of Immigration and the Ministry of Education, the Constitutional Court's finding in that case was that "should the Ministry of Education implement the circular in question the fundamental right that would be violated is the right to education, which is at once an individual right and a second-generation right. Given its nature, only the right-holder may seek protection of this basic right when it is violated."[446] It concerns the Commission that the circular in question has not been officially and formally revoked and could be put into effect again, thereby violating the right to education in the case of Dominican children who do not have identity documents to prove their nationality and who could then be denied access to the courts to challenge the circular on the very same grounds, i.e., that they do not have identity documents.[447]

474. In this judgment, the Constitutional Court held that the petitioner organizations did not have standing to claim the violations cited in the *amparo* action.[448] The Constitutional Court therefore declared the action inadmissible on the grounds that the organizations in question did not have standing to file it. The IACHR is concerned that this judgment hampers efforts to seek judicial protection for Dominicans of Haitian descent, who are themselves prevented from bringing legal actions on their own for protection of their fundamental rights.[449]

475. The Inter-American Commission also received information from Dominicans of Haitian descent or persons perceived as such, who were either threatened with deportation or were the victims of summary proceedings that resulted in their deportation to Haiti. The IACHR was also informed of other restrictions on the right to freedom of movement and residence in the case of Dominicans of Haitian descent, who have been prevented from moving freely through the territory because of the social prejudices attached to their migratory situation.

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445 *Acento*. June 13, 2012. *La circular 7475 de la Dirección General de Migración y los derechos adquiridos*; *Hoy*. June 11, 2012. *Educación tratará circular de indocumentados*.

446 Constitutional Court judgment TC/0123/13 of July 4, 2013, pp. 12, 16 and 17.

447 *Diario Libre*. June 14, 2012. *Escuelas aceptarán estudiantes extranjeros indocumentados*

448 Constitutional Court judgment TC/0123/13 of July 4, 2013, pp. 16 and 17.

449 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

> I have been unable to travel freely. On November 2, 2013, I was going to take a bus to Santo Domingo. At the bus stop, the driver asked me to show my identity card before allowing me to board. I told him I didn't have an identity card, and he answered "I'm not allowing Haitians to board the bus." I told him that I had my birth certificate and that I was able to travel with that, even though I don't have the identity card. He told me no. It was five in the morning and I was standing there. Everyone boarded the bus, and everyone asked the driver, "Why don't you let her board?" And he said "I'm not going to board Haitians and she doesn't have the identity card." I showed the people my birth certificate and said to them: "but I have the birth certificate." The people told the driver to let me board, but he refused.[450]

476. The information provided indicates that Dominicans of Haitian descent or persons perceived as such are detained by immigration officers on the basis of racial or ethnic profiling, language, phenotype and other characteristics, for the purpose of deporting them to Haiti.[451] In many cases, Dominicans of Haitian descent or persons perceived as such have had their documents suspended pursuant to Circular 17, Resolution 12 or judgment TC/0168/13 and are thus unable to produce an identity card to show to the immigration officers. Even in cases where such people produce valid identity documents, immigration officers detain them anyway and then proceed to summarily deport Dominican citizens from their own country.[452]

477. As was explained to the IACHR, Dominican immigration authorities make these arbitrary and summary detentions without informing the party of his or her rights or making provision for those rights. The "summary" nature of the proceeding means that in many cases, no written deportation order is issued and the deportation is done in a matter of hours, thereby preventing Dominicans facing deportation proceedings from exercising their right of defense or availing themselves of any means of judicial defense or legal assistance to stop the deportation they are facing. The authorities who make these arrests treat children and adults the same.[453]

478. It was also reported that the deportations are collective, systematic, and indiscriminate. Dominicans of Haitian descent or persons perceived as such are caught in round-ups of persons who "look Haitian." The indiscriminate nature of these sweeps makes it impossible to properly identify each person being

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450 Testimony that a Dominican woman of Haitian descent gave before the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

451 *Acento*. February 18, 2015. *Dominicohaitiano fue testigo y casi víctima de deportación arbitraria*.

452 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

453 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

deported.[454] Given this situation, the IACHR notes with concern that Dominicans of Haitian descent are at risk of being deported from their own country, in violation of the prohibition against deportation of nationals, set forth in Article 22(5) of the American Convention, especially since, as a result of the State's own actions, they are unable to show the documentation necessary to prove their Dominican nationality.

479. The Commission recalls that back in 1999, it asked the State to adopt precautionary measures to protect the Dominican-Haitian family composed of Eddy Martínez, his wife Germania Pierre (María), and their two minor daughters, Olga and Teresa, so that they could return to Dominican territory, and to take the necessary steps to return to them the personal documents that had been illegally taken from them. According to the information received, Dominican immigration inspectors are said to have illegally and arbitrarily deported Eddy Martínez' Dominican-born family to Haiti because the inspectors assumed they were Haitians.[455]

480. The Commission notes that in the cases involving deportations of persons born in the Dominican Republic of Haitian descent face major obstacles in their access to justice, related to the immediacy of their deportations; the impossibility, in geographic terms, of reaching a court; and the ability of affected persons to prove their identity because State authorities have either retained their documents or refused to issue them. Thus, Dominicans expelled from their own country do not have the guarantees of an effective judicial recourse that would enable them to challenge the Dominican authorities' decision to deport them.

481. The right to a judicial review of administrative decisions, such as deportation orders, is one element of the guarantee of due process of administrative law that has been accepted and developed within the IAHRS. In this regard, it must be emphasized that the absence of the proper judicial mechanisms to conduct a full review of administrative decisions also has direct consequences for the observance and protection of human rights, since recognition of many such rights is contingent upon the adoption of administrative decisions. On this point, the IACHR has determined that any law or measure that obstructs access to the courts and is not warranted by what is reasonably needed for the administration of justice will be regarded as contrary to Article 8(1) of the American Convention.[456]

482. The Commission takes note of the enactment of Law No. 107-13 on the Rights and Duties of Persons in Relation to the Public Administration, whose purpose is to regulate the rights and duties of persons in their relations with the public administration and to spell out the principles upon which those relations are based and the rules of administrative procedure governing administrative activity. This law governs the administrative organs and entities of the Armed Forces and National Police and the organs and entities that, under the Constitution, perform

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454 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013.

455 PM 89/99 – Eddy Martínez Olga and Teresa Germania Pierre (María) and their daughters, Dominican Republic.

456 IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A review of the standards adopted by the Inter-American System of Human Rights,* OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, paras. 164 and 176.

some administrative function or activity.[457] Article 4 of that law recognizes every person's right to a good Public Administration, embodied, *inter alia,* in 32 subjective rights of an administrative nature.

483. While Law No. 107-13 accords an extensive body of rights to all persons subject to administrative proceedings, the Commission did not have an opportunity to assess the enforcement of that law, because it was not scheduled to enter into force until February 2015. Nevertheless, the Commission must underscore the point that, because it is part of the IAHRS, the Dominican Republic is obligated to recognize, respect, and guarantee the rights of due process of administrative law, such as the right to recognition of nationality and the due process guarantees related to the immigration proceedings, to all persons under the State's administration.

## *D. Conclusions and recommendations*

484. The Inter-American Commission's main concerns with respect to the obstacles that Dominicans of Haitian descent encounter when attempting to pursue administrative procedures or to avail themselves of judicial remedies center around discretionary administrative authority, a lack of access to judicial protection and the latter's inefficiency, problems attributable to the discrimination that these persons experience in various areas of their lives and made worse since issuance of judgment TC/0168/13. The lack of access to justice and the absence of judicial protection are fundamental obstacles to securing effective protection against human rights violations from the domestic courts.

485. The Commission is mindful that States are sovereign to determine their internal administrative procedures. However, those procedures must endeavor to fulfill the minimum guarantees of due process. Moreover, the costs of the judicial process – whether it be judicial or administrative- and the location of the courts are other factors that might make impossible to turn to the courts, in violation of the right to judicial guarantees. The right of access to justice requires that any dispute or controversy be settled once and for all within a reasonable period of time.

486. The Commission is concerned that the problem of access to justice and respect for due process can be specifically traced to the proceedings conducted within the JCE or court proceedings involving the JCE. The Commission sees a pattern of JCE noncompliance with court orders issued in connection with amparo actions, legal mandates in the case of Law 169-14, and even Convention-related mandates in the case of the parameters that the Inter-American Court established back in 2005 for registering the births of Dominicans of Haitian descent. The State has a heightened obligation to ensure compliance with court rulings, domestic laws and regulations, and international commitments when the party called upon to comply is an organ of the State.

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457 Dominican Republic, Law No. 107-13 on the Rights and Duties of Persons in Relation to the Public Administration, Art. 1.

487. The IACHR has observed a number of structural problems that create obstacles obstructing access to justice. Here, the Commission is referring to the following: a) improper margins of discretion or appreciation in the administrative sphere, the effect of which is to promote abusive practices; b) a failure to issue prior, written notification of administrative proceedings and information concerning the stages of those proceedings; c) a failure to recognize the right of defense and representation that corresponds those accused in administrative proceedings; d) a lack of impartiality and independence in administrative investigations into "irregular" records; e) the excessive and undefined duration of administrative proceedings on the question of nationality; f) a lack of reasoning and grounds for administrative decisions; g) obstacles encountered when accessing general courts to challenge decisions in which the issuance of documents is denied or to challenge a deportation order; h) the administrative authorities' unjustified failure to comply with enforceable court orders; i) the illusory nature of judicial remedies; j) an unwarranted delay in rendering a judgment on those remedies; k) the absence of judicial institutions in rural, disadvantaged, and marginalized areas; l) the lack of legal aid for indigent victims; m) the costs of *amparo* judicial proceedings, and others.

488. Based on the foregoing conclusions, the Inter-American Commission on Human Rights makes the following recommendations:

1. Create the conditions necessary to enable Dominicans of Haitian descent to access and avail themselves of the justice system on an equal basis, so as to redress violations of their right to nationality or other rights that follow from nationality, and to be treated with dignity by public officials.

2. Create suitable and effective judicial institutions and recourses in rural, marginalized, and economically disadvantaged areas, so as to ensure that all Dominicans of Haitian descent have full access to effective judicial protection against acts that violate their human rights.

3. Establish efficient procedures in administrative, civil, criminal, labor, and other areas of the law to guarantee that Dominicans of Haitian descent have access to justice when their rights to nationality, recognition as a person before the law, equality, work, citizen security, health, and others are violated.

4. Develop policies and programs of inclusion designed to enable these groups to avail themselves of effective judicial guarantees and protections and to ensure that the judicial authorities respect their rights.

5. Systematize the decisions of regional and international organizations on the rights of Dominicans of Haitian descent to nationality, identity, and equality and non-discrimination, and make this information accessible to public operators at the national and local levels.

6. Circulate information nationwide about the judicial resources available to persons facing summary deportation, taking into account the racially and linguistically diverse target public.

7. Put into place oversight and accountability mechanisms to ensure that administrative officials and justice operators comply with the law, their responsibilities, and international standards on the subject without exercising discretional authority and without discrimination.

CHAPTER 5

# INTOLERANCE, THREATS, AND INCITEMENT TO VIOLENCE AGAINST PERSONS WHO DEFEND THE RIGHT OF DOMINICANS OF HAITIAN DESCENT TO NATIONALITY AND TO NON-DISCRIMINATION

# INTOLERANCE, THREATS, AND INCITEMENT TO VIOLENCE AGAINST PERSONS WHO DEFEND THE RIGHT OF DOMINICANS OF HAITIAN DESCENT TO NATIONALITY AND TO NON-DISCRIMINATION

## *A. General considerations*

489. Across the Dominican Republic, Constitutional Court judgment TC/0168/13 triggered reactions either in support of or in opposition to it, thereby exacerbating the polarization among various sectors of Dominican society. During its on-site visit to the Dominican Republic and by monitoring the human rights situation there, the Inter-American Commission has observed with concern the climate of intolerance and hostility in the country against those persons, including journalists and human rights defenders, who have been critical of the judgment and have publicly defended the right to Dominican citizenship of those whom this judgment would affect.[458]

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[458] According to information received by the Inter-American Commission, subsequent to issuance of judgment TC/0168/13, various sectors and civil society organizations came out against the Constitutional Court's ruling. New York Times (Randal C. Archibold), *Dominicans of Haitian descent cast into legal limbo by Court*. October 24, 2013, p. A1; Los Angeles Times (Mark Kurlansky, Julia Alvarez, Edwidge Danticat and Junot Díaz), *In the Dominican Republic, suddenly stateless*. November 10, 2013; New York Times (Mark Kurlansky, Junot Díaz, Edwidge Danticat and Julia Alvarez), *Two versions of a Dominican tale*. November 1, 2013, p. A30; UNHCR. October 1, 2013. *UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent*; UNICEF. October 9, 2013. *Statement attributable to UNICEF on the Constitutional Court decision on Dominican-born persons of Haitian Descent*; *Movimientos*. October 1, 2013. *Organizaciones de DDHH rechazan sentencia TC y llaman a la solidaridad*; *7 días*. September 26, 2013. *Sentencia sobre nacionalidad viola al menos cuatro artículos de la Constitución*; *Acento*. November 11, 2013. *ONG feminista dominicana rechaza la sentencia del Tribunal Constitucional*; *Listín Diario*. October 24, 2013. *Evangélicos deploran la decisión del TC*; *Listín Diario*. October 22, 2013. *Sacerdotes y consagrados de la Iglesia Católica respaldan afectados por sentencia del TC*. Furthermore, according to the available information, on November 5, 2013, the Committee for Solidarity with Denationalized Persons was formed, composed of 270 intellectuals, communicators, artists and clergy from the Dominican Republic, who declared that "we are witnessing a massive deprivation of nationality on a scale without precedent in any democratic nation." *7 días*. November 5, 2013. *Constituyen Comité de Solidaridad en apoyo a los desnacionalizados por el TC*; *Acento*. November 5, 2013. *Crean Comité de Solidaridad con los desnacionalizados con la TC-168*.

490. The Commission is troubled by the fact that expressions used against journalists, intellectuals, human rights defenders, and public figures critical of the judgment have taken an alarmingly aggressive tone, thereby fueling racism and xenophobia. Critics of the judgment have been called "traitors to the homeland," and public demonstrations have been staged under the slogan "death to the traitors". Thus far, it appears this discourse is taking place in the absence of a clear rejection by the country's authorities.

491. During its visit, the IACHR received complaints of various acts of intolerance, threats and incitement to violence against those who defend the right of Dominicans of Haitian descent to nationality. The media reported that on November 4, 2013, a demonstration was staged in Santo Domingo's Parque Independencia [Independence Park] in support of judgment TC/0168/13, in which public officials, journalists and figures in national politics were said to have participated and reportedly accused civil society organizations, journalists, attorneys, judges, politicians and others critical of the Court's judgment of harboring "anti-nationalist" sentiments. The event was reportedly organized by the *Red Nacional por la Defensa de la Soberanía* [National Network to Defend Sovereignty].[459]

492. According to news reports, during the demonstration, rallying cries like the following were heard: "Them there and us here" and "Duarte[460] said 'death to the traitors.'" The participants reportedly carried placards with phrases like the following: "No illegals in our country", "Illegal Haitians: Out of the DR", "RD$350 on Caribe Tours will get one Haitian to Juana Méndez - let's clean out the country."[461] The information received indicates that during the demonstration there were also loud condemnations of Constitutional Court justices Isabel Bonilla Hernández and Katia Miguelina Jiménez Martínez, who had expressed their disagreement with the Court's judgment in their separate, dissenting opinions. The justices were allegedly called "traitors to Duarte's legacy."

493. According to information received during the visit, during the protest, amid shouts of "death to the traitors, Duarte said so!", the demonstrators reportedly circulated a pamphlet titled "The Treason Album" showing the names and photographs of the so-called "traitors to the homeland". The pamphlet, a copy of which was provided to the IACHR during the visit, branded Juan Bolívar Díaz, news director of *Teleantillas* television channel, as the "principal conspirator" and "greatest traitor" and accused him of leading a media campaign to discredit the Dominican Republic, "their goal being to have the country sanctioned by the international community."

494. According to the pamphlet, "the sinister conduct of these people, led by the menacing Juan Bolívar Díaz with his entourage from the self-proclaimed civil society, a number of professionals, opportunistic politicians and so-called human rights

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459 *El Día*. November 4, 2013. *Dominicanos respaldan sentencia del Tribunal Constitucional*; *Tribuna Dominicana*. November 5, 2013. *En RD cientos defienden Sentencia 168-13; Acento*. November 5, 2013. *"¡Muerte a los traidores!", gritan nacionalistas en mitin de defensa a la TC-168*.

460 This is a reference to Juan Pablo Duarte, a founding father of the Dominican Republic.

461 *Al Momento*. November 4, 2013. *Cientos respaldan en SD sentencia del TC; Ultimas Noticias*. November 4, 2013. *Miles de dominicanos se manifestaron este lunes en apoyo a sentencia del TC* .

defenders, is a real act of treason." The pamphlet also mentioned journalists Rosario Adames, editor of the online newspaper *Acento;* Ramón Emilio Colombo, from the newspaper *El Caribe*; and Javier Cabreja, commentator from the program *El Día* and former executive director of the organization *Participación Ciudadana*, along with other personalities, all of whom were branded "traitors to the homeland".[462]

495. In the wake of the demonstrations, journalist Huchi Lora reportedly expressed concern over the slogan "Death to the traitors!" repeatedly heard during the demonstrations. The journalist was also troubled by the booklet that had emerged naming various journalists as supposed traitors.[463] He also denounced that the threats and personal attacks were an attempt to silence critics, and observed that "to cover the press's mouth is to cover the ears of the people, not allowing them to hear the arguments and get information."

> A demonstration was staged at Parque Independencia where a 'Treason Album" was distributed. The traitors depicted there are a number of the journalists who are here. In the demonstration, the chant "death to the traitors" was shouted over and over again and names were mentioned "So and so, death to the traitors".[464]

496. At a November 13, 2013 demonstration in support of the judgment and organized by groups that call themselves "nationalists," the chant "Duarte said death to the traitors!" surfaced again. This time a group of community organizations from the Santiago area reportedly staged a symbolic act in which they set fire to Mario Vargas Llosa's novel "La Fiesta del Chivo" about the dictatorship of Rafael Leónidas Trujillo in the Dominican Republic, and declared his son, Gonzalo Vargas Llosa, the UNHCR representative in the Dominican Republic, to be *persona non grata,* along with the former Haitian Consul Edwin Paraison and the NGO *Red Fronteriza Jano Siksé* (RFJS).[465]

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462 *El Álbum de la Traición. Panfleto del Comité Por la Defensa de la Nacionalidad* [The Treason Album. Pamphlet prepared by the Committee for the Defense of the Nationality]. November 2013. Provided to the IACHR during the on-site visit to the Dominican Republic, December 2, 2013; *Acento*. November 5, 2013. *"¡Muerte a los traidores!", gritan nacionalistas en mitin de defensa a la TC-168*; *7 Días*. November 6, 2013. *Neonacionalistas no solo piden matar a los traidores, también editan álbum para identificarlos*; *Acento*. November 7, 2013. *Cuidado con esas amenazas de los nacionalistas*; *Diario Libre*. November 4, 2013. *Cientos se manifiestan a favor de la sentencia del Tribunal Constitucional*; *El Día*. November 4, 2013. *Dominicanos respaldan sentencia del Tribunal Constitucional*; *Dajabón Digital*. November 5, 2013. *Centenares de personas se congregan en el Parque Independencia en defensa sentencia Tribunal Constitucional*.

463 The information received indicates that on November 15, 2013, journalists Huchi Lora and Juan Bolívar Díaz filed a complaint with the National District Prosecutor's Office in which that requested an investigation into these events. *Diario Digital RD*. November 6, 2013. . *Preocupa a Huchi Lora sindiquen de "traidores" y amenacen a ciudadanos*.

464 Testimony of Huchi Lora, a threatened journalist, as told to the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

465 *Acento/EFE*. November 13, 2013. *Fanáticos nacionalistas queman libro de Mario Vargas Llosa y rechazan a su hijo Gonzalo*; *El País*. November 14, 2013. *Países del Caribe piden sanciones ante la discriminación en República Dominicana*; *7 Días*. November 13, 2013. *Queman "La Fiesta del Chivo", piden muerte de "traidores" y declaran*

497. According to the information received, on November 20, 2013 the directors of the *Red Nacional por la Defensa de la Soberanía* [National Network for the Defense of Sovereignty] admitted to having put together the pamphlet titled the "Treason Album" and claimed to be "defending the Homeland, our sovereignty and the people."[466] They had reportedly filed a complaint with the National District Prosecutor's Office asking for an investigation of journalists Huchi Lora and Juan Bolívar Díaz, and of Roberto Álvarez and Rosalía Sosa, representatives of the organization *Participación Ciudadana,* on suspicion of "treason and inciting defiance of the Constitutional Court's judgment." The *Red Nacional por la Defensa de la Soberanía* [National Network for the Defense of Sovereignty] had also allegedly claimed to be seeking an investigation on the communicators "for their dishonest and unseemly conduct against the homeland", warning that "these will be the first suspects; others will follow."[467]

498. Against this backdrop, the IACHR received information claiming that a number of human rights defenders had been the targets of intimidation and stigmatization for the work they did. For example, one defender told the Commission the following: "We human rights defenders are accused of being traitors and anti-patriotic, of profiting from the Haitians […] the harassment is constant."[468] Another told the IACHR that those who had turned to the Inter-American Court in the *Case of Benito Tide et al. v. Dominican Republic* had been branded "traitors to the homeland."[469]

499. The attorney representing Juliana Deguis Pierre told the Commission that he had been the target of verbal attacks and threats that may have been related to his legal representation of Ms. Deguis. According to the information received, the attorney had been the victim of insults like "fucking negro, go back to Haiti". The assailants had threatened to "cut off his head" for having "defended Haitians". The attorney also stated that because his office is being watched, he keeps it locked and has had to take security precautions.[470]

500. On November 14, 2013, the Commission received a request for precautionary measures for the members of the *Movimiento "Reconocido*", a Dominican

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*no grato a jefe de ACNUR*; *Diario Libr*e. November 13, 2013. *Declaran en Santiago persona "non grata" a hijo de Vargas Llosa*.

466 *7 Días*. November 20, 2013. *Neonacionalistas denuncian ante Fiscalía a Díaz y Lora, anuncian que vendrán más*; *El Nuevo Diario*. November 20, 2013. *Defensores de sentencia TC denuncian ante Fiscalía a Huchi, Juan Bolívar y a Álvarez de PC*.

467 *7 Días*. November 20, 2013. *Neonacionalistas denuncian ante Fiscalía a Díaz y Lora, anuncian que vendrán más*; *Acento*. November 19, 2013. *Nacionalistas se querellarán contra Huchi y Juan Bolívar porque no apoyan la TC 168*; *El Nuevo Diario*. November 20, 2013. *Defensores de sentencia TC denuncian ante Fiscalía a Huchi, Juan Bolívar y a Álvarez de PC*; *Diario Digital RD*. November 20, 2013. *Red pide fiscalía prohíba a Huchi y Juan Bolívar disentir de sentencia 168-13*; *Listín Diario*. November 20, 2013. *Denuncian ante Fiscalía a Huchi, Juan Bolívar y PC por supuesta campaña contra sentencia TC*.

468 Testimony that a human rights defender gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

469 Testimony that a human rights defender gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

470 Testimony that a human rights defender gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

organization advocating "recognition and protection of the rights of Dominicans affected by the Dominican State's denationalization policy." Its members were reportedly receiving death threats and threats against their person because of their criticism of and protest against judgment 0168/13. On January 30, 2014, the IACHR requested that precautionary measures be adopted to protect the members of the *Movimiento "Reconocido*", calling upon the Dominican Republic to take the necessary steps to protect the lives and physical integrity of the Movement's members.[471]

501. Reports received during the visit also indicate that Congresswoman Guadalupe Valdez, a critic of the Constitutional Court's judgment, had been accused of being a "traitor" and had been summoned to appear before the Chamber of Deputies' Disciplinary Council for supposedly having taken part in a demonstration protesting the judgment and staged during a ceremony at which the president was present.[472]

502. According to the information available, on February 2, 2015 journalists Juan Bolívar Díaz, Huchi Lora, Amelia Dechamps and Roberto Cavada held a press conference where they reported that they were still receiving threats from unknown persons, accusing them of being "traitors to the homeland". The journalists said that at a nationalist demonstration held on January 26, 2015,[473] someone had said the following: "We are asserting that the anti-Dominican traitors deserve death; journalists Juan Bolívar Díaz, the Huchi Loras, the Cavadas deserve to die because they have betrayed the Dominican homeland."

503. The journalists also reported that at 9:30 a.m. on Saturday, January 10, journalist Roberto Cavada was verbally threatened by someone who said the following: "We're going to kill the traitors and the first to die will be the journalists." They also said that at noon on Friday, January 16, an unknown person had shouted at journalist Amelia Deschamps: "Traitor, you'll be the first to die! The next will be Huchi and Juan Bolívar! You're all traitors to the homeland!" [474] The Commission notes that the Santiago Prosecutor's Office launched an investigation into the events and had reportedly summoned certain individuals to make statements.[475]

504. On February 27, 2015,[476] during the commemoration of the 171st anniversary of Dominican Independence, Santo Domingo's Parque Independencia was reportedly the scene of another demonstration organized by the *Movimiento Patriótico Independiente*, where placards were exhibited with the photographs of President Danilo Medina and journalists Huchi Lora, Marino Zapete and Juan Bolívar Díaz,

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471 IACHR, PM 408/13 – *Members of the Movimiento "Reconocido"*, Dominican Republic, January 30, 2014.

472 *El Caribe*. October 17, 2013. *Investigarán a Juan Hubieres y Guadalupe Valdez por incidentes*.

473 The birth of Juan Pablo Duarte, one of the Dominican Republic's founding fathers, is celebrated on January 26.

474 *Periódico Hoy*. February 2, 2015. *Comunicadores denuncian reciben amenazas de muerte de "nacionalistas"; Acento*. February 2, 2015. *"Patriotas" gritan a comunicadores: "Les vamos a dar muerte a los traidores y los primeros serán los periodistas"*.

475 *El Día*. February 6, 2015. *Fiscal deja en libertad médico amenazó de muerte a periodistas*; *Periódico Hoy*. February 5, 2015. *Fiscalía investiga origen de amenazas de muerte contra periodistas; El Sol de Santiago*. February 3, 2015. *Fiscal Luisa Liranzo Investiga Denuncia Periodistas*.

476 The Dominican Republic declared its independence from Haiti on February 27, 1844, after 22 years of Haitian occupation.

accusing them of being "traitors to the homeland," labeling them as "pro-Haitian", and calling for their death.

505. According to news reports, the chants were the same: "Duarte said it: death to the traitors", "Haitians: out of the Dominican Republic", "I demand that the President put on Duarte's pants, the pants of the Trinitarians, and defend the homeland", "we are defending Dominican nationality and heritage." The demonstrators reportedly carried placards saying the following: "I'm no racist but I don't want Haitians in my country", "don't reward fraud at the Civil Registry", "we demand the mass deportation of Haitians" and "Haitians: get out of our territory."[477]

## *B. Freedom of expression under the Constitution and the law*

506. The Constitution of the Dominican Republic requires that the State protect and guarantee the right to freedom of expression and information and enforce the limits on that right. The Constitution provides, *inter alia,* that "[e]very person has the right to freely express his thoughts, ideas and opinions, through any medium and without prior censorship (…) The exercise of these freedoms shall respect the right to honor, the right to privacy, and right to personal dignity and moral integrity, especially in the case of adolescents and children, in accordance with the law and public order."[478]

507. The Commission observes that Articles 23 and 24 of Law No. 6132 on Expression and Dissemination of Thought establish the penalties for speech that incites violence or similar acts. Article 23 reads as follows:

> Article 23.- Persons who have directly incited the author or authors of an act classified as a crime, whenever said incitement leads to the commission of a crime, shall be punished as criminal accomplices. In order for this article to be applied, the incitement must be effected through: a) addresses, speeches, shouts or threats delivered in public places, either directly or through a loudspeaker, recordings or any other means of reproducing the human voice; b) writings or printed materials, distributed, sold or displayed in public places or at meetings; c) posters, pronouncements, placards or any other medium of visual or written propaganda; d) films. This provision shall also apply when the incitement is followed only by an attempted crime, covered under Article 2 of the Criminal Code.

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477 *Acento*. February 27, 2015. Nacionalistas piden muerte de Danilo Medina acusándolo de "traidor a la patria"; *Poder Latino*. February 27, 2015. Nacionalistas piden muerte de Danilo Medina acusándolo de "traidor a la patria".

478 Constitution of the Dominican Republic of January 26, 2010, Article 39.

## *C. Principal concerns and standards for journalists, attorneys, human rights defenders, and other public figures who have expressed opposition to Constitutional Court judgment TC/0168/13*

508. The right to freedom of expression is recognized in Article 13 of the American Convention on Human Rights.[479] The right to freedom of expression protects the right of all persons and groups in society to express differing opinions, even opinions that differ radically from the opinion of the majority, provided they do not violate the legitimate restrictions on freedom of expression, among them those that prohibit threats to a person's life and personal integrity and "incitement to violence", understood as a clear incitement to the commission of crimes, as defined under international human rights law.[480]

509. In light of the above, the Inter-American Commission observes that in a highly charged atmosphere of intense social polarization, racial intolerance, and racial violence against persons of Haitian descent, the "Traitors Album" and the "death to the traitors" rally cry could be construed as a collective call for the murder of clearly identifiable and identified persons, including journalists. Given the context in which they were disseminated, the IACHR therefore considers that slogans and publications of this type could border on incitement to violence.

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[479] Article 13 (Freedom of Thought and Expression) of the American Convention provides that:
1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
a. Respect for the rights or reputations of others; or
b. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

[480] See in this regard the following cases of the European Court: Karatas v. Turkey [GC], no. 23168/94. ECHR 1999-IV; Gerger v. Turkey [GC], no. 24919/94, July 8, 1999; Okçuoglu v. Turkey [GC], no. 24246/94, July 8, 1999; Arslan v. Turkey [GC], no. 23462/94, July 8, 1999; Erdogdu v. Turkey, no. 25723/94, § 69, ECHR 2000 – VI. See also: I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, Inter-Am. Ct. H.R. (Ser. A) No. 5 (1985), para. 77.

510. Nevertheless, extreme caution must be exercised when considering the question of whether to criminalize speech of this type. Following the settled international doctrine and international jurisprudence on the subject, the IACHR has said that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitement to commit crimes, the disruption of public order or national security) must be backed by actual, truthful, objective and strong proof that the person was not simply expressing an opinion (even if that opinion was harsh, unfair, and disturbing), but that the person had the clear intention of committing a crime and the actual, real, and effective possibility of achieving this objective.[481]

511. The Commission has written that to act otherwise would mean admitting the possibility of punishing opinions and all States would be authorized to suppress any kind of critical thought or expression.[482] Under these circumstances, the law can prohibit incitement to commit crimes, provided the intent and the means to bring about violence are present.[483] Where such conduct is prohibited by criminal law, the Inter-American Commission and the Inter-American Court have observed that the requirements of the principle of strict legality must be satisfied as well.[484]

512. On the other hand, the IACHR observes that some journalists and human rights defenders have been the targets of direct threats and acts of intimidation because of their defense of the right to nationality in the case of Dominicans of Haitian descent. This poses a serious danger to their lives and personal integrity, given the context in which the threats were made.

513. The Commission is particularly troubled by the fact that these alleged threats and acts of intimidation elicited no response from the Dominican authorities. The IACHR has observed that freedom of expression can only be freely exercised when the individual is not subject to threats or other acts of harassment. Such actions violate freedom of thought and expression in two ways: they affect the aggrieved party's right to express and impart his or her ideas, opinions and information, resulting in self-censorship; they also violate the rights of the members of society in general to seek and receive information and ideas of any kind.

514. In cases of special danger, the authorities have a duty to protect the persons exposed to that danger and to take measures to ensure, *inter alia,* their right to life, their right to personal integrity, and their right to freedom of expression. The obligation to take concrete measures of protection is contingent upon an awareness that a given

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481 IACHR. Annual Report 2009. Volume II: Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 59.

482 IACHR. Annual Report 2009. Volume II: Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 59.

483 The European Court wrote that "…the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence." *Cf*. ECHR. *Case of Cumpana and Mazare v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI.

484 See, *inter alia,* I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 55.

individual or group is facing some real and imminent danger and the reasonable possibility that the danger can be prevented or avoided.[485] In this regard, the obligation to protect at-risk journalists or human rights defenders can be fulfilled by taking the measures necessary to ensure, *inter alia,* the beneficiaries' right to life, right to personal integrity, and right to freedom of expression.[486]

515. The Inter-American Commission recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Intense polarization, discrimination, and violence engender a climate inimical to reasonable and pluralistic deliberation on public issues.

516. Although the positions of these journalists and human rights defenders are the minority opinion in the Dominican Republic today, the Inter-American Commission must again make the point that, in principle, all forms of discourse are protected by the right to freedom of expression, regardless of their content or their degree of acceptance by the public or the State. The general premise that all forms of expression are protected speech is a function of the State's foremost obligation to remain neutral regarding the content of expression, and hence the need to ensure that no persons, groups, ideas or means of expression are excluded *a priori* from public discourse.

517. One rule of particular importance is that freedom of expression must be guaranteed not just with respect to the dissemination of ideas and information that are favorably received or considered inoffensive or indifferent, but also with respect to those that clash, disturb, or offend the State or any fraction of the population. Such are the demands of pluralism, tolerance, and the spirit of openness, without which a 'democratic society' does not exist. The Commission has previously observed in this regard that it is particularly important to protect "freedom of expression as regards minority views, including those that offend, shock or disturb the majority."

518. The IACHR has stated that one simple yet highly effective protective measure is for the highest State authorities to speak out, in consistent, clear, public, and firm terms, advocating the legitimacy and value of the defense of human rights and the profession of journalism. It is essential that the authorities vigorously condemn the attacks committed against persons who contribute to the public discourse by

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485 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006, Series C No. 140. Para. 123; I/A Court H.R. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146. Para. 155; I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. Para. 78; I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Para. 280. See also, IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 42.

486 IACHR. Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA /Ser.L/V/II.149 Doc. 50. December 31, 2013. Para. 62; I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia.* Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 194.

expressing and circulating their thoughts and by calling upon the competent authorities to act swiftly and with due diligence to shed light on the facts.[487]

519. Therefore, it is incumbent upon the authorities that they conduct effective investigations to ascertain the source of any threats or acts of intimidation reported and, where called for, institute independent, swift, and effective judicial proceedings. To ensure that these investigations are effective and in compliance with international standards, States must develop and implement guidelines and handbooks for procedure for law enforcement officers who are involved in cases of crimes against freedom of expression.

520. The Commission reminds the State that public officials must refrain from any appearance of supporting speech that fosters cultural discrimination, intolerance, or incitement to violence. Public officials have a duty to ensure that their statements do no encroach upon the rights of those who bring their thoughts and ideas to the public discourse, such as journalists, the media, and organizations that defend human rights; they must also take care to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public debate through the expression and diffusion of their thoughts."[488]

521. The Commission must also stress the point that intolerance and racist discourse makes persons of Haitian descent all the more vulnerable to discrimination and violence. It therefore calls again upon the Dominican authorities to contribute decisively to the construction of a climate of tolerance and respect for the dignity of all persons.[489]

522. The IACHR considers that States must take steps to strengthen the role of public broadcasting to meet the information and expressive needs of a variety of individuals and groups within society and to promote understanding and tolerance within it. Given its mandate and purpose, public television has a particular role to play in strengthening democracy, building a citizenry, promoting pluralism and equality and providing balanced reporting that represents a variety of views.[490]

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487 IACHR. Annual Report 2010. Report of the Special Rapporteur for Freedom of Expression. Chapter II: *Special Report on Freedom of Expression in Mexico, 2010.* OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 713.

488 I/A Court H.R. *Case of Ríos et al. v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. Para. 139.

489 IACHR. December 6, 2013. *Press Release No. 97/13. IACHR Wraps Up Visit to the Dominican Republic.*

490 IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 83; Parliamentary Assembly of the Council of Europe. Recommendation 1641 (2004)1. Public Service Broadcasting. January 27, 2004. Recommendation No. 2.

## *D. Conclusions and recommendations*

523. During its visit, the Commission observed how the publication of Constitutional Court judgment TC/0168/13 created a climate of hostility toward those who were critical of the judgment and who have defended the right of Dominicans of Haitian descent to Dominican nationality. The Commission notes with concern that the comments made against journalists, intellectuals, lawyers, politicians, human rights defenders, and public figures critical of the judgment have taken on alarmingly aggressive tones.

524. The Commission is concerned by the threats and verbal attacks targeted at those who have spoken out against the judgment and urges the authorities to take decisive action to build a climate of tolerance and respect in which all persons are able to express their thoughts and opinions, without fear of being attacked, punished, or stigmatized for doing so.

525. Based on the above observations, the Inter-American Commission on Human Rights is making the following recommendations:

1. Adopt and implement all appropriate measures to combat the racial prejudices within society and promote understanding and tolerance among persons and groups who have different characteristics, either by virtue of their race, color, ancestry, or national or ethnic origin, including but not limited to continuing and permanent training programs and educational campaigns designed to foster equality and non-discrimination.

2. Take measures to prevent violence against journalists and human rights defenders, and others who have expressed their opposition to Constitutional Court judgment TC/0168/13, which should include public condemnation of any threat or act of intimidation.

3. Urge the authorities to refrain from making any public statements or waging public campaigns that could incite violence against persons because of their opinions. In particular, avoid making statements that could stigmatize or compound the risk to journalists, the media, human rights defenders, and socially vulnerable persons.

4. Take the necessary steps to ensure the safety of those who face some special danger for having exercised their right to freedom of expression, regardless of whether those threats come from State agents or private parties.

5. Investigate complaints of threats and acts of intimidation against journalists, human rights defenders, and socially vulnerable persons, in accordance with international standards on the subject.

6. Encourage democratic debate through statements, practices, and public policies that promote tolerance for and respect of all persons, which includes strengthening the role of public broadcasting in the fostering of understanding and tolerance within society.

CHAPTER 6

# HAITIAN MIGRANTS, IMMIGRATION OPERATIONS, AND DUE PROCESS

# HAITIAN MIGRANTS, IMMIGRATION OPERATIONS, AND DUE PROCESS

## *A. General considerations on the immigration phenomenon in the Dominican Republic*

526. During its visit, the Commission observed *de facto* and *de jure* manifestations of discrimination against migrants in the Dominican Republic, specifically those of Haitian nationality. Within the international community, there is widespread recognition of the vulnerable situation of migrants as subjects of human rights, certainly the fact that they are not nationals of the country in which they are located or are foreign-born leads to migrants falling victim to countless human rights violations, crime, abuse, discrimination, racism, and xenophobia. [491]

527. The Commission observes that the effect of judgment TC/0168/13 has been to denationalize persons who previously had Dominican nationality, with the result that they become foreign nationals in the own country or stateless persons. As has already been discussed, in their attempts to lay full claim to their nationality, Dominicans of Haitian descent have come up against discrimination based on their parents' migratory situation or country of origin. During the visit, the Commission received disturbing information that exposes the stigma that judgment TC/0168/13 has attached to Haitian migrants in Dominican territory.

528. By way of preliminary observations, the Commission has recognized that, while States are entitled to control their borders, establish the requirements for entry and stay within their territory and the grounds for deporting non-nationals from their

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[491] See, *inter alia,* United Nations General Assembly resolution on "Protection of migrants", A/RES/66/172, December 19, 2011; General Assembly of the Organization of American States, resolution on "The Human Rights of Migrants, including Migrant Workers and Their Families," AG/RES. 2729 (XLII-O/12), approved in Cochabamba (Bolivia) during the second plenary session, held June 4, 2012; IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 80; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraphs 112-114; and I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 98.

territory[492] and, in general, establishing their immigration policies, those policies, laws and practices must be respectful of and protect the human rights of all migrants, who have rights by virtue of their human dignity. These rights and freedoms have been widely recognized by the States in the international human rights treaties they have signed and ratified.[493]

529. It is important to point out that the Dominican Republic is a country of origin, transit and destination for migrants. According to 2012 statistics, more people left the country than entered it, with estimates putting the number of Dominicans who emigrated at 1,346,693. The figures suggest that the majority of Dominican migrants would be economic migrants, who, on occasion, have to contend with racial discrimination and live in poverty due to lack of opportunities.[494]

530. According to the National Survey of Immigrants (ENI), [495] in 2012 the immigrant population in the Dominican Republic numbered 534,632, which was 5.4% of the country's population. Out of this total estimated by the ENI, 458,233 persons, in other words 87.3%, of the immigration population, comes from Haiti, while the remainder is native to another 60 countries. The ENI also estimated the number of children born on Dominican territory to foreign-born parents at 244,151; of these, 209,912, or 86%, were children of Haitian immigrants.[496]

531. Of the many challenges that migrants in the Dominican Republic encounter, the chief concern for the Inter-American Commission is the serious discrimination toward Haitians in an irregular migratory situation and other persons perceived as such. This discrimination is the product of the racism and anti-Haitianism present within Dominican society, as explained in chapters II and III of this report. This situation is nothing new or unheard of in the Dominican Republic. In recent decades migrants in

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492 For purposes of this report, the terms expulsion, deportation, and repatriation will be used indiscriminately to refer to the expulsion of a person from Dominican territory.

493 See, in general, IACHR, *Human rights of migrants and other persons in the context of human mobility in Mexico.* OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 327; IACHR, Merits Report No. 64/12, Case 12,271, Benito Tide Méndez et al. (Dominican Republic). March 29, 2012, para. 260; IACHR, *Annual Report 1991, Chapter V, Situation of Haitians in the Dominican Republic.* OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992; IACHR, *Report on the Situation of Human Rights of Asylum Seekers with the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106 Doc.40 rev., February 28, 2000, para. 166; IACHR, *Annual Report of the Inter-American Commission on Human Rights 2000: Second Progress Report of the Rapporteurship on Migrant Workers and Members of their Families.* OEA/Ser./L/V/II.111 doc. 20 rev., April 16, 2000, para. 6; IACHR, *Report on Terrorism and Human Rights.* OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 377; IACHR, *Report on Immigration in the United States: Detention and Due Process.* OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, para. 32; IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, *Nadege Dorzema et al.: Guayubín Massacre (Dominican Republic).* February 11, 2011, para. 208. See also I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, paragraphs 97 and 169.

494 OBMICA. *Estado del arte de las migraciones que atañen a la República Dominicana 2012*. Dominican Republic, July 2013.

495 The First National Survey of Immigrants in the Dominican Republic, published in April 2013, was done by the National Statistics Office, with technical and financial assistance from the European Union (EU) and the United Nations Population Fund.

496 National Office of Statistics, Dominican Republic (ONE). 2013. First National Survey of Immigrants in the Dominican Republic, ENI-2012; OBMICA. *Estado del arte de las migraciones que atañen a la República Dominicana 2012*. Dominican Republic, July 2013, pp. 55-57.

the Dominican Republic have become a group that is highly vulnerable to human rights violations of all types.

532. Over the last few decades, a number of reports produced by civil society organizations [497] and international organizations like the Inter-American Commission on Human Rights,[498] the International Labour Organisation (ILO),[499] the Committee for the Elimination of Racial Discrimination,[500] the Office of the United Nations Special Rapporteur on the Human Rights of Migrants,[501] the UN Committee on Economic, Social and Cultural Rights,[502] and others have brought to light the serious human rights violations to which Haitian migrants are exposed, both those in a regular and irregular migratory situation in the Dominican Republic. As far as back as 1983, a Commission of Inquiry appointed by the ILO to examine the employment of Haitian migrant workers in the Dominican Republic's sugar refineries found that:

> [t]he practice adopted by the Dominican authorities of acquiescing in the long-term presence of Haitian workers on the sugar plantations, because their labor is needed there, but of reserving the possibility of invoking their illegal immigrant status once they leave these plantations and to require them to return there on pain of deportation, has the effect of tying the workers to the land and of making them perform, under the menace of a penalty, work for which they do not offer their services of their free will. This situation is therefore inconsistent with the obligations of the Dominican Republic under

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497 Americas Watch, National Coalition for Haitian Refugees and Caribbean Rights, *Half Measures, Reform, Forced Labour and the Dominican Sugar Industry*, Washington, D.C., March 1991; Human Rights Watch, *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*. Volume 14, Number 1 (B). April 2002; Amnesty International, Dominican Republic, *A life in transit - the plight of Haitian migrants and Dominicans of Haitian descent.,* AI: AMR 27/001/2007, March 2007; Lawyers Committee for Human Rights, A *Childhood Abducted: Children Cutting Sugar Cane in the Dominican Republic*, New York, May 1991; Bridget Wooding and Richard Moseley-Williams, *Needed but unwanted: Haitian immigrants and their descendants in the Dominican Republic*. Santo Domingo, Dominican Republic: International Cooperation for Development and the Jesuit Refugee Service for Latin America and the Caribbean, 2004; World Bank, *Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000*), Volume I, 2001; Marco Scuriatti, *Background Papers – A review of the Haitian Immigrant Population in the Dominican Republic*, in: World Bank, Dominican Republic Poverty Assessment: Poverty in a High-Growth Economy (1986 – 2000), Volume II, 2001.

498 IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992. Chapter V: Situation of Haitians in the Dominican Republic; IACHR, *Report on the Situation of Human Rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999. Chapter IX. Situation of Haitian Migrant Workers and Their Families in the Dominican Republic.

499 ILO, *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance of certain international labor Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic* (Vol. LXVI, 1983, Series B, Special Supplement).

500 Committee on the Elimination of Racial Discrimination, Concluding Observations, Dominican Republic, CERD/C/DOM/CO/12, May 16, 2008.

501 Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante", presented to the Commission on Human Rights at the Sixty-second Session held on March 27, 2006, UN Doc. E/CN.4/2006/73; Migrant Workers, Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2000/48," January 9, 2001, to the Commission on Human Rights at its 57th session, DOC. UN. E/CN.4/2001/83.

502 Report on the Technical Assistance Mission to the Dominican Republic of the Committee on Economic, Social and Cultural Rights. Doc. E/C.12/1997/9, January 27, 1998.

> the Forced Labour Convention [1930, No. 29] and the Abolition of Forced Labour Convention [1957, No. 105].[503]

533. Since 1991, the IACHR has been alerting the international community to the serious human rights violations that Haitian migrants face in the Dominican Republic. In the case of the complaints of human rights violations committed against the Haitian sugar cane workers employed in the Dominican Republic on the plantations operated by the State Sugar Council, President Balaguer issued Decree 233 on June 13, 1991, ordering the repatriation of any undocumented Haitians in the Dominican Republic who were over the age of 16 and under age 60. In response to the complaints the Commission received concerning massive deportations of Haitians or persons considered as such, even though they may have been born on Dominican territory, on June 26, 1991 the IACHR asked the Dominican Government to adopt the necessary precautionary measures to avoid irreparable harm from being done to persons who were awaiting deportation.[504]

534. After that, the IACHR conducted an observation mission to the Dominican Republic, from August 12 to 14, 1991. 23 years ago, in the report on the Situation of Haitians in the Dominican Republic issued after the visit, the Commission held, *inter alia*, that "[i]t would also be necessary to revoke any legislative or administrative measure aimed at impairing the rights of the foreigners or Dominicans of Haitian origin and to suspend definitively the collective expulsions of Haitian nationals."[505]

535. At the time of the IACHR's 1997 visit to the Dominican Republic, it again underscored the fact that the plight of Haitian migrants had not changed, as they were still the victims of human rights violations, especially in the context of the massive expulsions of Haitians and Dominicans of Haitian descent. In its report, the IACHR maintained the following:

> The Commission also expresses its concern over the massive expulsions of Haitian workers. Collective expulsions are a flagrant violation of international law that shocks the conscience of all humankind. Individual expulsions should be carried out in accordance with procedures that offer a means of defense that is in line with the minimal rules of justice, and that prevent errors and abuses.[506]

536. For its part, in 2005 the Inter-American Court delivered its judgment in the *Case of the Girls Yean and Bosico*, where it wrote that "[t]he Dominican Republic has deported Haitians and Dominicans of Haitian origin irrespective of their migratory

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503 ILO, *Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance of certain international labor Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic* (Vol. LXVI, 1983, Series B, Special Supplement), para. 461.

504 IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992. Chapter V: Situation of Haitians in the Dominican Republic.

505 IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992. Chapter V: Situation of Haitians in the Dominican Republic.

506 IACHR, *Report on the Situation of Human Rights in the Dominican Republic*. OEA/Ser.L/V/II.104 Doc. 49 rev. 1, October 7, 1999, para. 366.

status in the country. In such cases, the decisions have been taken without any prior investigation procedure."[507] The Court issued a similar finding in 2014 in the *Case of the Expelled Dominicans and Haitians v. Dominican Republic*, where it warned of "the existence in the Dominican Republic (…) of a systematic pattern of expulsions of Haitians and persons of Haitian descent, including through collective actions or procedures that did not involve an individualized analysis, that were based on a discriminatory conception."[508]

537. Another way the Commission has monitored the situation of Haitian migrants in the Dominican Republic is through the thematic hearings it convenes during the Commission's regular sessions. At the moment, it has held six hearings on this subject, the first in 1998 and the most recent in 2014.[509] Furthermore, during its visit to the Dominican Republic in December 2013, the IACHR's Rapporteur on the Rights of Migrants and the Rapporteurship's delegation took multiple testimonies from Haitian migrants who said they had been the victims of arbitrary detentions and other human rights violations perpetrated by State agents.

538. The State pointed out that under Presidential Decree No. 327-13, persons who applied for the National Plan to Regularize Foreigners with Irregular Migration Status were not to be deported until the plan concluded; hence, deportations to Haiti were to be suspended until June 17, 2015. The State also highlighted the fact that, within Dominican territory, a person's migratory condition is not an issue when claiming his or her rights to work, health, education, access to the courts, and other rights.[510]

539. The Commission would point out that the vulnerability of migrants can be attributed to the difficulties these persons have in communicating in the language of the country where they find themselves; their lack of familiarity with the culture and local customs; their lack of political representation; the difficulties they encounter in exercising their economic, social, and cultural rights – particularly the right to work, the right to education, and the right to health; the obstacles they face when attempting to obtain their identity documents; and the obstacles they encounter when attempting to avail themselves of effective judicial remedies when their rights are violated or in seeking redress for those violations.[511]

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507 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Judgment of September 8, 2005. Series C No. 130, para. 109(10).

508 I/A Court H.R., *Case of the Expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 171.

509 Specifically: "Human rights situation of the migrant workers in the Dominican Republic," 100th Session, October 7, 1998; "Situation of Haitian and Dominican-Haitian Communities in the Dominican Republic," 123rd Session, October 21, 2005; "Situation created by the Dominican Republic's General Law of Migration," 124th Session, March 3, 2005; "Racial Discrimination in the Dominican Republic," 127th Session, March 2, 2007; "Application of the 2004 Migration Law in the Dominican Republic" (Private Hearing), 131st Session, March 10, 2008; "Human Rights Situation of Haitian Migrant Workers and Their Families in the Dominican Republic," 150th Session, March 24, 2014.

510 Information that the State provided at a meeting with the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

511 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 80.

540. The situation of vulnerability of migrants is exacerbated when a migrant is in an irregular migratory situation. In the Commission's view, migrants in an irregular situation face a situation of structural vulnerability, in which it is common for migrants to become victims of arbitrary arrest and a lack of due process; collective deportation; discrimination in access to the public and social services to which foreign-born nationals of other states are entitled by law; inhumane detention conditions; unlawful harassment by police and immigration authorities; obstacles in accessing and obtaining justice for crimes committed against them; and an inability to defend themselves when exploited by unscrupulous employers.[512]

541. The Commission has confirmed how migrants' structural vulnerability is complicated by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion, or any other social condition, factors which, if presented at the same time, may lead to migrants becoming the victims of inter-sectorial discrimination.[513]

542. While the Commission recognizes the serious challenges facing the Dominican State and the efforts it has made to document and regularize the migratory situation of Haitian migrants within its territory and afford them access to basic services, it is nonetheless deeply disturbed by the repeated reports portraying how Haitians – whether in a regular or irregular migratory situation- are victims of continuous acts of violence and discrimination in various areas of their lives, especially as a result of immigration operations, widespread immigration detention and collective expulsions to Haiti carried out by members of the Office of the Director General of Immigration, the Specialized Border Security Corps (CESFRONT), other agents of the State and third parties.

## *B. The Constitution and the law on the subject of immigration*

543. The Dominican Constitution recognizes the State's obligation to protect and guarantee the rights involved in cases of detention and subsequent deportation of migrants within Dominican territory, specifically: the right to human dignity (Art. 38), the right to equality (Art. 39), the right to liberty and personal security (Art. 40), the right to humane treatment (Art. 42), freedom of movement (Art. 46), the right to property (Art. 51), the rights of the family (Art. 55), protection of minors (Art. 56), guarantee of basic rights (Art. 68), and effective judicial protection and due process

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512 See in this regard IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 82; IACHR, Annual Report de la IACHR, 2000, Chapter V. Special studies, Second progress report of the Rapporteurship on migrant workers and members of their families, OEA/Ser./L/V/II.111, doc. 20 rev., April 16, 2001, para. 64.

513 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 83.

(Art. 69). Under subparagraph 10 of this last article, due process of law must be observed in every judicial and administrative proceeding.

544. General Immigration Law No. 285-04 was enacted in 2004 for the purpose of establishing order in and regulating immigration within the national territory, both with respect to the entry, stay, and departure of foreign nationals and the immigration, emigration, and return of Dominican nationals. Its implementing regulations were issued seven years later, in Decree No. 631-2011 of October 19, 2011.

545. Under Law 285-04, "[a]ny deportation or expulsion ordered by the Office of the Director General of Immigration must be explained and must inform the foreign national concerned of the legal remedies available. The immigration authority's decision must be respectful of the principles of legality and of due process."[514] Under Regulation 631-11, deportation is an administrative act whereby the Dominican government expels a foreign national from Dominican territory for a violation of the law.[515]

546. The Commission underlines and values that immigration detention is regulated by Regulation 631-11 of the General Immigration Law, which reads as follows:

> Article 134.- Detention is the deprivation of a foreign national's liberty and his or her custody by the immigration authority. It begins with an order for detention issued by the Director General of Immigration, or is a step taken when it has been established that a person's immigration status is illegal.
> Paragraph.- Detention shall be a last resort, which the immigration authority shall only use if the other recourses available under these Regulations are deemed insufficient. Detention shall never be ordered in the case of minors, pregnant women or nursing mothers, the elderly or asylum seekers.
>
> Article 135.- The detention must be an administrative measure applied for a violation of immigration laws; hence, the deprivation of liberty is not punitive in nature, which means that those detained must be held physically separate from persons under criminal arrest or convicted in a criminal proceeding.

547. While neither the General Immigration Law nor its Regulations make express reference to detention alternatives, the Commission welcomes the rule stating that in matters related to immigration, deprivation of freedom must be a measure of last resort and shall never be used in the case of children, pregnant women or nursing mothers, the elderly, and asylum seekers.

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514 Dominican Republic, General Immigration Law, No. 285-04, August 15, 2004, Official Gazette No. 10291, August 27, 2004, Article, Article 137.

515 Regulation No. 631-11 for Application of the General Immigration Law No. 285-04, October 19, 2011, Article 129.

548. Furthermore, under the 1999 "Protocol of Understanding between the Dominican Republic and the Republic of Haiti on the Repatriation Mechanisms", the Dominican authorities made the following commitments to the Haitian authorities:

> a) not to repatriate Haitians at night, specifically between 6:00 p.m. and 8:00 a.m. the next day, or on Sundays and holidays in the two countries, except between 8:00 a.m. and noon; b) avoid separating nuclear families (parents and children who are minors) in repatriations; c) deport Haitians only by way of the following border crossings: Jimaní/Malpasse, Dajabón/Ouanaminthe, Elías Piña/Belladere and Pedernales/ Anse-à-Pietre; d) take concrete measures to ensure that the repatriated persons are able to take their personal effects with them, and not to withhold the repatriated persons' personal documents or papers unless, in the opinion of the Dominican authorities, those documents and papers have legal defects, in which case they shall be retained and sent to the Haitian diplomatic mission in the Dominican Republic; e) provide each repatriated person with a copy of the form containing his or her repatriation order; f) give the Haitian diplomatic or consular authorities accredited in the Dominican Republic the list of persons in the repatriation process sufficiently in advance so that those authorities are able to perform their consular assistance function.

549. As for the authorities in charge of conducting the immigration control operations, under Regulation 631-11 "the Ministry of Interior and Police and the Office of the Director General of Immigration are the State institutions charged with enforcing the deportation and expulsion procedures that such measures require."[516] Despite the above, during the meetings held with the State, the Specialized Border Security Corps (CESFRONT) told the Commission that at its two checkpoints on the border, it checks the immigration papers of all persons entering or leaving by way of those border crossings.

550. The Commission notes that CESFRONT was created in 2006 by Decree 325-06, as part of the Ministry of the Armed Forces. Its special mission is "to set up a permanent checkpoints at all entry and exit points along the Dominican Republic's land border."[517] The Commission finds it troubling that CESFRONT military personnel are not the Immigration Control Inspectors that Regulation 631-11 requires to carry out the deportations and expulsions of foreign nationals subject to those measures. Here, the Inter-American Court has already stated that in the case of administrative offenses, such as immigration-related offenses, the State must ensure that the training received is appropriate to address the type of offense and take into consideration the vulnerability of migrants.[518]

551. The Commission again highlights the enactment of Law No. 107-13 on the Rights and Duties of Persons in Relation to the Public Administration, which was set to take effect in February 2015 and the purpose of which is to regulate the rights and duties

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516 Regulation No. 631-11 for Application of the General Immigration Law No. 285-04, October 19, 2011, Article 9.

517 Decree No. 325-06, August 8, 2006, Article 1.

518 I/A Court H.R., *Case of Nadege Dorzema et al. V. Dominican Republic.* Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 81.

of persons in their relations with the Public Administration, the principles upon which those relations are based and the standards of administrative procedure that govern administrative activity. The law also applies to the administrative organs and entities of the Armed Forces and National Police and the organs and entities created under the Constitution to perform an administrative function or activity, like immigration control functions.[519] In its Article 4, the law recognizes the right of all persons to a good Public Administration, embodied, *inter alia,* in 32 subjective rights in the administrative sphere.

552. As for the obstacles that Haitian migrants encounter in their attempts to obtain their identity documents and regularize their immigration status within the Dominican Republic, the Commission welcomes the implementation of the National Plan to Regularize Foreigners with Irregular Migration Status in the Dominican Republic, adopted under Decree No. 327-13 of November 29, 2013. The plan was ordered back in 2004, in Article 151 of General Immigration Law No. 285-04.

## *C. Principal concerns and standards regarding migrants' effective enjoyment of their human rights*

553. During its visit, the Commission was able to gather information and testimony about the treatment that Haitian migrants receive in the Dominican Republic. The Commission is troubled by the statements reporting alleged acts of violence; intimidation; arbitrary detentions on streets or at places of work; violations of the privacy of the home; collective repatriations; separation of families; obstruction in access to justice; prohibition banning the recovery of goods, wages or personal effects; labor exploitation; smuggling of persons or human trafficking; all committed against Haitian nationals or persons perceived as such, even those born on Dominican soil. It is reported that these behaviors are based on racial profiling related to a perceived membership in the group of Haitians or Dominicans of Haitian descent.

554. The IACHR visited a number of *bateyes* in various parts of the country and observed how their inhabitants, most of whom are Haitian migrants, live in poverty, exclusion and discrimination

555. The Commission's general concern is with respect to two basic issues relating to Haitian migrants living in the Dominican Republic and judgment TC/0168/13. The first is the stigmatization that the judgment engenders which, given the problem of structural discrimination, is prejudicial to the migrant population's effective enjoyment of their human rights; the second has to do with the summary immigration sweeps that, as a result of the National Plan to Regularize the Status of Foreigners with Irregular Migration Status –ordered by judgment TC/0168/13, are

519 Law No. 107-13 on the Rights and Duties of Persons in Relation to the Public Administration, Art. 1.

being conducted for the purpose of deporting Haitian migrants or persons perceived as such.

## 1. The general human rights situation of Haitian migrants

556. With regard to the extent to which migrants in the Dominican Republic are able to effectively exercise their human rights, the information compiled by the Commission indicates that migrants tend to be in a more precarious situation than their Dominican peers, a situation that disproportionately affects persons of Haitian descent, who are also Afro-descendants and frequently identified on the basis of the color of their skin.

557. Here, the United Nations Independent Expert on Minority Issues concluded that:

> Haitians in long-term settled communities as well as Dominicans of Haitian descent live and work in fear and conditions of vulnerability, extreme poverty and super-exploitation of their labor. While they are being administratively denied documentation, all their other rights are subject to arbitrary rejection and abuse by low-level officials, police and military who have power, operate with limited instructions and have little accountability.[520]

558. On the other hand, the Commission was told that in general, the Haitian population in the Dominican Republic is able to enjoy its own cultural way of life, practice religious freedom, and has access to services by provided by the State or public entities, such as health care, education and legal and court services. Similarly, the State allows different radio stations to broadcast in Creole and French. Religious ceremonies take place that are non-Christian, although they are syncretic, in other words gagá and voodoo rites, in which Haitians and Dominicans take part indiscriminately. There are no cultural, much less State prohibitions against people speaking Haitian Creole, nor is there any law that, by its application, makes a distinction among Dominicans based on their racial characteristics.[521]

559. The Commission recalls that in Article 1(1) of the American Convention, the States Parties undertake to respect the rights and freedoms recognized in the Convention, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition, such as a person's migratory situation. Also, the principle of non-discrimination is reinforced in Article 24 of the American Convention, which recognizes the right to equal protection before the law. Ultimately, all persons subject to the State's jurisdiction have the right to have their human rights protected, without discrimination.

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520 UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to the Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, para. 112.

521 I/A Court H.R., *Case of the Expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 161.

560. The Commission has stated that in the enforcement of immigration laws, the basic right to equal protection before the law without discrimination requires that States ensure that their immigration law enforcement policies and practices do not unfairly target certain persons based solely on ethnic or racial characteristics, such as skin color, accent, ethnicity, or a residential area known to be populated by a particular ethnic group.[522] Furthermore, international human rights law not only prohibits policies and practices that are deliberately discriminatory in nature, but also those whose effect is to discriminate against a certain category of persons, even when discriminatory intent cannot be shown.[523]

561. As with civil and political rights, the principle of the universality of economic, social and cultural rights applies to everyone within the jurisdiction of a State and no distinction based on nationality, migratory situation, statelessness or any other social condition is permissible. The Inter-American Court has observed that the rights of migrant workers "have not been sufficiently recognized everywhere."[524]

562. The Commission has written that , irrespective of a person's nationality or migratory situation, under Article 26 of the American Convention on Human Rights and Article 1 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,[525] States have an obligation to take the necessary measures, both domestically and through international cooperation between States, especially economic and technical, to the maximum extent of available resources and taking into account their level of development, for the purpose of progressively achieving the full observance of economic, social, and cultural rights.[526]

563. The Commission shares the view of the Committee on Economic, Social and Cultural Rights where it expressed that:

> [t]he ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.[527]

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522 IACHR, *Report on Immigration in the United States: Detention and Due Process,* OEA/Ser.L/V/II., Doc. 78/10, December 30, 2010, para. 95.

523 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 358.

524 I/A Court H.R., OC-18/03, para. 132.

525 The Dominican Republic signed the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights on November 17, 1988, during the 18th regular session of the General Assembly.

526 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 582.

527 Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and

564. While the American Convention and the Protocol of San Salvador recognize the progressive development of economic, social, and cultural rights, under Article 1 of the Protocol the States have an obligation to take the necessary measures immediately, to the extent allowed by their available resources and taking into account their level of development, to guarantee the effectiveness of the rights recognized in the Protocol. States are thus prohibited from adopting regressive measures in the area of economic, social, and cultural rights.[528]

### a. Discrimination in the workplace and social security

565. uring its visit, the IACHR received information indicating that where the respect and guarantee for labor rights are concerned, Haitian migrant workers tend to be more vulnerable than their Dominican peers. Civil society organizations and even the State reported that some migrants claim to be paid less than what Dominicans earn per day worked; that they are sometimes not paid the amount promised or simply not paid at all. The employers use the ploy of calling the Office of the Director General of Immigration on pay day, to have the Haitian migrant workers deported.[529]

566. One particularly troubling aspect is the Haitian migrant worker's lack of documentation. According to reports, the administrative requirements and costs of obtaining the necessary visa are so high and complex that they encourage irregular migration. This also raises the cost to the employers, who compete with others in the market to obtain cheap undocumented labor.[530] Without the necessary documents, the migrant worker is unable to effectively exercise other rights such as the right to health services, access to justice, and others.

567. Another concern for the Commission has to do with the social security of migrant workers in an irregular migratory situation. During the visit, the fifth situation on which the IACHR received more evidence and information had to do with the impossibility of older adult migrants, mainly Haitian sugar cane workers to access social security and get the pension for which they quoted for decades. The Commission received 280 complaints about this situation. Cane workers over eighty years old, some with disabilities as a result of work performed, said they had been claiming their pension since the 1990's.

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Cultural Rights). E.C.12/GC/20, July 2, 2009, para. 30. Citing General Comment No. 30 (2004) of the Committee on the Elimination of All Forms of Racial Discrimination, on non-citizens.

528 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 586.

529 Information that the State provided at a meeting with the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

530 Submission presented by the *Coalición por los Derechos de las personas Migrantes* (CDPM) on the occasion of the Universal Periodic Review. *Derechos de las Personas Migrantes en República Dominicana*. June 2013.

> I arrived in [19]64 from Haiti with a contract between the two governments for cane workers. I worked at the Ingenio Haina,that was a State plant. There I got sick of chest tightness due to chopping cane at night. Work disease. Here I have the copy of the application for the pension. I've been asking for my pension since 2011 and [they] say to me come today, come tomorrow and it never comes out. They took our lifetime salary to save for pension. When we went to ask for the pension to the Pension Fund will not give us. I still work, cutting grass. People of good faith help me and gives me food. I have not made a complaint because [in court] they do not take our complaints in. [531]

568. According to the statements made by the Dominican Republic's Minister of Labour, Maritza Hernández, those who do not have documents cannot participate in the Dominican Social Security System, an issue that it is proposed be regulated jointly by the Ministry of Labour and the National Social Security Council. [532]

569. Furthermore, information obtained during the visit suggests that certain types of jobs in the sugar, farming, and construction areas are performed exclusively by Haitian migrant workers based on a discriminatory perception of work capacity related to their skin color and nationality. According to information from employers in the farming and construction areas, they have difficulty finding Dominican workers, even paying above minimum wage, which becomes an inducement to hire undocumented Haitian workers. Another common practice of employers is not to cooperate in processing their migrant workers' documentation and arranging housing, especially in the case of Haitian migrant workers, leaving these migrants workers even more vulnerable because they remain undocumented.[533]

570. During its visit to several *bateyes* across the country, the Commission was able to observe the precarious and unhealthy conditions in which the workers live. Historically speaking, the *bateyes* are believed to have been home to the sector of the population with the highest poverty rates nationwide. The poverty is reflected in the inadequate availability of basic services and in housing conditions. The water supply and sewage elimination systems are problems, and serve to further isolate the *bateyes* from other communities, which obstructs access to education and health services for migrant workers and their families.[534]

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[531] Testimony of elderly Haitian migrant before the Commission in Santo Domingo, Dominican Republic , December 5, 2013.

[532] Information that the State provided at a meeting with the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

[533] Submission presented by the *Coalición por los Derechos de las personas Migrantes* (CDPM) on the occasion of the Universal Periodic Review. *Derechos de las Personas Migrantes en República Dominicana*. June 2013.

[534] *Observatorio Migrantes del Caribe*. *Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación*. Chapter 4: Socioeconomic condition and general human rights situation in the *bateyes,* Dominican Republic, January 2014.

571. The Inter-American Commission received information from the State and from civil society organizations about a number of court cases claiming labor discrimination against Haitian workers. The principal claims included the following: failure to pay 500 Haitian migrants working in the sugar-growing area for their services;[535] the human-trafficking of over 100 coconut workers [*coqueros*] who were brought in as children and spent over 10 years working under exploitative conditions, for no pay and without job benefits.[536] The State also reports that in 2010, more than 2,570 labor cases were prosecuted in which Haitian migrants were asserting their labor rights.[537]

572. The Commission also notes with concern that because of the nature of the work they perform, migrants are particularly exposed to illnesses associated with job discrimination, workplace accidents, and overcrowding.

573. As for the labor rights of the migrant workers, the Commission recalls what the Inter-American Court of Human Rights wrote in its advisory opinion on the Juridical Condition and Rights of Undocumented Migrants to the effect that the labor rights of migrant workers, regardless of their migratory situation, come from their employment relationship and not their migratory situation.[538]

574. For the Commission, these cases illustrate what life is like for the Haitian worker in Dominican territory: a frequent victim of labor exploitation, resulting in the loss of the rights associated with labor. The Commission observes that these situations have become so commonplace that abuse and exploitation have become the norm for Haitian migrant workers. While the principle of non-discrimination and equal protection before the law requires that States guarantee observance of migrant workers' labor rights, in practice these persons are not regarded as subjects of the law precisely because they are migrants. The situation is much worse for those in an irregular migratory situation.

### b. Access to education

575. From the information gathered during the visit, the Commission notes with concern that migrant children, specifically the children of undocumented Haitian migrants, have difficulty getting access to education. First, they are required to have current immigration papers. For many migrant families, such papers are difficult to come by because they are poor and cannot pay the documents fees. For children of Haitian

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535 Dominican Republic. *Comentarios Iniciales del Gobierno de la República Dominicana en respuesta a las observaciones preliminares de la visita in loco de la IACHR a la República Dominicana*. Nota MP-RD-OEA 0877-14 [The Government's Initial Comments in response to the IACHR's preliminary observations on its visit to the Dominican Republic, Note MP-RD-OEA 0877-14], received August 22, 2014.

536 Submission presented by the *Coalición por los Derechos de las personas Migrantes* (CDPM) on the occasion of the Universal Periodic Review. *Derechos de las Personas Migrantes en República Dominicana*. June 2013.

537 Dominican Republic. *Comentarios Iniciales del Gobierno de la República Dominicana en respuesta a las observaciones preliminares de la visita in loco de la IACHR a la República Dominicana*. Nota MP-RD-OEA 0877-14 [The Government's Initial Comments in response to the IACHR's Preliminary Observations on its visit to the Dominican Republic, Note MP-RD-OEA 0877-14], received on August 22, 2014.

538 I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No. 18.

origin, lack of documentation is an obstacle to continuing school beyond eighth grade. In that regard, the IACHR echoes the concerns expressed by the Committee on the Rights of the Child about "[c]hildren who lack a birth certificate and children of Haitian descent who lack official documentation not being allowed to take the national examinations required to graduate from primary and secondary education."[539]

576. The Commission is also deeply concerned over the issuance of Circular No. 007475 of May 25, 2012, from José Ricardo Taveras Blanco, Director General of Immigration under the Ministry of Interior and Police, to Lic. Josefina Pimentel, Minister of Education, ordering all schools not to enroll any students who are the children of foreign nationals that have not regularized their status in the Dominican Republic.[540] According to the information provided, while the Ministry of Education and Office of the Director General of Immigration agreed to continue to enroll the children of undocumented foreign nationals for an indefinite period of time, the circular has not been revoked and could again be put into force.[541]

577. On this point, the State observed that under Dominican law, every person has the right to a free basic education, irrespective of his or her nationality or migratory situation. More specifically, the State reported that for the 2012-2013 period, the Ministry of Education had 67,550 immigrant students enrolled in Dominican schools; of these, 65% -or 44,310- were Haitian immigrants.[542]

> This year my daughter cannot take the national tests because she doesn't have papers and they will not accept her in school.[543]

578. On the subject of education, the Committee on Economic, Social and Cultural Rights has held that:

> The ground of nationality should not bar access to Covenant rights [International Covenant on Economic, Social and Cultural Rights[544]] e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as

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539 Committee on the Rights of the Child, *Concluding observations on the combined third to fifth periodic reports of the Dominican Republic*. 6 March 2015, para. 57.a.

540 *Acento*. June 13, 2012. *La circular 7475 de la Dirección General de Migración y los derechos adquiridos*; *Hoy*. June 11, 2012. *Educación tratará circular de indocumentados*.

541 *Diario Libre*. June 14, 2012. *Escuelas aceptarán estudiantes extranjeros indocumentados*.

542 Dominican Republic. *Datos de estudiantes inmigrantes en escuelas dominicanas*. Nota MP-RD-OEA 0952-14 [Data on immigrant students in Dominican Schools, Note MP-RD-OEA 0952-14], received September 17, 2014.

543 Testimony that a Haitian immigrant gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

544 The Dominican Republic ratified the International Covenant on Economic, Social and Cultural Rights on January 4, 1978.

refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.[545]

579. The IACHR notes that the situations described above reflect *de jure* and *de facto* obstacles preventing children without documents from getting the same education that children with documents receive. As previously observed, the situation of structural discrimination, extreme poverty, and vulnerability which Haitian children face make it difficult for them to obtain identity documents, which in turn directly affects their right to education.

### c. Access to health services

580. The Commission takes note on the information provided by the State to the effect that basic medical care is administered free of charge at all public hospitals, regardless of one's nationality or migratory situation. The State also reported that the Dominican Republic spends approximately 18% of its health budget on health services to the migrant population. The State points out that if any official denies noncitizens access to public services, he or she "is acting in a personal capacity" and not in accordance with Dominican law.[546]

581. Notwithstanding the information provided by the State, the Commission was told that the right of migrants to receive medical care does not mean that they have access to health care in practice. In effect, migrants in an irregular migratory situation cannot avail themselves of the public health systems and, because of their economic circumstances, cannot afford to pay the costs of private health services. Haitian migrants informed the IACHR of situations in which they simply did not go to health facilities for fear of being turned away because they were Haitian, and of being denied medical treatment because they did not have identity documents.

> This problem has been difficult for me. I now have a nine-month-old daughter. If she gets sick, I don't have medical insurance. I don't know what to do.[547]

582. In the Commission's view, States have an obligation to respect the right to health of migrants, asylum seekers, and refugees. As was signaled by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, the Commission reaffirms the right of noncitizens, migrants in an

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545 Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). E.C.12/GC/20, July 2, 2009, para. 30. Citing General Comment No. 30 (2004) of the Committee on the Elimination of All Forms of Racial Discrimination, on non-citizens.

546 Dominican Republic. *Documento en relación a las Observaciones Preliminares de la visita de la IACHR a la República Dominicana, presentadas al Consejo Permanente el 19 de febrero de 2014.* Nota MP-RD-OEA 0742-14 [Document concerning the Preliminary Observations from the IACHR's visit to the Dominican Republic, presented to the Permanent Council on February 19, 2014, Note MP-RD-OEA 0742-14], received July 22, 2014.

547 Testimony that a Haitian mother gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 2, 2013.

irregular migratory situation, asylum seekers, and refugees to an adequate degree of physical and mental health, which means, *inter alia,* that States must refrain from denying or limiting equal access to preventive, curative, and palliative health services.[548]

583. The Commission also reminds that under international law, the principle of the international responsibility of the State in matters pertaining to human rights means that the State is responsible for the acts and omissions committed by its agents acting in their official capacity, even when those agents are acting outside the boundaries of their authority.[549] Thus, the State may incur international responsibility when the actions of its agents discriminate against persons on the basis of their nationality or migratory condition in terms of their access to public services like health.

### d. Violence and harassment by private parties against Haitian migrants

584. The information the Commission gathered during its visit suggests that many acts of violence and discrimination committed against Haitian migrants are the work of third parties or private citizens. The Commission considers it necessary to point out that the State's international responsibility can also be triggered when acts committed by third parties or private individuals that violate human rights are attributed to the State, due to the State's obligations to ensure that those rights are respected among individuals.[550] The State has an obligation to take reasonable measures of prevention and protection when it has or should have knowledge of a situation that poses a real and immediate risk or danger to a given individual or group of individuals.[551]

585. Noticeable here are the events that occurred in Loma de Cabrera, Dajabón, on November 15, 2013, where a crowd beat up Haitians and destroyed their homes supposedly in retaliation for the murder of a person who lived in that area. Furthermore, a number of Haitians complained of having been chased through the streets by people shouting "death to the traitors" and "get out, get out, get out".[552]

586. There are reports that subsequently, on November 22, 2013, a group of persons allegedly killed Mr. Coito Pierre, a Haitian national, in retaliation for the murder of a

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548 See Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*. E/C.12/2000/4, August 11, 2000, para. 34; CERD, General recommendation on discrimination against non-citizens. HRI/GEN/1/Rev.9 (vol. II), October 1, 2004, para. 36.

549 I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005. Series C, No. 134, para. 108; and *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para.111; IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 333.

550 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 334.

551 IACHR, *Report on Citizen Security and Human Rights,* OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 42

552 *Z Digital*. November 16, 2013. Golpean haitianos y les rompen viviendas y ajuares para echarlos del país; *Nuevo País*. November 17, 2013. Criollos se constituyen en turba para sacar haitianos de Loma de Cabrera.

Dominican couple in Neiba, Bahoruco province.[553] According to the information received, a wave of persecution against Haitians was unleashed in the wake of the couple's killing and a number of people reportedly requested protection from the authorities and sought refuge in police stations.[554] As a result of these reprisals many Haitians reportedly left the area and crossed the border into Haiti. Nevertheless, Haitian authorities announced that they would be investigating whether those deportations were in fact voluntary.[555]

587. However, representatives of the International Organization for Migration and the Jesuit Refugee and Migrant Service in Haiti denounced that the deportations were not voluntary and that many persons claimed to have been threatened to leave the country. The number of persons deported during those weeks is around 357, according to various news reports.[556] For its part, the Office of the Director General of Immigration reportedly issued a communique clarifying that there had been no mass deportations of Haitian citizens as a result of the incidents that occurred in the municipality of Neiba, Bahoruco province. According to that Office, 172 –not 347- Haitians had voluntarily requested the authorities' assistance in returning to Haiti following the outburst of violence along the border.[557]

588. The media also reported that on December 4, 2014, the residents of the community of Boruco in Valverde province had allegedly asked that the community's Haitian residents be removed, in retaliation for an attempted assault on a Dominican merchant who was seriously injured in the attack, which was blamed on a Haitian national. Residents of the community had gone to the homes of Haitians warning them that they didn't want illegal migrants there. They also asked the Immigration authorities and the Army to return the immigrants residing in the area to Haiti.[558]

589. On April 9, 2015, dozens of Haitian migrants were reportedly attacked and then expelled from the community of La Ortega, Espaillat province, as a reaction to the murder of a Dominican young man by the name of Carlos José Núñez Gómez. The Inter-American Commission had access to videos aired in the media and circulated on social networks showing the moment when a group of Dominicans shoved a Haitian woman to the ground, pinned her down and then beat her up as she lie immobile and defenseless. The videos also show how a Haitian man was harassed, cornered, had his hands tied, and had parts of his hair cut with a knife and a machete, as group of bystanders looked on. The individuals who perpetrated these

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553 *Listín Diario*. November 23, 2013. *Linchan a haitiano acusado de crimen*.

554 *Al Momento*. November 24, 2013. *Linchan haitiano por asesinato pareja RD*.

555 *Hora Cero*. November 24, 2013. *Cónsul haitiano preocupado por linchamiento de haitiano en Neiba*; *Acento*. November 26, 2013. *Haití condena el asesinato de un haitiano en República Dominicana*

556 *Hoy*. November 27, 2013. *Ya suman 357 haitianos repatriados por autoridades, según agencia internacional*; *El Día*. November 27, 2013. *Dominicana repatria más haitianos; ya suman 357*

557 *Hoy*. November 26, 2013. *Migración aclaró no se han producido deportaciones masivas de haitianos; lamentó incidente en Neiba*; *Listín Diario*. November 26, 2013. *Dirección General de Migración dice haitianos de Neyba y Jimaní regresaron voluntariamente*; Office of the Director General of Immigration/Facebook Page. November 26, 2013. *Migración dice retorno de haitianos de Neiba fue voluntario*; *Diario Dominicano*. November 26, 2013. *Haitianos regresan a su país por temor a represalias tras asesinato de pareja de esposos en Neiba, Migración niega repatriación*.

558 *El Nacional*, December 6, 2014. *Piden sacar haitianos de comunidad por agresión a dominicano*.

acts were armed with machetes, bats, sticks, belts, and other similar objects. There were also reports of Haitians' household belongings being destroyed. According to the information received, thereafter the National Police were said to have detained eleven people for having damaged property belonging to Haitians living in La Ortega.

590. The Commission notes with concern the fact that the violence in La Ortega was said to have occurred amid a climate of mounting hostility toward Haitians, Dominicans of Haitian descent, or persons perceived as such, generated following the publication of Judgment TC/0168/13. Among some of the disturbing events was one on February 11, 2015, where the lifeless body of a Haitian man was founding hanging from a tree in one of Santiago's public parks, allegedly the victim of a xenophobic homicide.[559] As a consequence, in late February, protests were staged in Haiti and the Dominican Republic demanding justice for the lynching of the Haitian national, and denouncing the growing anti-Haitian sentiment in the Dominican Republic.[560] Then, in late March, two Dominican youth of Haitian descent were physically assaulted by truck drivers in Barahona for "being Haitian."[561]

591. Likewise, the Commission has also been disturbed by the recent statements made by civil organizations like the "*Antigua* Orden *Dominicana*" and the "*Movimiento Patriótico Independiente*", among others, which have issued calls to patrol communities nationwide[562] and use slogans like "we demand mass deportation of Haitians" and "oust the Haitians from the homeland."[563]

592. As the IACHR called for in Press Release 42/15 of April 29, 2015, Dominican authorities should publicly condemn the acts of violence and racial discrimination against Haitians, Dominicans of Haitian descent or people perceived as such in the Dominican Republic, and implement measures aimed at promoting a peaceful co-existence with foreigners, particularly those of Haitian origin.[564] The Commission is also urging the Dominican State to take all measures necessary to guarantee the rights to life and to personal integrity of all persons under its jurisdiction, including migrants and without distinction based on nationality, particularly any Haitian migrants who may find themselves in danger because of the actions of third parties or private individuals.

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559 *Listin Diario*. February 12, 2015. *Matan a un haitiano y cuelgan su cadáver en un parque en Santiago*; *Diario Libre*. February 11, 2015. *Hallan haitiano colgado de un árbol en parque Ercilia Pepín de Santiago*; *Noticias SIN*. February 11, 2015. *Encuentran haitiano colgando en parque de Santiago; fue atado de pies y manos.*

560 *Listín Diario*. February 25, 2015. *Marcharán hoy en Haití contra supuesto racismo*.

561 *Acento*. March 24, 2015. *Denuncian miembros de Sinchomiba agreden dominicanos por tener "tez oscura"*

562 *Antigua Orden Dominicana*. January 19, 2015. *Movimiento nacionalista recluta jóvenes para "defender soberanía" en República Dominicana*.

563 *Acento*. February 27, 2015. *Nacionalistas piden muerte de Danilo Medina acusándolo de "traidor a la patria"; Poder Latino*. February 27, 2015. *Nacionalistas piden muerte de Danilo Medina acusándolo de "traidor a la patria"*.

564 IACHR, Press Release No. 42/15 - IACHR Expresses its Deep Concern over the Acts of Violence in the Dominican Republic. Washington, D.C., April 29, 2015.

## 1. Immigration operations and due process: detention and deportation

593. The Inter-American Commission cannot fail to mention that during its visit, it received disturbing information on the way in which immigration operations are conducted, their purpose being to expel Haitians and Dominico-Haitians from Dominican territory. Various international organizations [565] and civil society organizations[566] have reported on the policy that the Dominican Republic has employed at various times in its history and that has resulted in the deportation of thousands of Haitians or persons perceived as such.[567]

> When there's any doubt about a dark-skinned person who is suspected of being Haitian but has a Dominican identity card, we investigate and determine whether the card is genuine.[568]

594. In the course of the immigration operations, State agents stop buses traveling in the provinces near the border, looking for anyone in an irregular migratory situation. The information provided by the Office of the Director General of Immigration in Jimaní and by CESFRONT indicates that passengers' documents are checked to ensure that the passengers have valid visas, in response to the increase in the number of Haitian networks dedicated to falsifying documents to enable Haitian nationals to enter the Dominican Republic without following the established legal procedures.

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565 UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall*, *Addendum, Mission to the Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, para. 91.; UNHCR and Human Rights Watch: *Illegal people: Haitians and Dominico-Haitians in the Dominican Republic.* April (2002), p. 12; Amnesty International. *Dominican Republic: A life in transit - the plight of Haitian migrants and Dominicans of Haitian descent.* March (2007) London, p. 15; UN, Committee on the Elimination of Racial Discrimination, 72nd session. *Consideration of Reports Submitted by States Parties under Article 9 of the Convention. Concluding Observations of the Committee on the Elimination of Racial Discrimination. Dominican Republic,* CERD/C/DOM/CO/12, May 16, 2008, para. 16; UN, Commission on Human Rights, 62nd session, *Advisory Services and Technical Cooperation in the Field of Human Rights. Situation of Human Rights in Haiti. Report prepared by the independent expert, Louis Joinet.*, E/CN.4/2006/115, January 26, 2006.

566 VOYNEAU, Sébastien. *République Dominicanaine: le traitement infligé aux haïtiens et aux Dominicanains d'origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33. p. 2; FERGUSON, James. *Migration in the Caribbean: Haiti, the Dominican Republic and beyond.* Minority Rights Group International. London, United Kingdom, 2003, p.17.;; Human Rights Watch: *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*, April 4, 1992; International Human Rights Law Clinic, Boalt Hall School of Law, University of California at Berkeley, *Unwelcome Guests: a study of expulsions of Haitians and Dominicans of Haitian descent from the Dominican Republic to Haiti,* 2002.

567 IACHR, Merits Report No. 64/12, Case 12,271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, para. 124.

568 Testimony of a CESFRONT soldier as told to the IACHR in Jimaní, Dominican Republic, December 4, 2013.

595. The State also indicated that those persons whom immigration control finds to be in possession of an irregular or falsified document, or without documentation at all, are immediately deported within a period that can range from 15 minutes to a half hour. They point out that in cases where smuggling of persons or human trafficking is suspected, CESFRONT gives the Office of the Director General of Immigration "a few hours" to check the document before expelling the person from Dominican territory.[569]

596. According to CESFRONT authorities, the checkpoints into Dominican territory close every day at 7:00 p.m. If irregular migrants are detected after that hour, they are held in the CESFRONT offices and later handed over to the authorities with the Office of the Director General of Immigration in Jimaní or Dajabón for deportation during the border checkpoints' operating hours.

597. With regard to the work that CESFRONT performs along the border between the Dominican Republic and Haiti, the Commission is reminded of the Recommended Principles and Guidelines on Human Rights at International Borders, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which establish the obligation of States to protect, respect, and fulfill human rights of all migrants at international borders.[570] In the Commission's view, the border authorities must have an adequate knowledge of their obligations under human rights law, especially with regard to the rapid and accurate identification and referral of migrants who may be at particular risk at international borders.

598. The testimony and information received from civil society indicates that the identity checks that trigger deportations are not based on a person's documents, but rely instead on racial profiling, using a phenotypical criterion "of looking Haitian." As a result, immigration officers simply observe how a person walks, his or her lifestyle, and skin color to determine whether he or she is Haitian or of Haitian descent.[571]

599. There are also reports that, in the course of conducting immigration operations, State agents actually visit communities predominantly populated by Haitian migrants and enter the homes without any authorization or prior notification. During these collective deportation round-ups or sweeps, no one is given the opportunity to show one's identity papers or prove one's immigration status. Acts of physical and psychological aggression have also been reported.[572]

600. Thus, for example, according to information that is public knowledge, a Haitian migrant died on May 23, 2013, allegedly from blows administered by agents from

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569 Information that agents of the Dominican State provided at the meeting with the IACHR in Jimaní, Dominican Republic, December 4, 2013.

570 OHCHR, Recommended Principles and Guidelines on human rights at international borders.

571 Information that civil society provided at its meeting with the IACHR, held in Santo Domingo, Dominican Republic, December 3, 2013; VOYNEAU, Sébastien. *République Dominicaine: le traitement infligé aux haïtiens et aux Dominicains d'origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 6.

572 Submission presented by the *Coalición por los Derechos de las personas Migrantes* (CDPM) on the occasion of the Universal Periodic Review. *Derechos de las Personas Migrantes en República Dominicana. June 2013*.

the Office of the Director General of Immigration and the police, during a mass-deportation round-up in the "El Tanque" neighborhood, Juan Dolio, province of San Pedro de Macorís.[573] In this respect, the Inter-American Commission reiterates the statement it made in its Press Release 42/13 of June 12, 2013, to the effect that in any immigration control action, States have the obligation to ensure that their authorities respect the rights to life and to physical and psychological integrity of all persons, regardless of their migratory situation.[574]

601. Given the reports to the effect that immigration operations in Dominican territory tend to rely on racial profiling in the case of migrants, who are detained on the basis of subjective and discriminatory criteria such as skin color, physical appearance, or social condition, the Commission must underscore the fact that it has defined the use of racial profiling as a repressive tactic taken supposedly for the sake of public safety or protection but that is based in fact on stereotypes of race, color, ethnicity, language, descent, religion, nationality, or place of birth, or a combination of these, not on objective suspicions.[575] Because this policy or practice may be based on discrimination and stereotypes, the Commission believes that it violates the principle of equal protection recognized in Article 24 of the American Convention.[576]

602. Elaborating, in its cases of "Nadege Dorzema *et al.*"[577] and "Expelled Dominicans and Haitians,"[578] both of which were against the Dominican Republic, the Commission found that:

> [i]n the context of the application of immigration laws, the fundamental right to equal protection and to non-discrimination obligates the States to ensure that its policies and enforcement of the law are not unjustifiably aimed at certain individuals based on their ethnic or racial features such as color of the skin, accent, ethnicity, or particular area of residence known for having a specific ethnic population.

603. In its turn, in the Case of the Expelled Dominicans and Haitians, the Court stated the following:

> It is obvious that the way in which the presumed victims were deprived of their liberty by the State agents indicates that this was due to racial profiling related to the fact that they apparently belonged to the group of Haitians or

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573 Amnesty International. May 31, 2013. *Murder of a Haitian migrant during deportation must motivate the Dominican government to finally respect its international obligations; Diario El Día.* March 29, 2013. *Muere inmigrante haitiano golpeado por agentes de migración.*

574 IACHR, June 12, 2013. *IACHR Condemns Death of Haitian Immigrant at Hands of State Agents in the Dominican Republic.*

575 IACHR, Report No. 26/09 (Admissibility and Merits) Case No. 12,440, Wallace de Almeida (Brazil), March 20, 2009, para. 143.

576 IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 485.

577 IACHR, Application filed with the Inter-American Court of Human Rights, Case No. 12,688, Nadege Dorzema *et al.:* The Guayubín Massacre (Dominican Republic). February 11, 2011, para. 205.

578 IACHR, Merits Report No. 64/12, Case 12,271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, paragraphs 261-274.

> Dominicans of Haitian origin or descent (…) which is evidently unreasonable and therefore arbitrary ….[579]

604. The Committee for the Elimination of Racial Discrimination has recommended to the States Parties that they take the measures necessary to prevent racial profiling by their authorities.[580] The Committee has also expressed concern over the practice of identity checks and police raids carried out on the basis of ethnic and racial profiling in public places and neighborhoods with high concentrations of foreigners, with the aim of arresting anyone in an irregular situation in the State party. The Committee has therefore urged the States to take effective measures to end the practice of identity checks based on ethnic and racial profiling.[581]

605. When the persons detained in immigration operations are not immediately deported, they are held and then collectively boarded onto a truck (women, children and men together) and taken to the Haina Immigration Detention Center in San Cristóbal province or, if that facility is too far away, to criminal detention centers operated by the National Police or the Armed Forces in border areas.

606. The Commission had an opportunity to visit the Haina Immigration Detention Center. Even though no one was being held there at the time, the Commission was able to observe the center's deplorable hygienic and health conditions. Haitian migrants detained there have reported overcrowding, a lack of food and water, the indefinite duration of their detention, and the impossibility of getting legal or consular assistance and of challenging the legality of their detention before a court of law.

607. The IACHR was told that Haitian migrants who do not have their own funds to negotiate their release or someone to pay for them, are boarded onto buses outfitted with bars and taken to the Dominican-Haitian border, where they are expelled from the country without any deportation order or proceeding. The buses that carry the migrants to the Dominican-Haitian border are crowded with people, posing a dangerous safety risk. These people are not given anything to eat or drink; no stops are made for bathroom breaks during the trip, which can last as long as 6 hours.[582]

608. On the matter of immigration detention in the Dominican Republic, the Commission considers that in order to observe the guarantees provided for in Article 7 of the American Convention, Member States must establish immigration policies, laws, protocols and practices premised on a presumption of liberty –the migrant's right to remain free while his or her immigration proceedings are pending- and not a

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579 I/A Court H.R., *Case of the Expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 368.

580 Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system. A/60/18, 2005, para. 20.

581 Committee on the Elimination of Racial Discrimination, Concluding Observations: Spain. 78th session, CERD/C/ESP/CO/18-20, March 10, 2011, para. 10.

582 Centro Bonó. *¿Qué es el Centro de Detención de Haina?* Observatorio de Derechos Humanos. January-September 2013, Santo Domingo, Dominican Republic; Amnesty International, *Dominican Republic: A life in transit - the plight of Haitian migrants and Dominicans of Haitian descent.*

presumption of detention.[583] As the Commission previously held that the standard for the exceptionality of pre-trial detention must be even higher in the case of immigration detention because immigration violations ought not to be construed as criminal offenses.[584]

609. The Commission concurs with the United Nations Special Rapporteur on the Human Rights of Migrants where he wrote that "irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security."[585] The Commission deems that the fact that a migrant's situation in a country is irregular does not represent an attack on any basic right that must be protected through exercise of the State's punitive authority.[586]

610. Therefore, with respect to the immigration detention practices used in the case of Haitian migrants in the Dominican Republic, the Commission is compelled to again point out that "international standards establish that detention must be applied only as an exceptional measure and after having analyzed the necessity in each case. In all cases, states must avoid prolongation of the detention, and must ensure that it is as brief as possible."[587] The multiple effects that deprivation of liberty can have on the rights of persons explain why States should only use such measures as a last resort. Furthermore, in addition to the effects that immigration detention can have on the right to personal liberty, one also has to consider that detention can frequently have serious consequences for a detained migrant's personal integrity and his or her physical and mental health.[588]

611. The Commission has observed that based on the case law of the organs of the Inter-American System on the right to personal liberty, the following standards apply in the case of immigration detention: i) immigration detention must be the exception and not the rule; ii) consequently, the fact that an migrant is in an irregular situation is not, by itself, sufficient grounds to order his or her immigration detention on the assumption that the person will not comply with the legitimate ends that an immigration proceeding serves; iii) the legitimate and permissible ends of immigration detention must be procedural in nature, such as ensuring the migrant's appearance for the proceeding at which his or her immigration status will be determined or to ensure enforcement of a deportation order; iv) even when there

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583 See, IACHR, Admissibility and Merits Report No.51/01, Case 9903, Rafael Ferrer-Mazorra *et al.* ("The Mariel Cubans") (United States). April 4, 2001, para. 219; IACHR, Resolution O3/08, Human Rights of Migrants, International Standards and the Return Directive of the EU. July 25, 2008, p. 2; and IACHR, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II. Doc. 78/10, December 30, 2010, para. 39.

584 IACHR, *Report on Immigration in the United States: Detention and Due Process,* OEA/Ser.L/V/II., Doc. 78/10, December 30, 2010, para. 38; IACHR, *The human rights of migrants and other persons in the context of human mobility in Mexico.* OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 417.

585 United Nations General Assembly – Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau*. 20th Session, April 2, 2012, para. 13.

586 IACHR, *The human rights of migrants and other persons in the context of human mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 427.

587 IACHR, *Human Rights of Migrants, International Standards and the Return Directive of the EU.* Resolution No. 03/08, July 25, 2008, p. 2.

588 IACHR, *The human rights of migrants and other persons in the context of human mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 428.

are procedural ends to be served, immigration detention must be absolutely necessary and proportional, in the sense that there must be no less onerous means of achieving the procedural end being sought and it must not disproportionately affect the right of personal liberty; v) all the foregoing elements require case-by-case analysis based on fact not assumptions; vi) immigration detention must be ordered for the time strictly necessary to achieve the procedural end, which also means periodic review of the factors that prompted the detention; and vii) immigration detention for an unreasonable period of time is arbitrary and abusive.[589]

612. Another complaint to the IACHR concerned the forced separation of families, by not giving those affected with the opportunity of making arrangements to travel with their wives and children, or to have their families with them at all. In some cases, they were not permitted to gather even the least in the way of belongings to take to Haiti, as they had to obey the order to remain on the bus or "suffer the consequences." In other cases, the haste with which the deportations were effectuated made it impossible for those being deported to collect their wages or claim other job benefits.[590]

613. Migrants are left at the border and ordered to cross it on foot. Normally they arrive in Haiti with little or no money and without any luggage; they have only the clothes on their back and may be forced to beg for food and a place to stay.[591] The Commission observes that there are no reports of other undocumented migrants from other nationalities being detained and expelled in the same manner as Haitian migrants.

614. The IACHR highlights that a summary deportation of the kind described by both the State and by civil society has severe consequences, especially when the factor of national origin is compounded by others like gender and age. The United Nations Committee on the Rights of the Child expressed concern over the fact that 881 children were deported to Haiti in 2013, and that no information was made available on the circumstances of their deportations and the due process procedures that must be followed.[592]

615. In the case of immigration detention involving children, the European Court of Human Rights has written that even detention for short periods of time is a violation of the prohibition against torture and other inhumane and degrading treatment; a child's vulnerability and best interests are the primary consideration over the Government's interest in stemming irregular immigration.[593] The United Nations Rapporteur on Torture and other cruel, inhuman or degrading treatment or

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589 IACHR, *The human rights of migrants and other persons in the context of human mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 458.

590 United Nations, Report of the Independent Expert on the situation of human rights in Haiti: Forced returns of Haitians from third state, Michel Forst. Human Rights Council, Twentieth session, A/HRC/20/35/Add.1, 4 June 2012, para. 64; IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1991*. OEA/Ser.L/V/II.81 Doc. 6 rev. 1, February 14, 1992. Chapter V: Situation of Haitians in the Dominican Republic.

591 Human Rights Watch, *Illegal People, Haitians and Dominico-Haitians in the Dominican Republic*.

592 United Nations, Committee on the Rights of the Child. *Concluding observations on the combined third to fifth periodic reports of Dominican Republic*. Adopted by the Committee at its sixty-eighth session (12-30 January 2015). CRC/C/DOM/CO/3-5. 4 February 2015, para. 63.

593 ECHR, *Popov v. France*, judgement of 19 January 2012; *Rahimi v. Greece*, judgement of 5 April 2011; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, judgement of 12 October 2006.

punishment has written that "within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children." [594]

616. As for the treatment of unaccompanied and separate children outside their country of origin, the Committee on the Rights of the Child has stated that a determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities, and protection needs.[595]

617. The information received and discovered during the Commission's visit is consistent with respect to the *modus operandi* that the Dominican authorities have followed in recent decades in their collective deportations of Haitians and Dominicans of Haitian descent to Haiti. It has been said in this regard that when these deportations occur, neither due process is guaranteed nor is there any judicial oversight,[596] deportees are not allowed to speak with relatives or family members, mistreatment and abuse by the authorities - who confiscate or destroy legal identification documents or never even ask that those documents be shown, even though such documents might confirm a deportee's legal status in the Dominican Republic, either as residents, tourists, temporary workers, or relatives of Dominican citizens.[597]

618. For its part, the Inter-American Court observed that "[t]he Dominican Republic has deported Haitians and Dominicans of Haitian origin irrespective of their migratory status in the country. In such cases, the decisions have been taken without any prior investigation procedure. In some cases in the 1990s, these deportations included many thousands of persons."[598]

619. The Committee against Torture has observed that States must not expose individuals to the danger of torture or cruel, inhuman, or degrading treatment or punishment upon return to another country by way of their extradition, expulsion,

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[594] UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Human Rights Council, A/HRC/28/68, 5 March 2015, para. 80.

[595] General Comment No. 6, Committee on the Rights of the Child, *Treatment of unaccompanied and separated children outside their country of origin,* 39th session (2005), U.N. Doc. CRC/GC/2005/6, September 1, 2005, para. 20

[596] Amnesty International. *Dominican Republic: A life in transit - the plight of Haitian migrants and Dominicans of Haitian descent,* March (2007) London, pp. 7-9, 11 and 17.

[597] VOYNEAU, Sébastien. *République Dominicaine : le traitement infligé aux haïtiens et aux Dominicains d'origine haïtienne, une discrimination institutionnalisée ?* OBSERVATOIRE DES AMÉRIQUES. Montreal, Canada. October 2005 No.33, p. 5. See, also, UN, Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Addendum, Mission to the Dominican Republic*, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008, p. 24.; Amnesty International. *Dominican Republic: A life in transit - the plight of Haitian migrants and Dominicans of Haitian descent.* March (2007) London, pp. 7-9.

[598] I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 109(10).

or *refoulement*.[599] States must therefore ensure that persons who have any role in immigration proceedings where a person's deportation is at stake, must be properly trained, both personally and professionally, so that they are able to identify the special international protection that a person facing deportation, refugees, or asylum seekers may require in application of the principle of *non-refoulement* recognized in Article 22(8) of the American Convention.

620. In the Universal Periodic Review conducted in February 2014, 19 States[600] expressed a number of concerns with respect to the way in which the Dominican Republic conducts its immigration policy with respect to migrants of Haitian nationality. Generally speaking, the recommendations ask Dominican State to adopt public policies to combat the racial discrimination that Haitian migrants encounter, as well as to end the collective and arbitrary deportations of migrants, and to guarantee that their human rights are respected in all deportation procedures.[601]

621. The Inter-American Commission is troubled by the fact that for so many Haitian migrants the deportation process is swift and offers them little or no access to legal or consular representation; their right to a hearing before a competent judge, to make their legal or other arguments to support their continued presence in the Dominican Republic, is not being observed. And all this occurs against a backdrop of discrimination based on racial profiling, which only exacerbates the vulnerable condition that is the plight of Haitian migrants in Dominican territory.

### 3. National Plan to regularize the status of foreigners in an irregular migratory situation

622. Pursuant to judgment TC/0168/13, in Decree No. 327-13 of November 29, 2013 the Executive Power issued the National Plan to regularize the status of foreigners in an irregular migratory situation in the Dominican Republic (hereinafter the "Regularization Plan"). Under that decree, the following persons may apply for regularization:

> Article 8. Persons subject to regularization. Any foreigner living in the country may apply for the Plan if:
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> 1. He or she has entered the national territory in an irregular manner, in violation of the provisions of the Dominican Republic's immigration laws and regulations, and has remained in the country under the terms and conditions stipulated in this Plan;

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599 Human Rights Committee, General Comment 20.

600 Recommendations made by: Morocco, Paraguay, Slovenia, Spain, Uruguay, Vietnam, Angola, Australia, Belgium, Bolivia, Brazil, Canada, Ecuador, Egypt, Guatemala, Indonesia, Mexico, Somalia and Colombia.

601 Universal Periodic Review. February 5, 2014. *Recommendations to Dominican Republic.*

> 2. He or she has entered the Dominican Republic legally, in compliance with the immigration requirements established in the laws and regulations, and his or her status has become irregular as a result of:
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> a. Having overstayed the period of time he or she was authorized to remain in the national territory, under the terms and conditions stipulated in this Plan;
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> b. Having violated the conditions under which he or she was admitted or the conditions of his or her presence on Dominican territory, under the terms and conditions stipulated in this Plan.
>
> Paragraph. To those persons born within the territory of the Dominican Republic of foreign parents in an irregular migratory situation and who are not entitled to Dominican nationality under the laws now in force, they will have the possibility to apply to a special naturalization process for non-resident children of foreign mothers, provided they are listed in the Civil Registry.

623. The Commission acknowledges and appreciates the efforts made by the Dominican Government to provide those who are not legally within its territory with documentation and a regularized migratory status. The Commission is aware of the provisions of the Regularization Plan and has taken note of the statements made by the Director General of Immigration, José Ricardo Taveras, who said that repatriations or deportations would be suspended under Decree 327-13, until the Regularization process has been completed.[602]

624. However, the IACHR is concerned by events like those that happened on January 27, 2015, when 51 persons were deported to Haiti. They included 28 children said to have been born in the Dominican Republic, 14 women –some of whom were the children's mothers, another 14 Haitian migrants, and Isabella Pomares, a 74-year-old Spanish nun. The information available to the Commission indicates that these people were on their way to the San Juan de la Maguana province to be registered, in keeping with the procedures prescribed in Law 169-14 or in the Regularization Plan, as the case may be.[603]

625. According to what was reported, the group was detained by a military control patrol some 20 kilometers from San Juan de la Maguana province, near the offices that process the applications for naturalization and regularization. They were then taken to the Office of the Director General of Immigration in Elías Piña province. It is alleged that the authorities at the Office of the Director General of Immigration ordered their immediate expulsion to Haiti, without the proper, individualized analysis of their cases. The information the Commission has available suggests that on January 28, 2015, the group had been given authorization to return to Dominican territory.[604] That information also indicates that similar events had occurred in

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602 *Diario Libre*. December 12, 2014. *Migración dice que las deportaciones están suspendidas*.

603 Amnesty International. January 28, 2015. *Urgent Action: Mass Deportation in the Dominican Republic; El día*. January 28, 2015. *Amnistía Internacional denuncia deportación de niños nacidos de madres haitianas en RD*.

604 *El Nacional*. January 29, 2015. *Regresa RD un grupo deportado hacia Haití*; *El Nuevo Diario*. January 31, 2015. *Migración explica las razones por las que devolvieron a niños y monjas a Haití*.

January 2015, despite the fact that the Regularization Plan stipulated that persons who applied for regularization could not be deported until the process was completed.[605]

626. The IACHR points to the statements made by President Danilo Medina, who has said that deportations would resume once the period for applying for the Regularization Plan is over, which is on June 17, 2015.[606] For his part, the Director of Immigration reported that his office is ready to begin deporting Haitians again once the time period allowed under the Regularization Plan is over.[607]

627. The Commission welcomes the public statements made by President Danilo Medina and Foreign Minister Andrés Navarro after the period for signing up for the Regularization Plan had expired, to the effect that any necessary deportations would be handled "with full respect for human rights"; that the government "will not deport a single Dominican," and that "all the guarantees necessary for protection of human rights will be afforded when the Immigration Law is once again regularly applied and all those who did not apply for the Plan are deported back to their country of origin." The IACHR also welcomes the measures taken by the Dominican State under the Regularization Plan, in which 288,486 foreign nationals applied to have their immigration status in the Dominican Republic regularized. It also appreciates any measures taken to ensure that the majority of these individuals will quickly obtain regular immigration status and the documentation to prove it.[608]

628. In that connection, in its observations on this report, the Dominican State said that by the final day for registration under the Regularization Plan 288,486 people had applied to regularize their status. In other words, 69% of the foreigners residing in the country, according to the National Immigrant Survey (ENI) conducted in 2012, had registered. The State also told the Commission that "more than 90% of those who had registered were Haitian nationals and that a significant proportion of them did not have a passport. Faced with the reality that the greatest negative impact of not having such a document is felt by the person who lacks it, the Dominican Government decided that even those applicants who did not have a passport should be granted temporary status for one year while they obtained their Haitian national identity document."[609]

629. According to information furnished by the State, it had allowed "the enrollment in its Regularization Plan of those who had registered with the Haitian Government's

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605 *Acento*. January 15, 2015. *Denuncian haitianos son tirados a su suerte en la frontera en medio del Plan de Regularización*.

606 *Diario Libre*. April 11, 2015. *Medina dice a Ban Ki-moon no habrá más prórroga del Plan de Regularización*.

607 *El Nacional*. April 14, 2015. *Migración está lista para deportar haitianos*.

608 Dominican Republic, *Discurso de Danilo Medina, Presidente de la República Dominicana, en el marco de la XLV Cumbre del Sistema de Integración Latinoamericano (SICA)* [Address delivered by Danilo Medina, President of the Dominican Republic, at the XLV Summit of the Latin American Integration System (SICA)]. Guatemala, June 26, 2015.

609 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 13.

PIDIH program and were waiting to be issued a passport. As of December 1, 2015, 184,816 foreigners had been issued a document or visa in line with their regularization request."[610] With those measures, 239,956 of the 288,486 who had registered with the Regularization Plan received a positive response to their regularization application. The remainder corresponded to those whose applications were not completed with an identity document issued by the country of origin or which, following a thorough comparison, were determined to be duplicates.[611]

630. The State also said that given the effort that gone into the Regularization Plan, which "had cost the Dominican state and people millions of dollars, the marginal importance that the IACHR had ascribed to that fact in its report was truly surprising. Although it mentions and recognizes it, upon addressing the question of immigration in the Dominican Republic its emphasis was on issues that had already been disposed of, such as the matter of collective expulsions, which are not carried out in the country owing to the progress that had made in that regard in terms of individualizing deportation processes, including making a record of the fingerprints of those who had benefited from the Regularization Plan, which prevents them from being repatriated. In its report, the IACHR preferred to repeat old accusations, rather than highlight what a small country do to tackle such a thorny problem as this as an example for other countries around the world."[612]

631. In turn, the Dominican State reiterated "its commitment to observance of the rules of administrative due process in repatriating foreigners in the country irregularly, in accordance with the Constitution and laws. Indeed, a large variety of agencies and entities have seen for themselves the significant investment that the Dominican Government has made to improve detention centers and transportation, as well as in providing training for personnel responsible for those tasks."[613]

632. The Commission has consistently maintained that collective expulsions are against international law.[614] The Rapporteurship on the Rights of Migrants has observed in this regard that although collective expulsion is not defined in any international instrument, expulsions become collective when the decision to expel is not based on individual cases but on group considerations, even if the group in question is not

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610 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 13.

611 *Ibid*., p. 13.

612 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 14.

613 Dominican Republic, Permanent Mission of the Dominican Republic to the Organization of American States. *Note MP-RD-OEA 1395-15: Note enclosing the Note of the Ministry of Foreign Affairs containing the observations of the Dominican State on the draft "Report on the Situation of Human Rights in the Dominican Republic."* December 21, 2015, p. 14.

614 IACHR, *Annual Report of the Inter-American Commission on Human Rights, 2000: Second Progress Report of the Rapporteurship on Migrant Workers and Members of Their Families.* OEA/Ser./L/V/II.111 doc. 20 rev., April 21, 2000, para. 97.5.

large.[615] Therefore, given the prohibition established in Article 22(9) of the Convention, States have an obligation to examine, justify, and decide each expulsion or deportation on a case-by-case basis.

633. The Commission has also held that collective expulsions involve multiple violations of the human rights of migrants. The summary manner in which collective expulsions are conducted is such that Dominican nationals, residents, or persons in need of international protection –many of whom are children- also end up being expelled.[616]

634. The Commission is also concerned with regards to the plight of persons born on Dominican soil who have no birth certificate, and who under Law 169-14, they had to first to apply for a special program to obtain a residency permit and then apply for citizenship throughout a naturalization process. According to what the State reports, the deadline for applying for that program was February 1, 2015, by which time only 8,755 persons had signed up, despite estimates that between 110,000 and 145,000 should apply.[617]

635. This means that persons who have been unable to apply for the program will lose any possibility of someday receiving Dominican citizenship. To make matters worse, they will be ineligible for the Regularization Plan, since these are not foreign nationals who entered Dominican territory under the conditions specified in Article 8 of the Regularization Plan.

636. The Commission observes that the Human Rights Committee has expressed its concern over the continuing reports of mass expulsions of persons of Haitian origin, even when such persons are nationals of the Dominican Republic. It also wrote that mass expulsions of non-nationals is in breach of the International Covenant on Civil and Political Rights and that the State should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings enjoy the guarantees established in the Covenant.[618]

637. The IACHR recognizes the efforts the Dominican State has made to publicize and encourage access to the Regularization Plan, which is vital to remedying the vulnerable condition in which migrants with an irregular migratory states and their families have lived with in the Dominican Republic for years. The Commission also welcomes the orientation programs and advertising campaigns as best practices

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615 IACHR, Merits Report No. 64/12, Case 12,271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, para. 253.

616 IACHR, Merits Report No. 64/12, Case 12,271, Benito Tide Méndez *et al.* (Dominican Republic). March 29, 2012, para. 254.

617 *Listin Diario*. February 3, 2015. *Suman 8,755 los extranjeros inscritos para naturalización*; Amnesty International. January 30, 2015. *Dominican Republic: No more hope for tens of thousands stateless and at risk of expulsion if residence deadline expires; Hoy*. January 30, 2015. *La reacción de Amnistía Internacional ante vencimiento plan naturalización*.

618 UN, Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Dominican Republic*, CCPR/CO/87/DOM, April 26, 2001, para. 16.

introduced in the Regularization Plan's implementation.[619] Nevertheless, with the announced resumption of deportations now that the deadlines set in the Regularization Plan have passed, the Inter-American Commission is urging the Dominican State to guarantee immigration due process for any migrant who may be caught up in a process leading to his or her deportation. The Commission again points out that Article 22(9) of the American Convention flatly prohibits collective deportations. Finally, in keeping with its obligations under the American Convention, the Commission calls upon the State to take all measures necessary to guarantee that no person born on Dominican soil be deported.

i. Trafficking in persons

638. With respect to trafficking in persons, the Commission believes it necessary to recognize the importance of the creation in 2013 of the Specialized Prosecution Unit against Smuggling of Migrants and Trafficking in Persons (*Procuraduría Especializada contra el Tráfico de Migrantes y Trata de Personas*).[620] The Commission expresses concern at the prevalence of trafficking of Haitian children for forced labor. In the same way as the Committee on the Rights of the Child has done, the Commission is concerned about the situation of Haitian children from poor families who are given up for adoption to Dominican families, and who then end up working for those families in conditions akin to slavery, a practice known in Haiti as "*restavek."* Likewise, the Commission is deeply troubled by reports of the general impunity attached to child trafficking, as shown by the low number of prosecutions and convictions for this serious crime. The Commission also notes the lack of adequate rehabilitation programs for child victims of trafficking[621].

639. The American Convention establishes an absolute and non-derogable prohibition against slavery, servitude, trafficking in women, and the slave trade in all their forms. Under Article 6(2), no one shall be required to perform forced or compulsory labor. In addition, article 27 (2) provides that the prohibition of slavery, servitude, and trafficking in persons is one of the fundamental human rights that cannot be suspended by states "[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party."[622]

640. For the purpose of determining the scope of trafficking in persons within the inter-American system, the Commission is of the view that the provisions contained in

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619 *Diario Libre*. February 12, 2015. *Inician un plan de orientación a haitianos indocumentados*; Office of the President of the Republic: *Sin ninguna maldá*. Video; *Mwen byen nan peyi dominiken*. Video; *Me siente bien aquí*. Video; *El paí me ha pueto gente*. Video; *Yo nunca recibí maltrato*. Video; *Sin problème, sin bull*a. Video; *Ya tengo mis papeles*. Video; *El que no etá legal no puede tá en paí*. Video

620 Office of the Prosecutor General of the Republic (*Procuraduría General de la República*), Resolution 1, paragraph 3, of the Third Session of the Superior Council of the Public Prosecution Service (*Ministerio Público*). 4 de febrero de 2013.

621 Committee on the Rights of the Child, *Concluding observations on the combined third to fifth periodic reports of the Dominican Republic*. 6 March 2015, para. 69.

622 See, IACHR, Report No. 169/11, Case 12,066, Merits, *Fazenda Brasil Verde Workers*, Brazil, November 3, 2011, par. 123; see also IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. 2013, par. 344; and IACHR, *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*. OEA/Ser.L/V/II. Doc. 58, 2009, par. 55.

Article 6 of the American Convention should be interpreted in the light of the definition of trafficking in persons contained in Article 3.a of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), also known as the "Palermo Protocol." The definition of trafficking in persons set out in the Palermo protocol encompasses three elements: (1) acts, (2) means, and (3) purpose. The Palermo Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.[623]. The Dominican Republic ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on February 5, 2008.

641. In addition to the foregoing, the Palermo Protocol provides that the consent of a victim of trafficking in persons to any of the forms of exploitation set forth therein shall be irrelevant where any of the means set forth in Article 3 have been used. As for the trafficking of children and adolescents, the Protocol provides that recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of Article 3.

642. Trafficking in persons, servitude and forced labor often entail violations of other fundamental human rights under the American Convention, the Convention of Belém do Pará, and other instruments of the universal system of human rights. Those fundamental rights include the right to life, the right to humane treatment, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and personal security, protection of one's honor and dignity, freedom of expression, the rights of the child, the right of women to a life free of violence, the right to private property, equal protection and access to justice.[624]

643. Trafficking in persons is a violation of multiple human rights and an offense to the dignity and integrity of its victims. It remains a continuing violation until such time as the victim is free. The means through which human trafficking is perpetrated leave the victim utterly defenseless, which leads to other related violations. Human trafficking is particularly serious when it is part of a systematic pattern or a practice that is applied or tolerated by the State or its agents. The Palermo Protocol underscores the need for a holistic approach to combat the trafficking in persons,

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623 Protocol to Prevent, Suppress and Punish Trafficking in Persons, and Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3.a.

624 See IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. 2013, par. 350; y CIDH, *Informe sobre Comunidades Cautivas: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*. OEA/Ser.L/V/II. Doc. 58, 2009, par. 58.

one that includes measures to prevent trafficking and to protect victims and survivors, as well as measures to punish the traffickers.[625]

## *D. Conclusions and recommendations*

644. The information the IACHR gathered during its visit and thereafter exposes a number of contradictions in the laws governing the Dominican immigration regime and its enforcement by agents of the State. Immigration operations based on racial profiling and summary and collective deportations of Haitian migrants, regardless of their migratory condition, are the Commission's main concerns.

645. The seriousness of the situations and events raised in this chapter suggests that, notwithstanding the measures the State is taking, the violence and discrimination against Haitian migrants in the Dominican Republic is extremely worrisome. The Commission profoundly regrets the fact that the State has failed to adopt a comprehensive public policy aimed at protecting migrants in the Dominican Republic, especially Haitian nationals, and at preventing, punishing, and redressing the acts of violence committed against them.

646. The discrimination against Haitian migrants is multidimensional, which means that the policies the State adopts must be comprehensive and encompass more than the areas in charge of security and immigration policy, such as the Office of the Director General of Immigration and CESFRONT and their personnel. With the situation as it now stands, all areas of the government must be involved, and coordination and cooperation among authorities in the three branches of government are essential to ensuring respect for and protection of the migrants' human rights, regardless of their migratory situation.

647. Beyond the figures, which illustrate the severity of the problem of collective deportations of Haitians from Dominican territory, the various reports published in recent years and the testimony given by the victims and their family members reveal a State policy of deporting Haitian migrants or persons perceived as such, regardless of their migratory situation, a practice that has gotten worse in recent years.

648. The IACHR reiterates that, under international standards, migrants facing proceedings that can lead to their deportation are entitled to individual proceedings in which the minimum guarantees are observed, such as: i) the right to a hearing by a competent authority during any deportation proceeding and to an adequate opportunity to exercise one's right of defense; ii) the right to interpretation and translation; iii) the right to legal representation; iv) the right to consular assistance from the moment of one's detention; v) the right to receive notification of the decision ordering one's deportation; vi) the right to an effective recourse to

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625 See IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. 2013, par. 351.

challenge the decision ordering deportation; vii) the right whereby any appeals filed shall have the effect of suspending the deportation decision.

649. The Commission is deeply troubled by the widespread and discretionary use of immigration detention in the case of Haitian migrants or persons perceived as such. Those affected are held for an indefinite period, under deplorably unhygienic and unhealthy conditions, without ever being brought before a judge for a determination of the legality of their detention. Despite the advances introduced with the new laws governing immigration, under which immigration detention is to be the exception, the enforcement of these laws in practice is a very a different matter, and immigration detention becomes the rule rather than the exception. These practices are at variance with the State's international obligations, which require that immigration detention be the exception.

650. The Commission considers that given the situations described above with regard to economic, social, and cultural rights, migrants in the Dominican Republic and their children do not enjoy the same protection of and access to labor, educational, and health rights that Dominican nationals enjoy, in violation of the obligations imposed in this regard, where an irregular migratory situation is irrelevant for purposes of determining the State's obligation to guarantee these rights.

651. Finally, the Commission would like to stress how important it is that civil society organizations dedicated to immigration issues play a role in crafting policies and laws on the subject of immigration. During the preparation of the National Plan to regularize foreigners in an irregular migratory situation in the Dominican Republic, the Commission received numerous complaints from civil society organizations active in this area about the obstacles that the Dominican State imposes to prevent them from participating in these processes.

652. The Commission was particularly disturbed by statements like those made by the *Coalición por los Derechos de las Personas Migrantes* to the effect that the Regularization Plan was never discussed with civil society organizations that advocate for and defend the rights of migrants.[626] For the Commission, it is vital that for purposes of crafting immigration policies, laws, and practices, the State establish an open and pluralistic mechanism, governed by clear rules on participation, feedback, and accountability.

653. Based on these findings, the Inter-American Commission on Human Rights makes the following recommendations:

1. Take the measures necessary to ensure that the immigration review, verification, and control operations and the interrogations, detentions, and round-ups conducted are not *de facto* based exclusively on a person's physical

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626 Submission presented by the *Coalición por los Derechos de las personas Migrantes* (CDPM) on the occasion of the Universal Periodic Review. *Derechos de las Personas Migrantes en República Dominicana*. June 2013; *El Nuevo Diario*. May 14, 2013. *Instituciones de la sociedad civil firman compromiso social y político por un nuevo modelo de migraciones*.

aspect, color, facial features, membership in a given racial or ethnic group, or any other category.

2. Take the necessary measures to ensure that immigration detention is for the shortest period of time possible, with clearly defined limits that must be strictly observed.

3. Guarantee that the decision ordering immigration detention is taken and enforced in accordance with the Dominican State's obligations under its Constitution, laws, and the conventions to which it is party, that it is not arbitrary and that it is subject to periodic judicial review. Persons detained must have the right to communicate quickly with their families, attorneys, and/or guardians, the right to appeal the lawfulness of their detention –which must include the right to legal counsel, to request consular assistance, and the court's authority to order the detainee's release; the authorities of the Office of the Director General of Immigration must comply with any such order without delay.

4. Ensure that detention conditions at the immigration detention stations and provisional facilities meet the minimum human rights standards recognized in the American Convention and developed in greater detail in the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

5. Establish, by law, alternatives to immigration detention. These measures should function as the rule in cases of migrants in an irregular situation, asylum seekers, refugees and other persons in need of international protection, who are the subjects of a proceeding to determine their migratory situation or a proceeding to determine whether refugee status will be recognized.

6. Ensure that migrants are expelled only by order of a competent authority, delivered in the context of a proceeding previously established by law and in which the migrant has had an opportunity to defend himself or herself in accordance with the inter-American standards of due process.

7. Guarantee that in all phases of the immigration proceedings, the persons involved are assisted by counsel and translators and are informed of their rights and of the mechanisms by which and the bodies to which immigration decisions can be appealed; and ensure that those decisions are properly substantiated.

8. Take measures to enable persons to enter and transit through Dominican territory via regular channels, so that migrant persons do not have to resort to clandestine means, thereby reducing their exposure to crime and violations of their human rights.

9. Establish programs aimed at raising the Dominican public's awareness of the situation and the human rights of migrants, and adopt the measures necessary

to eradicate any discriminatory policy, combat xenophobia, and promote multi-culturalism in education and the media.

10. Take affirmative action to change negative public perceptions of migrants and remove any institutionalized type of stigma that attaches to migrants.

11. Strengthen the mechanisms to combat corruption and promote accountability by State officials through evaluation and investigation, conducted by competent government institutions which, after due process, should apply the corresponding administrative, disciplinary, or criminal sanctions to the officials of the Office of the Director General of Immigration and CESFRONT or any other official found to be responsible for the commission of crimes and human rights violations against migrants.

12. Take the measures necessary to guarantee the economic, social, and cultural rights of migrant workers without any form of discrimination. Specifically, the State must monitor conditions in the *bateyes,* farms, and in the places where migrant workers and their families live, to ensure that they are provided with the basic necessities such as: potable water, electricity, medical services, and educational programs.

13. Ensure that migrant workers know their labor rights and where they should turn in the event their labor rights are violated. Provide *pro bono* legal aid so that migrant workers can demand their rights, no matter what their migratory situation.

14. Adopt all measures necessary to prevent and eradicate labor exploitation of migrants. Oversee the working conditions and check to ensure that migrant worker is registered with the Ministry of Labour. Implement measures to punish employers and intermediaries who subject migrants to labor exploitation.

15. Strengthen education in the human rights obligations of the State with respect to victims and survivors of trafficking in persons. In particular, such education should especially target relevant actors in trafficking-in-persons cases, such as agents of CESFRONT and the Office of the Director General of Immigration, the police and military, judges, prosecutors, defenders and lawyers. Continue to promote activities and campaigns to raise awareness and inform the public about the impact of trafficking in persons in the Dominican Republic.

16. Set up State-run shelters that specialize in providing assistance to trafficking survivors.

17. Initiate, *ex officio* and without delay, a serious, impartial, and effective investigation by all lawful means available with a view to pursuing, capturing, prosecuting, and imposing the appropriate penalties on all perpetrators and masterminds of the crime of trafficking in persons. This recommendation also includes providing reparation to victims and survivors of trafficking in persons.