

# Submission to the Universal Periodic Review: Dominican Republic

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The Open Society Justice Initiative presents this submission in preparation for the Universal Periodic Review of the Dominican Republic during the 18<sup>th</sup> session of the UPR Working Group in January 2014. This paper focuses on the Dominican Republic's failure to respect the right of persons of Haitian descent to nationality and the detrimental effect on their enjoyment of other human rights.

# Executive Summary

The Open Society Justice Initiative presents this submission in preparation for the Universal Periodic Review of the Dominican Republic during the 18<sup>th</sup> session of the UPR Working Group. This submission focuses on laws, official policies, and practices that discriminate against Dominicans of Haitian descent<sup>1</sup> in relation to their right to nationality, in violation of the Dominican Republic's human rights obligations.

The Dominican Republic was last reviewed under the UPR in December 2009. It received four recommendations from Canada, Spain, and the United States to bring its nationality laws in line with international standards and ensure that they are non-discriminatory, and to not retroactively deny citizenship or birth registration to Dominicans of Haitian descent. The Dominican Republic rejected all of these recommendations, claiming that the constitutional provisions on right to nationality were “not open to interpretation,” and that, notwithstanding all evidence to the contrary, its laws were not applied retroactively.

In February 2013, the UN Committee on the Elimination of Racial Discrimination (CERD) examined the Dominican Republic's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and expressed concern about discrimination in nationality and birth registration policies.<sup>2</sup> The Committee also recommended that the government reform its nationality and birth registration laws and policies.

These laws and policies have not been amended as recommended by the UPR and CERD. To the contrary, they have been further entrenched in the Dominican legal system and even elevated to constitutional status. The Dominican Republic's nationality laws and policies continue to constitute impermissible discrimination against persons of Haitian descent and amount to significant and widespread breaches of the Dominican Republic's international human rights obligations under ICERD, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

The Open Society Justice Initiative promotes the rule of law through litigation, legal advocacy and reform of legal institutions aimed at enhancing the protection of human rights. Since 2005 the Justice Initiative has been systematically challenging the Dominican Republic's discriminatory nationality policies through documentation, litigation, advocacy and legal capacity development.

## Recommendations

We urge the members of the UPR Working Group to address the discriminatory nationality and birth registration laws and policies described in this submission during the review of the Dominican Republic. In particular, we urge members to recommend that the Dominican Republic:

- Review and amend the 2010 constitutional provisions regarding nationality as well as the 2004 General Law on Migration to ensure that they fully respect the principle of non-discrimination, and ensure access to citizenship irrespective of a person’s ethnicity or their parents’ national origin. In particular, the government should review and amend
  - Article 18 (3) of the Constitution, granting nationality to persons born on the territory, unless their parents are residing there illegally or are considered to be “in transit”;
  - Article 28 of the General Law on Migration, instructing non-resident women to register their children born on Dominican soil with the consulate of their nationality. It also requires health centres to provide a pink certification of birth (*constancia de nacimiento*), different from the white one assigned to all other children, to Dominican-born children of non-legally resident mothers. As well, the law obligates health centres to deliver the birth records of such children to the Central Electoral Board and the Foreign Ministry, to be recorded in a foreigners’ book. Finally, the Central Electoral Board must notify the General Directorate for Migration of these births;
  - Article 36 (10) of the General Law on Migration, providing that non-residents are considered persons “in transit” for the purposes of Article 11 of the Constitution.
- Cease retroactive application of the 2010 constitution and the 2004 General Law on Migration to strip Dominicans of Haitian descent of their nationality.
- Repeal Circular 17 and Resolution 12 and adopt and implement non-discriminatory birth registration and personal identification policies that ensure that all individuals born in the Dominican Republic receive the same proof of birth and non-discriminatory access to identity documents.
- Adopt, publicize, and implement transparent, non-discriminatory procedures with respect to birth registration and personal identification, and guarantee due process by including written notifications and records of investigations, written explanations for decisions given and opportunities for appeal. Provide training to all civil registry staff on such procedures, in particular, and on human rights principles, especially non-discrimination, in general.

# Discrimination in access to nationality against Dominicans of Haitian descent

## A. Constitutional change entrenches discrimination against Haitian descendants in nationality matters

1. Since the last UPR in 2009, the situation concerning nationality for persons of Haitian descent has deteriorated. The Dominican government has exacerbated long-standing discrimination by instituting a series of legislative and administrative measures that negatively affect persons of Haitian descent in particular.
2. In the 2009 UPR review, several countries made recommendations relating to the Dominican Republic's outstanding violations of the rights to nationality, namely:
  - a. Canada: Ensure that appropriate legal frameworks are in place in line with the international conventions governing the issue of nationality. The Dominican Republic rejected this recommendation since nationality is already established in the Constitution and is "not open to interpretation";
  - b. Spain: Cancel all retroactive measures taken to replace the principle of jus soli with the principle of jus sanguinis for the acquisition of nationality. The Dominican Republic agreed that the law should not be retroactive, but disagreed that the Constitution was applied retroactively;
  - c. United States: 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. The Dominican Republic did not accept this recommendation because it claimed application of the law was not retroactive.
3. In 2005, the Inter-American Court of Human Rights in the case *Dilcia Yean and Violeta Bosico v. Dominican Republic*<sup>3</sup> found that the Dominican Republic applied its nationality and birth registration laws in a discriminatory manner and ordered it to reform its birth registration system to eliminate discriminatory elements, and to create an effective procedure to issue birth certificates to all children born on Dominican territory, regardless of their parents' migratory status. Rather than comply with this decision and the recommendations made in the context of the 2009 UPR to reform its nationality laws, the Dominican Republic has further entrenched its discriminatory policies.
4. The former constitution had guaranteed Dominican nationality to anyone born in the Dominican Republic with the limited exception of children of diplomats and children of parents who were "in transit".<sup>4</sup> In January 2010, the Dominican Republic adopted a significantly revised constitution<sup>5</sup> that further limited the pool of people entitled to Dominican nationality.

5. Article 18(3) gives constitutional status to the language of the 2004 General Law on Migration (Law 285-04),<sup>6</sup> which limited the right to Dominican nationality to children of legal “residents”.<sup>7</sup> As a result of the 2010 constitutional change, all children of “illegal residents” or “persons in transit” born on Dominican territory are now barred from acquiring Dominican nationality.
6. Dominicans of Haitian descent who have been denied formal recognition of their Dominican nationality (including many of those previously recognized and documented as Dominican nationals), are considered “illegal residents” under the 2010 constitution. As a result, their children have no constitutional right to Dominican nationality.<sup>8</sup>
7. Many of those born before the entry into force of the General Law on Migration and the new constitution have been stripped of their Dominican nationality through the government’s retroactive application of the nationality restrictions imposed on “non-residents”, contrary to the constitutional prohibition of retroactive application of laws.<sup>9</sup> Furthermore, persons unable to obtain personal documentation as a result of arbitrary and discriminatory practices are prevented from proving and formally claiming Dominican nationality under Article 18(2). The government argues that these persons never had a right to Dominican citizenship.<sup>10</sup>

## B. Continuing discriminatory birth registration policies and practices

8. Persons of Haitian descent find it increasingly difficult to obtain birth certificates for their children, required for accessing essential services including education and health care.
9. In the Dominican Republic, children of foreign mothers are provided with birth certificates of a different colour and inferior status to those given to Dominican mothers.<sup>11</sup> The General Law on Migration explicitly provides that children of “non-resident” mothers should receive *constancias de nacimiento* (certified birth documents provided by hospitals) “of a different type and color” (in practice, pink) than those given to “resident” mothers.<sup>12</sup> The pink documents prevent children from obtaining official birth certificates.
10. This birth registration regime continues the long-standing institutional discrimination in access to identity documents that proves the nationality and lawful residency of persons of Haitian descent.<sup>13</sup> As a result of this regime, many Dominicans of Haitian descent possess no valid identity documents even though they were born and have lived in the Dominican Republic their entire lives.<sup>14</sup> The lack of documentation bars them from registering the births of their children, perpetuating the denial of legal identity and rights across generations.
11. “Non-resident” mothers must register their children with the relevant embassy or consulate of a foreign government. Children of Haitian descent and their parents often have no meaningful link to Haiti as the parents often were born in the Dominican Republic or have lived there for many years.<sup>15</sup>

## A. Discriminatory denial of personal documents leads to further rights violations

12. Access to certified copies of birth certificates in the Dominican Republic is critically important,<sup>16</sup> as these documents are required to register for primary school or university, to obtain health care coverage, to apply for mandatory identity documents (*cédulas*), to get married, and to enjoy a host of other rights.
13. The Dominican Central Electoral Board (*Junta Central Electoral*, JCE) has issued internal memoranda effectively barring Dominicans of Haitian descent from obtaining certified copies of their birth certificates.<sup>17</sup> Circular No. 17 and Resolution 12-2007 ordered all civil registry officials to refrain from delivering, signing or copying "any identity documents to children of foreign parents who had received birth certificates under irregular circumstance". Officials generally interpret these as applying to individuals who had not proven their residency or legal status in the Dominican Republic at the time of the child's births. Such interpretation disproportionately affects Haitian migrants and their descendants, who frequently lack documentation of their legal status (including work visas) due to the informal manner in which many of them came to the Dominican Republic.
14. Since 2007, many Dominicans of Haitian descent in possession of state-issued birth certificates were unable to obtain the mandatory identity document for persons over 18 years, the *cédula de identidad y electoral*.<sup>18</sup> The JCE regularly claims as that their parents were "non-residents" at the time their births were registered, they never had the right to Dominican nationality.<sup>19</sup> This position, which constitutes an impermissible retroactive application of the recently introduced "non-resident" category, has severe implications for the enjoyment of the rights of many Dominicans of Haitian descent to education, to work, political participation, freedom of movement and access to justice.<sup>20</sup> For example, Dominicans of Haitian descent are unable to register the births of their own children, perpetuating the denial of their rights across generations.<sup>21</sup>
15. Some Dominicans of Haitian descent have been explicitly denied identity documents because of their national background.<sup>22</sup> Civil registry officials also have admitted considering darker skin color, racial features, linguistic accents, and "Haitian-sounding names" to determine who might be carrying irregular or suspect documents.<sup>23</sup>
16. Officially issued identity documents have been retroactively invalidated through administrative fiat. Commencing in 2012, the JCE has conducted administrative "denationalizations" removing the records of people, including children, who were registered years ago in the Dominican birth registry and transferring them to registration books for foreigners.<sup>24</sup>
17. Dominicans of Haitian descent whose identity documents have been denied or withdrawn are left in legal limbo, unable to enjoy their fundamental rights because they cannot prove their nationality or exercise the rights inherent in Dominican citizenship.

# The Dominican Republic's Continued Failure to Meet its Human Rights Obligations

## A. Violations of the right to nationality

18. The right to a nationality without discrimination is protected under the International Covenant on Civil and Political Rights Article 24, para. 3 read with Article 2, the Convention on the Rights of the Child Article 7 read with Article 2, and the Convention on the Elimination of Racial Discrimination Article 5, d), iii). CERD has affirmed that states have an obligation to “[e]nsure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization”.<sup>25</sup>
19. In adopting the revised constitution and implementing the General Law on Migration and Circular No. 17 and Resolution 12 to disproportionately affect persons of Haitian descent on the basis of their national origin, the Dominican Republic violates these individuals’ right to nationality.
20. Many children of Haitian descent cannot obtain official birth certificates, even where their parents’ Dominican nationality has been recognized. As birth registration is a prerequisite for recognition of Dominican nationality, their right to nationality is violated on a discriminatory basis. The refusal to issue mandatory identity documents (*cédulas*) to adult Dominicans of Haitian descent also violates the right to nationality, as these documents constitute the only proof of Dominican nationality for those over the age of 18.
21. The practices that have barred Dominicans of Haitian descent from obtaining official identity documents on discriminatory grounds such as skin color, surname, or national origin effectively deprive them of nationality.

## B. Related violations of economic, social and cultural rights

22. Article 5(e) of ICERD obligates all States Parties to guarantee without distinction as to race, color, or national or ethnic origin a number of economic and social rights, including the right to education; public health, medical care, social security and social services; and work.
23. Dominicans of Haitian descent without birth certificates or mandatory identity documents (*cédulas*) are unable to attend school or obtain any kind of secondary education. Although recent legislation<sup>26</sup> guarantees all children the right to primary education, several government officials have publicly stated that they will prevent any “Haitian” child from enrolling in Dominican schools.<sup>27</sup>
24. Children who have been denied birth certificates can access neither public nor private health care, as a certified copy of a birth certificate is required for all health care coverage. Proof of Dominican nationality is also required to access social security and social services schemes. Consequently, deprivation of the proper documentation results in violations of right to health care and to social security and social services for many Dominicans of Haitian descent.

25. Many Dominicans of Haitian descent have to work in the informal sector, as their lack of a *cédula* renders them ineligible for jobs in the formal economy. The jobs they obtain are often low-paying and do not qualify for protection under Dominican labor laws, resulting in violations to various rights related to work and employment.

### C. Related violations of civil and political rights

26. ICERD and the ICCPR obligate States parties to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law in the enjoyment of a number of civil and political rights.<sup>28</sup> Discrimination against Dominicans of Haitian descent in access to nationality and identity documents prevents them from enjoying these civil rights.

27. Dominicans of Haitian descent without a *cédula* cannot travel freely within the country, and absent proof of lawful residence in the Dominican Republic, they risk being deported.<sup>29</sup> *Cédulas* and, in the case of Dominicans of Haitian descent, birth certificates, are also required to obtain a Dominican passport.<sup>30</sup> Furthermore, *cédulas* are required to get married, to own property, and to receive inheritances. Dominicans of Haitian descent without *cédulas* are prevented from enjoying these rights.

28. All Dominicans must present a valid *cédula* to vote in local and national elections. Denied this document by the government on discriminatory grounds, many adult Dominicans of Haitian descent are unable to enjoy the right to political participation.<sup>31</sup> Those whose *cédula* applications have been denied have neither been able to participate in recent elections, nor present their candidature.<sup>32</sup> Political exclusion is likely to surge in the coming years as an increasing number of Haitian descendants are barred from obtaining the necessary documents.

29. ICCPR Article 16 requires that “everyone shall have the right to recognition everywhere as a person before the law.” Many Dominicans of Haitian descent with valid *cédulas* and passports obtained before 2004 will be unable to renew or replace them, without access to certified birth certificate copies. Without these documents, they will be unable to prove their nationality or exercise the rights inherent to Dominican citizenship, leaving them effectively stateless.

### D. Right to a remedy

30. Domestic courts of first instance in the Dominican Republic have found denials of requests for identity documents to be unlawful in some cases. However, the JCE has not complied with these rulings and has appealed these decisions. In 2011, the Supreme Court upheld Circular 17 and the JCE’s actions in a case concerning its refusal to issue a certified copy of a birth certificate to Emildo Bueno, a Dominican of Haitian descent.<sup>33</sup> The Court refused to hear the appeal and held that the JCE is authorized to implement any administrative measures it deems necessary to oversee the Civil Registry and implement the laws, specifically the 2004 General Law on Migration. The ruling has effectively eliminated the possibility of judicial review of the JCE’s decisions, in violation of the right to an effective remedy.



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<sup>1</sup> In this submission we use the term “Dominicans of Haitian descent” to refer to descendants of Haitian migrants born in the Dominican Republic who worked and settled in the country throughout the 20<sup>th</sup> and 21<sup>st</sup> century.

<sup>2</sup> Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session, 19 April 2013, CERD/C/DOM/CO/13-14, paras. 18-20.

<sup>3</sup> In 2005, the Inter-American Court of Human Rights issued a landmark judgment against the Dominican Republic affirming that these policies discriminated against Dominicans of Haitian descent and left them vulnerable to statelessness. The case was brought by two young girls of Dominican descent who were denied Dominican birth certificates even though their mothers were born in the Dominican Republic and possessed valid *cédulas*. In its judgment, the Inter-American Court found that the Dominican Republic was misapplying the “in transit” constitutional exception to deprive children of Haitian descent of their right to Dominican nationality, making them vulnerable to statelessness. The court ordered the State not to adopt arbitrary rules that ignore the enduring links that long term migrants develop with the country, noting 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 cannot be equated to a person in transit” (para. 157). The court made clear that the migratory status of parents could not be transmitted to children born on national territory and must never constitute justification for depriving a person of the right to nationality (para. 156). The court recognized that although states enjoy wide discretion in determining who has the right to be a national, its regulations cannot be discriminatory or have discriminatory effects on particular groups of people (para. 141). *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R. (Ser. C), No. 130 (2005).

<sup>4</sup> According to the Immigration Act No. 95 of April 14, 1939 and the Immigration Regulation No. 279 of May 12, 1939, which were until August 2004 the applicable migration regulations, foreigners “in transit” were those who entered the Dominican Republic with the principal objectives of traveling to another destination, those engaging in business or leisure activities, and diplomats. According to statements made by the Dominican Republic before the passage of the 2004 General Law on Migration, “A period of 10 days will be considered ordinarily sufficient to pass through the Republic” See: UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Dominican Republic 27/04/2000*, UN Doc. CCPR/C/DOM/99/3, para 18 and *Follow-up State Reporting: Action by State Party: Dominican Republic*, UN Doc. CCPR/CO/71/DOM/Add.1(2002), para. 57.

<sup>5</sup> The full text of the new constitution is available at <http://www.suprema.gov.do/codigos/Constitucion.pdf>.

<sup>6</sup> The full text of the General Law on Migration no. 285-04 (*Ley General de Migración* No. 285-04) was published in the *Gaceta Oficial* on August 27, 2007. It is available (in Spanish) at <http://ww.seip.gov.do/cnm.php>.

<sup>7</sup> Article 18 of the new constitution identifies as Dominican citizens: (1) The children of Dominican mothers or fathers; (2) Those who enjoyed Dominican nationality prior to the entry into force of this Constitution; (3) Persons born on national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and foreigners who find themselves in transit or reside illegally on Dominican territory. Foreigners shall be considered as being in transit as defined in Dominican laws; (4) Persons born abroad to Dominican mothers or fathers, regardless of having acquired, by virtue of their place of birth, a different nationality than their parents. Having reached the age of 18, they may express their will, to the competent authority, to assume dual nationality or renounce one of them; (5) Whoever marries a Dominican, as long as they opt for their spouse’s nationality and meet the requirements established by law; (6) Naturalized persons, in accordance with the conditions and formalities required by law.

<sup>8</sup> On June 1, 2011, the president of the JCE was asked about the thousands of Dominicans of Haitian descent who are being left without documents due to Resolution 12 and he answered that the JCE was simply applying the Constitution. For the full interview please see: *La JCE no cede en caso de hijos de haitianos nacidos en RD que reclaman nacionalidad*, Lisette Rojas. June 1, 2011, Acento.com.do, <http://www.acento.com.do/index.php/news/3485/56/La-JCE-no-cede-en-caso-de-hijos-de-haitianos-nacidos-en-RD-que-reclaman-nacionalidad.html>. Please also see: *La Suprema entiende que la Junta actuó en base a las disposiciones legales de la Constitución*. November 30, 2011, Diario El Día, <http://www.eldia.com.do/nacionales/2011/11/30/68965/La-Suprema-Corte-de-Justicia-valida-circular-de-la-Junta-Central-Electoral>.

<sup>9</sup> According to Article 47 of the 1999 Dominican constitution, Dominican laws can only be applied prospectively. Furthermore, “in no case may the law or [any other] public power affect or alter the juridical security derived from situations established under previous legislation.” Article 110 of the January 26, 2010 constitution upholds this prohibition.

<sup>10</sup> In a lawsuit challenging these discriminatory practices filed by a victim, the Dominican Central Electoral Board stated the following: “[T]he birth certificate of [...] was registered in a fraudulent manner because she is not Dominican but Haitian as she is the daughter of Haitian parents who arrived in the country on a visa and then fell into the “transit” category. Her birth registration is therefore an act contrary to the Constitution, and as such, it should be annulled.” Supplementary brief filed on November 30, 2010 by the Central Electoral Board before the Civil and Commercial Court of the First Judicial District of San Pedro de Macoris regarding the *amparo* filed on November 15, 2010 by Ana Maria Belique.

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<sup>11</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, para. 16.

<sup>12</sup> General Law on Migration No. 285-04, Article 28, enacted on August 15, 2004.

<sup>13</sup> For the most recent findings of international human rights monitoring bodies, please 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: Mission to the Dominican Republic*, UN Doc. A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, March 18, 2008; Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, UN Doc. CRC/C/DOM/CO/2, February 11, 2008, para. 126, wherein the Special Rapporteur and Independent Expert issued a joint recommendation that the Dominican Republic “appropriately implement the law in a manner that protects the right to non-discrimination enjoyed by every person within Dominican territory and the imperative to avoid statelessness”; UN Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, UN Doc. CRC/C/DOM/CO/2, February 11, 2008, para. 40, where the Committee “encourage[d] the State party to adopt a procedure to require nationality which is applied to all children born in the Dominican Republic in a non-discriminatory manner and to make sure that no child becomes stateless;” UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, May 16, 2008, wherein the Committee “strongly recommend[ed] the State party to take appropriate measures to guarantee respect for the principle of non-discrimination in children’s access to nationality.” The Committee also urge[d] the State party to take immediate steps, including the removal of administrative obstacles, to issue all Dominicans of Haitian descent with identity documents;” Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, UN Doc A/HRC/13/3, January 4, 2010, para. 53, where Working Group members recommended that that the Dominican Republic “[a]dopt measures to ensure that Dominicans 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 comments and that it “[a]pply consistent and non-discriminatory citizenship policies and practices”; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Dominican Republic*, UN Doc. CCPR/C/DOM/CO/5, April 19, 2012, para 22, wherein the Committee expressed concern “at reports that the 2004 General Migration Act has been applied retroactively in a number of cases in which recognition of the Dominican nationality of Dominican adults of Haitian origin has been withdrawn because their parents were “in transit” at the time of their birth, regardless of the duration of their stay in the country.” The Committee also regretted “the serious consequences of this situation in terms of the affected persons’ access to education, justice, employment, housing, health services and to all the civil and political rights related to migration status and nationality.”

<sup>14</sup> Human Rights Watch, “Illegal People: Haitians And Dominico-Haitians In The Dominican Republic”, April 2002 Volume 14, Number 1 (B), [www.hrw.org/reports/2002/domrep/](http://www.hrw.org/reports/2002/domrep/); Amnesty International, *Dominican Republic: A life in transit - The plight of Haitian migrants and Dominicans of Haitian descent*, Amnesty International, March 2007, [www.amnesty.org/en/report/info/AMR27/001/2007](http://www.amnesty.org/en/report/info/AMR27/001/2007).

<sup>15</sup> According to Haitian law, children born to Haitian nationals outside Haiti and who were not declared by the parents before Haitian authorities within three years after their birth or who accepted another nationality have no direct access to Haitian nationality. They must first establish residency in Haiti before being recognized as Haitian nationals. As a result, the Dominican Republic’s retroactive de-nationalization of these persons makes them stateless and this status will be inherited by their children. Please see Articles 11, 12.1 13a of the Haitian constitution.

<sup>16</sup> Law 659 of 1955 on Civil Acts, Article 31.

<sup>17</sup> Under current Dominican law, all holders of civil registry documents have unfettered and automatic right of access to these documents. See Law 659 of 1955 on Civil Status Acts, Article 31.

<sup>18</sup> Upon reaching 18 years of age, all Dominican nationals must apply for a *cédula de identidad y electoral*. In order to obtain a *cédula*, applicants must first present a certified copy of their birth certificate issued by the JCE specifically for the purposes of applying for a *cédula*. Possession of a valid *cédula* is mandatory under law and persons unable to present one risk fines, imprisonment, and even deportation. For adult Dominicans, *cédulas* are a necessary prerequisite for enjoying a wide variety of civil, political, social and economic rights. *Cédulas* are required to vote and to run for political office, to register for university education, to pay into the Dominican social security system, to open a bank account and acquire or transfer property, to apply for a passport, to make a sworn statement before the judicial system, to get married or divorced, and to register the birth of one’s children.

<sup>19</sup> When *cédula* applications are rejected, it is done orally, rather than in writing; in a public place; and in an informal, often derogatory fashion. Interviews with several Dominicans of Haitian descent whose *cédula* applications have been denied show that most have been instructed to come back only when their parents’ migration status is “sorted out” – presumably, when their parents’ migration status has been regularized, leaving them in a legal limbo as for most, this is a requirement almost impossible to fulfill.

<sup>20</sup> See Human Rights Watch, “*Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*”, 2002.

<sup>21</sup> Enforcing a 1994 law, civil registries now require all parents over the age of 18 to present a valid *cédula* in order to obtain a birth certificate for their children.

<sup>22</sup> The Justice Initiative has on file an example of a copy of Circular 17 where the phrase “foreign parents” has been replaced with “Haitian parents.”

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<sup>23</sup> Justice Initiative interview with an administrative assistant at a civil registry office in Puerto Plata, Dominican Republic, August 24, 2007 who admitted that she determined who was born to foreign parents “by the physical traits of the person, the manner of talking.” Please also see a report published by Centro Bono on the effects of Resolution 12 on Dominicans of Haitian descent. *Vidas Suspendidas*, November 2011. Available at: [http://catunescopucmm.org/unesco\\_files/pdf/Vidas\\_Suspendidas.pdf](http://catunescopucmm.org/unesco_files/pdf/Vidas_Suspendidas.pdf).

<sup>24</sup> JCE, Directive for the application of Resolution No. 02-2007 of April 18, 2007, for the registration of children of foreigners born after the entry into force of the Migration Law 285-04 and the creation of a special book for those born prior to its entry into force, see paragraph 4. (*Instructivo para la aplicación de la resolución No. 02-2007 del 18 de abril del 2007, para el registro de los hijos de extranjeros nacidos con posterioridad a la ley de migración 285-04 y la habilitación de un libro especial para aquellos nacidos con anterioridad a dicha ley, abril 28, 2011*).

<sup>25</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No.30: Discrimination Against Non Citizens*, October 1, 2004, para. 13.

<sup>26</sup> Ministry of Education. Circular No. 18, July 27, 2011 in which the Ministry ordered all educational centers to accept all children up to 8<sup>th</sup> grade even in cases where they lack identity documentation.

<sup>27</sup> “*Director regional de Educación niega que autorizara inscribir los haitianos ilegales*”, El Diario Digital, August 2, 2007, ([www.diariodigital.com.do/?module=displaystory&story\\_id=18562&format=html](http://www.diariodigital.com.do/?module=displaystory&story_id=18562&format=html)).

<sup>28</sup> States Parties to ICERD must guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin to equality before the law in the enjoyment of the following rights: the right to freedom of movement and residence within the border of the State (Article 5(d)(i)); the right to leave any country, including one’s own, and return to one’s country (Article 5(d)(ii)); the right to marriage and choice of spouse (Article 5(d)(iv)); the right to own property alone as well as in association with others (Article 5(d)(v)); and the right to inherit (Article 5(d)(vi)).

<sup>29</sup> Massive deportations of Haitian migrants and Dominicans of Haitian descent have always been a serious issue in the Dominican Republic. In July 2012, the Inter American Commission on Human Rights submitted the case of Benito Tide Mendez et al. v. Dominican Republic to the jurisdiction of the Inter-American Court because of the need to obtain redress for the victims, the seriousness of the violations, and the failure of the State to implement the recommendation. The case concerns the arbitrary detention and summary expulsion of Benito Tide Méndez, a Dominican of Haitian descent with proof of Dominican nationality, and other Dominican nationals, as well as several Haitian long-term residents, from the Dominican Republic. The Commission found “...that phenotypical characteristics and skin color were decisive factors when individuals were selected for detention and subsequent expulsion, indicating a pattern of discrimination regarding these persons”. Full report available at: [www.oas.org/en/iachr/.../12.271NdeREng.doc](http://www.oas.org/en/iachr/.../12.271NdeREng.doc).

<sup>30</sup> *Emildo Bueno v. the Dominican Republic* (P 816-10), a petition filed in June of 2010 by OSJI and CEJIL with the Inter-American Commission on Human Rights, is a case in point. Emildo Bueno, born in the Dominican Republic to Haitian parents, had been officially recognized as a Dominican national since his birth, at which time he was issued a Dominican birth certificate and subsequently his Dominican nationality was confirmed through the issuance of a *cédula de identidad y electoral* and Dominican passport. In 2007, Mr. Bueno sought a certified copy of his birth certificate required for his application for permanent residency in the United States. On the basis of Circular 17, the Dominican civil registry denied him copies of those documents. Although the U.S. government granted him permanent residency and he is currently residing in the United States, his Dominican passport is due to expire shortly, in which case he will be unable to travel abroad. For more information, please see <http://www.opensocietyfoundations.org/litigation/bueno-v-dominican-republic>.

<sup>31</sup> Please see the Final Statement of the Electoral Observation Mission of the OAS in the Dominican Republic, in which the mission stated: “Likewise, the Mission is concerned by some complaints related to the recognition of the right to vote of Dominican citizens of Haitian descent”, and it recommended: “[To] take the pertinent measures to protect the right of participation of all the people born in the territory of the Dominican Republic”. Available at: [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-184/12](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-184/12).

<sup>32</sup> Since these policies have been in place, the Dominican Republic has held two presidential elections: May 2008 and May 2012.

<sup>33</sup> *Tercera Sala de la Suprema Corte de Justicia de la República Dominicana*, Decision to reject the third opinion recourse submitted by Emildo Bueno Oguis, No. 003-208-01043, November 2, 2011 available at [http://www.suprema.gov.do/PDF\\_2/sentencias\\_destacadas/2011/Emildo\\_Bueno\\_Oguis\\_JCE.pdf](http://www.suprema.gov.do/PDF_2/sentencias_destacadas/2011/Emildo_Bueno_Oguis_JCE.pdf)

**E-mail: [info@justiceinitiative.org](mailto:info@justiceinitiative.org)  
[www.justiceinitiative.org](http://www.justiceinitiative.org)**



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