



DOMINICAN REPUBLIC

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 32ND SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2019

FOLLOW-UP TO THE PREVIOUS REVIEW

During its second Universal Periodic Review (UPR) in February 2014, the Dominican Republic accepted 84 recommendations and rejected 50.¹

The majority of recommendations accepted by the Dominican Republic related to ensuring the Ombudsman's office complies with the Paris Principles and is adequately resourced,² combating all forms of discrimination and gender-based violence against women and girls,³ combating trafficking⁴ and child labour,⁵ and strengthening the educational system.⁶

While the state also accepted recommendations to prevent discrimination and violence against LGBTI people,⁷ and to strengthen protections against racial discrimination,⁸ the state has yet to pass comprehensive anti-discrimination legislation. In addition, the Dominican Republic accepted a number of recommendations related to comprehensive reform of the police and to strengthening investigation and prosecution of alleged human rights violations by the police.⁹ However, the number of killings by the police remains high.

Amnesty International regrets that the Dominican Republic did not accept recommendations to guarantee the right to nationality and to prevent and resolve cases of statelessness.¹⁰ Amnesty International also regrets that the Dominican

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, Addendum, 11 June 2014, A/HRC/26/15/Add.1, page 2.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/15, recommendations 98.24 and 98.26 (Ukraine), 98.25 (France), 98.27 (United Kingdom of Great Britain and Northern Ireland)

³ A/HRC/26/15, recommendations 98.29 (Spain), 98.34 (Thailand), 98.35 (Malaysia), 98.54 (Nicaragua), 98.55 (Uruguay), 98.56 (Norway), 98.57 (Paraguay), 98.58 (Singapore), 98.59 (Switzerland), 98.60 (Turkey), 98.61 (Belgium), 98.63 (Colombia), 98.64 (Democratic People's Republic of Korea), 98.65 (France), 98.66 (Germany), 98.67 (Italy)

⁴ A/HRC/26/15, recommendations 98.71 (Singapore), 98.72 (Trinidad and Tobago), 98.73 (Algeria), 98.74 (Bolivia),

⁵ A/HRC/26/15, recommendations 98.69 (Turkey), 98.70 (Ecuador)

⁶ A/HRC/26/15, recommendations 98.100 (Cuba), 98.101 (Belgium), 98.101 (Chile), 98.103 (Djibouti), 98.104 (Egypt), 98.105 (Indonesia), 98.106 (Malaysia)

⁷ A/HRC/26/15, recommendations 98.41 (Mexico), 98.42 (Netherlands), 98.43 (Norway)

⁸ A/HRC/26/15, recommendations 98.36 (Viet Nam), 98.37 (Angola), 98.38 (Bolivia), 98.40 (Somalia)

⁹ A/HRC/26/15, recommendations 98.46 (Canada), 98.47 (Australia), 98.48 (France), 98.49 (Spain), 98.50 (Switzerland), 98.51 (United States of America), 98.52 (Germany), 98.53 (Italy)

¹⁰ A/HRC/26/15, recommendations 98.111 (Spain), 98.112 (Mexico), 98.113 (Uruguay), 98.114 (Argentina), 98.115 (Italy), 98.116 (Brazil), 99.117 (Germany), 98.118 (Chile)

Republic did not accept recommendations to ratify a number of key international human rights treaties, in particular the International Convention for the Protection of All Persons from Enforced Disappearance and the UN Conventions on Statelessness,¹¹ and to extend a standing invitation to UN special procedures.¹² The Dominican Republic continues to be home of the largest stateless population in the Americas region.

Although the Dominican Republic accepted a number of recommendations to reduce maternal mortality, it did not support recommendations to “guarantee full and effective recognition of sexual and reproductive rights,” including by decriminalizing abortion.¹³ Dominican civil society continues to lobby for decriminalization of abortion in three instances: where the pregnancy poses a risk to the life of a pregnant woman or girl, where the fetus could not survive outside the womb, and where the pregnancy is the result of rape or incest.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Right to nationality and statelessness

In September 2013 the Constitutional Court of the Dominican Republic issued Judgement 168-13 which states that children born to foreign parents who did not have regular migration status had never been entitled to Dominican nationality. The Judgement was applied retrospectively to people born since 1929. Amnesty International considers that Judgement 168-13 constitutes a retroactive and arbitrary deprivation of nationality, that it disproportionately affects Dominicans of Haitian descent, and that it is therefore discriminatory.¹⁴

In May 2014, the Dominican Congress adopted Law 169-14 in response to a wave of criticism of Judgement 168-13 at both national and international levels. Although it is a step in the right direction, it fails to provide for automatic restoration of Dominican nationality to those who had been arbitrarily deprived of it by Judgement 168-13.

The law divides those affected into two groups: those who have at some point been registered in the Dominican Civil Registry (so-called “Group A”) and those whose births have never been registered (so-called “Group B”). The law stipulates that people belonging to Group A could be formally recognized as Dominicans, but only after an administrative process carried out by the Central Electoral Board, the same institution that in previous years had sought to block their access to identity documents.

With regard to Group B, the law creates an impediment to exercising the right to nationality by forcing people to register as foreigners and to undergo a complex process which could eventually enable them to apply for naturalization as Dominicans; it does not lead to automatic acquisition of nationality.

International accountability

In November 2014, the Dominican Constitutional Court issued Judgement 256-14¹⁵ seeking to withdraw from the competency of the Inter-American Court of Human Rights (IACtHR). The ruling came only two weeks after the condemnation of the Dominican Republic by the IACtHR in the case of *Expelled Dominicans and Haitians v the Dominican*

¹¹ A/HRC/26/15, recommendations 98.16 (Uruguay), 98.17 (Brazil), 98.18 (Ireland)

¹² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/15, 98.31 (Portugal), 98.32 (Montenegro), 98.33 (Uruguay),

¹³ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/1598.98 (France), 98.94 (Netherlands)

¹⁴ See Amnesty International report AMR 27/2755/2015 ‘Without papers I am no one’ – Stateless people in the Dominican Republic (2015) at <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>

¹⁵ Sentencia TC/0256/14, Tribunal Constitucional de la República Dominicana, at <https://www.tribunalconstitucional.gob.do/content/sentencia-tc025614>

Republic. Amnesty International is concerned that withdrawal from the region's highest human rights court would put rights at risk.¹⁶ The authorities have yet to clarify their position on the Court's Judgement.

Sexual and reproductive rights

A comprehensive reform of the Criminal Code has been ongoing for several years. Under the Criminal Code currently in force, women seeking abortion services, and those who provide those services, face criminal sanctions regardless of the circumstances in which the abortion was sought or provided.

Discrimination

Although a comprehensive anti-discrimination bill was drafted and consulted with civil society organizations in 2016, the bill has not been tabled, leaving many marginalized and discriminated groups, including LGBTI people, without adequate protection.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Discrimination and rights of stateless people

Amnesty International has documented the impact of Judgement 168-13 of the Constitutional Court on the enjoyment of human rights by Dominicans of Haitian descent, in particular their rights to a nationality, to recognition as a person before the law, and to identity. With no automatic access to Haitian nationality, many have been left stateless.

Although the Dominican government has shown some willingness to mitigate the harshest consequences of the Judgement, in particular with the passing of Law 169-14 in May 2014, the authorities have yet to acknowledge the problem of statelessness, let alone to provide comprehensive and effective measures to prevent and end it. Several groups of people remain stateless or effectively stateless, owing to the inadequacy of the solutions provided by Law 169-14, shortcomings in its implementation and its failure to propose any solution at all for some neglected groups.¹⁷

Moreover, the failure by the Dominican authorities to carry out a comprehensive census of the stateless population in the country, means that there is no reliable estimates of how many people are currently stateless or at risk of statelessness. An estimated 30% of Group A (which includes only 20,872 individuals out of an official estimate of 61,049 individuals) are able to access some sort of Dominican identity document proving their Dominican nationality, according to the Inter-American Commission on Human Rights in its Annual Report 2017.

Of the estimated 53,000 individuals in Group B only 16% were able to register during the 180 days period established by Law 169-14, according to government data cited by the Inter-American Commission on Human Rights. The authorities stated that by November 2017, 5,401 individuals had received their birth certificates and their permanent regularization card. The law requires a two-year period after the approval of the registration before people are able to request their naturalization as Dominicans. At the time of writing, no one was known to have been naturalized under the plan. Most of the individuals affected remain stateless in the absence of another nationality.

Years of discriminatory policies and practices have created a wide variety of complex situations that Law 169-14 has failed to address. For example, it does not provide a solution for those people who were wrongfully registered as foreigners even though they were born in the Dominican Republic well before the 2004 Migration Law and the establishment of the Registry of Foreigners in 2007.

Another situation is that of children of mixed couples. Even though children with at least one Dominican parent have a

¹⁶ See Amnesty International, *Dominican Republic: Withdrawal from top regional human rights court would put rights at risk* (2014) at <https://www.amnesty.org/en/latest/news/2014/11/dominican-republic-withdrawal-top-regional-human-rights-court-would-put-rights-risk/>

¹⁷ See Amnesty International report AMR 27/2755/2015 'Without papers I am no one' – *Stateless people in the Dominican Republic* (2015) at <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>

constitutional right to Dominican nationality, in practice, if the mother is undocumented, her children are denied birth registration and have no means of proving their Dominican nationality.

People who are effectively stateless or lack identity documents face discrimination in the enjoyment of a range of economic, social and cultural rights, including completing schooling and accessing higher education, as well as accessing formal employment, adequate healthcare, social security and pensions. Their right to freedom of movement is also severely limited and they are at risk of expulsion to Haiti. They are vulnerable to violence and exploitation and, in the vast majority of cases, are condemned to lives of poverty and marginalization. Their access to judicial remedy for human rights violations is also hampered.

Sexual and reproductive rights

On two occasions since 2014, President Danilo Medina has rejected draft reforms of the Criminal Code approved by the Congress that maintained the ban on abortion.¹⁸ He has urged Congress to decriminalize abortion in three circumstances: where the pregnancy poses a risk to the life of a pregnant woman or girl, where the fetus could not survive outside the womb, and where the pregnancy is the result of rape or incest. A revised Criminal Code that integrated the decriminalization of abortion in these three instances was finally approved in 2014, however, in December 2015 the Constitutional Court struck down the proposed reforms through Judgement 599-15 leaving the old Criminal Code, which dates back to 1884, in force.¹⁹ In July 2017, Congress rejected a new proposed reform of the Criminal Code that failed to decriminalize abortion in the three limited circumstances.²⁰

Human rights defenders and journalists

In the aftermath of Judgement 168-13 violent rhetoric against human rights defenders, journalists and those perceived to defend the rights of Dominicans of Haitian descent emerged from ultra-nationalistic groups. People denouncing the Judgement were regularly called “traitors to the homeland” and public demonstrations were held in different parts of the country during which the portraits of prominent journalists were burned.²¹

In September 2016, Dominican lawyer and human rights defender, Genaro Rincón Mieses, was verbally and physically assaulted in Santo Domingo.²² Other defenders advocating against statelessness in the country, including an Amnesty International delegate, have reported receiving threats, intimidations and insults related to their work.

Police and security forces

While the Dominican Congress passed a new Organic Law of the National Police in July 2016, killings by law enforcement officers remain high.²³ There has been no progress in the investigation into the enforced disappearance of three men

¹⁸ See Amnesty International, Urgent Action AMR 27/018/2014 *Dominican Republic: Further information: President vetoes full ban on abortion* <https://www.amnesty.org/en/documents/AMR27/018/2014/en/> and Amnesty International, Urgent Action AMR 27/5478/2017 *Dominican Republic: Further information: Abortion vote pending after President's veto* <https://www.amnesty.org/en/documents/amr27/5478/2017/en/>

¹⁹ See Amnesty International, *Dominican Republic takes women's rights back to 1884* (2015) at <https://www.amnesty.org/en/latest/news/2015/12/dominican-republic-takes-womens-rights-back-to-1884/>

²⁰ See Amnesty International, Urgent Action AMR 27/6724/2017 *Dominican Republic: Further information: Congress rejects regressive abortion reform* <https://www.amnesty.org/en/documents/amr27/6724/2017/en/>

²¹ See Amnesty International, Urgent Action AMR 27/0004/2015, *Dominican Republic: Journalists threatened and harassed* at <https://www.amnesty.org/en/documents/amr27/0004/2015/en/>

²² See Amnesty International, Urgent Action AMR 27/4901/2016, *Dominican Republic: Defender combatting statelessness attacked: Genaro Rincón Mieses* at <https://www.amnesty.org/en/documents/amr27/4901/2016/en/>

²³ See Amnesty International, Annual Report 2016/2017, p.14 and Amnesty International, Annual Report 2017/2018, p.149

whose cases were documented by Amnesty International.²⁴ Amnesty International has also documented the use of excessive force and harassment by the police against peaceful activists.²⁵

Discrimination and LGBTI rights

In June 2017, the dismembered body of Rub Mori, a transgender sex worker and activist with community organization *Este Amor* (This Love), was found in a wasteland in the eastern Dominican municipality of Higüey. This case highlights the extreme violence transgender women face and their need for protection against discrimination and gender-based violence.²⁶

Illegal deportations and expulsions

Since the end of the National Plan for the Regularization of Foreigners in June 2015, the International Organization for Migrations reported that by September 2017 nearly 230,000 people had returned to Haiti from the Dominican Republic. These include more than 96,000 Haitian migrants who had allegedly been deported, and over 130,000 people who returned “spontaneously” after receiving threats or being pressured to leave. In addition, more than 1,000 Dominican nationals may have been forcibly expelled to Haiti from the Dominican Republic in violation of international law, including various cases documented by Amnesty International. At the beginning of May 2016, UNHCR verified the cases of 1,582 individuals born in the Dominican Republic who were in Haiti.

Despite the Dominican authorities’ commitment to respect human rights in deportation procedures, allegations of failure to respect due process are frequently reported, including as documented by Amnesty International. Moreover, the mechanisms for holding migration officers and members of security forces involved in deportation procedures to account for possible abuses and human rights violations have not been clarified.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of the Dominican Republic to:

International and national accountability

- Fully implement the binding judgements issued by the Inter-American Court on Human Rights including through undertaking any necessary administrative, legislative and constitutional reforms;
- Leave without effect judgement 256-14 of the Constitutional Court and clearly acknowledge the competency of the Inter-American Court of Human Rights.

Discrimination and rights of stateless people

- Recognize the impact of Judgement 168-13 in terms of statelessness and acknowledge the scale of the problem of statelessness in the Dominican Republic, including the limitations of the solutions provided under Law 169-14,

²⁴ See Amnesty International, Urgent Action AMR 27/0004/2014, *Enforced disappearance suspected: Randy Vizcaíno González* at <https://www.amnesty.org/en/documents/amr27/004/2014/en/>

²⁵ See Amnesty International, Urgent Action AMR 27/014/2014, *Dominican Republic: Torture denouncers threatened by the police: Ana Patricia Fermín* at <https://www.amnesty.org/en/documents/amr27/014/2014/en/> and See Amnesty International, Urgent Action AMR 27/2945/2015, *Dominican Republic: Police break up peaceful protest violently* at <https://www.amnesty.org/en/documents/amr27/2945/2015/en/>

²⁶ See Amnesty International, Dominican Republic: Horrifying killing of transgender woman highlights need for protection against discrimination (2017) <https://www.amnesty.org/en/latest/news/2017/06/dominican-republic-horrifying-killing-of-transgender-woman-highlights-need-for-protection-against-discrimination/>

as a first step towards the identification and implementation of comprehensive and effective measures for its eradication;

- Fully cooperate with UNHCR to fulfil its mandate towards statelessness, including by giving due consideration to technical advice on how to adopt a robust methodology for counting the stateless and on adequate measures to eradicate statelessness;
- Promptly issue adequate documentation recognizing the Dominican nationality of all those in Group A, ensure that they receive all the identity documents that they request with no further delays, and avoid the creation of separate registries;
- In consultation with Dominican human rights organizations, adopt new legislation recognizing the right to Dominican nationality of all those born in the Dominican Republic before 26 January 2010, regardless of the migration status of their parents, in accordance with the legislation in force before the 2010 Constitution, including those who have been registered as foreigners under Law 169-14, and implement such legislation in a manner ensuring that all beneficiaries are promptly registered in the Dominican Civil Registry and that the requested identity documents are issued;
- Establish and make public clear procedures to facilitate the registration of births in the Dominican Civil Registry of all the children who are entitled to Dominican nationality, including by amending the 2004 Migration Law and establishing a clear and simple procedure to correct mistakes such as the erroneous attribution of a pink proof-of-birth certificate for foreigners and mistaken registration in the Register of Foreigners;
- Take all appropriate measures to ensure that nobody born in the Dominican Republic and entitled to the Dominican nationality is in future prevented from registering the birth of their children or obtaining or renewing their identity documents on the basis of their parents' ancestry or migration status, in compliance with two decisions of the IACtHR;
- Ratify and implement the UN Convention relating to the Status of Stateless Persons and the UN Convention on the Reduction of Statelessness.

Sexual and reproductive rights

- Reform the Criminal Code to ensure that women and girls seeking abortion services are not subject to criminal sanctions and that health professionals are not criminalized for providing safe abortion services, and further ensure that counseling, information, and safe and legal abortion services are available, accessible, acceptable and of good quality for all women and girls who require them, at a minimum in cases of unwanted pregnancy as result of rape, sexual assault, or incest, when pregnancy poses a risk to the life or the health of the woman and in cases of severe and fatal fetal impairments.

Human rights defenders and journalists

- Publicly condemn all acts of intimidation against journalists and human rights defenders.

Police and security forces

- Ensure strict adherence by all officers to national and international standards related to the use of force and firearms;
- Thoroughly, independently and timely investigate all reports of human rights violations by the police and bring the perpetrators to justice;
- Ensure that victims and families of victims of human rights violations by the police receive full reparation.

Discrimination and LGBTI rights

- Continue to work with civil society organizations to pass comprehensive anti-discrimination legislation;
- Investigate all killings of LGBTI people independently and impartially and take all steps to unmask any potentially discriminatory motive.

Illegal deportations and expulsions

- Ensure that all cases of suspected irregular migrants are individually assessed; that all deportees receive deportation orders in writing; that all deportation orders include information on their legal basis and its application to the individual's personal circumstances, and all deportees have the right to challenge the deportation order before an independent court of law, with suspensive effect;
- Establish transparent, clear and fair procedures to screen and protect Dominicans of Haitian descent from expulsion, in particular those lacking identity documents, and make these procedures public;
- Allow the immediate and unconditional return to the Dominican Republic of any expelled Dominican of Haitian descent who wishes to return and provide them with access to effective remedies and adequate reparations for the human rights violations they have suffered, as well as with identity documents if they had not yet been able to access to those;