

# *Report of the Dominican Coalition on the Right to Nationality*

*(DCRN)*

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## *Dominican Republic 2009-2013*

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**Recommendations related to the right to nationality of Haitians and their descendants, are found between those that did not receive support from the State, during the 13<sup>th</sup> period of sessions of the Human Rights Council during the Universal Periodic Review.**

1. *Ensure that appropriate legal frameworks are in place in line with the international conventions governing the issue of nationality (Canada): The Dominican Republic does not accept this recommendation;*
2. *Cancel all retroactive measures taken to replace the principle of jus soli with the principle of jus sanguinis for the acquisition of nationality (Spain): The Dominican Republic agrees that the law is not retroactive, but cannot accept the allegation that the Constitution is applied in a retroactive manner;*
3. *Take further steps to tackle impunity, including independent investigations of killings by security forces (United Kingdom): The judiciary in the Dominican Republic is constitutionally independent and its investigations and decisions are impartial and objective;*
4. *Adopt measures to ensure that Dominican of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancellation of birth and identity documents (United States): This is not acceptable because, as noted earlier, application of the law is not retroactive in the Dominican Republic. In addition the Constitution of the Dominican Republic is not subject to interpretation as to who is or is not a Dominican;*
5. *Apply consistent and non-discriminatory citizenship policies and practices (Canada).*

- 1- The elapsed time between 2009 and 2013, has been a period of legislative advances, considering the recognition of the civil and political rights in the Dominican Republic. Nevertheless, there are still discriminatory practices, as well as other state actions, directed towards a minority group: **the children of the Haitian immigrants born on Dominican soil.**
- 2- In reality this group presents a national minority and faces different situations which may be defined as: a) the denial of the right to nationality. B) the deficiency of the civil register. C) the implementation of the book of foreigners. D) the administrative denationalization and discriminatory politics coming from the Dominican government.

#### **a. Advances**

- 3- In this period new acknowledgements of the rights implemented years ago have been risen. The reformed constitution recognizes, in article 18, paragraph 1, that the Dominican woman endows the Dominican nationality to her children *jus sanguinis*. Paragraph 5 of the abovementioned article allows the female to acquire the Dominican nationality through marriage. Nevertheless, we will have to wait to see the development of the implementation of this article in national life.
- 4- The automation process of the Dominican civil registers, the implementation of the website of the central elective congress, as well as the publication of informative bulletins to inform the national citizens.

***Systematic and permanent denial to the nationality (Dominicans who have never possessed identity papers)***

- 5- With the adoption of the constitution on the 26th of January 2010, the Dominican Republic changed the manner to obtain the Dominican nationality and created conditions for the same process. Article 18, paragraph 3 establishes, in a constitutional manner, the denial of the Dominican nationality to children who have been born on Dominican soil as sons of 'illegals'. This same article establishes in paragraph 2, who is considered as Dominican: "Those who enjoy the Dominican nationality before this constitution enters into force". Thus, Dominicans are those born before 2010, but there are different positions and interpretations by powerful state actors. However, there still has not been an interpretation with respect to the new actor: the constitutional tribunal. Given this situation, men, women, children and youngsters, children of Haitian immigrants born in the country; those who the Dominican state always has denied the right to nationality and registration in the civil registry; now do not have any other solution than: ***"To live as a foreigner on the land that saw them being born"***.
- 6- It has been over 10,15,20 years that, given the situation, children of immigrants born on Dominican soil are obliged to register themselves in the book of foreigners; even though they have the right to obtain Dominican nationality without any legal restrictions or conditions from the moment they are born. The denial of the right to nationality to these citizens has been a subject of debate, nationally and internationally. The Dominican state has been condemned in 2005 by the Inter-American Court of Human Rights, due to the denial of the right to nationality to children of Haitian immigrants, who have been born in the Dominican Republic. Currently the state has not complied with the aforementioned sentence.<sup>i</sup>
- 7- Even though there exists an international sentence which obliges the state to comply with certain obligations related to the nationality and the civil register, the resistance to recognize this right persists in all societal spheres. The Supreme Court of Justice established in 2005: *"That the children of foreign mothers both in the country are not Dominicans, and these may not justify their entrance and permanence in the Dominican Republic as to claim this right"*.<sup>ii</sup> The systematic denial of the right to nationality to this group has caused this group to stay within the cycles of the marginalized, it has led to social exclusion and extreme poverty, which is considerably aggravating on a daily basis, in addition to the psychological and emotional consequences which frustrate these people in their life projects. The women and children from this group are even more vulnerable, which leads the problem of undocumentedness to aggravate considerably.<sup>iii</sup>

***b. The Civil Register in the Dominican Republic (Deficiencies, customs, and implementation)***

- 8- The Dominican constitution established in article 55, paragraph 8: *"Every person has the right to be registered free of charge in the civil register of the book of foreigners, and to obtain the public documents which prove their identity, according to law and from their birth onwards."* Nevertheless, over the past years there has been a considerable amount of cases<sup>iv</sup> reported to the organizations of the civil society, where Dominican women of Haitian origin have not been able to register the birth of their children, because they are faced with the denial of their identity papers (birth certificate, identity card); documents necessary for this registry. There is the case of *Antonia Pierre*, as an instance, who could not register the birth of her 20 months old son, since she faced the rejection of her identity card, since over 2 years.<sup>v</sup> Cases such as Antonia's, are common in the country: women suffer from a denial of their rights.

- 9- There are many children living under conditions of statelessness, due to the State's denial to give documents to their mothers. The legislative reality is that the child is assumed to be his mother's child solely due to the fact of his birth. As a result, the nationality and the documentation of the mother is transferred to the child. The Dominican women, continue carrying the weight of the responsibility of the identity of their children. It is through them, that the denial of the rights in relation to the documentation are manifested on the women; the consequences flow from the legal spheres to the family spheres. As an instance there are those cases where the children blame their parents for the problems they encounter as a result of their documents of the lack of possessing a legal identity and thus blame their parents for their poverty and marginalization.<sup>vi</sup>
- 10- Also related to the civil register, is the lack of efficient informative mechanisms where the beneficiaries are able to search for information related to the available services. There is evidence showing that an estimated 40% of the women residing in the country, who have given birth during the last couple of years, have not been able to realize the declaration of the birth of their children: one of the principle obstacles is the lack of information on the procedures.<sup>vii</sup>
- 11- In the recommendations related to nationality, which were earlier made to the Dominican Republic, there has been suggested to guarantee the right to be registered immediately after birth through an inclusive and simplified process, to every child. Unfortunately, this recommendation has not been complied with, seen that there still exist an indefinite number of children of immigrants, especially Haitian immigrants, whose births have not been registered. When a child is born in a medical centre, the clerks are unable to provide proof of the birth, hence there is no way to prove the birth of these children.

**c. *The book of foreigners in the Dominican Republic (Foreigner's registry)***

- 12- Since 2007 the book for the registry of the births of children of foreign mother's, not residing in the country, also known as the "book of foreigners"<sup>viii</sup>, has been implemented. The intention to create a register where births of children of foreign mother's can be registered, in principle, is a good alternative to the problem of the existing undocumented and statelessness in the country. Nevertheless, the implementation of this register has created suspicion under the organizations of the civil society, as well as under the beneficiaries themselves. The fact that the Dominican Republic is able to administer the nationality of other countries through this register is questioned. Additionally, it puts into doubt whether the registry as a foreigner, in this book of foreigners supposes a declaration of birth in the country of origin.
- 13- Questionable stays the creation of a system to register and administer foreign nationalities, without having clarity on the system being trustworthy, legal and safe. Organizations of the civil society have not been successful in understanding how it can be pretended that children are registered as foreigners and receive a birth certificate with the Dominican national armorial bearings, and at the same time establish that these children are nationals of the determined country, while the administrative clerks of this department are the same officials of the Dominican civil register. For example: there is a case of a Haitian woman living in Batey Bienvenido, East Santo Domingo, who registered her children as foreigners and received birth certificates with the Dominican national armorial bearings and received these documents at the same civil department where normally, the Dominican nationals are registered.

***d. The administrative de-nationalization and the discriminatory politics of the State***

- 14- On 10 December 2007, the council of the Central Elective Congress (CEC) emitted resolution 12-07, which ordained the provisional suspension of all civil state acts with irregular indications. This resolution was preceded by the subpoena 017-07, emitted by the administrative council of the CEC. This same CEC pretends that individuals registered in the Dominican civil registry, thus recognized as Dominicans, should be unilaterally taken out of this registry and subscribed to the book of foreigners; through a process of 'de-nationalization'. This is a unilateral decision adopted by the CEC, without undergoing the legislative process. This measure, which is above anything else discriminatory, is being applied in retrospect to those born before 2007, irrespectively of the decisions taken by the international tribunals, and regardless to the principle of retrospectivity of the law.
- 15- The only manner to prove one's existence, civil status and nationality in the Dominican Republic is through one's birth certificate. Without this birth certificate, or one's identity card, it is impossible for a citizen to develop itself politically, socially, economically, and culturally. The system of national registry has been designed in such a way, that the acceptance of one's nationality is related to the registration of one's name through a birth certificate submitted by an official of the civil state of the Dominican Republic. This submission should be accompanied by the submission of the identity card, which acquires the authorization of the State in order to exercise one's civil and political rights.
- 16- Those affected by these measures, do not notice their situation until they proceed to solicit an extract of their birth certificate in one of the civil state departments, for diverse actions in their civil life. To many Dominicans of Haitian origin who have solicited certified copies of their birth certificates in the office of the civil registry, identity cards in one of the documentation centres, passports, or register the births of their children in one of the civil state offices, the granting of documents is denied without any form of explication; or they are being told that they are descendents of foreigners; or because they are children of Haitians [and therefore classified as #HH]; or because of a pheno typical critique related to their physical appearance or skin tone; or because they are the child of illegal parents or parents with an irregular civil status,<sup>ix</sup> or because they should request the document in the foreigners department of the CEC. This has been happening to all Dominicans of Haitian origin across the country. It happens to individuals of all ages: from children requesting a copy of their birth certificate to register at school, to youngsters trying to register in universities, to adults possessing valid identity papers and passports, who require a copy to enable them to travel or acquire a scholarship.
- 17- Through the denial of their identity documents, they enter a state of 'de-nationalization' and statelessness. Their civil and political rights, as well as their economic, cultural and social rights, are continuously being violated; without these identity papers they will be unable to declare their children, enter into marriage, they are unable to continue to high school and university, they cannot apply for employment, they cannot obtain a health insurance, open a banking accounts, obtain a passport, or a visa to travel out of the country. Additionally, they face the risk of deportation, given the context of the massive, systematic, and generalized deportation of Haitians and Dominicans of Haitian origin who never possessed documents [another stateless group]. This group is affected by the 2007 administrative measures.

- 18- After a 6 year long battle, where the affected party has empowered itself in the movement 'Reconoci.do' against the 2007 measures of the CEC. Some cases are being examined by the Inter-American Court of Human Rights. The political discourse has unsettled the public opinion nationally and internationally, expressing that it is about children of illegal or undocumented immigrants. <sup>x</sup> The CEC is currently experiencing a political crisis between their members and other corrupt situations, and power misuse. Up until the point where the National Congress recently called into existence a committee to investigate the facts. The country's president has promised to resolve the situation of the affected party, in his political campaign, however since the beginning of his presidency, the 16th of August 2012, he has not publicly restated his promise.
- 19- Regarding the number of affected individuals, it is impossible to indicate an estimation. As stated before, the individual will ignore his situation until he will proceed to request his birth certificate in the corresponding civil state department. There are hundreds of children who have not been declared after 2007, due to the measures that affect their parents or one of them. Recently, in February 2013, the CEC ordered to deregister 22,673 "foreigners" [ 75% were of Haitian origin] from the civil registry, and register them in the book of foreigners, where the department of migration will judge upon their situation.
- 20- There have always been systematic practices, adopted and tolerated by the state directed towards the denial of rights of thousands of Dominicans, which makes them unable to live as nationals of their country. This denial also functions as a discriminatory mechanism of a specific population: black people of Haitian origin.
- 21- In 2010, the constitution was adapted and limited the right of *Jus Solis* to children born in the Dominican Republic of parents with the status of legal residents (article 18.3) and to those who had the Dominican nationality before the 2010 constitution entered into force (article 18.2). In practice this means that this measure is applied in retrospect, with the result that those individuals who were denied or revoked their nationality before the constitution entered into force, are now in fact illegal residents.
- 22- In relation to the situation faced by Dominicans of Haitian origin in the Dominican Republic, the Inter-American Commission of Human Rights, during their session in March 2013, expressed their grave concern on the de-nationalization of the Dominicans of Haitian origin, seeing that the problem has worsened. The Commission of the Elimination of Racial Discrimination, in their final observations in their session in February 2013, recommended: to eliminate the administrative obstacles to acquire identity documents of the Dominicans of Haitian origin and reissues the, by the State, confiscated, annulled, or destroyed identity papers.<sup>xi</sup> Nevertheless, the State continues to adopt measures in favor of the illegal administrative dreg that denies the nationality to a national minority born and recognized as Dominicans. For instance, there is the case of Miguelina Jacob, daughter of a Dominican mother and a Haitian father. This youngster confronted the denial of her identity card in 2007, which was approved through a judicial discourse. After one year, she again became a victim of the same situation, however this time her birth certificate was denied. The refusal to provide her birth certificate is currently continuing.<sup>xii</sup>
- 23- Except for being deprived of their nationality, as has been shown, many Dominicans without identity papers, and those affected by resolution 12-07, face deportation to Haiti. In 1999 Haiti and the Dominican Republic signed a bi-national agreement regarding the conditions of deportations, including the requirement to respect the process and provide a written notice on the deportation. The deportations should only occur at nighttime, in official and border functions, and those deported should be able to contact their families and gather their identity papers. Nevertheless, the states ignore

those requirements set out in the abovementioned agreement; violating the most basic guarantees, such as a fair process and individual determination of the cases.

- 24- In 2011, the general direction of the civil registry, submitted subphoena 32-11, after a thematic session of the Inter-American Court of Human Rights on the de-nationalization of those affected by resolution 12-07. The same ordered civil state officials to deliver birth certificates in provisional forms in cases that were still under investigation. This disposition allowed that dozens of individuals affected by resolution 12-07 obtained duplications of their birth certificates. Nevertheless, the application of subphoena 32-11 has not been generalized, or applied in all offices. Thus, there continue to be situations of denial of the obtainment of duplicated birth certificates, identity papers, passports, and inscriptions to the civil registry. A practice impossible to solve at the moment.
- 25- The judicial safeguard sentences favorably of the affected, order the CEC to provide identity papers. The CEC does not exercise this sentence. In return, the CEC re-established its position: demanding the annulment of the birth certificates of the affected, especially those who won their cases. This creates a judicial insecurity. Recently, the CEC has notified their offices that they cannot provide birth certificates to those affected, until there has been a court ruling against the annulment.
- 26- The discriminatory denial and arbitrary nationality of Dominican individuals of Haitian origin (as much before as after the 2010 reform of the constitution), and the retrospective annulment of the nationality of individuals already recognized as Dominicans, are illegal actions. They are legal and administrative measures and discriminatory practices.

## **Recommendations**

1. Eliminate the 2007 administrative measures, subphoena 17-07 and resolution 12-07, and comply with the 1944 law on civil state acts, according to a fair legal process. Cease discriminatory politics in relation to the civil registry, which affect Dominicans of Haitian origin.
2. Implement the sentences of the Inter-American Court of Human Rights.
3. Guarantee the registration to the civil registry to all children born on Dominican soil, without distinguishing in sex, ethnicity, nationality, origin, or descent, in accordance with the international treaties and conventions ratified by the State.
4. Guarantee the rights set out in the constitution, especially in relation to article 18 on the right to nationality.
5. Dominican authorities should stop retaining the birth certificates in an administrative manner.

## Endnotes

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<sup>i</sup>CorteIDH. *NiñasYean y Bosico v. RepúblicaDominicana*. (ser. C) No. 130 ( Sep. 8, 2005).

<sup>ii</sup>Supreme Court of Justice. Sentence B.J. No. 12. 02 November 2011. CaseEmildoBuenoOlguis.

<sup>iii</sup>The 2010 ConstitutionStablished in article 18.2: “Dominicans are those who enjoy the Dominican nationality before the contitution enters into force”.

<sup>iv</sup>Follow up report on the development of the millennium

2010.[http://www.stp.gov.do/eWeb%5CArchivos%5CLibros%5CInforme\\_Objetoivo\\_Desarrollo\\_del\\_Milenio.pdf](http://www.stp.gov.do/eWeb%5CArchivos%5CLibros%5CInforme_Objetoivo_Desarrollo_del_Milenio.pdf)published by theMinisterio de Economía, Planificación y Desarrollo.

<sup>v</sup>In 2012, MUDHA reported 357 cases of denial of identity papers, amongst which 45% corresponded with a denial of identity cards.

<sup>vi</sup>For reasons of protection of the victim, the name has been changed.

<sup>vii</sup>Denial of the nationality. In communities such as: Caraballo, Muñoz, and Cangrejo where, at the time of the interviews, the youngsters were not declared. The identify those responsible as their mothers, who do not have any type of document and thus have been unable to fulfill the declaration.(MUDHA, house visits 2011).

<sup>viii</sup>Resolution 02-2007 of the CEC, which creates and legitimates the book of birth for children of foreign mothers in the Dominican Republic.

<sup>ix</sup> Centro Bonó. Observatorio de DerechosHumano: Boletín 11. VidasSuspendidas, 2011.

[<http://bono.org.do/wp-content/uploads/2011/11/ODH11.pdf> ]

<sup>x</sup>The political discourse is safeguarded by a 2005 sentence of the Supreme Court of Justice, where the 2002 Constitution was interpreted and it was said that children of illegals will continue being illegal. Additionally, in 2011, the Supreme Court of Justice took a decision validating the attitude of the CEC, stating that Circular 17-07 is valid.

<sup>xi</sup> CERD/C/DOM/13-14. *Comité en la Eliminación de la Discriminación Racial*. 82 Periodof Sessions. Session of theRepublicaDominicana, February 11 until March 1<sup>st</sup>, 2013.<http://www2.ohchr.org/english/bodies/cerd/cerds82.htm>. [seen 2nd June 2013]

<sup>xii</sup>For reasons of protection of the victim, the name has been changed.