

Discrimination in Access to Nationality

*Statement Submitted by the Open Society Justice Initiative for
Consideration by the United Nations Human Rights Council at
its Sixth Session, on the occasion of its Universal Periodic
Review of the Dominican Republic
November 30 – December 11, 2009*

April 2009

I. INTRODUCTION

1. The Justice Initiative is an operational program of the Open Society Institute (OSI) that pursues law reform activities grounded in the protection of human rights and contributes to the development of legal capacity worldwide. A major area of the Justice Initiative's work is the enforcement of international legal prohibitions on discrimination, statelessness and arbitrary deprivation of nationality.
2. Dominicans of Haitian are experiencing discriminatory denial of their right to nationality. The Dominican government has targeted this significant proportion of the Dominican population through legislative and policy changes that are depriving Dominicans of Haitian descent of recognition of their lawful nationality and, in consequence, of fundamental rights that depend upon nationality.

II. THE DOMINICAN REPUBLIC'S INTERNATIONAL AND NATIONAL OBLIGATIONS WITH RESPECT TO THE RIGHT TO NATIONALITY

A. Scope of international obligations

3. The Dominican Republic is a party to several international and regional treaties that provide legal standards with respect to statelessness and the right to nationality.¹ The Dominican Republic has signed but not ratified the Convention on the Reduction of Statelessness (1961). It is not a party to the Convention Relating to the Status of Stateless Persons (1954). These are key international instruments that guarantee the protection of stateless people and the Dominican Republic should consider ratifying these two treaties.
4. The Dominican Republic's obligations under various treaties must be understood in terms of General Recommendation No. 30 of the Committee on the Elimination of All Forms of Racial Discrimination (CERD) which recommends that States "[r]ecognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States' Parties obligations to ensure non-discriminatory enjoyment of the right to nationality."²

B. Constitutional and legislative framework

5. Article 11 of the Dominican constitution establishes citizenship according to the *jus soli* principle: all children born on national territory are Dominican nationals, with the exception of those whose parents are diplomats or persons "in transit." Until recently, persons "in transit" for purposes of citizenship exclusion were those who spent no more than ten days in the Dominican Republic at the time of their children's births.³
6. The new General Law on Migration (Law No. 285-04), adopted in 2004, redefined the "in transit" exception, broadening it to include all children of "non-residents". "Non-resident" is broadly defined to include not only travelers in transit to another country but also tourists, businesspeople, laborers with temporary visas allowing them to work in the Dominican Republic (including

¹Acceded to the International Covenant on Civil and Political Rights on April 4, 19789 (no reservations); acceded to the Convention on the Elimination of All Forms of Racial Discrimination on June 24, 1983 (no reservations); ratified the Convention on the Elimination of all Forms of Discrimination against Women on October 2, 1982 (no reservations); acceded to the Convention on the Rights of the Child on July 11, 1991 (no reservations); acceded to the American Convention on Human Rights on July 9, 1977 (one reservation with respect to the death penalty provision).

² CERD, General Recommendation No. 30: Discrimination Against Non-Citizens, October 1, 2004, para. 14.

³ Immigration Act No. 95 of April 14, 1939 and the Immigration Regulation No. 279 of May 12, 1939.

seasonal workers in the sugar industry or performing other agricultural work), residents of the Dominican-Haitian border, persons who entered the country legally but have overstayed their visas, undocumented migrant workers,⁴ and persons who cannot otherwise prove their residence in the Dominican Republic.⁵

III. THE DOMINICAN REPUBLIC'S NATIONALITY POLICIES DEPRIVE DOMINICANS OF HAITIAN DESCENT OF RECOGNITION OF CITIZENSHIP, LEAVING THEM STATELESS

A. The Dominican Republic's current nationality policies disproportionately affect Dominicans of Haitian descent

7. As a result of historical discrimination, Dominicans of Haitian descent face particular challenges in providing documentary proof of their citizenship, or that of their parents, and are thus disproportionately affected by current practices. Individuals who do not have documentary proof of their parents' Dominican citizenship or legal residency are now categorized as "non-residents" regardless of how long they or their families have lived in the Dominican Republic. Children without proof of their parents' citizenship are told they must go to foreign embassies and consulates to obtain birth certificates. Many parents of Dominican-born children lack the necessary documentation, due to the long-standing refusal of many local government officials to issue it to persons believed to be of Haitian descent.
8. In direct breach of an historic judgment of the Inter-American Court of Human Rights in 2004,⁶ the government has continued discriminating against persons of Haitian descent in access to citizenship in three principal ways:
 - a. The government is retroactively applying the 2004 migration law to denationalize Dominicans of Haitian descent whose citizenship has already been recognized by the state. The Dominican Republic has refused to issue *cédulas de identidad* (the national identity card required of all Dominican adults) to many Dominicans of Haitian descent on the basis that their birth certificates—a prerequisite for obtaining *cédulas*—are no longer valid because their parents were "non-residents" when their births were registered. And yet, in many cases the affected individuals were born 10 and 20 years prior to the creation of this category of

⁴ According to Article 36 of the General Law on Migration No. 285-04, Nonresidents are eligible as qualified aliens in some of the following subcategories: 1. Tourists, those understood to foreigners entering the country for recreation, leisure, rest and fun, with enough resources to do so; 2. Business people, who visit the country because of their business or commercial activities and to evaluate the establishment of such activities; 3. Crew and staff manning a conveyance; 4. Passengers in transit to other destinations abroad; 5. Temporary workers, defined as all those foreigners who enter the country to provide their labor services for a fixed period and under contract...6. Residents of border communities ...7. Persons in groups because of their sporting, artistic, academic or related nature.; 8. Foreigners entering the country with a resident visa with the intent to complete the procedures within the country for the award of the Dominican residence; 9. Students who enter the country to study as regular students in officially recognized establishments; 10. Non-residents are considered people in transit, for the purposes of applying Article 11 of the Constitution of the Republic. .

⁵ Article 129 of the same law mandates that "[w]hoever shall have entered [the country] legally and has overstayed his residency, independent of his actual status, shall be considered as a Non-Resident."

⁶ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Int. Am. Ct. H.R. Case No. 12.189 (September 8, 2005). The case was brought by two Dominican girls of Haitian descent, Dilcia Yean and Violeta Bosico, who were denied Dominican birth certificates even though both they and their mothers had been born on Dominican territory. As a result, they could not enroll in school and remained vulnerable to summary expulsion from their country of birth. The Inter-American Court ruled that the government's birth registration policy constituted impermissible racial discrimination which had the effect of rendering Dominican children of Haitian descent effectively stateless and barred them from accessing basic human rights in violation of the American Convention on Human Rights, particularly the rights to recognition of juridical personality (Article 3), a given name (Article 18), nationality (Article 20), and equal protection before the law (Article 24).

“non-resident” by the 2004 law. Those denied *cédulas* are unable to vote, attend school, obtain lawful employment, or register the birth of their own children. This last consequence is particularly pernicious, as it creates a cycle of statelessness and marginalization that affects multiple generations in the same family.

- b. Dominicans of Haitian descent whose nationality was previously recognized by the government have also been disproportionately affected by a recent internal memorandum (Circular 017), issued in March 2007 by the Central Electoral Board (*Junta Central Electoral*, or JCE), the state agency that administers the country’s civil registry operations. This memorandum directed civil registry officials not to expedite, process, sign, or issue copies of identity documents when the applicants are children of “foreign parents” and the documents in question appear to be “irregular” or obtained fraudulently.⁷ Circular 017 explicitly links the presumed irregularity of these identity documents to the parents’ inability to provide proof of their Dominican residency. JCE officials have admitted to using impermissible criteria such as skin color and “Haitian-sounding” surnames to decide which individuals are likely to be carrying “suspect” identity documents. While their documents are under investigation, affected individuals cannot undertake any activities that require proof of their citizenship or lawful residency, resulting in the retroactive cancellation of many birth certificates and identity documents belonging to Dominicans of Haitian descent.
- c. Dominicans of Haitian descent have also been disproportionately affected by Resolution No. 12-2007, issued by the JCE in 2007, which authorizes the provisional suspension of “irregular” state civil registry documents (including birth certificates and national identity cards). Once ordered, a provisional suspension can only be lifted by an express decision of the JCE after a period of investigation.⁸ The JCE has begun proactively identifying individuals from whom it wishes to withdraw recognition of Dominican nationality, even though even though they had previously been issued birth certificates, *cédulas*, and passports.⁹ The JCE’s justification for this is to “correct” the administration’s mistake in granting these persons Dominican nationality, to which they were never entitled to because their parents were “non-residents” – a legal classification that did not exist before 2004. The JCE argues that the affected individuals have a right to Haitian nationality under that country’s *jus sanguinis* constitutional provision, that therefore the Dominican government’s actions do not leave them stateless and are, in fact, in full compliance with national and international human rights obligations. However, this argument ignores the fact that the Dominican constitution also grants these individuals Dominican nationality from birth, that they have built a life in the Dominican Republic based on their assumption of this nationality, and that in most cases they lack any effective link to Haiti.¹⁰ Furthermore, according to Dominican law the JCE is not only not empowered to cancel or to prohibit the issuance of identity documents to Dominican nationals – only a judge can do so, and the JCE is obligated to continue issuing said documents until such time as the legal dispute is resolved.¹¹

C. New civil registry and legislative reforms pose potential threat to the right of Dominicans of Haitian descent to nationality

⁷ A copy of *Circular 017* is annexed to this report.

⁸ A copy of *Resolution No. 12-2007* is annexed to this report.

⁹ Wanda Méndez, “Llevará a Justicia falseadores de actas,” *Listin Diario*, September 13, 2008 (available at: <http://www.listin.com.do/app/article.aspx?id=77145>).

¹⁰ Recent international treaties have employed the “genuine and effective link” principle as a criterion for granting nationality. See, e.g., the *European Convention on Nationality*, 6 November 1997, Article 18.2(a).

¹¹ Law No. 659 on State Civil Acts of 17 July 1944 (*Ley No. 659 Sobre Actos del Estado Civil del 17 de Julio del 1944*), Article 31.

9. The JCE recently ordered that all *cédulas* currently held by Dominican citizens be replaced by a new version that will contain biometric information. The new *cedulización* process is also intended to “clean” the civil registry system of any duplicate or fraudulent *cédulas*.¹² The process is due to conclude in June 2009. The new *cedulización* threatens to disproportionately affect Dominicans of Haitian descent that currently hold *cédulas*, as many will need to obtain certified copies of their birth certificates in order to be approved for a new *cédula*. Given the government’s recent policy of refusing to grant Dominicans of Haitian descent copies of their birth certifications on the presumption of fraud or “irregularity,” Dominicans of Haitian descent are likely to be unable to receive new *cédulas* through the *cedulización* process and will be left effectively stateless – without any proof of their Dominican nationality and unable to exercise the human rights which depend on such recognition.

IV. RECOMMENDATIONS TO THE HUMAN RIGHTS COUNCIL

8. The Justice Initiative urges the UPR Working Group of the Human Rights Council to address the nationality policies and practices described in this statement when it conducts its Universal Periodic Review of the Dominican Republic’s general human rights practices at its upcoming sixth session. In particular, we urge the Human Rights Council to ask the Dominican Republic state representatives questions that would clarify the following:
 - Why is the 2004 General Law on Migration being applied to those who were born prior to its adoption?
 - On what criteria are decisions to investigate the authenticity of identity documents based? What guarantees of due process exist for individuals whose documents are being investigated under the provisions of *Circular 017* or Regulation 12-2007?
 - Why is the JCE refusing to issue copies of existing identity documents to Dominicans of Haitian descent?
 - What safeguards has the Dominican Republic instituted to enable Dominicans of Haitian descent to obtain a new *cédula*?

12. In its concluding observations we urge the UPR Working Group to make clear that the Dominican Republic’s treatment of Dominicans of Haitian descent is incompatible with its human rights obligations. We also urge the Working Group to recommend to the Dominican Republic that it
 - Formally withdraw *Circular 012* and Regulation 12-2007 and develop and implement nondiscriminatory citizenship policies and practices;
 - Implement non-discriminatory policies ensuring that all individuals born in the Dominican Republic receive the same proof of birth and access to citizenship irrespective of ethnicity or the parents’ national origin;
 - Develop, apply and publicize due process guarantees with respect to nationality procedures, including written notifications and records of investigations, explanations for actions taken, and opportunities for appeal, and adequately train all civil registry staff in these procedures; and
 - Ensure that any changes to the Dominican laws, particularly those related to nationality, not be applied retroactively.

¹² Loyda Peña, “Negar datos para cédula conllevaría “muerte civil,” *Hoy Digital*, November 28, 2008, <http://www.hoy.com.do/el-pais/2008/11/29/257315/Negar-datos-para-credula-conllevaria-muerte-civil>; “JCE tomará huellas a ocho millones”, *Diario Libre*, August, 5th 2008 (http://www3.diariolibre.com/noticias_det.php?id=27562)