

## CHAPTER IV.B DOMINICAN REPUBLIC

### I. INTRODUCTION

1. During 2016, the Inter-American Commission on Human Rights (the “Commission,” “Inter-American Commission,” or “IACHR”) has closely monitored a variety of events that occurred in the Dominican Republic which could impact the full enjoyment of human rights.

2. Since the beginning of the 1990’s the Inter-American Commission has received information about the situation of entrenched racial discrimination against people of Haitian descent, or those perceived as such, which has had particularly impacted in terms of recognition of nationality, deportations, expulsions, and other areas. Furthermore, migrant operations and collective expulsions have been of particular concern to the Commission since its visit to the country in 1991. Both the Commission and the Inter-American Court of Human Rights have examined the situation via the different mechanisms placed at their disposal made by the member countries of the Organization of American States (OAS), eliciting recommendations for comprehensively addressing the problems that they have identified in the area of human rights.<sup>1</sup> In this

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<sup>1</sup> IACHR, *Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015; Annual Report 2001, Chapter V, Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Member States, *Dominican Republic*, OEA/Ser.L/V/II.114, Doc. 5 rev. 16 April 2002; *Report on the Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, 7 October 1999; Annual Report 1991, Chapter V, *Situation of Haitians in the Dominican Republic*, OEA/Ser.L/V/II.81, Doc. 6 rev. 1, February 14, 1992.

Between 1998 and the date on which this publication went to press, the Commission held 19 hearings on topics in that connection: IACHR, *Human Rights and Statelessness in the Dominican Republic*, 159th regular session, December 6, 2016; *Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic*, 157th regular session, April 8, 2016; *The Right to Nationality in the Dominican Republic (Scheduled by the Commission)*, 156th regular session, October 23, 2015; *Progress and Challenges Posed by Law 169/14 in the Dominican Republic*, 153rd regular session, October 31, 2014; *Human Rights Situation of Haitian Migrant Workers and Their Families in the Dominican Republic*, 150th regular session, March 24, 2014; *Situation of the Right to Nationality of Dominicans of Haitian Descent affected by Denationalization Policies in the Dominican Republic*, 150th regular session, March 24, 2014; *Right to Nationality of the Dominicans of Haitian Origin in Dominican Republic*, 147th regular session, March 12, 2013; *Judicial Response in Denationalization Cases in the Dominican Republic*, 143rd session, October 24, 2011; *Modification of the Civil Register in the Dominican Republic*, 141st regular session, March 28, 2011; *The Constitution and the Right to Nationality in the Dominican Republic*, 140th regular session, October 28, 2010; *The Situation of Violence against Children and Women in the Haitian-Dominican Frontier Region*, 137th regular session, November 3, 2009; *Application of the 2004 Migration Law in the Dominican Republic*, 131st regular session, March 10, 2008; *Racial Discrimination in the Dominican Republic*, 127th regular session, March 2, 2007; *The Situation Created by the General Migration Law of the Dominican Republic*, 124th regular session, March 3, 2006; *The Situation of Haitian and Dominican-Haitian Communities in the Dominican Republic*, 123rd regular session, October 21, 2005; *Hearing on Case 12,189 – Dilcia Jean and Violeta Bosico, Dominican Republic*, 113th regular session, November 15, 2001; *Hearing on Case 12,189 – Dilcia Jean and Violeta Bosico, Dominican Republic*, 106th regular session, March 6, 2000; *Hearing on Case 12,189 – Dilcia Jean and Violeta Bosico, Dominican Republic*, 104th regular session, October 5, 1999; *The Human Rights Situation of Migrant Workers in the Dominican Republic*, 100th regular session, October 7, 1998.

The Commission has also requested the Dominican State to adopt precautionary measures on behalf of Dominicans of Haitian descent, as follows: IACHR, PM 86/99 – Dilcia Yean and Violeta Bosico, Dominican Republic; PM 88/99 – Group of persons of Haitian origin and Dominicans of Haitian descent; PM 89/99 – Eddy Martínez Olga and Teresa Germana Pierre (María) and their two minor children, Dominican Republic; PM 195/08 – Emildo Bueno *et al.*, Dominican Republic; PM 279/12 – Luisa Fransua, Rafael Touissaint *et al.*, Dominican Republic; PM 408/13 – Members of *Movimiento “Reconoci.do.”* Dominican Republic. Likewise, the IACHR has processed numerous petitions concerning matters in this regard: IACHR, Application filed with the Inter-American Court of Human Rights, *Case of Dilcia Yean and Violeta Bosico Cofi v. Dominican Republic*, July 11, 2003; Application filed with the Inter-American Court of Human Rights, Case No. 12.688, *Nadege Dorzema et al.: The Guayubín Massacre (Dominican Republic)*. February 11, 2011; and Report on Merits No. 64/12, Case 12,271, *Benito Tide Méndez et al. (Dominican Republic)*. March 29, 2012.

The Inter-American Court, in its turn, has also addressed such issues: I/A Court HR, *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 282; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251; *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130; and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic regarding Dominican Republic*. Orders of the Inter-American Court of Human Rights of August 7,

context, the impact of the Constitutional Court's judgment TC/0168/13 of September 23, 2013, again served to highlight the major challenges facing the Dominican State in relation to racial discrimination, the impact of which the Commission had the opportunity to observe for itself during its on-site visit to the country from December 2 to 6, 2013, at the invitation of the State.

3. After such visit, the IACHR then prepared a report on the situation of human rights in the Dominican Republic, which contained a series of recommendations for the Dominican State based on its findings and on information obtained from monitoring the situation before, during, and after the on-site visit, from investigations conducted *sua sponte*, from the State itself, from input produced by the various mechanisms through which the IACHR has observed the situation in the country, journalists' reports, and decisions and recommendations of specialized international agencies, among other sources. In 2016, the IACHR requested the Dominican State to provide, within six months, information on steps taken to implement the recommendations contained in the country report; as yet, it has received no response. The Dominican Republic also neglected to respond to other requests made by the Commission in 2016.

4. Consequently, in light of the above-referenced human rights situation in the Dominican Republic and the persisting structural problems in relation to discrimination against people of actual or perceived Haitian descent born on Dominican soil, coupled with the lack of response from the State to the various requests made in 2016, the IACHR has decided to include the country in this chapter of its report, on the basis that it meets the requirement for inclusion under Article 59(6)(d)(iii) of the Rules of Procedure of the IACHR, which provides:

- d. The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration, the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:
  - iii. serious omissions in the adoption of the necessary measures to make fundamental rights effective, or in complying with the decisions of the Commission and the Inter-American Court [...]

5. In accordance with Article 59 (5) of its Rules of Procedure, in preparing this chapter of its report, the Commission has relied on information published by international agencies, civil society organizations, and the Dominican Government via its official media. The Commission has also drawn on information obtained from other mechanisms for monitoring, promotion, and protection of human rights at its disposal.

6. On January 27, 2017, the IACHR forwarded to the State a copy of the preliminary draft of this chapter in accordance with Article 59(10) of its Rules of Procedure, and asked that the State submit its comments within one month. In the same communication the State was given the possibility of extending an invitation for the Commission to make an on-site visit to the country in 2017, should it feel it advisable, its consent for which should be conveyed not later than 10 days counted from that date (that is, January 27, 2017). On February 24, 2017, the IACHR received the observations of the State<sup>2</sup>, which were incorporated, as deemed pertinent, into the final version approved by the Commission on March 14, 2017.

7. In its response, the State regretted the "exceedingly short amount of time that it has been given to present the aforesaid comments, given that it prevents it from responding effectively to the different issues raised by the Commission."<sup>3</sup> Moreover, the Dominican State thanked the IACHR for its recognition of

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2000; August 18, 2000; September 14, 2000; November 12, 2000; May 26, 2001; February 2, 2006; July 8, 2009; December 1, 2011; and February 29, 2012.

<sup>2</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017. Available in Spanish only.

<sup>3</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

the efforts made in recent years to ensure effective exercise of human rights. However, it lamented the country's inclusion in Chapter IV.B of the 2016 Annual Report, since it believes that a country's inclusion "is warranted by genuinely extreme situations, which [was] not the case with the Dominican Republic, which has been making sustained efforts at strengthening its institutions within a context of political stability, ideological pluralism, respect for freedom of expression and political organizations, as well as an acknowledged bolstering of judicial guarantees that protect fundamental rights."<sup>4</sup> The Dominican Republic also reiterated its commitment to effective observance of the human rights of everyone living within its jurisdiction and reaffirmed its intent to work with the Commission in the search for ways to address the various obstacles that impede their enjoyment.<sup>5</sup>

8. This chapter is divided into five sections, which are described as follow: i. Introduction; ii. Structural discrimination in the Dominican Republic (which covers the topics examined in the report "Situation of Human Rights in the Dominican Republic" adopted by the IACHR on December 31, 2015); iii. Serious omissions in the adoption of the necessary measures to make fundamental rights effective, or in complying with the decisions of the IACHR; iv. Other human rights situations observed; v. Recommendations. Each section references events that occurred in 2016 and have a direct bearing on the main subject of this chapter.

## II. STRUCTURAL DISCRIMINATION IN THE DOMINICAN REPUBLIC: THE RIGHTS TO NATIONALITY, JURIDICAL PERSONALITY, EQUALITY, AND NONDISCRIMINATION

9. As the introduction notes, since the beginning of the 1990's the Inter-American Commission has received information about the situation of entrenched racial discrimination against people of Haitian descent—whether actual or perceived—born on Dominican soil. Migrant operations and collective expulsions have been of particular concern to the Commission since its visit to the country in 1991. Using the diverse mechanisms placed at their disposal by the OAS member states, both organs of the inter-American human rights system (IAHRS) have examined human rights abuses in relation to discrimination and exclusion of individuals of Haitian descent.<sup>6</sup>

<sup>4</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>5</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>6</sup> IACHR, *Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015; Annual Report 2001, Chapter V, Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Member States, [Dominican Republic](#), OEA/Ser./L/V/II.114, Doc. 5 rev. 16 April 2002; [Report on the Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II.104, Doc. 49 rev. 1, 7 October 1999; Annual Report 1991, Chapter V, [Situation of Haitians in the Dominican Republic](#), OEA/Ser.L/V/II.81, Doc. 6 rev. 1, February 14, 1992.

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10. On September 23, 2013, the Dominican Republic's Constitutional Court handed down judgment TC/0168/13. That ruling redefined, retroactively, the criteria for acquiring citizenship by application of the principle of *jus soli*, by giving a new interpretation to the concept of foreign nationals in transit, equating this concept with that of a foreign national in an irregular migratory situation. In addition, judgment TC/0168/13 ordered the administrative transfer of all birth certificates of people born in the Dominican Republic as children of "foreign nationals in transit" from 1929-2007, to the birth registration book for foreign nationals. Consequently, such decision arbitrarily deprived of their nationality a significant number of people who enjoyed Dominican nationality, and leaving them stateless because they were considered foreign nationals, despite being born on Dominican soil and having identity documents that proved as much.

11. The ruling had a discriminatory effect, as it impacted Dominicans of Haitian descent, particularly by retroactively stripping them of their nationality, thus rendering them stateless since no other State claimed them as its nationals. The new interpretation of the Constitutional Court retroactively deprived of their right to Dominican nationality to tens of thousands of people who had been considered Dominican during all of their lifetime, many of which were registered at birth as Dominican nationals by the competent authorities, and who throughout their lives had been granted other identity documents such as identity cards, electoral ID cards and passports.

12. The arbitrary deprivation of nationality and the lack of recognition of the juridical personality of those affected places them at a disadvantage when it comes to the enjoyment of a number of their human rights, as well as making them extremely vulnerable to becoming victims of a host of other human rights violations. Accordingly, the Commission considered that the Dominican authorities' interpretation of the right to nationality by virtue of the *jus soli* principle is incompatible with its obligations under international human rights law because it discriminates against people of Haitian descent born in the Dominican Republic.

13. The Commission considered that judgment TC/0168/2013 disproportionately affected persons already subjected to multiple forms of discrimination, particularly by reason of their race, the national origin and/or migratory status of their parents, or their poverty. Their lack of papers or the fact that their papers have been withheld, destroyed, or are under investigation, has created obstacles for them in terms of access to education, health care, and decent work, as well as the ability to enter into contracts and get married, among other things.

14. The judgment of the Constitutional Court was a step in the decades-long process of denationalization under way in the Dominican Republic, aimed at "protecting its national identity" by arbitrarily and retroactively restricting the right to nationality of Dominicans of foreign extraction, especially

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session, March 6, 2000; *Hearing on Case 12,189 - Dilcia Jean and Violeta Bosico, Dominican Republic*, 104th regular session, October 5, 1999; *The Human Rights Situation of Migrant Workers in the Dominican Republic*, 100th regular session, October 7, 1998.

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those of Haitian descent.<sup>7</sup> The refusal to register or issue papers to a large number of people born in the Dominican Republic has been extensively practiced by the Central Electoral Board (JCE) in recent decades, during which arbitrary deportations and collective expulsions have also been recorded. Those deportations included persons born in the Dominican Republic, who had been recognized as Dominican nationals in birth certificates and identity cards issued by the Dominican State.

15. Judgment TC/0168/13 and its effects have drawn widespread concern and condemnation at the national, regional and international level. After the judgment TC/0168/13 and in response to an invitation from the Dominican State that the Inter-American Commission made its sixth on-site visit to the Dominican Republic. In its report, the IACHR considered that the discrimination and marginalization of persons of Haitian descent who have been deprived of their Dominican nationality because of the Haitian nationality of their forebears and/or because of the color of their skin (especially women and children), have increased their vulnerability to other forms of discrimination, exploitation, and violation of human rights.

16. During the visit, the Inter-American Commission also received deeply disturbing reports of threats made to journalists, academics, lawyers, politicians, lawmakers, human rights defenders, public figures and even high-level public servants for criticizing Constitutional Court judgment TC/0168/13. Such people were branded “traitors” and even threatened amid public calls for “death to the traitors.” The Commission expressed its concern that intolerance and racist discourse could create an environment that would increase the vulnerability of people of Haitian origin to violence in different forms.

17. In response to the effects produced by judgment TC/0168/13, President Danilo Medina’s administration promoted, with the support of many political and social actors, the adoption of the Law 169-14, which was approved unanimously by Congress and went into force on May 23, 2014. Law 169-14 divided those affected by judgment TC/0168/13 into two groups: A and B. With respect to Group A, the Law envisaged the validation of birth certificates and the restoration of nationality for those registered as born on Dominican soil between June 16, 1929 and April 18, 2007.

18. As for those in Group B, the Law introduced a special registration procedure for those who were born on Dominican soil but never registered in the Dominican civil registers to do so in the birth records for foreign nationals. It also allowed them the possibility subsequently to apply to regularize their status as migrants and, after two years, to apply for Dominican citizenship through the regular naturalization procedure. However, those born between April 18, 2007, and January 26, 2010, were not covered by the Law’s scope.

19. According to information provided by the Dominican State while the Commission was preparing the country report, as of end-May 2015, more than 53,000 persons in Group A had had their records validated. Consequently, according to what the State has stated, those individuals and their descendants will have their Dominican nationality restored and their Dominican identity documents issued in accordance with the provisions of Law 169-14. The Commission has received complaints from a number of individuals regarding obstacles in the delivery of their documents by Civil Registry officials. In that regard, the Commission considers that the State must ensure that the delivery of identity documents to such individuals proceeds without discrimination, arbitrariness or administrative impediment, so that they can exercise the multiple rights associated with the right to nationality and juridical personality.

20. With respect to Group B, that is, those who were born on Dominican soil to foreign nationals with irregular migratory status but were not registered in the Dominican Civil Register, the State reported that 8,755 people applied for registration in the “foreign nationals book” within the allotted 180-day period for doing so (that period expired on February 1, 2015). The Commission notes that according to the National Immigration Survey (ENI) of 2012, more than 53,000 people were born in the Dominican Republic to two

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<sup>7</sup> IACHR, *Preliminary Observations from the IACHR’s Visit to the Dominican Republic: December 2 to 6, 2013*. Santo Domingo, December 6, 2013, pp. 6-11.

foreign parents but were never registered in the Civil Register.<sup>8</sup> That means that most of those in Group B did not register for the procedure envisaged for them by Law 169-14.

21. In its observations to the draft of this Chapter, the Dominican State reiterated in that regard that it had done:

[...] everything it could to disseminate the information and offer the necessary facilities to enable any interested party who met the requirements to take advantage of that mechanism, and it even extended the time limit in order to give those interested another opportunity. It also invited nongovernmental organizations and faith-based groups to do the same on their part; therefore, no one could reasonably claim that the Dominican State did not provide the appropriate facilities.<sup>9</sup>

22. In relation to the alleged obstacles supposedly faced by many persons seeking to register in Group B because they faced becoming stateless, the State said that it was "prepared to receive such complaints and act on them."<sup>10</sup> It said that "two years since the adoption of Law 169, and its deadlines having expired, only two cases have been presented to the State of individuals who were unable to benefit from it, one submitted by the person concerned and the other through one of the organizations that work with the Dominican Republic on those matters. Those cases, which were presented at the beginning of this year, are currently being examined in the light of the legal standards in force."<sup>11</sup>

23. The Commission recognized in its country report that the Dominican State took steps to address the situation of those affected by judgment TC/0168/13. While the Commission rejected the underlying bases of Law 169-14, it recognizes the importance of the procedure established for restoring Dominican nationality to the children born in Dominican territory to non-resident foreign parents and whose births were registered in the Civil Register, i.e., the members of Group A. However, the Commission said that it could not but express its rejection of the fact that people born in the Dominican Republic—and entitled to Dominican nationality under Dominican law—should be treated as foreign nationals, and that the option that they were given to regain Dominican nationality was to apply for naturalization two years after regularizing their migratory status in accordance with the National Plan for the Regularization of Foreign Nationals with Irregular Migratory Status (*Plan Nacional de Regularización de Extranjeros en Situación Migratoria Irregular*). Since the solution that Law 169-14 offers for people in Group B is to consider them foreign, tens of thousands of people and their descendants continue without having their nationality restored and, therefore, without an effective reparation for the arbitrary deprivation of their nationality and the statelessness in which they were left in the wake of judgment TC/0168/13.

24. The Commission also expressed its deep concern about the risk of deportation faced by persons born in Dominican territory who lack identity documents certifying their Dominican nationality, in contravention of the American Convention and standards developed by the Commission and the Inter-American Court.

25. Among measures taken by the Dominican State to assist the Haitian state and Haitian migrants on Dominican soil, the Commission highlighted the steps taken under the Migrant Regularization Plan, in which, according to the State, 249,869 of the 288,467 foreigners seeking to do so had applied,<sup>12</sup> in

<sup>8</sup> This figure does not include the descendants of these persons.

<sup>9</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>10</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>11</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017, p. 7.

<sup>12</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017, p. 4.

order to regularize their migratory status in the Dominican Republic and enable the majority of those individuals promptly to acquire regular migratory status and the documents accrediting as much. The State said that in developing the plan it consulted bodies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the United Nations Children's Fund (UNICEF), the European Union (EU), and the United Nations Development Programme (UNDP)<sup>13</sup>. It also mentioned that while the Plan was being implemented, "a moratorium was placed on deportations of undocumented immigrants, in order to provide them with the assurance that registration in the Plan would not signify a risk of expulsion."<sup>14</sup>

26. What follows is information received during the year under review in connection with the situation of discrimination, juridical personality, and other related rights.

### **A. The right to nationality and Constitutional Court judgment TC/0168/13**

27. In its 2015 report "Situation of Human Rights in the Dominican Republic," the Commission urged the State to adopt the necessary measures to prevent judgment TC/0168/13 from continuing to have legal effects; to fully restore the right to nationality of those affected by judgment TC/0168/13; to repeal the provisions of Law 169-14 that are based on the consideration that people who are born in the Dominican Republic to irregular migrants are foreign nationals, since that implies a retroactive deprivation of nationality; and to take the necessary steps to halt practices tending to deny Dominican nationality to persons born on Dominican soil on account of the origin of their parents or forebears or on the migratory status of their parents; among other recommendations.

28. At the public hearing on *Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic* held by the Commission in April 2016, the representative of the Dominican State said that institutional solutions have been sought to the problems and challenges in the area of nationality and immigration. For the State, Law 169-14 is a prime example of that, as the:

[...] broad and lengthy consultations and discussions that are clearly demonstrated the political will and cooperation of large sectors of society, under the leadership of president Danilo Medina, aimed at coming up with just, politically viable, and juridically sustainable answers to the problems affecting those born on national soil to parents with irregular status.<sup>15</sup>

29. At that hearing, the State held that according to the way in which the Inter-American Commission and Court interpret the right to nationality, "the Dominican Republic would never be able to have a system of rules governing nationality that contains any restrictive provisions based on the regularity or otherwise of the parents' migratory status, as dozens of countries around the world do."<sup>16</sup> According to the State, the only option available to the country would be for it to adopt a completely open nationality regime, which is not the case in the majority of countries in the world's different regions. The State said that in introducing the above restriction, "the Dominican State is not acting arbitrarily or for discriminatory reasons, as the IACHR alleges when referring to the issue of the limitations on States when it comes to establishing

<sup>13</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017, pp. 3 and 4.

<sup>14</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017, pp. 3 and 4.

<sup>15</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016. The hearing was attended by *Movimiento de Mujeres Dominicano Haitianas* (MUDHA), *Centro Pedro Francisco Bonó* (Centro Bonó), *Centro de Formación y Acción Social y Agraria* (CEFASA), *Comisión Nacional de Derechos Humanos* (CNDH), *Derechos Vigentes* (DV), *Centro Cultural Dominicano-Haitiano* (CCDH), Genaro Rincón, *Movimiento Reconocido*, *Centro de Desarrollo Sostenible* (CEDESO), and Noemí Méndez.

<sup>16</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

their nationality regimes under international law.”<sup>17</sup> In its response to the draft of this chapter, the State said that “the law passed both chambers of the legislature unanimously,” demonstrating “a steadfast commitment on the part of the organs of democratic representation to protecting the rights of those affected by the decision, without allowing ideological differences to be an obstacle to the enjoyment of human rights by those affected by the decision.”<sup>18</sup>

30. The State mentioned the rules on nationality that it has adopted and said that they were proportionate and suitable for their intended purpose. It said that in order for children born to foreign parents on Dominican soil to acquire Dominican nationality, the migratory status of their parents must be in order. The rules do not specifically exclude a particular group of people because of their national origin. The Dominican State reiterated that its norms are not intended to discriminate against any group of persons for reasons of race, color, religion, or origin. In the opinion of the State, “the fact that they mainly or disproportionately impact a specific group of persons, as the Commission affirms, is something that happens to stem from the social reality in a given historical context, as is the case in many countries that do not have nationality rules that impose certain restrictions, which is not to imply that such countries are engaging in discrimination.”<sup>19</sup>

31. According to information received from civil society organizations, the measures adopted by the Dominican State in relation to the rights to nationality and juridical personality of persons of Haitian descent born on Dominican soil have given rise to the following categories of demographic profile among those affected.

- Group A Population: persons born on Dominican soil to parents with irregular migratory status who registered their birth in the civil registers.
- Group B Population: persons born on Dominican soil to parents with irregular migratory status who did not register their birth in the civil registers.
- Foreign Nationals Book Population: persons born on Dominican soil after April 18, 2007, to parents with either regular or irregular migratory status, who have been registered in a foreign nationals book with no indication as to their nationality and who remain in legal limbo. The foregoing is in accordance with Central Electoral Board Resolution 2-2007 issued pursuant to the 2004 Immigration Law. Those declared after the deadline (but born before April 18, 2007) are also registered in that book retroactively and illegally, since they are entitled to Dominican nationality.
- Population of Children of Mixed-Nationality Parents: the children of mixed-nationality parents face a variety of obstacles in registering their birth and, therefore, being able to certify their nationality, owing to the migratory status of one of their parents. A mixed-nationality couple is understood to be a conjugal or parental union between a Dominican national and a foreign alien. Based on the different obstacles that they face in order to register the birth of their children and certify their nationality, civil society organizations have identified the following four types of mixed-nationality couples. 1. Foreign mother and Dominican father; 2. Dominican mother perceived as a foreign national (usually of Haitian descent) and foreign father; 3. Foreign mother and Dominican father perceived as a foreign national (usually of Haitian descent); and 4. Dominican mother and foreign father (allowed to be registered in the civil registers but may have difficulties with paternal recognition).<sup>20</sup>

<sup>17</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

<sup>18</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR, Dominican Republic](#), received on February 24, 2017, p. 3.

<sup>19</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

<sup>20</sup> Movimiento Reconoci.do, *Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana* (Follow-up on the recommendations made by the Inter-American Commission on Human Rights to the Dominican State in its Report on the Situation of Human Rights in the

32. In the public hearing on *Human Rights and Statelessness in the Dominican Republic* held in Panama in December 2016, the organizations taking part said that Law 169-14, adopted to address this situation, perpetuates discrimination and its implementation has been plagued with shortcomings.<sup>21</sup> They said that the treatment accorded to persons in Group B is incompatible with the American Convention, given that they are entitled to Dominican nationality by virtue of having been born in the Dominican Republic. However, they are required to register in foreign nationals books in order to obtain residence and then, after two years, have the possibility of applying for citizenship. They say that out of an estimated total of 100,000 people to whom the law applies, according to the national statistics office, only 8,765 were registered and only 4,500 of those have had their applications accepted; the rest have been left without a response.<sup>22</sup> They concluded that, therefore, the measures to mitigate the effects of the judgment run counter to the recommendations of the IACHR and the jurisprudence of the Inter-American Court.<sup>23</sup> They also referred to the need to establish a working group with the State in order to hold a dialogue on the situation and examine possible responses. The organizations said that the people affected by the judgment "are being treated like objects, as opposed to persons with rights."<sup>24</sup>

33. Based on its monitoring and available information, the Commission observes with concern that the Dominican State has not adopted measures to nullify any norm, whether constitutional, legal, regulatory, or administrative, as well as any practice, decision, or interpretation, that denies or has the effect of denying Dominican nationality to persons born in the territory of the Dominican Republic due to the irregular status of their foreign parents. In addition, the information available indicates that the Dominican State has not taken steps to void the legal effects of judgment TC/0168/13 and repeal the provisions contained in Articles 6, 8, and 11 of Law 169-14.

34. The Dominican State has repeatedly said that Law 169-14 was the chief measure adopted by the State to deal with the consequences of Constitutional Court judgment TC/0168/13. The Law introduced procedures for validating birth certificates and restoring the nationality of individuals born in the country between 1929 and 2007 whose births were already registered (Group A). The Law also ushered in a special registration procedure, open for 180 days, by which people born on Dominican soil whose births were never registered in the civil registers (Group B) will be able to apply to register as foreign nationals and regularize their status as such. Once the time limits set by the Government passed, anyone who had not applied to regularize their status was subject to the procedures envisaged by the law, including deportation. The IACHR has made the following analysis of the two groups.

#### i. GROUP A

35. In its sixth periodic report submitted to the United Nations Human Rights Committee, the Dominican State said that, in accordance with Law 169-14, the Central Electoral Board (JCE) had fully regularized the status of all persons listed as irregular in the civil registers. In that connection, the State reported that, having concluded its review, the JCE had used various media channels to publicize the list of persons in the registry who were presumed to be in an irregular situation, so that they could present themselves at a civil registry office or service center to collect their certificates. The list of registered persons

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Dominican Republic). October 2016, p. 1. [Document in the Commission archive] For more information about mixed-nationality couples and the obstacles that they face in registering their children and certifying their Dominican nationality, see, OBMICA, [Hijos de parejas mixtas: Explorando un nuevo perfil de exclusión del registro civil](#) (Children of mixed nationality couples: Exploring a new profile of exclusion from the civil registers), June 10, 2015.

<sup>21</sup>IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016. The hearing was attended by *Movimiento de Mujeres Dominicano Haitianas* (MUDHA), *Centro Pedro Francisco Bonó* (Centro Bonó), *Movimiento Socio Cultural de Trabajadores Haitianos, Inc.* (MOSCTHA), *Comisión Nacional de Derechos Humanos* (CNDH), *Comité Dominicano de Derechos Humanos* (CDH), *Centro para la Educación y el Desarrollo* (CEDUCA), *Movimiento Reconocido*, *Centro de Desarrollo Sostenible* (CEDESOS), *Fundación Derechos Vigente* (FDV), *Red Nacional de Organizaciones Populares* (RENOPO), and *Asociación para la Promoción de la Vida* (COOVIDA).

<sup>22</sup>IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>23</sup>IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>24</sup>IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

was also provided to all civil registry offices throughout the country. The process was submitted for the approval of international agencies, the Ministry of Foreign Affairs and the relevant civil society organizations.<sup>25</sup>

36. Civil society organizations, for their part, said that even if the legal situation created by the entry into force of Law 169-14 were valid, the JCE has continued to engage in innumerable administrative practices that violate the rights of Dominicans of Haitian descent and even infringe the Law's own provisions. For example, in relation to Group A, Law 169-14 introduced the obligation for the JCE to "regularize or transcribe" the birth certificates in the civil registers, for which the beneficiaries would not be required to complete any administrative formalities. The Commission was informed that the JCE conditioned the transcription of birth certificates to a prior review of the civil registers, as ordered by the Constitutional Court in judgment TC/0168/13.<sup>26</sup> It took more than a year following the entry into force of Law 169-14 before the above review was published. Therefore, many of the law's beneficiaries had to wait over a year to obtain identity documents accrediting them as Dominican nationals.

37. Civil society organizations also reported multiple cases of people affected whose situation placed them in Group A but were not included in the review, which made it problematic for them to obtain identity documents. They also said that in cases where the JCE has not recognized the nationality of the person affected, in accordance with the provisions of Law 169-14, the violation of rights is transferred to the children of the affected person, given that without papers they cannot declare them.<sup>27</sup>

38. *Movimiento Reconoci.do* said that the JCE interpreted "transcription" as eliminating the beneficiary's original registration and creating a new one that postdates the entry into force of Law 169-14. For example, when the Law ordered the regularization or transcription in the registers of those in Group A, the JCE created a new civil register as of 2014 in which to register or "segregate" the beneficiaries of Law 169-14. As a result, the JCE has filed applications to annul the original birth certificates of the persons affected, while keeping the new records that it created following the adoption of Law 169-14. The above would give rise to legal impediments for acquiring, for example, an identity and voter registration card (*Cédula de Identidad y Electoral*), given that there has to be a single register for that purpose. In referring to this new practice by the JCE, *Movimiento Reconoci.do* said that its effect is to "continue and perpetuate segregation."<sup>28</sup>

39. The Commission notes that on November 27, 2015, the President of the JCE, who at the time was Roberto Rosario, adopted Circular No. 24/2015 concerning the issuance of identity documents. That circular ordered civil registry officials to proceed to issue identity documents to everyone on the list of 55,000 people. The circular said that failure to comply with its instructions would result in removal from office.

40. The circular mentioned that the JCE had broadly concluded, saving reservations made in a number of specific cases, the review of the registry books from 1929 to 2007, in accordance with Constitutional Court judgment TC/0168/13 and Law 169-14.<sup>29</sup> On June 26, 2015, edition No. 35256 of the

<sup>25</sup> United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Sixth periodic reports of States parties due in 2016. Dominican Republic. July 27, 2016, para. 85.

<sup>26</sup> *Movimiento Reconoci.do, Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016, p. 3 [document in the Commission archive].

<sup>27</sup> *Movimiento Reconoci.do, Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016, p. 3 [document in the Commission archive].

<sup>28</sup> *Movimiento Reconoci.do, Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016, p. 3 [document in the Commission archive].

<sup>29</sup> Central Electoral Board, *Auditoría al Registro Civil por TC0168-13 y Ley 169-14: Autorizados y Transcritos* (Review of the Civil Register Pursuant to TC0168-13: Authorized and Transcribed).

morning daily *Listín Diario* published a list of approximately 55,000 people whose records had been reviewed, and it invited everyone on the list to collect their registration certificate that accredited them as Dominicans, in accordance with that law.

41. Circular No. 24/2015 instructed all civil servants, administrative assistants, heads of identity documents centers (*Centros de Cedulación*), heads of service centers (*Centros de Servicios*), the Civil Registry Bureau (*Dirección Nacional de Registro Civil*), the Office of the Legal Counsel (*Consultoría Jurídica*), the Central Civil Registry Office (*Oficina Central del Registro Civil*), and the Information Technology Directorate to ensure that everyone whose names appeared on the list from the above review were provided with their identity documents when they presented themselves at any of the offices of the aforementioned authorities. The circular also cautioned officials that if it was found that, due to negligence or for any other reason, the above certificates were not made available for collection and the respective identity documents were not issued, the persons directly in charge of that working unit would be immediately suspended and their personnel files sent for cancellation, without prejudice to the appropriate legal actions.

42. At the public hearing held at the Commission's headquarters in April 2016, the group of civil society organizations that belong to the umbrella organization *Dominican@s por Derecho* informed the Commission that, according to the results of the JCE's review of the civil registry books published in June 2015, there were 55,000 people in Group A of Law No. 169-14, of whom only 10,000 had received their identity documents. They also said that a significant number of victims of arbitrary withholding or disqualification of documents, whom they were assisting with their document applications, did not appear in the registers reviewed by the JCE. Most of those on the list were still waiting to receive their certificates and identity documents in April 2016.<sup>30</sup>

43. In the circular, the then-president of the JCE said that there was pressure on the entity over the implementation of Law No. 169-14, particularly with regard to the issuance of identity documents. Specifically, the circular said:

In spite of all the efforts, certain persons, civil society organizations, and even diplomatic missions insist on charging that bureaucratic hurdles are being created at civil registry offices and that 55,000 people are being denied documents.

[...] Any error or non-compliance could vindicate the enemies of the Republic and of the Board, and provide an excuse for representatives of organizations and outsiders who falsely utilize the struggle for human rights because of interests contrary to ours, to meddle in our domestic affairs, violating our sovereignty, and make us have to tolerate such an affront.

[...] Let us hope that no error, oversight, negligence, or non-compliance will provide an excuse for such despicable behavior. We trust that the rights of those individuals have not been harmed. We need to make sure that we are right.<sup>31</sup>

44. As regards the recommendation that the State adopt the necessary measures to void any administrative investigations or civil and criminal proceedings that are ongoing in relation to registration and documentation, the JCE has said that “one of the purposes of annulling the certificates of origin to be transcribed is to avoid having to registrations for the same person; or to avoid the original, a regular registration subsequently being used as a substitute, among other possibilities. It only has an administrative,

<sup>30</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

<sup>31</sup> See, El Caribe newspaper, [Rosario admite en una circular que hay presiones](#) (Rosario admits to pressure in circular). December 1, 2015; Diario del Cibao newspaper, [Presidente JCE admite en una circular que hay presiones](#) (JCE president admits to pressure in circular). December 1, 2015.

registry-related aim, which does not injure the rights of third parties but, rather, protects them and ensures that they can exercise their rights.<sup>32</sup>

45. Civil society organizations told the Commission that cancellations continue of civil registry certificates as a result of applications for annulment, as do administrative cancellations and supposed disappearances of books and pages from registries. They said that such situations are compounded by the refusal of civil registry offices to register new demographic profiles that have emerged, such as children of mixed-nationality couples.<sup>33</sup> Civil society organizations have also reported that the JCE announced that it will continue to move forward with judicial proceedings to request the nullification of birth certificates that have been transcribed in order to avoid dual registration (the original whose annulment is sought, and the transcription resulting of Law No. 169-14 and the review).<sup>34</sup> The Commission notes with concern that the State has not supplied up-to-date information on the number of applications filed by the JCE or about the outcome of those applications.

46. The State, for its part, said that the JCE is receptive to complaints from anyone who shows that they are a beneficiary of Law No. 169-14 and is not receiving their benefits for any reason. The State said that the Ministry of Foreign Affairs, in coordination with the JCE, the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (OIM), the United Nations Development Programme (UNDP), and the United States Embassy, set up a mechanism for lodging such complaints, which have been satisfactorily disposed of with the full collaboration of the JCE. It said that as of April 2016, no case reported by civil society organizations or individuals remained unresolved. Indeed, it said that as of April 2016, all 11 cases reported were immediately dealt with in a satisfactory way.<sup>35</sup>

47. The Commission underscores the measures adopted by the Dominican State to ensure that Dominicans of Haitian descent who were registered (Group A) have the necessary documentation to prove their identity and Dominican nationality, such as Circular No. 24/2015 and the mechanism for lodging complaints described in the preceding paragraph.

48. In spite of the importance of those measures, the Commission notes that no information has yet been provided as to whether or not all the people in Group A and their descendants have received their identity documents. The Commission urges the Dominican State to indicate how many of those individuals have already received their identity documents and what steps have been taken to enable those who have not yet received their identity documents to do so.

49. The Commission also continues to receive reports about the institution of annulment proceedings and practices designed to delay or deny access to documents accrediting Dominican nationality that are necessary for a wide range of basic civil acts. The IACHR considers that the State must ensure that the delivery of identity documents to such individuals proceeds without any kind of discrimination, arbitrariness or administrative impediment, so that they can exercise the multiple rights associated with the right to nationality and juridical personality.

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<sup>32</sup> Central Electoral Board, *Consideraciones sobre el informe remitido por el Ministerio de la Presidencia* (Considerations on the report submitted by the Ministry of the Presidency). PRES-JCE No. 6955-15/. November 26, 2015, p. 9 [document in the Commission archive].

<sup>33</sup> OBMICA, *Hijos de parejas mixtas: Explorando un nuevo perfil de exclusión del registro civil* (Children of mixed nationality couples: Exploring a new profile of exclusion from the civil registers), June 10, 2015.

<sup>34</sup> Movimiento Reconoci.do, *Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016 [document in the Commission archive].

<sup>35</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

## ii. GROUP B

50. With respect to Group B, the commission has urged the Dominican state to adopt measures to guarantee that persons who had the right to Dominican nationality but were not included in the Dominican Civil Registry are not required to register as foreigners, as stipulated in Article 6 of Law No. 169-14.

51. Furthermore, in its report “Situation of Human Rights in the Dominican Republic,” the Commission recommended that the State adopt, as soon as possible, any necessary measures to ensure that Dominicans of Haitian descent who were not registered are, as appropriate, duly registered and have the necessary documentation to prove their identity and Dominican nationality.

52. At a public hearing convened by the Commission in April 2016, upon referring to individuals born on Dominican soil to foreign parents with irregular migratory status who did not register them in the civil register—so-called Group B under Law No. 169-14—the representative of the Dominican State said:

With regard to people in Group B, the Law established a specific mechanism to offer them a clear and certain legal path to nationality; however, not automatically, as was the case with those who were registered in the civil register. Various human rights organizations have charged that hundreds of thousands of people who were eligible to benefit from the law's provisions for this second group were unable to do so and that, as a result, they were left stateless. Those accusations are baseless. The Dominican Government knows of no one claiming to be a beneficiary of so-called Group B of Law No. 169-14 who was unable to pursue the established procedure.<sup>36</sup>

53. With regard to those in group B who did not apply under law No. 169-14, the former Minister of Foreign Affairs, Andrés Navarro, said:

Anyone who says that they were born in the country will be investigated and will not be deported; if it is confirmed that they were born there, then they will go through the regularization process in order later to have the option to apply for nationality as the migration law already provides, in accordance with the regulations. The undertaking that the Dominican Government has given is that we will not expel from our soil anyone who was born in our country.<sup>37</sup>

54. According to information provided by civil society organizations, only 8,755 potentially affected people in this group registered under the Naturalization Plan envisaged by Law No. 169-14, which represents very few of the total number of people in that situation, according to the First National Immigrant Survey conducted in 2012.<sup>38</sup> The naturalization plan accorded those affected the migratory category of “permanent resident” (in the country of their birth) and issued them an identity card that names Haiti as their country of nationality. In addition, those individuals were issued a foreign national's birth certificate, in which the Dominican State assigns them “Haitian” nationality. Under the Law, those people have the option of applying for naturalization two years after receiving their residence permit; however, civil society organizations say that it is not known what the procedure is for naturalizing them. They also said that as a result of confusion, racial phenotypic profiling, and lack of information, others were included in the regularization plan as if they were foreign nationals.<sup>39</sup>

<sup>36</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

<sup>37</sup> El Nacional newspaper, [RD no repatriará a extranjeros que digan que nacieron aquí](#) (DR won't repatriate foreigners who say they were born here), August 31, 2015; Listín Diario, [El canciller debe renunciar](#) (Foreign minister should resign), September 7, 2015.

<sup>38</sup> IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>39</sup> Movimiento Reconoci.do, [Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana](#). October 2016 [document in the Commission archive].

55. In addition, civil society organizations said that the documents that were issued to those in Group B as a result of this process, such as the foreign national's birth certificate and a permanent resident's migratory permit, affords them no possibility of undertaking any civil act whatever, such as registering their children's birth, gaining access to education,<sup>40</sup> entering into contracts, signing an employment contract, registering for social security, taking out medical insurance, or opening a bank account, among other things. Civil society organizations reported that there is constant denial of access to a range of services because the providers of those services do not recognize the validity of the documents that the State has issued them. For example, they highlighted that with respect to social security, the National Social Security Council adopted a resolution recognizing those documents as valid in order to enable their registration in the Dominican social security system. Nevertheless, despite the fact that more than a year has passed since the resolution was adopted, those individuals have still not been able to register in the Dominican Social Security system, with the result that those affected remain without access to it.<sup>41</sup> In addition, the fact that those individuals are recognized Dominican nationality via a naturalization process restricts their exercise of political and civil rights, which means that they will not be permitted to participate fully in civil and political affairs in the Dominican Republic.<sup>42</sup>

56. Civil society organizations also reported on the extreme vulnerability of those who were unable or did not wish to make use of the mechanism envisaged for Group B in Law No. 169-14 because of the risk of being expelled from the Dominican Republic to Haiti.<sup>43</sup> The lack of any identity document puts such individuals at serious risk of being deported. According to civil society organizations, based on the findings of the 2012 National Immigrant Survey (ENI-2012), that population is much larger than the one that enrolled in the mechanism provided for Group B. NGOs reported cases of people born in the Dominican Republic who were expelled to Haiti because they did not have any identity documents proving their nationality.<sup>44</sup> On the subject of deportations, see Section F of this chapter.

57. In its report "Situation of Human Rights in the Dominican Republic," the Commission also recommended that the Dominican State carry out, within a reasonable period, ongoing, permanent training programs on topics related to said population with a view to ensuring that: (a) racial profiles do not in any way constitute the grounds for detention or expulsion; (b) strict observance of due process guarantees during any proceedings related to the expulsion or deportation of foreigners; (c) expulsions of persons of Dominican nationality are not carried out, under any circumstances; and (d) no collective expulsions of foreigners are carried out.

58. Based on publicly available information, the Commission notes that training activities was provided to immigration officials and military personnel stationed on frontiers, which included topics relating to human rights. In the words of the State, these important modernizing efforts, which included training for personnel in charge of migratory management at all levels, with an emphasis on the basic level, ... [were designed] to ensure that migration is managed in a way that respects human rights."<sup>45</sup> In the eyes of

<sup>40</sup> Georgetown University Law Center, Human Rights Institute, [Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education, Legal Update](#). September 23, 2016.

<sup>41</sup> Movimiento Reconoci.do, *Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016 [document in the Commission archive].

<sup>42</sup> Movimiento Reconoci.do, *Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016 [document in the Commission archive].

<sup>43</sup> IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>44</sup> Movimiento Reconoci.do, *Seguimiento a las recomendaciones hechas por la Comisión Interamericana de Derechos Humanos al Estado dominicano en su Informe sobre la Situación de derechos humanos en República Dominicana*. October 2016 [document in the Commission archive]. See also, John Hopkins University – The Paul H. Nitze School of Advanced International Studies (SAIS) – International Human Rights Clinic, [Torn at the Seam: Migration, Deportations and Humanitarian Concerns on the Island of Hispaniola](#). 2016.

<sup>45</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

the State, such actions demonstrate the efforts made by the Dominican government to make effective structural changes, not merely short-term ones.<sup>46</sup>

59. After visiting more than 14 provinces in the country, trainers from the International Organization for Migration (OIM) and the National Migration Institute (INM), completed the training phase for officials from the Office of the Director General of Immigration as well as military and police personnel involved in migration control. The training covered approximately 1,000 immigration officials, army personnel, and intelligence officials at four points on the land border, three international airports, and various places in Dominican territory.<sup>47</sup>

60. In that connection, the Commission notes that the National School on Migration (*Escuela Nacional de Migración*), an institution that reports to the INM, has the mission of training immigration officials of the Office of the Director General of Immigration with a view to modernizing migration management. The Institute performs a series of functions that could, therefore, be critical for ensuring migration management that respects human rights in the Dominican Republic. The Commission highlights the remarks of the Director of the INM, Florinda Rojas, when she called for reflection on the need to provide training in human rights from the ground up and to create special programs to help forge a different society.<sup>48</sup>

61. Based on the foregoing, the IACHR urges the State to adopt, within a reasonable time, the necessary measures to abrogate any provision, regardless of its nature, that denies or has the effect of denying Dominican nationality to those born in the territory of the Dominican Republic because of the irregular migratory situation of their foreign-national parents; and to take the necessary steps to introduce rules governing an accessible, non-discriminatory and simple birth registration process, in order to ensure that all persons born on its soil may be registered immediately after their births, irrespective of their descent or origin or of the migratory situation of their parents. The State should also ensure the right to nationality of persons who already had that right under the domestic regime in force between 1929 and 2010, and it should not require persons who were entitled to Dominican nationality but not registered in the Dominican Civil Registry to register as foreign nationals, as stipulated in Article 6 of Law No. 169-14. The State should adopt the necessary measures to ensure that Dominicans of Haitian descent who were registered have the necessary documentation to prove their identity and Dominican nationality. Moreover, the State should adopt the necessary measures to void any administrative investigations or civil and criminal proceedings that are ongoing in relation to registration and documentation. Finally, the State should adopt, as soon as possible, the necessary measures to ensure that Dominicans of Haitian descent who were not registered are registered, as appropriate, and have the necessary documentation to prove their identity and Dominican nationality.

## **B. Statelessness in the Dominican Republic**

62. Article 20(2) of the American Convention provides that every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality; in other words, if they do not acquire that nationality, they would be left stateless. In international law, Article 1(1) of the Convention relating to the Status of Stateless Persons (1954) defines “stateless person” as “a person who is not considered as a national by any State under the operation of its law.” The definition of statelessness, contained in Article 1(1) of the Convention relating to the Status of Stateless Persons is part of customary international law.<sup>49</sup>

<sup>46</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>47</sup> Diario Dominicano newspaper, [Capacitan a personal migratorio y militar de la R.D.](#) (Immigration and military personnel trained in D.R.), September 17, 2015.

<sup>48</sup> National Migration Institute, [Diálogo: Eduquemos en materia migratoria](#), October 15, 2015.

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

63. The profound vulnerability faced by stateless people is recognized at the international level, given that it restricts individuals' exercise of their human rights and fundamental freedoms, such as access to education, health care, and freedom of movement, among others. The precarious situation in which stateless people with in its turn becomes the obstacle that States, the UNHCR, and other stakeholders face in their efforts to gather complete data on that population, which is a key task for adequately addressing the problem.

64. According to figures published by the UNHCR in its report "Global Trends: Forced Displacement in 2015," Dominican Republic is the country with the seventh highest number of stateless persons in the world, with 133,770, surpassed only by Myanmar (938,000 stateless persons), Ivory Coast (700,000), Thailand (443,862), Zimbabwe (300,000), Latvia (252,195), and Syria (160,000).<sup>50</sup> In this report, the UNHCR explained that this revised number of stateless persons in the Dominican Republic includes only persons born in that country, both of whose progenitors were born outside it. It does not include those who were born in the country with one parent was also born there and the other being a Dominican national, as had been included in the previous estimate of 210,000. That amount was based on the results of the First National Immigrant Survey in the Dominican Republic, which found that there were residing in the country 209,912 first-generation descendants who were born on Dominican soil to Haitian migrant parents.<sup>51</sup> The current estimate of the number of stateless persons in the Dominican Republic does not include subsequent generations of foreign descent since there are no reliable demographic data on groups other than first-generation individuals,<sup>52</sup> which signifies that the actual number of stateless persons is much higher.

65. The UN High Commissioner for Refugees, Antonio Guterres, said "In the short time that children get to be children, statelessness can set in stone grave problems that will haunt them throughout their childhoods and sentence them to a life of discrimination, frustration and despair."<sup>53</sup> As a result of being treated like foreigners in the country where they have lived all their lives, children live on the margins of society, denied the rights that most citizens enjoy, and often denied the opportunity to receive school qualifications, go to university, and find a decent job Their particular vulnerability exposes them to harassment by authorities, discrimination, and exploitation. Their lack of nationality often sentences them and their families and communities to remain impoverished and marginalized for generations.<sup>54</sup>

### C. Right to Equality and Non-discrimination of Dominicans of Haitian Descent

66. In a number of individual petitions and cases the IACHR and the Inter-American Court have documented different manifestations of discrimination in Dominican Republic. In its report "Situation of Human Rights in Dominican Republic," the Commission expressed its concern at the State's denial of the existence of racial discrimination. In that regard, it noted that the persistent denial or refusal to accept the historical racism and racial and ethnic discrimination, particularly by the political and economic elites, rendered it invisible and, therefore, the topic's exclusion from public debate.

67. In the opinion of the IACHR, public official acknowledgment of the existence and the historical, social, and cultural impact of racism and racial discrimination in the Dominican Republic, accompanied by an expression of political will to combat them, is the first in a series of steps that the State should take to ensure enjoyment of the rights to equality and nondiscrimination for people of African descent,

<sup>50</sup> UNHCR, [Global Trends: Forced Displacement in 2015](#), June 20, 2016.

<sup>51</sup> According to the First National Immigrant Survey in the Dominican Republic, in 2012 the population of descendants of immigrants amounted to 244,151, accounting for 2.5 percent of the country's population overall. Of the total number of descendants of immigrants, 209,912 were descendants of Haitian immigrants and the other 34,239 were descended from immigrants from other countries. For more information, see, National Statistics Office, [Primera Encuesta Nacional de Inmigrantes en la República Dominicana](#), Santo Domingo, April 2013, p. 30. The First National Immigrant Survey in the Dominican Republic (ENI-2012) is also available at: <http://www.one.gob.do/Categoria/Publicaciones/194>.

<sup>52</sup> UNHCR, [Global Trends: Forced Displacement in 2015](#), June 20, 2016, p. 59.

<sup>53</sup> UNHCR report reveals debilitating impact of statelessness on children, November 3, 2015.

<sup>54</sup> UNHCR report reveals debilitating impact of statelessness on children, November 3, 2015.

particularly Dominicans of Haitian descent and Haitian migrants. In spite of the Commission's recommendations in its report, during 2016, the Dominican Republic, in its dealings with the IACHR and other human rights bodies,<sup>55</sup> clung to its position of denying structural discrimination as a factor in the country's reality. In that connection, in its comments on this chapter, the Dominican State merely acknowledged that "combating discrimination in all its forms is a process that requires constant effort and that the results of that process must be constantly nurtured." The State also said that it was mindful of "the challenges facing it and how difficult it is to uproot [those] social practices."<sup>56</sup>

68. In its country report, the Commission also expressed concern at the absence of general laws that prohibit racial discrimination and, therefore, it recommended that the State adopt comprehensive legislation to prohibit discrimination on the grounds of race, color, descent, or national or ethnic origin, and ensure that legislative and political measures on immigration do not discriminate on grounds of race, color, national origin, or language.<sup>57</sup> Likewise, the United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations on the fourth periodic report of the Dominican Republic in 2016, expressed its concern about the continued discrimination faced by Haitians and persons of Haitian descent in the country.<sup>58</sup> It also found it regrettable that, pursuant to Constitutional Court ruling TC/0168/13, persons of Haitian descent who were born in the Dominican Republic and have lived there for decades have retroactively been deprived of their nationality. In spite of the adoption of law No. 169-14, the Committee was concerned that a significant number of persons of Haitian descent are stateless, which limits their effective exercise of their economic, social and cultural rights.<sup>59</sup> Accordingly, the Committee on Economic, Social and Cultural Rights recommended that the State:

(a) Adopt all necessary legislative and administrative measures to combat all forms of discrimination that cause or perpetuate formal or de facto discrimination against Haitians and Dominicans of Haitian descent;

(b) Adopt such measures as may be necessary to ensure that ruling TC/0168/13 ceases to have any legal effect and ceases to result in the deprivation of persons of Haitian descent of their economic, social and cultural rights and, to that end, consider amending the constitutional provisions that provided the basis for that ruling;

(c) Ensure the restoration of nationality to all individuals to whom the ruling applies and eliminate excessive procedures and requirements for the recovery of nationality;

(d) Adopt the necessary measures to prevent and reduce statelessness and consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

69. The Committee also found it regrettable that the State did not have a comprehensive legal framework for combating discrimination, although it welcomed the commitment made by the delegation to expedite the discussion of the bill on equality and non-discrimination drafted by the National HIV/AIDS

<sup>55</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016. See also: Committee on Economic, Social and Cultural Rights, List of issues in relation to the fourth periodic report of the Dominican Republic, Addendum, Replies of the Dominican Republic to the list of issues, E/C.12/DOM/Q/4/Add.1, 9 August 2016.

<sup>56</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>57</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 387.

<sup>58</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 21.

<sup>59</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 21.

Council.<sup>60</sup> Committee on Economic, Social and Cultural Rights recommended that the State explicitly include in the bill all the prohibited grounds of discrimination.<sup>61</sup>

70. According to publicly available information, the bill in question, whose drafting was coordinated by the National HIV/AIDS Council (CONAVIHSIDA) and the National Group for the Elimination of All Forms of Stigma and Discrimination (CRUNED), will seek to protect against discrimination on the basis of:

Skin color; national or ethnic origin; age; sex; sexual orientation; gender identity or expression; language; religion and/or spiritual beliefs; cultural identity; political or other opinions; social origin; socioeconomic status; educational level; migratory status; refugee, deported, stateless or internally displaced status; disability; past criminal conviction; genetic traits; state of mental or physical health, including infectious-contagious, incapacitating psychological, or other condition; incarceration, and others.<sup>62</sup>

71. In that connection, in its observations the State said that the success of legislative initiatives such as the one described depends on the depth of the consensus reached among the various actors and, therefore, "in order that the law's promulgation serve as a starting point for real change, the Dominican Government is immersed in a process of consultations with various sectors of society."<sup>63</sup>

72. Despite the limited information about its contents, the IACHR takes a positive view of the efforts made to engage civil society and other stakeholders in consultations on the bill. In that connection, the Commission calls on the State to give priority to the discussion of the bill and, as a consultative organ of the OAS on human rights, is at the disposal of the State and its branches of government to provide such specialized technical assistance as may be required in the debate.

73. The IACHR also takes note of the observations of the Committee on Economic, Social and Cultural Rights regarding the lack of disaggregated statistics that could serve as a basis for an objective assessment of the effective enjoyment of economic, social and cultural rights by persons of African descent, and it echoes its recommendation to "develop a data-collection methodology that takes into account the multi-ethnic composition of the population and incorporates an ethnic variable based on the criterion of self-identification for use in defining effective policies that include affirmative action measures for achieving the full realization of the Covenant rights of persons of African descent."<sup>64</sup>

74. With respect to poverty and discrimination, the Committee on Economic, Social and Cultural Rights was concerned at the high levels of poverty, extreme poverty and inequality, especially in the cases of Haitians, Dominicans of Haitian descent, Afrodescendants and persons living in rural areas. Among its recommendation, the Committee suggested that the State adopt effective measures to fight inequality, taking

<sup>60</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 19.

<sup>61</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, paras. 19-20.

<sup>62</sup> House of Deputies of the Dominican Republic, Newsletter: [Misión de campo para el seguimiento de Proyecto de la Ley General para la Igualdad y No Discriminación, Santo Domingo, República Dominicana](#), November 28, 2016. See also: CONAVIHSIDA, [CONAVIHSIDA someterá anteproyecto de Ley antidiscriminatoria](#), S/F; Listín Diario, [Entidad internacional apoya anteproyecto de Ley contra la discriminación](#), 11 November 2016; Acento, [Introducirán a Congreso proyecto de ley General de igualdad y No Discriminación](#), 10 November 2016.

<sup>63</sup> Dominican Republic, [Comments on draft Chapter IV.B, Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>64</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, paras. 23-24.

into account the needs of the most disadvantaged and marginalized sectors of society, in particular persons of African descent and persons living in rural areas.<sup>65</sup>

75. In the past, the IACHR has stated in general that structural discrimination is reflected in indicators on poverty, political participation, criminality, and access to housing, health care, and education, among others. In its comments on this chapter, the Dominican Government recognizes "the difficulty that many Dominicans have gaining access to public services. However, ... that difficulty has to do not with the national or racial origins of those who seek them [but with] significant material constraints."<sup>66</sup> In this instance, the Commission has seen the impact caused by the deprivation of the right to nationality and its associated rights on Dominicans of Haitian descent, given the obstacles that they face in exercising their right to education, closing off already limited avenues for escaping poverty, along with multiple attendant privations.

76. The IACHR observes that the Committee on Economic, Social and Cultural Rights welcomed the State's efforts to increase spending on education. However, according to the information provided by the State to the committee, regarding the circular instructing directors of all the country's education institutions to enroll all children and adolescents, "whether or not they are duly registered,"<sup>67</sup> the Committee noted that children of Haitian descent and children who do not possess a birth certificate continue to face difficulties in gaining access to education, especially at the secondary and tertiary levels.<sup>68</sup>

77. In its observations in 2016, the CESCR also expressed concern about the alleged existence of "excessive requirements for the registration of children of Haitian descent, even when one of the parents is of Dominican origin, which places them at risk of statelessness and limits their ability to exercise their rights, particularly their rights to education and to access to health-care services."<sup>69</sup> The CESCR recommended that the Dominican State "ensure that everyone has access to an efficient and free birth registration process through which all children who do not have a birth certificate may obtain one." It also urged the State to "eliminate all legal provisions and administrative practices that prevent children of Haitian descent from obtaining a birth certificate."<sup>70</sup>

78. Accordingly, the IACHR stresses the importance that the State take all necessary steps to ensure access to education for all persons without any discrimination based on the national origin or migratory status of their parents or by reason of their race, color, linguistic ability, statelessness, or any other social condition. In particular, the IACHR reiterates its appeal to the State to remove any rule or practice that requires children and adolescents to present a birth certificate in order to be officially enrolled in schools.

79. With respect to access to basic services, in its observations in 2016 the CESCR regretted that the level of investment in housing is insufficient to reduce the significant housing shortage. It also expressed concern that housing conditions in the *bateyes* remain substandard, and the fact that there is an insufficient supply of drinking water and limited access to adequate sanitation systems, particularly in rural areas. The CESCR was further concerned at the inequality that exists in terms of the various socioeconomic groups'

<sup>65</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 49.

<sup>66</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>67</sup> United Nations, Committee on Economic, Social and Cultural Rights, List of issues in relation to the fourth periodic report of the Dominican Republic, Addendum, Replies of the Dominican Republic to the list of issues, E/C.12/DOM/Q/4/Add.1, 9 August 2016, para. 112.

<sup>68</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 64.

<sup>69</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 46.

<sup>70</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 47.

access to the right to health and their enjoyment of that right, as is reflected in the fact that the infant mortality rate among lower-income groups is higher than the national average.<sup>71</sup>

80. With respect to the activities of the Ombudsman, based on its examination of the statistics produced by that institution in 2015 and 2016,<sup>72</sup> the Commission was unable to determine if it directly address the problem of discrimination by reason of race, ethnicity, nationality, sex, age, disability, migratory status, sexual orientation, gender identity, or any other condition, despite its broad powers and the variety of mechanisms at its disposal. The IACHR believes that the Ombudsman, among other institutions, could play a significant role in promoting and providing training for children and young people on the historical legacy of colonization and slavery in the Dominican Republic; the human rights violations generated by the stigma and negative stereotypes with which black people are constantly confronted, be they Dominicans, Dominicans of Haitian descent, stateless persons of Haitian descent, or Haitians; and the contributions made by the various ethnic groups in shaping the country's national identity. In the case of State officials, training courses should also cover—from the point of view of domestic law and in light of international human rights obligations—the implications of racial profiling as a State practice.

81. Based on the foregoing, the IACHR hopes that the State will recognize the discrimination that thousands of persons of African descent face in the Dominican Republic, and the impact that it has on the full enjoyment of their civil and political rights as well as their economic, social, and cultural rights. In addition, it is hoped that a general law on equality and nondiscrimination is finally adopted that explicitly includes all the grounds for discrimination prohibited by the American Convention, and that the legal framework is developed so as adequately and effectively to prevent and punish violations of the right to equality and nondiscrimination. By the same token, the State is invited to implement such measures as may be necessary to educate State officials and the general public about the scope of the international obligations assumed by the State in the area of human rights.

#### **D. Access to justice and due process guarantees for Dominicans of Haitian descent**

82. In its report "Situation of Human Rights in Dominican Republic," the Commission analyzed a number of structural challenges in relation to access to justice. In particular, the Commission was made cognizant of practices that leave Dominicans of Haitian descent without judicial protection and fair trial guarantees in proceedings that lead to the arbitrary deprivation of their nationality; of summary proceedings that result in the deportation of Dominicans of Haitian descent; and, in general, of the various challenges facing Dominican justice.<sup>73</sup>

83. Prior to the Constitutional Court's adoption of judgment TC/0168/13, the IACHR had already received reports about a generalized practice on the part of the Central Electoral Board of withholding, indefinitely suspending, or refusing to issue identification documents—such as birth certificates, identity and voter registration cards, or both—in the case of Dominicans of Haitian descent or persons perceived as such,<sup>74</sup> a situation that has evidently continued in 2016.<sup>75</sup>

<sup>71</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 55.

<sup>72</sup> *Defensor del Pueblo de la República Dominicana: Estadísticas Institucionales Enero-Abril 2016* (Ombudsman of the Dominican Republic: Institutional Statistics January–April 2016) and *Estadísticas Defensor del Pueblo* (Ombudsman Statistics), available at : <http://defensordelpueblo.gob.do/transparencia/index.php/2015-09-03-14-18-52/2015-09-03-16-05-09>

<sup>73</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 402.

<sup>74</sup> IACHR, *Hearing on the modification of the Civil Registry in the Dominican Republic*. 141st session, March 28, 2011; *Hearing on the Judicial Response in Cases of Denationalization in the Dominican Republic*. 143rd regular session, October 24, 2011; *Hearing on the right to nationality in the case of Dominicans of Haitian Descent in the Dominican Republic*. 147th regular session, March 12, 2013.

<sup>75</sup> IACHR, *Hearing on Human Rights and Statelessness in the Dominican Republic*, 159th regular session, December 6, 2016.

84. During its visit, the Commission received multiple testimonies from individuals describing the obstacles they faced in their efforts to gain access to the justice system, as a result of not having an identity card. In that connection, the Commission was told of the case of a mother who, because neither she nor her son had documentation to show that they were born in the country, was apparently unable to file an application for child support against the boy's father.<sup>76</sup> As the CESCR has observed, the failure to register a child's birth limits their ability to exercise fundamental rights on account of being excluded from the State system and, therefore, the protections accruing to recognition as a human being.<sup>77</sup>

85. Other testimonies denounced the failure to comply with multiple writs of constitutional relief (*amparo*) issued on behalf of claimants, which ordered the Central Electoral Board to issue identity documents to persons affected by the enforcement of Circular 17 and Resolution 12.<sup>78</sup> According to civil society organizations, when the *amparo* actions were filed to obtain the birth certificates, the JCE would use the information contained in the applications to sue for nullification of the birth certificates of most of the plaintiffs in the *amparo* actions who were seeking to have their right to nationality restored.<sup>79</sup> According to the organizations who requested the hearing on *Human Rights and Statelessness in the Dominican Republic*, mass nullification proceedings continue, with the aggravating circumstance that the persons concerned are not being summoned to appear before the tribunal, leaving them utterly defenseless.<sup>80</sup> According to civil society organizations, the Dominican authorities are treating the people affected by Constitutional Court judgment TC/0168/13 like objects, as opposed to persons with rights.<sup>81</sup>

86. For residents of *bateyes*, who are the persons most affected, the lack of documentation is compounded by the impossibility of gaining access to Dominican justice for geographical reasons as well as the costs associated with seeking justice. In its report, the Commission expressed concern about the too few courts and advocacy services available nationwide, which means that victims have to rely on substantial financial and logistical resources of their own to file a complaint and then participate in the judicial proceedings.<sup>82</sup>

87. The International Labour Organization (ILO), for its part, said in a technical report that the National Plan for the Regularization of Foreign Nationals with Irregular Migratory Status in the Dominican Republic is a special mechanism to provide identity documents and residency permits to foreign nationals in an irregular situation. The report also said that the irregular and undocumented status of thousands of Haitian immigrants makes it hard for them to present the documents needed to regularize their status. The situation for women is more serious as they tend to have greater difficulty proving that they reside in the country, are more likely to be employed in the informal sector, and do not have contracts in their own name since, even when they do have a contract, it is usually in their partner's name.<sup>83</sup> According to the report, although the process is free, the costs of legalizations, certifications, and notarial documents entail a financial burden that is hard for most immigrants to bear, especially in the case of families.<sup>84</sup>

<sup>76</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 411.

<sup>77</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 46.

<sup>78</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 412.

<sup>79</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 454.

<sup>80</sup> IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>81</sup> IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>82</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 455.

<sup>83</sup> ILO technical reports 2016, Labour Migration in Latin America and the Caribbean: Review, Strategy and Lines of Work of the ILO in the Region, pp. 33 and 34. First edition, 2016. Link <http://www.redetis.iipe.unesco.org/wp-content/uploads/2016/08/La-migracion-laboral-en-ALyC.pdf>.

<sup>84</sup> ILO technical reports 2016, Labour Migration in Latin America and the Caribbean: Review, Strategy and Lines of Work of the ILO in the Region, pp. 33 and 34. First edition, 2016. Link <http://www.redetis.iipe.unesco.org/wp-content/uploads/2016/08/La-migracion-laboral-en-ALyC.pdf>.

88. In 2016, the CDESCR also expressed concern about the lack of effective guarantees of judicial independence in the Dominican Republic. It was particularly concerned at the fact that “the composition of the National Council of the Judiciary is not such as to guarantee that the selection and appointment process will effectively ensure the independence, ability and integrity of high court judges (art. 2, par. 1).”<sup>85</sup>

89. Accordingly, the IACHR urges the State to create the conditions necessary to enable Dominicans of Haitian descent to access and avail themselves of the justice system on an equal basis, so as to redress violations of their right to nationality or other rights that follow from nationality, and to be treated with dignity by public officials. It is also necessary to develop and ensure suitable and effective judicial institutions and remedies in rural, marginalized, and economically disadvantaged areas, so as to ensure that all Dominicans of Haitian descent have full access to effective judicial protection against acts that violate their human rights; as well as to establish effective procedures in administrative, civil, criminal, labor, and other areas of the law to guarantee that Dominicans of Haitian descent have access to justice when their rights to nationality, recognition as a person before the law, equality, work, citizen security, health, and others are violated.

**E. Intolerance, threats, and incitement to violence against persons who defend the right of Dominicans of Haitian descent to nationality and to non-discrimination**

90. In the report “Situation of Human Rights in the Dominican Republic” the IACHR expressed profound concern about acts of intolerance, threats, and incitement to violence against journalists, academics, lawyers, politicians, lawmakers, human rights defenders, public figures and even high-level public servants for criticizing Constitutional Court judgment TC/0168/13. Such people were branded “traitors” and threatened, and calls for “death to the traitors” were publicly made. The IACHR noted that those incidents occurred amid an alarming outpouring of racist discourse and the absence of a clear rejection of such expressions on the parts of the country’s authorities.<sup>86</sup>

91. In its comments on the draft of this chapter, the Dominican Republic made two clarifications. The first was to specify that “the expressions of intolerance that trouble the Commission did not come from the State or its agents, nor were they encouraged or supported by any public-sector institution.”<sup>87</sup> Second, it asserted that in the country there is no “state of siege or intimidation against the press. Violent incidents do occur—such as the killing on February 14, 2017, of two journalists in San Pedro de Macorís—but they do not stem from any atmosphere of generalized violence against the press, let alone any policy sanctioned or tolerated by the State.”<sup>88</sup>

92. At the hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, held in Panama in December 2016, the civil society organizations reported that in recent years harassment, threats, public smear campaigns, incitement to violence and hatred have continued against human rights defenders, including those who are beneficiaries of precautionary and provisional measures, particularly by so-called “nationalist” groups.<sup>89</sup> They said that social media were used to carry out several acts of harassment and intimidation.

<sup>85</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 11.

<sup>86</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 490.

<sup>87</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017.

<sup>88</sup> Dominican Republic, [Comments on draft Chapter IV.B. Annual Report of the IACHR](#), Dominican Republic, received on February 24, 2017, p. 11.

<sup>89</sup> IACHR, Hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, 159th regular session, December 6, 2016. The hearing was attended by Movimiento de Mujeres Dominicano Haitianas (MUDHA), Centro Pedro Francisco Bonó (Centro Bonó), Movimiento Socio Cultural de Trabajadores Haitianos, Inc. (MOSCTHA), Comisión Nacional de Derechos Humanos (CNDH), Comité

93. They also denounced that over the past year there has been an upswing in such attacks, including acts of physical violence that endanger their lives and well-being. They said that the danger was exacerbated by the fact that such attacks go unpunished because, despite complaints being filed, they are reportedly not investigated. They also reported that there have been no expressions of public support and appreciation for their work from high-ranking government officials. They also described various cases involving attacks, killings, and disappearances of defenders since 2009, especially those who work for the rights of Haitian migrants and defend the nationality of their Dominican descendants.<sup>90</sup>

94. At the hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, the requesting organizations also reported the existence of the Human Rights Unit, which answers to the Office of the Attorney General of the Republic, and which they described as dysfunctional. According to the organizations, in spite of the interest professed by its officials in the requests made by civil society organizations, it has neither the mechanisms nor the personnel necessary to take action on them, and it gives priority in its work to responding to requests from international agencies.<sup>91</sup> They also said that in the Dominican Republic the State has no effective mechanisms in place to address the issue of human rights defenders; therefore, they requested that the State adopt protocols and legislative measures to ensure protection for human rights defenders in the country.<sup>92</sup>

95. For its part, the CESCR, in its 2016 concluding observations on the fourth periodic report of the Dominican Republic expressed concern about reports of assaults and reprisals against human rights defenders, including defenders of economic, social and cultural rights. The Committee recommended that the State adopt effective measures on a timely basis to prevent acts of violence against all human rights defenders, protect their lives and ensure their personal safety. It also recommended that the State carry out thorough, transparent investigations into all cases of violence against human rights defenders and that it punish those responsible appropriately.<sup>93</sup> In that context, the Committee encouraged the Dominican State to conduct campaigns to raise awareness of the importance of the work carried out by human rights defenders with a view to fostering a climate of tolerance in which they can perform their work free of any type of intimidation. In that regard, it referred the State to their statement on human rights defenders and economic, social and cultural rights (E/C.12/2016/2).<sup>94</sup>

96. The Commission is concerned by reports about the attack on Jorge Disla, a cameraman with *Canal 27* (part of the *Red Nacional de Noticias* network), on September 23, 2016, during demonstrations to

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Dominicano de Derechos Humanos (CDH), Centro para la Educación y el Desarrollo (CEDUCA), Movimiento Reconocido, Centro de Desarrollo Sostenible (CEDES), Fundación Derechos Vigente (FDV), Red Nacional de Organizaciones Populares (RENOPO), Asociación para la Promoción de la Vida (COOVIDA).

<sup>90</sup> Some of the cases they mentioned were as follows: **Sonia Pierre**, a defender who constantly denounced violations of the right to Dominican nationality and was a beneficiary of provisional measures ordered by the Inter-American Court from 2000 until the day she died; **Father Pierre Ruquoy** (a priest and Belgian national), whose defense of Haitian workers, fight for the documentation of Dominicans of Haitian descent, and participation in a hearing before the Inter-American Court of Human Rights in the Case of Expelled Dominicans and Haitians, reportedly made him the target of threats, defamation, persecution, and ultimate expulsion from the Dominican Republic in 2005 for his work as a defender; **Virgilio Almanzar Estrella**, President of the *Comité Dominicano de los Derechos Humanos*. They also mentioned the application for precautionary measures made on October 2, 2009, on behalf of Juan Almonte Herrera, his lawyers, wife, and family, in the context of a media campaign calling for the disclosure of his whereabouts. The Commission requested that precautionary measures be granted in January 2010. In March 2010, the Inter-American Court ordered provisional measures in favor of Juan Almonte, his lawyers, and his family.

IACHR, Hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, 159th regular session, December 6, 2016.

<sup>91</sup> IACHR, Hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, 159th regular session, December 6, 2016.

<sup>92</sup> IACHR, Hearing on the *Situation of Human Rights Defenders in the Dominican Republic*, 159th regular session, December 6, 2016.

<sup>93</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016.

<sup>94</sup> United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016.

mark the third anniversary of judgment TC/0168/13. Supporters and opponents of the judgment converged at the seat of the Constitutional Court of the Dominican Republic and, while covering the events, Mr. Disla was assaulted by an individual who reportedly claimed to be a “retired colonel” and member of a “nationalist” group. The cameraman sustained a light injury to one of his legs and his assailant was reportedly arrested by the police.<sup>95</sup>

97. The Commission has not received any information about progress in investigations of threats and acts of intimidation against journalists, human rights defenders, and persons in vulnerable circumstances described in the country report. Nor has it received information about measures, practices, and public policies instituted by the State to promote tolerance and nondiscrimination, including by strengthening the role of state-owned media in that task.

98. The organs of the Inter-American system for protection of human rights have repeatedly stated that human rights defenders, from different sectors of civil society, and, in some cases, from State institutions, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic State largely depends on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.<sup>96</sup>

99. In the context of a democratic society, journalism is one of the most important manifestations of freedom of expression and information. Journalism and the activities of the press are essential for democracies to function since it is journalists and the media that inform society about events and their different interpretations of them, a necessary prerequisite for a robust, informed, and vigorous public debate.<sup>97</sup> A free, independent and critical press is clearly also fundamental to ensuring respect for other freedoms that are part of a democratic system.<sup>98</sup>

100. The right to freedom of expression is also fundamental for helping vulnerable groups to restore the balance of power among the different components of society.<sup>99</sup> Moreover, that right is useful for fostering understanding and tolerance among cultures, encouraging the dismantling of stereotypes, facilitating the free interchange of ideas, and offering alternative opinions and different points of view.<sup>100</sup> Inequality results in the exclusion of certain voices from the democratic process, undermining the values of pluralism and diversity of information. People pertaining to social groups that are traditionally marginalized, discriminated against, or defenseless, are systematically excluded from public debate.

101. The Dominican State should also publicly acknowledge that promotion and protection of human rights are legitimate activities and that in carrying out those activities human rights defenders are not working against the State institutions but, to the contrary, seeking to strengthen the rule of law and expand the rights and guarantees of all. All state authorities and officials should be aware of the principles relating to the activities of defenders and their protection, as well as the guidelines that apply to their observance. At the

<sup>95</sup> *El Caribe*. 23 September 2016. [Hieren camarógrafo durante protesta contra sentencia 168-13 frente al Tribunal Constitucional; Diario al instante](#). 23 September 2016. [Disturbios frente al TC en contra de sentencia 168-13; agreden reportero](#); *Informativos Tele Antillas*. 23 September 2016. [Agreden a un camarógrafo durante protesta contra sentencia 168-13 frente Tribunal Constitucional \(VIDEO\)](#); Facebook. *El Jarabe de Zapete*. [Marino comenta sobre suceso frente al Tribunal Constitucional RD \(VIDEO\)](#); *Proceso*. 27 September 2016. [Reporteros Gráficos piden al MP y a la PN tomar acciones contra coronel retirado que agredió a camarógrafo](#).

<sup>96</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, paras. 20-41. Available at: <http://www.cidh.org/countryrep/defensores/defensorescap1-4.htm>.

<sup>97</sup> I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107, paras. 117 and 118.

<sup>98</sup> IACHR, Report No. 50/99, Case 11.739, Héctor Félix Miranda (Mexico), April 13, 1999, par. 42; IACHR, Report No. 130/99, Case 11.740, Víctor Manuel Oropeza (Mexico), November 19, 1999, par. 46.

<sup>99</sup> United Nations, Committee on the Elimination of Racial Discrimination, *General Comment No. 35, Combating racist hate speech*, CERD/C/GC/35. 26 September 2013, paras. 39 to 42.

<sup>100</sup> United Nations, Committee on the Elimination of Racial Discrimination, *General Comment No. 35, Combating racist hate speech*, CERD/C/GC/35. 26 September 2013, paras. 39 to 42.

same time, it is essential that the State strengthen mechanisms that could serve to safeguard the lives and personal well-being of human rights defenders who are at risk because of their work.

## F. Haitian migrants, immigration operations, and due process

102. The organs of the Inter-American system have analyzed in detail several individual cases that reflect shortcomings in the law, practices, and policies in relation to migration. In its country report, the Commission mentioned that over the years it has identified a series of impediments preventing Haitian migrants from regularizing their migratory status in the country, which, in turn, have led to other obstacles to registering their Dominican-born children in the Civil Registry, so that they might be given identity documents certifying their Dominican nationality.<sup>101</sup>

103. It also stated that judgment TC/0168/13 disproportionately affected persons of Haitian descent born in the Dominican Republic to parents with irregular migratory status, and that the ruling was incompatible with the American Convention, as it violates the rights to nationality, to recognition of juridical personality, and to a name, as well as the rights to identity and equal protection of the law.<sup>102</sup> In that regard, as was noted in the previous section, the CDESCR, in its concluding observations on the fourth periodic report of the Dominican Republic, again regretted that, pursuant to Constitutional Court judgment TC/0168/13 had a disproportionate effect on persons of Haitian descent who, despite having been born in the state and lived there for decades, have retroactively been deprived of their nationality.<sup>103</sup> As regards the regime for the regularization and naturalization of the persons affected by the judgment, the Committee expressed concern that the “significant number of persons of Haitian descent [who] are stateless, which limits their effective exercise of their economic, social and cultural rights (art. 2).”<sup>104</sup>

104. The Commission also noted the heightened vulnerability of Haitian migrants who seek to exercise their human rights. Thus, for example, the IACHR received consistent reports about discrimination that they faced at work and in relation to social security, as well as the obstacles they encounter to education and health care.

105. One aspect that the IACHR has monitored over the years are housing conditions in the *bateyes*, farms and other places where migrant workers and their families live. In that connection, the Commission echoes the concern expressed by the Committee on Economic Social and Cultural Rights regarding housing conditions in the *bateyes* which remain substandard, coupled with the “insufficient supply of drinking water and limited access to adequate sanitation systems, particularly in rural areas.”<sup>105</sup>

106. In its country report, the Commission expressed concern over the reported impossibility of access to social security for older migrants, particularly Haitian sugarcane workers. In that regard, in 2016 “the negligent way in which the Dominican Social Security Institute (IDSS) managed the pension files of cane cutters who work in the sugarcane fields that supply Dominican mills” was publicly denounced.<sup>106</sup> It was charged that the IDSS required the sugar mills to pay the pension fund contributions of cane workers in advance but then did not have the funds to cover the social security benefits of those who had contributed to the fund. As a result an appeal was made to the authorities to come up with a solution to the problems caused

<sup>101</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 226.

<sup>102</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 227.

<sup>103</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 21.

<sup>104</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 21.

<sup>105</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 51.

<sup>106</sup> Acento, [Experto en seguridad social denuncia expedientes de cañeros eran tirados en IDSS](#), September 29, 2016.

by the mismanagement. In response, the authorities assigned a basic pension to anyone holding a carnet issued by the Institute.<sup>107</sup>

107. In its assessment of the Dominican Social Security system, the CDESCR acknowledged the efforts made by the State to strengthen its social protection system, but reiterated its concern that the system still provides quite limited coverage and “does not ensure an appropriate level of protection” for the entire population. Accordingly, the Committee urged the authorities:

to pursue its efforts to develop a social security system that guarantees universal social protection coverage and provides appropriate benefits for all workers and for all persons and families, especially those belonging to the most disadvantaged and marginalized groups, including migrants of Haitian origin, with a view to ensuring that they have a decent standard of living. The Committee also urged the State party to redouble its efforts to set a social protection floor that includes basic social security guarantees.<sup>108</sup>

108. As the CDESCR observed, children of Haitian descent and children who do not possess a birth certificate continue to face difficulties in gaining access to education.<sup>109</sup>

109. In addition, in its country report, the Commission noted with concern that the legislative and constitutional measures governing the right to nationality in the Dominican Republic have been changing into a process geared toward denationalizing the children of Haitian immigrants whose migratory situation is irregular and even those with a regular migratory situation.<sup>110</sup> It also mentioned that Haitian migrants and those perceived as such, are victims of continuous acts of violence and discrimination in various areas of their lives, especially as a result of immigration operations, widespread immigration detention and collective expulsions to Haiti carried out by members of the Office of the Director General of Immigration, the Specialized Border Security Corps, and other agents of the State.<sup>111</sup>

110. With respect to expulsion or deportation proceedings, in its country report, the Commission recommended that the State strictly observe due process guarantees in any proceedings related to the expulsion or deportation of foreigners. It also recommended that expulsions of Dominican nationals not be carried out under any circumstances.

111. As part of its monitoring of migratory flows on the Dominican-Haitian border, the IOM deployed teams at nine border crossing points, where they interviewed 1,133 individuals corresponding to 349 households between June 16 and July 3, 2015.<sup>112</sup> Of those interviewed, 665 persons (58.7 percent) said they had spontaneously returned to Haiti, while 408 persons (36 percent) said that they had been forcibly returned by different entities, including the military, police, immigration officials, and civilians. Approximately half of the people interviewed (579 persons or 51.1 percent) said they were born in Haiti, while 380 persons (or 33.9 percent) said that they had been born in the Dominican Republic. Only 93 individuals (8.2 percent) said that they had been registered in the National Regularization Plan for Foreigners. Of the 1,133 people interviewed by the IOM monitoring team during that period, 847 (nearly 75

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<sup>107</sup> Acento, [Experto en seguridad social denuncia expedientes de cañeros eran tirados en IDSS](#), 29 September 2016.

<sup>108</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 41.

<sup>109</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of the Dominican Republic, 21 October 2016, para. 64.

<sup>110</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 324.

<sup>111</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 542.

<sup>112</sup> IOM, [IOM Monitors Dominican Republic – Haiti Border](#), July 14, 2015.

percent) were below the age of 30. Of those, 20.7 percent (234 individuals) were children below the age of five; six cases of unaccompanied minors were encountered.<sup>113</sup>

112. The IOM continued its interview exercise until August 6, 2015, covering 4,628 persons (1,659 families) in all.<sup>114</sup> Out of that total, 3,758 individuals (81.2 percent) said that they had returned to Haiti spontaneously, while 870 (18.8 percent) said that they had been forcibly returned by the authorities. Some 82.0 percent (3,794 individuals) did not have any type of documentation. In addition, the IOM teams identified 25 presumed unaccompanied children.<sup>115</sup>

113. Some of the persons interviewed who had been living in *bateyes* near Barahona said that the military came in the morning and put them on a truck without letting them take any of their belongings; fortunately, their children were with them at the time of the operation.<sup>116</sup> They said that they were left at the Malpasse border in the afternoon. The persons interviewed who said that they had been registered in the Regularization Plan for Foreigners spoke of not being able to afford all the requested documents. They also said that life without papers was hard because they could not send their children to school in the Dominican Republic.<sup>117</sup>

114. The commission considers it important to underscore the particular vulnerability of unaccompanied and separated children of Haitian origin who are repatriated or deported from the Dominican Republic. That vulnerability is exacerbated by the sudden separation from their families and the disruption in schooling,<sup>118</sup> exposing them to exploitation, discrimination, and other violations of their human rights.

115. In the hearing on *Human Rights and Statelessness in the Dominican Republic*, held on December 6, 2016, during the 159th regular session of the IACHR, civil society organizations told the Commission that deportations were continuing of Haitian migrants and Dominicans of Haitian descent, albeit with lesser intensity. According to them, deportations continue to be arbitrary and consist of taking the persons concerned to the border without any record kept or the individuals being turned over to the Haitian immigration authorities.<sup>119</sup>

116. Amnesty International reported that deportations of Haitian migrants and Dominicans of Haitian descent continued to occur. Citing figures provided by organizations on the ground, Amnesty said that as of May 26, 2016, 40,000 people had been deported from the country while at least another 66,000 returned “spontaneously,” following judgment TC/0168/13 and after having received threats or having been pressured to leave.<sup>120</sup> At least 2,000 people reportedly settled in make-shift camps at the southern Haitian border town of Anse-à-Pitres, where humanitarian assistance was only provided after they had been there for some time.<sup>121</sup>

<sup>113</sup> IOM, [IOM Monitors Dominican Republic – Haiti Border](#), July 14, 2015.

<sup>114</sup> IOM, [IOM Monitors Migrant Flows on Haiti - Dominican Republic Border](#), August 11, 2015.

<sup>115</sup> IOM, [IOM Monitors Migrant Flows on Haiti - Dominican Republic Border](#), August 11, 2015.

<sup>116</sup> IOM, [IOM Monitors Dominican Republic – Haiti Border](#), July 14, 2015.

<sup>117</sup> IOM, [IOM Monitors Dominican Republic – Haiti Border](#), July 14, 2015.

<sup>118</sup> UNICEF, Haiti, available as at December 23, 2016, at: <https://www.unicef.org/appeals/haiti.html>.

<sup>119</sup> At that hearing, the IACHR regretted the absence of the Dominican State and expressed its commitment to the civil society organizations to act as a conduit for dialogue and rapprochement with the state authorities. IACHR, Hearing on Human Rights and Statelessness in the Dominican Republic, 159th regular session, December 6, 2016. Available at: <http://www.oas.org>.

<sup>120</sup> Amnesty International, [“Where Are We Going to Live? Migration and Statelessness in Haiti and the Dominican Republic](#), June 15, 2016. See also: Dialogo UPR, [Haití y República Dominicana: las deportaciones dejan a miles en el limbo](#), 16 June 2016.

<sup>121</sup> Amnistía Internacional, [“¿Dónde vamos a vivir?” Migración y apatridia en la República Dominicana y Haití](#), 15 June 2016.

117. Based on figures provided by the IOM, Human Rights Watch said that as of November 3, 2016, almost 150,000 Haitian migrants and Dominicans of Haitian descent had entered Haiti since mid-2015.<sup>122</sup> It also mentioned that although some deportees were migrants without valid claims to stay in the Dominican Republic, others were Dominicans of Haitian descent, including some who were summarily deported and others who left in the belief that their deportation was inevitable, regardless of the strength of their claims to Dominican citizenship. It said that no government or agency has tracked where most of the deportees have settled in Haiti. However, it indicated that at least 3,000 of the poorest have lived in camps near the southern Haitian town of Anse-à-Pitres where many still live, struggling to find enough to eat.<sup>123</sup>

118. In spite of improvements in the way deportations are being carried out since the end of the regularization plan, Amnesty International, and other organizations on the ground say that they have documented infringements of human rights and fundamental freedoms in deportations. For example, they charge that none of the people were served with a deportation order issued by a competent authority, or had the chance to challenge the legality, necessity and proportionality of detention, or were offered legal aid.<sup>124</sup> According to Amnesty, as a consequence of the failure to systematically implement procedural safeguards, in some cases people who might have had a case against deportations, including those who had applied to the regularization plan, unaccompanied children and parents of children entitled to Dominican nationality, have been deported.<sup>125</sup>

### III. SERIOUS OMISSIONS IN THE ADOPTION OF THE NECESSARY MEASURES TO MAKE FUNDAMENTAL RIGHTS EFFECTIVE, OR IN COMPLYING WITH THE DECISIONS OF THE IACHR

119. In 2016, the Commission expressed its concern at the lack of response from the Dominican Republic to several requests made through different human rights monitoring mechanisms envisaged in the American Convention on Human Rights and other instruments. The Inter-American Commission would like to underscore the importance of States' good-faith collaboration in supplying adequate and timely information in the joint pursuit of solutions to the region's human rights problems.

120. At the invitation of the Dominican Republic, the IACHR made an on-site visit to the country from December 2 to 6, 2013, in order to monitor the situation with respect to the rights to nationality, identity, equality, and nondiscrimination, in addition to other related rights and issues. On December 31, 2015, the IACHR adopted its report *Situation of Human Rights in the Dominican Republic*,<sup>126</sup> which contained a series of recommendations for the Dominican State based on its findings and on information obtained from monitoring the situation before, during, and after the on-site visit, from investigations conducted *sua sponte*, from the State itself, from input produced by the various mechanisms through which the IACHR has observed the situation in the country, journalists' reports, and decisions and recommendations of specialized international agencies, among other sources, in accordance with the provisions set down in Article 59(5) of its Rules of Procedure.

121. In a letter of March 1, 2016, and a reminder dated August 4, 2016, the IACHR requested the Dominican State to provide information on steps taken to implement the recommendations contained in the country report. That deadline having passed, the Commission publicly regretted the lack of response and appealed to the State to comply with the request.<sup>127</sup>

<sup>122</sup> Human Rights Watch, [Haiti: Stateless People Trapped in Poverty](#), November 29, 2016.

<sup>123</sup> Human Rights Watch, [Haiti: Stateless People Trapped in Poverty](#), November 29, 2016.

<sup>124</sup> Amnesty International, ["Where Are We Going to Live? Migration and Statelessness in Haiti and the Dominican Republic"](#), June 15, 2016.

<sup>125</sup> Amnesty International, ["Where Are We Going to Live? Migration and Statelessness in Haiti and the Dominican Republic"](#), June 15, 2016, p. 5.

<sup>126</sup> IACHR, [Situation of Human Rights in the Dominican Republic](#), OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015.

<sup>127</sup> IACHR, [Annex to the Press Release Issued at the Close of the 159th Session](#), December 7, 2016.

122. At its 157th regular session, the Commission held a hearing on the *Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic*,<sup>128</sup> at which civil society organizations provided evidence of the impact that the denationalization of Dominicans of Haitian descent was having on the exercise of their political rights. On that occasion, the representative of the Dominican State professed surprise that the hearing had been granted, notwithstanding that the issue had been addressed in previous sessions, the recent publication of the country report, and the imminence of the upcoming elections. The representative also regretted the denial of the request for postponement that was presented. The IACHR concluded by expressing high appreciation for the great efforts made by the State in that regard, while clarifying that the hearing had been granted precisely to open a constructive dialogue among the parties, as well as to identify immediate solutions bearing in mind the proximity of the elections. It also pointed out that the Commission's persistent attention to the issue was evidence of its profound concern and desire for the parties to engage in dialogue.

123. Subsequently, at the 159th regular session held in Panama City, Panama, on December 6, 2016, the Commission invited the Dominican State to participate in the hearings on the *Situation of Human Rights Defenders in the Dominican Republic*<sup>129</sup> and on *Human Rights and Statelessness in the Dominican Republic*,<sup>130</sup> which were requested by civil society organizations. To the Commission's regret, the State did not attend, with the result that the opportunity for continued constructive progress in finding solutions to the above-described problems in the area of human rights was squandered. The Commission expressed concern for the State's absence at those hearings. On December 20, 2016, the Commission received two communications from the Permanent Mission of the Dominican Republic to the OAS, which said, with regard to the hearings on the *Human Rights and Statelessness in the Dominican Republic* and the *Situation of Human Rights Defenders in the Dominican Republic*, that "the Dominican State was not represented at that hearing because it did not receive the proper notification in a timely manner."<sup>131</sup> In its reply, the Commission pointed out to the State that the invitation to the hearings had been transmitted electronically to the e-mail addresses of that Permanent Mission and the Ministry of Foreign Affairs of the Dominican Republic registered at the IACHR, and in advance of the one-month deadline provided for in Article 66 (5) of the Rules of Procedure.

124. The Dominican Republic also did not respond to the request for information dated September 8, 2016, made by the IACHR pursuant to its powers under Article 41 of the American Convention, relating to the criminal code bill under discussion in that country's national congress. At the time of drafting of this chapter, a response to the request made to the Dominican State for information on the adoption of the new criminal code remained pending, although it was still within the deadline provided.

125. The IACHR wishes to remind the Dominican Republic of the nature of the international obligations that it assumed as a sovereign state when it joined the OAS and its inter-American human rights system. It also wishes to reiterate reiterate that cooperation, frank, respectful, and open dialogue, and observance in good faith of obligations in the area of human rights not only help to strengthen the inter-American human rights system, but also benefit States and their peoples by bringing progress toward the objective of consolidating "a system of personal liberty and social justice based on respect for the essential rights of man" within the framework of democratic institutions.<sup>132</sup>

<sup>128</sup> IACHR, Hearing on [Political Rights of Dominican Persons of Haitian Descent in the Dominican Republic](#), 157th regular session, April 8, 2016.

<sup>129</sup> IACHR, Hearing on the [Situation of Human Rights Defenders in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>130</sup> IACHR, Hearing on [Human Rights and Statelessness in the Dominican Republic](#), 159th regular session, December 6, 2016.

<sup>131</sup> Permanent Mission of the Dominican Republic to the OAS, Note MP-RD-OEA 1310-16 of December 16, 2016, and Note MP-RD-OEA 1311-16 of December 7, 2016, both received by the Executive Secretariat on December 20, 2016.

<sup>132</sup> American Convention on Human Rights, signed in San José, Costa Rica, on November 22, 1969, at the Inter-American Specialized Conference on Human Rights, Preamble.

#### IV. OTHER HUMAN RIGHTS SITUATIONS OBSERVED DURING THE YEAR

126. For some years, the Commission has been closely monitoring developments in discussions on the regulation of abortion in the Dominican Republic. In that connection, the IACHR learned of the enactment on December 19, 2014, of Law No. 550-14 (Criminal Code of the Dominican Republic), published in Official Gazette No. 10788 of December 26, 2014, whose provisions envisaged exonerating circumstances in the event of “[t]he interruption of the pregnancy by specialized medical personnel at health facilities, whether public or private,” as well as “[t]he interruption of the pregnancy caused by rape or incest, or as a result of fetal malformations clinically proven to be incompatible with life.” The Commission was later informed how the validity of the above law was compromised by Constitutional Court judgment TC/0599/15 of December 17, 2015, which declared it to be unconstitutional owing to “a material defect in the legislative procedure,” with the result that the 1884 Criminal Code continued in force.

127. According to information available in the public domain, a new criminal Code was introduced to the House of Deputies, which, having passed, was reportedly submitted on July 25, 2016, to the Senate Committee on Justice and Human Rights for examination. That bill, reportedly again makes abortion a criminal offense and envisages prison sentences for any woman who commits said crime.

128. At the time, the contents of the bill prompted various expressions of concern at the international level regarding the potential legislative retrogression that this would entail, running counter to international standards on sexual and reproductive rights and on regulations governing abortion.<sup>133</sup> The Commission, for its part, in a letter dated September 8, 2016, requested the Dominican State for information in accordance with its attributions under Article 41 of the American Convention. At the time of drafting of this chapter, the Commission had not received a response.

129. On December 14, 2016, the Senate of the Republic adopted the new criminal code at two consecutive sessions, with 19 of the 20 senators present at the session voting in favor.<sup>134</sup> The bill retained the provisions criminalizing abortion, distancing itself from international standards on such matters by adopting rules that amount to obstacles to adequate access for women to maternal health care services that only they need by virtue of their sex and reproductive capacity. According to information received by the IACHR, the bill provides prison terms of up to three years for women who have an abortion and only exonerates them when all technical and scientific measures to save the lives of the mother and the fetus have been exhausted. The bill also establishes prison sentences of 4 to 10 years for any doctor, nurse, pharmacist, or other professional who performs or assists in an abortion.

130. In that regard, the director of the National HIV/AIDS Council, Víctor Terrero, called on President Danilo Medina to object the recently adopted criminal code and return it to the legislature on the grounds that it “violates fundamental rights, affects Dominicans in the lower social classes, and hampers the work of thousands of doctors.”<sup>135</sup> Various sectors of civil society reportedly echoed those sentiments.<sup>136</sup>

131. The circumstances in which the new criminal code was adopted justified the request for information sent by the Commission to the Dominican State on December 19, 2016, in exercise of its powers

<sup>133</sup> UN, [Expertos de la ONU instan a República Dominicana a no dar marcha atrás en el derecho al aborto](#), July 27, 2016. See also: Diario Libre, [PNUD cree que República Dominicana involucionó por tema del aborto en el Código Penal](#), July 29, 2016; Miles Chile, [PNUD dice penalización total del aborto vulnera derechos de mujeres y niñas](#), July 29, 2016.

<sup>134</sup> Senate of the Dominican Republic, [Senado aprueba Código Penal, donde se establece la acumulación de la pena hasta 60 años](#), December 14, 2016. See also: Listín Diario, [PNUD cree que República Dominicana involucionó por tema del aborto en el Código Penal](#), December 15, 2016, Acento, [Senado aprueba de “urgencia” Código Penal que castiga el aborto en cualquier circunstancia](#), December 15, 2016; Hoy, [Lucía Medina, Profamilia y ANDECLIP “se riegan” por aprobación Código penaliza aborto](#), December 15, 2016.

<sup>135</sup> El Acento, [Director de CONAVIHSIDA pide al Presidente Medina que observe el Código Penal](#), December 15, 2016.

<sup>136</sup> Acento: [Senado aprueba de “urgencia” Código Penal que castiga el aborto en cualquier circunstancia](#), December 15, 2016, and [Organizaciones critican ratificación de penalización del aborto sin ninguna excepción](#), December 15, 2016; Hoy, [Lucía Medina, Profamilia y ANDECLIP “se riegan” por aprobación Código penaliza aborto](#), December 15, 2016.

under Article 41 of the American Convention. The above letter concurred with the note of objection to the law transmitted by President Danilo Medina in which it expressed its differences with regard to the code's approach in criminalizing the voluntary termination of pregnancy in all circumstances, without exceptions, and submitted a new proposal, which will be examined by both chambers of the National Congress. The Commission received the response of the State to the above request, informing that:

the above bill was again the subject of observations by the Office of the President of the Republic, to the effect that it should include exceptions to the prohibition of abortion for cases in which the life of the mother is in danger, when she is the victim of rape or incest, or in the event of malformations that render the fetus unviable. In that regard, under Article 102 of the Dominican Constitution, the bill would have to be reintroduced to the Congress.<sup>137</sup>

132. In this context, the Commission considers it important to recall the negative impact that restrictive laws that criminalize abortion in all circumstances can have on the full enjoyment of women's sexual and reproductive rights.<sup>138</sup> In that connection, the Commission would like to reiterate to the State the need to observe the recommendations put forward in the reports on *Access to Maternal Health Services from a Human Rights Perspective* and *Access to Information on Reproductive Health from a Human Rights Perspective* when analyzing and enforcing laws, standards, and policies related to reproductive health services, in order to prevent direct and indirect discrimination against the women concerned.<sup>139</sup> The Commission also notes that the matter was the subject of a pronouncement by UN experts on January 25, 2017, who urged lawmakers to support the position of President Medina on exceptions to the abortion ban, saying that they "sincerely hope that the Dominican Congress will finally seize this historical moment to mark its commitment towards eliminating gender discrimination in its legislation and to advance women's and adolescents' sexual and reproductive rights, in accordance with their international human rights obligations."<sup>140</sup> The UN experts also said that this was the last chance for lawmakers to improve the situation of sexual and reproductive rights of women in the country and that if they failed to do so, "it would be a tragedy for women in the Dominican Republic and a deplorable example for the region."<sup>141</sup>

133. In this regard, the Commission will continue to monitor closely developments in the discussions on the new criminal code.

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<sup>137</sup> Permanent Mission of the Dominican Republic to the OAS, Note MP-RD-OEA 0009-17, dated January 7, 2017, received January 13, 2017.

<sup>138</sup> IACHR, Press Release No. 106/15, Joint statement by United Nations and regional experts, *More Needs to Be Done to Protect Women's Sexual and Reproductive Health and Rights*, September 24, 2015; IACHR, Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application (update 2011-2014), paragraphs 53 and 54; IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive Rights and Emergency Contraception in the Americas," hearing held on October 29, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human Rights and Criminalization of Abortion in South America," hearing held on March 15, 2013; IACHR, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR, "Access to Public Information and the Right to Sexual and Reproductive Health in the Americas," hearing held on November 2, 2012.

<sup>139</sup> IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive Rights and Emergency Contraception in the Americas," hearing held on October 29, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human Rights and Criminalization of Abortion in South America," hearing held on March 15, 2013; IACHR, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR, "Access to Public Information and the Right to Sexual and Reproductive Health in the Americas," hearing held on November 2, 2012.

<sup>140</sup> UNHCHR, [Dominican Republic: Dominican Republic: UN rights experts urge legislators to back President Medina's stand on abortion](#), January 25, 2017.

<sup>141</sup> UNHCHR, [Dominican Republic: Dominican Republic: UN rights experts urge legislators to back President Medina's stand on abortion](#), January 25, 2017.

## V. RECOMMENDATIONS

134. More than three years since the Constitutional Court adopted judgment TC/0168/13, and more than two years since Law No. 169-14 was enacted, serious challenges persist with regard to the effective enjoyment of the rights to nationality and legal personality by persons of Haitian descent born in the Dominican Republic. The Commission notes that it is still not known with any certainty how many people were affected by that judgment. The information available does not offer any clarity about the scope and effectiveness of the measures adopted by the State to restore Dominican nationality to the persons affected by the ruling. The Commission acknowledges the measures adopted by the government of president Danilo Medina; however, it is also concerned at the persistence of practices by the Central Electoral Board and civil registry offices that continue to create obstacles hindering the persons affected from obtaining identity documents and registering their children.

135. The Commission reiterates its appeal to the Dominican State to nullify any policy, law, or practice that has the effect of denying Dominican nationality to persons born in the territory of the Dominican Republic due to the irregular migratory status of their foreign parents, since such laws, practices, decisions, and interpretations run counter to the American Convention.

136. As the IACHR mentioned in its country report, since the solution that Law 169-14 offers for people in Group B is to consider them foreign, tens of thousands of people and their descendants continue without having their nationality restored and, therefore, without an effective reparation for the arbitrary deprivation of their nationality and the statelessness in which they were left in the wake of judgment TC/0168/13. The Dominican State should adopt such measures as may be necessary fully to restore Dominican nationality to such persons and their Dominican-born descendants.

137. With respect to expulsion or deportation proceedings, the Commission calls upon the Dominican State strictly to observe due process guarantees during such proceedings and not to expel Dominican nationals under any circumstances. The Commission also considers it necessary to point out that anyone who has been arbitrarily deprived of their nationality will continue to be entitled to enter and reside in that country, since it is their "own country" under international law.

138. The IACHR considers it essential for the Dominican Republic to adopt positive measures to eradicate racial and ethnic discrimination and provide effective guarantees of the human rights of persons of Dominican persons of African descent, especially the Dominican population of Haitian descent, Afro-Dominicans, and Haitian migrants. To that end, it is necessary to have appropriate, disaggregated information and to assign sufficient and specific human and financial resources, not only to neutralize racial prejudice and stereotypes, but also to improve the living conditions of persons of African descent with respect to health, housing, education, and employment, especially emphasizing the cross-sectoral discrimination that women of African descent suffer.

139. The Commission urges the Dominican State to provide information on the steps that it has taken in connection with the recommendations formulated in its report "Situation of Human Rights in the Dominican Republic." The Commission also reaffirms its commitment both to work with the Dominican State in the search for solutions to the problems and challenges highlighted, and to support it in meeting its international obligations in the area of human rights.

140. In turn, the Commission reiterates its call for the Dominican State to align the new Criminal Code with its inter-American and international obligations in the area of human rights of women and girls, particularly their rights to life, to humane treatment, to nondiscrimination, and to a life free of any form of violence.