

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

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

## **The Dominican Republic**

### **I. Introduction and focus of the submission**

1. Dominicanos por Derechos (DxD)<sup>1</sup>, the Institute on Statelessness and Inclusion (ISI)<sup>2</sup>, and the Center for Justice and International Law (CEJIL)<sup>3</sup> make this joint submission to the Universal Periodic Review (UPR) on the Dominican Republic.
2. This joint submission focuses on statelessness, the right to a nationality, and discrimination faced by Dominicans of Haitian descent in the enjoyment of their human rights. This report proceeds in the following manner: first, a review of the recommendations made in the previous cycles of the UPR; second, an analysis of the Dominican Republic's international human rights obligations; third, an examination of the Dominican legal framework and the right to a nationality; fourth, an analysis of the human rights violations that have resulted from the State's failings to comply with its domestic and international obligations; and finally, recommendations. This submission draws on the combined expertise of the submitting organizations and is the product of extensive legal analysis, investigation, research, and consultations with affected persons, national civil society organizations, and international partners.

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<sup>1</sup> Dominicanos por Derechos (DxD) is a network of national organizations working to promote the human rights of the most vulnerable in the Dominican Republic, especially Dominicans of Haitian descent. The collaboration is made up of the following organizations: Movimiento de Mujeres Dominico-Haitiana (MUDHA), Movimiento Socio Cultural para los Trabajadores Haitianos (MOSCTHA), Centro de Desarrollo Sostenible (CEDES), Centro para la Observación Migratoria y el Desarrollo Social en el Caribe (Observatorio Migrantes del Caribe (OBMICA)), Hermanas Misioneras de San Carlos Borromeo Scalabrinianas (ASCALA), Comisión Nacional de Derechos Humanos (CNDH), Movimiento RECONOCI.DO, Centro de Educación para el Desarrollo (CEDUCA), Centro Cultural Dominicano Haitiano (CCDH), y Derechos Vigentes. For more information about DxD, please see: <https://dominicanosxderecho.wordpress.com/>.

<sup>2</sup> ISI is an independent non-profit organization committed to an integrated, human rights-based response to the injustice of statelessness and exclusion. It is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. Between the 27th and 31st sessions of the UPR, ISI has made over 30 country-specific submissions on the human rights of stateless persons and has also compiled summaries of the key human rights challenges related to statelessness in all countries under review between the 23<sup>rd</sup> and 30<sup>th</sup> UPR sessions. For more information about ISI, please see: <http://www.institutesi.org>.

<sup>3</sup> CEJIL utilizes international human rights law to strategically litigate in international forums, principally before the Inter-American Court of Human Rights. CEJIL has represented diverse cases from many countries in the Americas, including the Dominican Republic. For more information about CEJIL, please see: <https://www.cejil.org/>.

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

3. The right to a nationality, statelessness, and the Dominican Republic's non-compliance with its international obligations have been sources of concern during the country's reviews in previous UPR cycles. The Dominican Republic was subject to review under the first cycle of the UPR on December 1, 2009, and subsequently under the second cycle on February 5, 2014.
4. During the interactive dialogue at the Dominican Republic's first review at the Thirteenth Session of the First Cycle in 2009, many States expressed concern about the discrimination faced by individuals of Haitian descent. Bosnia and Herzegovina inquired about the General Law on Migration's effect on vulnerable groups including Dominicans of Haitian descent; Canada noted reports of discriminatory denial of the right to a nationality for Dominicans of Haitian descent; the United Kingdom of Great Britain and Northern Ireland emphasized the importance of equality in access to healthcare, education and freedom of movement for Dominicans of Haitian descent; and the United States expressed concern about the barriers faced by Dominicans of Haitian descent in establishing their citizenship and the resulting impact this has on their opportunities for employment, education, marriage, and land ownership, as well as their access to judicial and financial services.<sup>4</sup> Three States made five recommendations to the Dominican Republic regarding statelessness, the right to a nationality, and citizenship<sup>5</sup> (see Appendix A).
5. In response to these recommendations, the Dominican Republic accepted Canada's recommendation to accede to the two UN Statelessness Conventions, but did not accept any other recommendations, including several which related directly to the discriminatory treatment and deprivation of nationality for Dominicans of Haitian descent.<sup>6</sup>
6. During the interactive dialogue at the Dominican Republic's second review at the Twenty-Sixth Session of the Second Cycle in 2014, 16 States expressed concern regarding the restrictive interpretation of nationality laws following a 2013 Constitutional Court ruling, the disproportionate impact this decision had on Dominicans of Haitian descent, and the ensuing risk of statelessness for those born in the Dominican Republic.<sup>7</sup> During the second cycle, 20 States made 26 recommendations regarding statelessness, the State's obligations to respect the right to a nationality for all, the issuance of identity documents without discrimination, and the prevention

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<sup>4</sup> General Assembly. Draft Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/WG.6/6/L.2 (3 December 2009) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_06\\_-\\_november\\_2009/a\\_hrc\\_wg.6\\_6\\_l.2\\_dominican\\_republic.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_06_-_november_2009/a_hrc_wg.6_6_l.2_dominican_republic.pdf). Paragraphs 36, 39, 53 and 66.

<sup>5</sup> General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/13/3 (4 January 2010) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_6\\_-\\_november\\_2009/ahrc133dominicanrepublice.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_6_-_november_2009/ahrc133dominicanrepublice.pdf).

<sup>6</sup> UPR Info. Responses to Recommendations: Dominican Republic. Dominican Republic's responses to recommendations (as of 01.04.2010) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_6\\_-\\_november\\_2009/recommendationstodominicanrepublic2009.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_6_-_november_2009/recommendationstodominicanrepublic2009.pdf). 88.11, 89.1, 89.2, 89.4 and 89.5.

<sup>7</sup> General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. (4 April 2014) [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_18\\_-\\_january\\_2014/a\\_hrc\\_26\\_15\\_e.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_18_-_january_2014/a_hrc_26_15_e.pdf). Paragraphs 45, 50, 52, 54, 56, 57, 58, 59, 64, 65, 68, 79, 80, 83, 84 and 85.

of statelessness for those at risk<sup>8</sup> (see Appendix A). These include: Mexico's recommendation to respect every person's right to nationality in accordance with the recommendations of the Inter-American Commission on Human Rights and the judgment of the Inter-American Court on Human Rights<sup>9</sup>; Norway's recommendation to seek the technical advice of the United Nations High Commissioner for Refugees to identify and prevent statelessness, and protect stateless persons, to address the challenges created by the ruling of the Constitutional Court<sup>10</sup>; and Australia's recommendation that all rights be restored retroactively to those affected by the Constitutional Court judgment and that they be given prompt and non-discriminatory means to acquire their Dominican Republic citizenship.<sup>11</sup> The significant increase in the number of recommendations and recommending states, as well as the content of the recommendations received, is reflective of a further deterioration of human rights protections for Dominicans of Haitian descent between the first and second cycles.

7. The Dominican Republic accepted 3 of the recommendations made during the second cycle, took 9 recommendations under advisement, and did not support 14 of the recommendations.<sup>12</sup> For the recommendations taken under advisement, the State declared that it was taking steps to achieve compliance with these but that it was not possible to guarantee immediate compliance. For the recommendations not supported, the State declared that these were based on false premises.<sup>13</sup> 13 different States made recommendations related to statelessness and the right to a nationality that the Dominican Republic did not support.<sup>14</sup> 7 of the recommendations not supported mention statelessness, 9 emphasize the State's obligations to resolve existing situations of statelessness, and 8 relate to discrimination in access to a nationality.<sup>15</sup>
8. The Dominican Republic accepted the recommendation to consider ratifying the international human rights instruments to which it is not yet a State party,<sup>16</sup> and took under advisement recommendations to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness,<sup>17</sup> which it had already accepted in the first UPR cycle.<sup>18</sup> However, at the time of this report's submission, the State had not yet ratified these conventions.

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<sup>8</sup> Id.

<sup>9</sup> Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendation 89.112.

<sup>10</sup> Id. Recommendation 98.126.

<sup>11</sup> Id. Recommendation 98.132.

<sup>12</sup> General Assembly. Report of the Working Group on the Universal Periodic Review: Dominican Republic, Addendum. A/HRC/26/15 Add.1 (11 June 2014). [https://www.upr-info.org/sites/default/files/document/dominican\\_republic/session\\_18\\_-\\_january\\_2014/a\\_hrc\\_26\\_15\\_add.1\\_e.pdf](https://www.upr-info.org/sites/default/files/document/dominican_republic/session_18_-_january_2014/a_hrc_26_15_add.1_e.pdf).

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendation 89.1

<sup>17</sup> Id. Recommendations 89.15, 89.16, 89.17 and 89.18.

<sup>18</sup> Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/13/3. Recommendation 88.11.

9. Recommendations also accepted by the Dominican Republic include to effectively register births in a non-discriminatory manner<sup>19</sup> and to safeguard the fundamental rights of people of Haitian origin.<sup>20</sup> Additionally, the State expressed its desire to comply with recommendations to guarantee and ensure the full respect for the right to a nationality.<sup>21</sup>
10. While recognizing the concerns expressed by the Dominican Republic about its inability to comply immediately with recommendations, this report notes that affected persons and civil society organizations consider State progress in complying with the majority of the recommendations made in past UPR cycles weak regarding the right to a nationality, the elimination of discrimination from the Civil Registry, and the guarantee of all fundamental human rights to Dominicans of Haitian descent in compliance with domestic and international law. Rather, the State has imposed additional obstacles to the enjoyment of a number of human rights for Dominicans of Haitian descent and has further entrenched deep-rooted racial discrimination through legal reforms.

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

11. While the Dominican Republic has not ratified the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, it is party to a significant number of international human rights instruments that guarantee the right to a nationality for all on a non-discriminatory basis. These include the International Covenant on Civil and Political Rights (Article 24),<sup>22</sup> the Convention on the Rights of the Child (Articles 7 and 8),<sup>23</sup> the Convention on the Elimination of All Forms of Discrimination against Women (Article 9),<sup>24</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5).<sup>25</sup> Additionally, the Dominican Republic is obligated to guarantee all rights enshrined in the International Covenant on Economic, Social and Cultural Rights without discrimination of any kind, including on the basis of "race, colour... national or social origin...birth or other status."<sup>26</sup> Finally, the Dominican Republic is obligated to respect and promote the right to a nationality as specified in Article 20 of the American Convention on Human Rights.<sup>27</sup>
12. Numerous international bodies in charge of monitoring States' compliance with the human rights treaties listed above have expressed concern about the deprivation of nationality for those born in the Dominican Republic to parents of Haitian descent and the discrimination this segment of the

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<sup>19</sup> Report of the Working Group on the Universal Periodic Review: Dominican Republic. A/HRC/26/15. Recommendations 98.76 and 98.109.

<sup>20</sup> Id. Recommendation 98.122.

<sup>21</sup> Id. Recommendations 98.18, 98.114, 98.115 and 98.119.

<sup>22</sup> Acceded to 4 January 1978.

<sup>23</sup> Ratified 11 June 1991.

<sup>24</sup> Ratified 2 September 1982.

<sup>25</sup> Acceded to 25 May 1983.

<sup>26</sup> Article 2.3. Acceded to 4 January 1978.

<sup>27</sup> Ratified 21 January 1978.

population faces, particularly following Constitutional Court ruling TC/0168/13 and the subsequent enactment of Law 169-14. For example, in 2017, the Human Rights Committee expressed concern for the “situation of a large number of first-generation immigrants and their descendants, whose Dominican nationality has been denied as a result of decision No. TC/0168/13. ...the Committee is concerned about the limited scope of the Act and the additional barriers that it has created, including unreasonable procedures and requirements.”<sup>28</sup>

13. In their most recent reviews of the human rights situation in the Dominican Republic, the Committee on the Rights of the Child,<sup>29</sup> the Committee on the Elimination of Discrimination Against Women,<sup>30</sup> the Committee on the Elimination of Racial Discrimination,<sup>31</sup> the Committee on Economic, Social and Cultural Rights,<sup>32</sup> and the Inter-American Commission on Human Rights (IACHR)<sup>33</sup> all expressed similar concerns regarding the denial of the right to a nationality following TC/0168/13, the shortcomings of Law 169-14, which was adopted to mitigate the impact of TC/0168/13, and the systemic discrimination faced by persons of Haitian descent. In response, in a statement made to the Committee on the Rights of the Child during its most recent review on January 13, 2015, the Dominican Republic characterized its response to TC/0168/13 as working to protect the fundamental rights and reduce the vulnerability of all persons on Dominican territory through an inclusive process carried out in accordance with international standards.<sup>34</sup> In a statement made to the Committee on Economic, Social and Cultural Rights on September 27, 2016, the Dominican Republic characterized its State obligations under the 2010 Constitution as those of effectively promoting human rights and ensuring the fulfillment of economic, social and cultural

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<sup>28</sup> Human Rights Committee. Concluding observations on the sixth periodic report of the Dominican Republic. International Covenant on Civil and Political Rights. (27 November 2017). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DOM/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DOM/CO/6&Lang=En). Paragraph 25.

<sup>29</sup> Committee on the Rights of the Child. Concluding observations on the combined third to fifth periodic reports of the Dominican Republic. Convention on the Rights of the Child. (6 March 2015). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2fCO%2f3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fDOM%2fCO%2f3-5&Lang=en). Paragraph 27.

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

<sup>31</sup> Committee on the Elimination of Racial Discrimination. Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic. International Convention on the Elimination of All Forms of Racial Discrimination. (19 April 2013). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fDOM%2fCO%2f13-14&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fDOM%2fCO%2f13-14&Lang=en). Paragraphs 7 and 19.

<sup>32</sup> Committee on Economic, Social and Cultural Rights. Concluding observations on the fourth periodic report of the Dominican Republic. Economic and Social Council. (21 October 2016). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fDOM%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fDOM%2fCO%2f4&Lang=en). Paragraph 21.

<sup>33</sup> Inter-American Commission on Human Rights. Situation of Human Rights in the Dominican Republic Organization of American States. (31 December 2015). <http://www.oas.org/en/iachr/reports/pdfs/dominicanrepublic-2015.pdf>. Paragraphs 4 and 16.

<sup>34</sup> República Dominicana. Discurso de Presentación de los informes periódicos tercero a quinto combinados de la República Dominicana ante el Comité de los Derechos del Niño. (12-13 de enero de 2015). [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DOM/INT\\_CRC\\_STA\\_DOM\\_19561\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DOM/INT_CRC_STA_DOM_19561_E.pdf).

rights for all segments of its population.<sup>35</sup> These responses are emblematic of the Dominican Republic's refusal to directly recognize the discrimination and marginalization faced by Dominicans of Haitian descent or even acknowledge the existence of a single case of statelessness<sup>36</sup> and serve to highlight the State's use of inclusive and cooperative rhetoric while simultaneously enacting discriminatory policies and refusing international collaboration.

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

14. In recent decades, the Dominican Republic has restricted the enjoyment of the right to a nationality for Dominican-born descendants of migrants through its legal framework. Beginning with the Constitution of 1929, the Dominican Republic granted citizenship through the principle of *jus soli* ("right of the soil") to any person born in the country, with the exception of children born to foreign diplomats and children born to persons in transit.<sup>37</sup> The 1939 Migration Law established that the concept of "in transit" applied to persons in the country for ten days or fewer, with the purpose of reaching another destination.<sup>38</sup>
15. In 2004, the Dominican Republic enacted Migration Law 285-04<sup>39</sup>, which in Article 36 expanded the "in transit" exemption to apply to all non-residents and established a new system for the acquisition of Dominican nationality, effectively depriving the children of those born to parents with an irregular migratory status from Dominican nationality, in violation of the Constitution in place at the time.<sup>40</sup>
16. On January 26, 2010, the Dominican Republic adopted a new Constitution, which in Article 18.3 explicitly states that children of foreigners "residing illegally in the Dominican territory" are not entitled to Dominican nationality.<sup>41</sup> At the same time, Article 18.2 states that "those who enjoy the Dominican nationality before the entry into effect of this Constitution" are Dominicans.<sup>42</sup> Furthermore, Article 74 establishes that human rights treaties, pacts, and conventions have constitutional hierarchy, and that norms concerning fundamental human rights and their

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<sup>35</sup> República Dominicana. Presentación del 4 informe de la República Dominicana del Pacto Internacional de Derechos Económicos, Sociales y Culturales: 59 Sesión del Comité. [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/DOM/INT\\_CESCR\\_STA\\_DOM\\_25322\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/DOM/INT_CESCR_STA_DOM_25322_S.pdf).

<sup>36</sup> Fernández, Leonel. "En República Dominicana, No Existe La Apatridia." 18 de enero de 2016. Leonel Fernández. <https://leonelfernandez.com/articulos/en-republica-dominicana-no-existe-la-apatridia/>.

<sup>37</sup> Constitución Política de la República Dominicana, proclamada 20 de junio de 1929. Art. 8.

<sup>38</sup> Reglamento de migración número 279, del 12 de mayo de 1939. Sección V. Proclamada en la Gaceta Oficial No. 6593. <http://www.acnur.org/fileadmin/Documentos/BDL/2001/0241.pdf?file=fileadmin/Documentos/BDL/2001/0241>.

<sup>39</sup> Ley General de Migración Núm. 285-04, de 15 de Agosto de 2004. Proclamada en la Gaceta Oficial No. 10291.

<sup>40</sup> Observatorio Migrantes del Caribe. Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación. *OBMICA*. Editora Búho: República Dominicana. Enero 2014; Ley 285/04.

<sup>41</sup> Constitución Política de la República Dominicana, proclamada el 26 de enero de 2010. Publicada en la Gaceta Oficial No. 10561.

<sup>42</sup> Id.

guarantees should be applied in the most favorable manner for those affected.<sup>43</sup> The 2010 Constitution also recognizes that all people are equal before the law and are entitled to the same protections and treatments from institutions and authorities in the enjoyment of their rights. Furthermore, it recognizes that the State must “adopt measures to prevent and combat discrimination, marginalization, vulnerability and exclusion.”<sup>44</sup> As such, the 2010 Constitution guarantees Dominican nationality to those born on Dominican territory prior to 2010, obligates the State to respect the treaties that guarantee the right to a nationality to which it is a party, and compels the State to take actions to protect and fulfill that right in a non-discriminatory manner.

17. Nevertheless, on September 23, 2013, the Constitutional Court issued ruling TC/0168/13 (“La Sentencia”), which retroactively deprived those born in the Dominican Republic of their Dominican citizenship if their parents were irregular migrants at the time of their birth, even though they had been recognized as citizens according to the laws in effect between 1929 and 2010.<sup>45</sup> TC/0168/13 is estimated to have affected 133,770 people<sup>46</sup> born in the Dominican Republic and has had a disproportionate impact on persons of Haitian descent.<sup>47</sup> Many of those impacted had been registered in the Dominican Civil Registry (“Registro Civil”), had received official birth certificates and identity cards (“cédulas de identidad”), and had lived in the Dominican Republic all their lives, with some families residing in the Dominican Republic for as many as four generations. The Dominican Republic was the only country of nationality and of habitual residence for most of the affected people. The Court ruling violated the Dominican Constitution, as well as numerous norms and protections guaranteed by international law. While 133,770 is the statistic most widely agreed upon for the number of people affected, this number is only an estimate. According to the 2012 National Immigrant Survey, 209,912 people were identified as descendants of Haitian immigrants<sup>48</sup>, and would thus be vulnerable to statelessness following TC/0168/13.
18. The Dominican government maintains that those affected by TC/0168/13 are not stateless because these individuals still have the right to a nationality, namely that of Haiti, due to their Haitian ancestry. However, an inability to prove Haitian nationality due to their parent’s lack of government-issued documents ensures that there are no guarantees to Haitian nationality for those affected. Rather, the determination of statelessness is dependent on one’s existing nationality (or lack thereof) rather than the nationality that one might later acquire, and an individual in the process of acquiring a nationality cannot be said to be a national of the country in

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<sup>43</sup> Id.

<sup>44</sup> Id. Article 39.

<sup>45</sup> Centro para la Observación Migratoria y el Desarrollo Social en el Caribe. “Estado del arte de la migraciones que atañen a la República Dominicana: 2014” *OBMICA*. Editora Búho: República Dominicana. Septiembre 2015.

<sup>46</sup> Executive Committee of the High Commissioner’s Programme. Overview of the UNHCR’s Operations in the Americas. UNHCR Standing Committee: 65<sup>th</sup> Meeting (23 February 2016). <http://www.unhcr.org/56cd75a59.pdf>.

<sup>47</sup> “La Sentencia del Tribunal Constitucional Genera Rechazo en RD.” *OBMICA*. <http://www.obmica.org/index.php/actualidad/23-derecho-a-nacionalidad/18-la-sentencia-del-tribunal-constitucional-genera-rechazo-en-rd>.

<sup>48</sup> Unión Europea, UNFPA y Oficina Nacional de Estadística. ENI 2012: Primera Encuesta Nacional de Inmigrantes de la República Dominicana. Santo Domingo, República Dominicana (Abril de 2013).

[http://media.onu.org.do/ONU\\_DO\\_web/596/sala\\_prensa\\_publicaciones/docs/0565341001372885891.pdf](http://media.onu.org.do/ONU_DO_web/596/sala_prensa_publicaciones/docs/0565341001372885891.pdf).

question at that time.<sup>49</sup> As such, those affected are stateless. Furthermore, the profound connections to the Dominican Republic of those persons affected impose a political and moral imperative on the State to facilitate their integration into their “own country”<sup>50</sup> and Dominican society.

19. In response to national and international outcries that TC/0168/13 caused massive denationalization<sup>51</sup>, the State issued Law 169-14<sup>52</sup> (“Ley 169-14”). Law 169-14 divided those persons affected by TC/0168/13 into two groups, known as Group A and Group B. People in Group A were born on Dominican territory between June 16, 1929 and April 18, 2007 and had their births recorded in the Civil Registry, while Group B corresponded to persons born during the same period whose births were never registered, even though they were also born in the Dominican Republic.
20. According to Law 169-14, the Central Electoral Board (“Junta Central Electoral” or “JCE”) would review and transcribe all civil registry records for those in Group A affected by TC/0168/13 as part of an internal audit in order to ensure that identity documents were not issued to people who had registered by providing fraudulent information. The Central Electoral Board would then either ratify existing registrations or transcribe these registrations for individuals deemed eligible.<sup>53</sup> This process was criticized by national and international organizations for a lack of transparency as to what the review process entailed and what constituted fraud. This process was also criticized for leaving people in Group A in legal limbo while their identity documents were temporarily invalidated during the audit.<sup>54</sup>
21. For those in Group B whose births were never registered, these individuals could register during a limited time period in the Book of Foreigners (“el Libro de Extranjería”) and apply for naturalization two years after obtaining one of the migratory statuses established in General Migration Law No. 285-04, so long as they did not have an existing criminal record.<sup>55</sup> The process of potential naturalization for Group B was condemned by national and international actors both in principle and in implementation, as it treated people born on Dominican territory – who had a right to nationality – as foreigners and arbitrarily deprived them of a nationality without an effective or guaranteed remedy.<sup>56</sup>
22. One source of international condemnation for Law 169-14 came from the Inter-American Court of Human Rights, which in the 2014 case *Expelled Dominicans and Haitians v. Dominican Republic*,

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<sup>49</sup> UNHCR. Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons. Geneva, 2014. <http://www.unhcr.org/en-us/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>50</sup> Id. Page 57.

<sup>51</sup> “La Sentencia del Tribunal Constitucional Genera Rechazo en RD.” *OBMICA*.

<sup>52</sup> El Congreso Nacional de la República Dominicana. Ley 169-14. Consultoría Jurídica del Poder Ejecutivo.

<sup>53</sup> Ley 169-14, art. 2 y 4.

<sup>54</sup> Robert F. Kennedy Human Rights, American Jewish World Service, Centro de Desarrollo Sostenible, United Nations Democracy Fund. “Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back.” [https://rfkhumanrights.org/assets/documents/rfk\\_dr\\_report-web\\_1.pdf](https://rfkhumanrights.org/assets/documents/rfk_dr_report-web_1.pdf). Pages 32-37.

<sup>55</sup> Id., art. 6, 7 y 8.

<sup>56</sup> Inter-American Commission on Human Rights. Chapter IV.B: Dominican Republic. 2016 Annual Report. <https://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.RD-en.pdf>.

determined that several aspects of the law contravened international human rights standards. According to the Court, “Law No. 169 represented an impediment to the full exercise of the right to nationality of the victims. In this regard, it violated the obligation to adopt domestic legal provisions, in relation to the rights to juridical personality, to a name, and to nationality...and owing to the violation of these rights taken as a whole, the right to identity, and the right to equal protection of the law.”<sup>57</sup> In response to these findings, the Dominican Republic not only failed to make substantive changes to the law in order to comply with its international human rights obligations, but instead the Dominican Constitutional Court issued a decision attempting to nullify the Court’s jurisdiction<sup>58</sup>, although this decision itself violates international law.

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

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

23. During the preparation of this submission, numerous civil society organizations acknowledged that Law 169-14 does provide a potential, although limited and fundamentally flawed, way to address the large-scale statelessness generated by TC/0168/13. These organizations then expressed concern that the Dominican Republic had conflated a human rights issue, the right to a nationality for those born on Dominican territory, with one of migration and naturalization, which can be more politically contentious, logistically challenging, and potentially xenophobic. Thus, instead of providing a solution to the mass denationalization created by TC/0168/13, the implementation of Law 169-14 by the JCE instead generated a series of obstacles for both people initially registered in the Civil Registry (Group A) and those born in the country but not registered (Group B) to overcome.<sup>59</sup>
24. One of the most significant concerns expressed by civil society organizations was that persons born in the Dominican Republic who comprise Group B would have to register as foreigners in their country of birth and nationality, only to later apply for Dominican citizenship through an uncertain naturalization process.<sup>60</sup> This requirement is especially problematic given the historical discrimination practiced and individual discretion exercised by officials in charge of the Civil Registry. In its 2015 Country Report, the Inter-American Commission on Human Rights (“IACHR”) observed that the most frequently reported human rights problem in the Dominican Republic related to the authorities’ refusal to issue birth certificates, which appeared in 1,360 cases, and noted that the four most frequently reported issues all related to structural problems around the right to a nationality for individuals of Haitian descent.<sup>61</sup> During the implementation of Law 169-14,

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<sup>57</sup> Inter-American Court of Human Rights. Case of Expelled Dominicans and Haitians v. Dominican Republic. Official Summary. 28 August 2014. [http://corteidh.or.cr/docs/casos/articulos/resumen\\_282\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/resumen_282_ing.pdf).

<sup>58</sup> Romero, Argénida. TC declara inconstitucional vinculación de República Dominicana a CIDH. *Diario Libre*. 5 de noviembre de 2014. <https://www.diariolibre.com/noticias/tc-declara-inconstitucional-vinculacin-de-repblica-dominicana-a-cidh-KGDL867841>.

<sup>59</sup> El Congreso Nacional en Nombre de la República. “Ley No. 169-14.” Congreso Nacional. Consideración Octavo. <https://presidencia.gob.do/themes/custom/presidency/docs/gobplan/gobplan-15/Ley-No-169-14.pdf>.

<sup>60</sup> Estado del arte de las migraciones que atañen a la República Dominicana: 2014.

<sup>61</sup> Inter-American Commission on Human Rights. Situation of Human Rights in the Dominican Republic. Country Report: Dominican Republic. (31 December 2015). <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

people in Group B faced discrimination when trying to register in the Civil Registry during the allotted registration period, which manifested itself through openly hostile statements and the imposition of additional requirements on those registering.<sup>62</sup> OBMICA, part of the Dominicanos por Derechos network, collected testimony from persons in Group B who were turned away by officials due to their physical appearance or surnames that officials deemed to sound Haitian, as well as being required to arbitrarily produce additional witnesses and paperwork to access the process.<sup>63</sup> The registration period closed on 31 January 2015.

25. As a result of Law 169-14 and the ensuing audit of the Civil Registry records, the government reported that 61,049 individuals in Group A had been irregularly registered.<sup>64</sup> The government pledged to the IACHR that “the Dominican State recognizes as Dominicans each of these persons and therefore their nationality is not in question,”<sup>65</sup> and stated that individuals who were deemed irregularly registered could now obtain their official identity documents recognizing them as Dominican. According to the most recent figures released by the government, 20,872 birth certificates have been issued to these individuals and 19,521 identification cards are eligible to be requested<sup>66</sup>, although civil society organizations have criticized the State for its failure to publish information on the names of those eligible and if those eligible have claimed possession of their documents.<sup>67</sup>
26. Furthermore, during the process of transcribing those in Group A from the original Civil Registry to the newly created version, the State effectively segregated Dominicans of Haitian descent from the rest of the population.<sup>68</sup> In theory those in Group A affected by TC/0168/13 should have had their right to a nationality restored. However, the small percentage of people who have actually received their identity documents, the obstacles they face in obtaining their documents and discriminatory hurdles imposed by government officials, means that many individuals officially recorded in the Civil Registry still cannot enjoy their rights as Dominican nationals. CEDES0, part of the Dominicanos por Derechos network, collected testimony of persons in Group A who still cannot enjoy their rights to register the birth of their own children, study, marry, or find formal employment despite being officially recorded.<sup>69</sup> This marginalization from Dominican society and prolonged uncertainty led them to report feelings of paralysis, shame, despair, and to even contemplate suicide.<sup>70</sup>

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<sup>62</sup> “Estado del arte de la migraciones que atañen a la República Dominicana: 2014.” Pages 151-152.

<sup>63</sup> Id. Page 153.

<sup>64</sup> Inter-American Commission on Human Rights. Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. 2017 Annual Report. <http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.5RD-en.pdf>. Page 774.

<sup>65</sup> Id.

<sup>66</sup> Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 775.

<sup>67</sup> Id. Pages 775-776.

<sup>68</sup> “Reconoci.do exige al Gobierno que restituya la nacionalidad de los dominicanos desnaturalizados con la Sentencia 168-13.”

<sup>69</sup> “Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back.” Pages 41-42.

<sup>70</sup> Id. Pages 10 and 30.

27. With regard to Group B, of the approximately 110,000 to 145,000 individuals that the Ministry of the Interior and Police estimated could benefit from Law 169-14,<sup>71</sup> only 8,755 people registered in the regularization plan according to official reports.<sup>72</sup> The low rates of participation can be attributed to various factors, including the absence of a media campaign directed towards potential beneficiaries, the lack of training for officials who incorrectly rejected applications from those who were eligible, the low number of offices receiving applications, the limited 180-day timeframe in which to register, general lack of faith of the affected individuals in the proposed system stemming from historical and structural discrimination, and additional barriers imposed by individual offices and officials.<sup>73</sup>
28. According to the law, individuals able to register as part of Group B have to wait two years to pursue a naturalization process,<sup>74</sup> which would potentially provide them with the opportunity to enjoy the nationality of the country where they were born. The process of naturalization is discretionary and applications can be denied upon review. If approved, this naturalized citizenship limits access to political office and can be subject to suspension in certain cases.<sup>75</sup> Those able to register as part of Group B remain deprived of their nationality until able to pursue this naturalization process, and there is no guarantee that they will ever be recognized as Dominicans. As recently as November 23, 2017, the Dominican government stated to the IACHR that “it was not aware of any application for naturalization filed by any of population registered as Group B.”<sup>76</sup> The IACHR noted its concern that not only has the government not yet received applications for naturalization, but it has also not published information for the affected population about the requirements or procedure for the naturalization process.<sup>77</sup> In addition to those in Group B who could register, tens of thousands of Dominicans in Group B that could not register through Law 169-14 for reasons detailed earlier are stateless or at risk of statelessness in their country of birth.
29. While the Dominican government pledged not to carry out deportations during the registration period,<sup>78</sup> that window officially ended in 2015, exposing thousands of people to the risk of deportation to a country they have never known. Between July 2015 and September 2017, 58,271 people were officially deported to Haiti and another 37,942 claimed they were deported, according to the International Organization for Migration.<sup>79</sup> Among those deported, 15,301 individuals claimed to have been born in the Dominican Republic before January 26, 2010, the date that the 2010 Constitution went into effect.<sup>80</sup> Under the International Covenant on Civil and Political Rights

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<sup>71</sup> Situation of Human Rights in the Dominican Republic. Country Report: Dominican Republic. Page 237.

<sup>72</sup> Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 777.

<sup>73</sup> Estado del arte de las migraciones que atañen a la República Dominicana: 2014. *OBMICA*. P.152-153.

<sup>74</sup> El Congreso Nacional en Nombre de la República. Ley No. 169-14, art. 8.

<sup>75</sup> Constitución Política de la República Dominicana, proclamada el 26 de enero de 2010. Articles 19, 24, 79 and 135.

<sup>76</sup> Chapter V: Follow-Up on Recommendations Issued by the IACHR in its Country or Thematic Reports. Page 778.

<sup>77</sup> Id. Page 779.

<sup>78</sup> Taveras, Estarlin. Gobierno concluye plan naturalización especial. *El Día*. (3 de febrero de 2015).

<http://eldia.com.do/gobierno-concluye-plan-naturalizacion-especial/>.

<sup>79</sup> IOM Haiti. Monitoring Border SITREP. IOM. 28 September 2017.

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

<sup>80</sup> Id.

(ICCPR), the Dominican Republic is obligated to respect the right of individuals to enter and remain in their own country, which the Human Rights Committee has found includes “stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.”<sup>81</sup> As such, these deportations are in clear violation of the Dominican Republic’s international human rights obligations.

30. Those stateless or at risk of statelessness include people in Group A who have not yet received their nationality documents, those in Group B both waiting to access the naturalization process to regain their Dominican nationality and those eligible to participate in the registration process but unable to do so, those deported or facing deportation, and those born in the Dominican Republic between April 18, 2007 and June 26, 2010.<sup>82</sup> Furthermore, the children of parents in both Groups A and B are considered stateless due to the fact that the Dominican government does not recognize the nationality or legal residence status of their parents.
31. However, even the limited protections offered by Law 169-14 have been subject to efforts to repeal the law and have it declared unconstitutional.<sup>83</sup> These efforts have largely been led by conservative and nationalist groups, who have particularly targeted Articles 1, 2, and 8 of the law, which respectively describe its purpose, the alleged plan for transcription and regularization of status for those in Group A, and the possibility for naturalization of those in Group B after the required waiting period.<sup>84</sup> These efforts serve to underscore the law’s fragility, as it does not guarantee the right to a nationality in a permanent manner for those affected by TC/0168/13, but rather leaves its implementation up to the discretion of different national actors, many of whom have openly demonstrated hostility to this segment of the population.
32. TC/0168/13, Law 169-14, and the resulting cases of statelessness are not isolated events; rather, they are the consequences of a long legacy of systematic discrimination directed towards Dominicans of Haitian descent over multiple decades which have left them vulnerable to human rights abuses. The IACHR declared that “all Dominicans of Haitian descent, or those perceived as such, are suffering from a situation of structural discrimination, in all regards and all levels, which deprives it of the enjoyment and exercise of its human rights.”<sup>85</sup> The IACHR also noted that it does not receive complaints or information on foreigners of non-Haitian descent in the Dominican Republic facing barriers in recognition of their nationality, access to the Civil Registry, or obtaining their identity documents,<sup>86</sup> which serves to further underscore the discrimination towards the population of Haitian descent.

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

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<sup>81</sup> UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), (2 November 1999), CCPR/C/21/Rev. 1/Add. 9.

<sup>82</sup> Concluding observations on the sixth periodic report of the Dominican Republic. Paragraph 25.

<sup>83</sup> Menez, Wanda. Cuatro acciones buscan nulidad de la Ley 169-14. *Listín Diario*. 10 de abril de 2018. <https://www.listindiario.com/la-republica/2018/04/10/509910/cuatro-acciones-buscan-nulidad-de-la-ley-169-14>.

<sup>84</sup> El Congreso Nacional en Nombre de la República. Ley No. 169-14, art. 1, 2 y 8.

<sup>85</sup> Inter-American Commission on Human Rights. Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. <http://www.oas.org/en/iachr/multimedia/2016/DominicanRepublic/dominican-republic.html>.

<sup>86</sup> Id.

33. In the Dominican Republic, persons of Haitian descent who have been identified throughout this submission face serious consequences as a result of their lack of identity documents or of a nationality. These individuals face widespread discrimination and the denial of their rights to move freely within and outside of the country, participate in political life, marry, study, work in the formal economy, and receive medical assistance, among other human rights violations.<sup>87</sup> Furthermore, without identity documents, it is nearly impossible to apply for insurance, open a bank account, obtain a passport, receive a certificate of good conduct from the police, or submit a complaint to the authorities if a human rights violation is committed.<sup>88</sup>
34. The Committee on the Rights of the Child and the IACHR highlighted the effect that the denial of the right to a nationality can have on children's education and their resulting future opportunities. The Committee stated its concern that "children who lack a birth certificate and children of Haitian descent who lack official documentation [are] not being allowed to take the national examinations required to graduate from primary and secondary education."<sup>89</sup> During the IACHR's most recent visit to the Dominican Republic, 620 people of the 3,342 who provided information reported cases where they themselves or their family members faced obstacles in enjoying the right to an education due to their lack of identity documents.<sup>90</sup> Furthermore, knowledge of future obstacles in accessing and completing secondary education can act as a deterrent for many children to complete or even attend primary school.<sup>91</sup>
35. Due to the fact that people who do not have identity documents cannot register the birth of their own children in the Dominican Republic, the absence of a recognized nationality is transmitted to their children, creating intergenerational statelessness. The Committee on the Elimination of Discrimination against Women noted in its most recent report on the Dominican Republic that the exception to the principle of *jus soli* for foreigners "in transit" has been applied in an excessively broad and systematic manner, to the detriment of women of Haitian descent and their children who cannot receive Dominican nationality at birth.<sup>92</sup> Furthermore, women and girls of Haitian descent who have been denied their identity documents are especially vulnerable to violence and marginalization in many forms, including forced prostitution, human trafficking, and underage marriage.<sup>93</sup> As a result, women and girls of Haitian descent face marginalization and human rights abuses in multiple forms.
36. Additionally, due to the denial of the right to work and the systematic exclusion from access to banks, credit, and social security, those denied the right to a nationality are more likely to live in

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<sup>87</sup> Centro para la Observación Migratoria y el desarrollo en el Caribe. "Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes en la República Dominicana". OBMICA. Editora Búho: República Dominicana. Diciembre de 2017. Pág. 114.

<sup>88</sup> Id.

<sup>89</sup> Concluding observations on the combined third to fifth periodic reports of the Dominican Republic. Paragraph 57.

<sup>90</sup> Situation of Human Rights in the Dominican Republic. Page 163.

<sup>91</sup> Country Report on Human Rights Practices for 2017. United States Department of State: Bureau of Democracy, Human Rights, and Labor. Page 19.

<sup>92</sup> Concluding observations on the sixth and seventh periodic reports of the Dominican Republic. Paragraph 30.

<sup>93</sup> "Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes en la República Dominicana." Pág 114.

poverty.<sup>94</sup> This poverty can, in turn, create further discrimination and exclusion from Dominican society.

37. While many of the obstacles faced by persons of Haitian descent are imposed by the Dominican authorities, political parties, business owners, and other social actors also discriminate against this portion of the population.<sup>95</sup> In recent years, racist and xenophobic rhetoric against those of Haitian descent has grown and expanded within the mainstream media and flourished throughout social media.<sup>96</sup> Human rights defenders, journalists, academics, and civil society organizations that have openly condemned TC/0168/13 and defended the rights of persons of Haitian descent have faced growing hostility from a range of actors. They have been openly threatened and branded as traitors, and public demonstrations have called for “death to the traitors.”<sup>97</sup> The IACHR has expressed concern regarding these alleged threats and acts of intimidation, which have failed to elicit an official rebuke from the government and can further create an environment of intolerance, making those of Haitian descent all the more vulnerable to discrimination and exclusion.<sup>98</sup> The Dominican Republic’s failure to protect the rights and safety of Dominicans of Haitian descent and those working to defend their rights represents a failing of the State to comply with its Constitutional and international treaty obligations, as identified throughout this submission.

## VI. Recommendations

38. Drawing on the information provided in this report, the co-submitting organizations propose the following recommendations:
- a. Adequately respond to the recommendations made by international and regional mechanisms, courts and treaty bodies, and by other States in past UPR cycles, to address the discriminatory deprivation of nationality and historic and structural denial of fundamental human rights faced by persons of Haitian descent.
  - b. Fulfill its obligations under Article 18 of the Dominican Constitution, whereby those who enjoyed Dominican nationality prior to the 2010 Constitution coming into effect continue to do so.
  - c. Implement a legal framework that restores the nationality of all persons affected by TC/0168/13 in a prompt and standardized manner that respects their human rights and includes all affected individuals (including Group A and Group B) without discrimination and without requiring them to legally become foreigners and later acquire Dominican nationality via a naturalization procedure.

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<sup>94</sup> Situation of Human Rights in the Dominican Republic.

<sup>95</sup> Inter-American Commission on Human Rights. Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. <http://www.oas.org/en/iachr/multimedia/2016/DominicanRepublic/dominican-republic.html>.

<sup>96</sup> Núñez, Ali. “Comunidad haitianos ‘organizados’ denuncia xenofobia y odio en la RD.” *Al Momento*. 17 de marzo de 2018. <http://almomento.net/comunidad-haitianos-organizados-rd-denuncia-xenofobia-y-odio-en-su-contra/>.

<sup>97</sup> Denationalization and Statelessness in the Dominican Republic. IACHR: *Dominican Republic*. Page 14.

<sup>98</sup> *Id.*

- d. Pass comprehensive anti-discrimination legislation to legally guarantee equal access to human rights to all persons in the Dominican Republic regardless of ethnicity, socioeconomic status, sexual preference, or gender.
- e. Take steps to combat xenophobia, racism, and hate speech, and foster an environment where human rights defenders and civil society organizations can operate freely and openly to advocate for the human rights of all persons in the Dominican Republic.
- f. Provide training to and oversight of government officials to ensure that children and adults of Haitian descent do not face discrimination in registering at the Civil Registry due to the unlawful exercise of discretion by government officials or additional arbitrary regulations imposed by the Central Electoral Board (JCE).
- g. Formally recognize the existence of racial discrimination in the Dominican Republic and adopt non-discriminatory policies related to the issuance of identity documents.
- h. Conduct a national census, in collaboration with UNHCR and national human rights organizations, to identify those stateless or at risk of statelessness and publish the resulting disaggregated data.
- i. Accede to the 1954 Convention on the Status of Stateless Persons and ratify the 1961 Convention on the Reduction of Statelessness.