



'WITHOUT PAPERS, I AM NO ONE'

STATELESS PEOPLE IN THE
DOMINICAN REPUBLIC

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Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015

Index: AMR 27/2755/2015
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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Cover photo: The Alcino family, El Seibo, June 2015. Both parents are Haitian migrants. All 10 children were born in the Dominican Republic. Eight of the children have encountered obstacles in obtaining identity documents and having their Dominican nationality recognized. The six youngest remain stateless.

Back cover photo: Demonstration outside the Presidential Palace to mark the first anniversary of the adoption of Law 169-14, Santo Domingo, May 2015. The sign reads: "We are from here and if we are not from here, where are we from? You tell me, Roberto Rosario, because we are Dominicans like you". Roberto Rosario is the President of the Central Electoral Board, the institution in charge of the civil registry that has for years restricted access to birth registration and identity documents to Dominicans of Haitian descent.

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EXECUTIVE SUMMARY

Dominicans of Haitian descent in the Dominican Republic face a series of obstacles to the full enjoyment of their human rights to a nationality, to recognition as a person before the law and to identity. The denial of these rights has increasingly been codified into Dominican laws and regulations, creating an ever more complex web of restrictions and entrenching and institutionalizing discriminatory attitudes and practices.

The intensification of discriminatory attitudes and practices has taken place in the context of changes in migration into the Dominican Republic, primarily from Haiti, in recent decades. From the 1920s to the 1980s, Haitian migrant workers were drawn into the Dominican Republic as seasonal workers in the sugarcane industry. The workers, mostly men, were confined to settlements called *bateyes* within the plantations. For a considerable part of that time (1952-1986), they were contracted as *braceros* (cane cutters) for the sugar cane harvest in their own country through bilateral agreements between the Dominican and Haitian governments.

Following the fall in sugar prices on the international market from the mid-1980s onwards, the demand for sugarcane workers fell drastically. New migrant workers from Haiti began to make their own way to the Dominican Republic. They, together with other Haitian migrants who previously worked in the sugarcane plantations, increasingly sought and found employment outside the *bateyes* in the diversifying agricultural sector, in the construction sector and in the developing tourism industry. These changes in migration patterns started to be used by some nationalist groups to stoke a fear of a “peaceful invasion” of Haitians.

In recent decades, the widespread use of such rhetoric, steeped in discriminatory views, has dominated public and political debate about Haitian immigration. One consequence of this development has been that since the early 1990s Dominican-born children of Haitian migrants have been the target of a number of administrative, legislative and judicial decisions aimed at restricting their access to Dominican identity documents and ultimately to Dominican nationality. With no automatic access to Haitian nationality, many have been left stateless, not recognized as nationals by either the Dominican Republic or Haiti. Certain Dominican institutions, such as the Central Electoral Board and the Constitutional Court, have played a key role in approving or implementing such discriminatory measures.

Although the current government has shown some willingness to mitigate the harshest consequences of such measures, the Dominican authorities have yet to acknowledge that the problem of statelessness exists, let alone provide comprehensive and effective measures to prevent and end it.

THE ROAD TO STATELESSNESS

Between 1929 and 2010, successive versions of the Dominican Constitution granted Dominican nationality to all children born on national territory (*ius soli*). The only exceptions were the children of diplomats and of people “in transit”. Long-standing and authoritative legal interpretations limited the definition of people considered to be “in transit” to those present in the country for fewer than 10 days. Irrespective of the migration status of their parents, therefore, for many decades the Dominican Republic formally recognized

Dominican-born children of Haitian parents as citizens and issued them with Dominican birth certificates, identity cards and passports – at least in the vast majority of cases.

However, during the 1990s, nationalist groups started to promote a restrictive interpretation of “in transit” and as a result many civil registry officers started denying the children of undocumented Haitian migrants their right to birth registration. In 2004, a new Migration Law formally considered temporary foreign workers and undocumented migrant workers as foreigners “in transit”. This effectively meant that the children of the majority of Haitian migrants could no longer access Dominican nationality by virtue of being born in the Dominican Republic.

The Central Electoral Board, the body in charge of the civil registry, started applying this law retroactively. In 2007 it systematised these practices by issuing two administrative decisions which had the effect of preventing identity documents being issued or renewed for Dominican-born children of Haitian migrants who had not regularized their migration status at the time of their children’s birth. These practices continued despite the concerns raised by several international human rights bodies and a 2005 binding judgment by the Inter-American Court of Human Rights.

On 26 January 2010, the current Dominican Constitution entered into force. Under the Constitution, children of irregular migrants born in the Dominican Republic whose parents were irregular migrants no longer had the automatic right to Dominican nationality. This was followed in 2013 by a Constitutional Court judgment (168-13) which stated that children born in the Dominican Republic to foreign parents who did not have regular migration status had never been entitled to Dominican nationality. The judgment was applied retrospectively to people born since 1929. Judgment 168-13 constitutes a retroactive and arbitrary deprivation of nationality. It disproportionately affects Dominicans of Haitian descent and is, therefore, discriminatory.

The main consequence of this judgment is that a large number of people have been left stateless who identify the Dominican Republic as their own country; it is where they were born and where they have lived all their lives. They often have no ties with Haiti, have never been there and barely speak the local language. Many are the children or grandchildren of people who were also born in the Dominican Republic. For these families the Dominican Republic has been home for generations.

THE STATELESSNESS CRISIS

While the Dominican authorities have never acknowledged that Judgment 168-13 resulted in mass statelessness, the President and other officials have indicated a level of awareness of the ruling’s harsh impact on the lives of those affected.

In May 2014, Congress adopted Law 169-14 in response to a wave of criticism at the national and international levels. Although it was a step in the right direction, it failed to provide for an automatic restoration of the Dominican nationality to all those who had been arbitrarily deprived of it by Judgment 168-13.¹

¹ Amnesty International, Open letter to the President Danilo Medina regarding Law 169-14, 3 June 2014, available at <https://www.amnesty.org/en/documents/amr27/008/2014/en/>.

The law divided those affected into two groups: those who had at some point been registered in the Dominican Civil Registry (so-called “Group A”) and those whose births had never been registered (so-called “Group B”). The law recognized that people belonging to Group A could be formally recognized as Dominicans, but only after an administrative process carried out by the Central Electoral Board, the same institution that in previous years had sought to block their access to identity documents.

Regarding Group B, as the Inter-American Court for Human Rights later explained, the law created an impediment to the full exercise of their right to nationality and therefore violated international law because it forced them to be registered as foreigners and to initiate a complex process which could eventually lead them to apply for naturalization as Dominicans, but did not lead to automatic acquisition of nationality.²

As a consequence, several groups of people remain stateless or effectively stateless in the Dominican Republic owing to the inadequacy of the solutions provided by Law 169-14, shortcomings in its implementation and its failure to propose any solution at all for some neglected groups.

In particular, this report shows that, unless they have acquired another nationality, most people belonging to the following groups remain stateless:

- Those previously registered in the Dominican Civil Registry (Group A) and who are still being denied nationality documents that could serve as proof of their identity;
- All those whose births have never been registered (Group B), including those who have enrolled on the naturalization plan under Law 169-14 as this group of people will only be able to be naturalized as Dominicans two years after having received a positive response to their application made under the Law;
- People who were wrongly registered as foreigners even though they were born in the Dominican Republic well before the 2004 Migration Law and the establishment of the Register of Foreigners in 2007 and who have, therefore, been retroactively and arbitrarily deprived of their Dominican nationality;
- The children of all those in the above groups until such time as their parents are allowed to register them as Dominicans in the Dominican civil registry;
- Children of undocumented foreign nationals born in the Dominican Republic between 18 April 2007³ and 26 January 2010⁴ who have been registered as foreigners although they were entitled to the Dominican nationality;

In addition, this report highlights that although children who have at least one Dominican parent are entitled to Dominican nationality under the Constitution, in practice children whose father is a Dominican national but whose mother is an undocumented foreigner are denied birth registration and have no means of exercising or proving their Dominican nationality.

² *Expelled Dominicans and Haitians v the Dominican Republic*, 28 August 2014, http://corteidh.or.cr/docs/casos/articulos/seriec_282_ing.pdf.

³ This date marks the entry into force of the Register of Foreigners. From this date onward, this recorded the births of most children born in the Dominican Republic to foreigners without regular migration status who have therefore been denied Dominican nationality.








⁴ The entry into force of the new Constitution which explicitly excluded children born in the country to foreigners without regular migration status from obtaining Dominican nationality by *ius soli*.

THE IMPACT OF CONTINUED STATELESSNESS

International human rights law prohibits discrimination on the ground of nationality (or lack thereof). Despite this prohibition, in the Dominican Republic people who lack identity documentation and are effectively stateless are denied a range of human rights and prevented from participating fully in society. They also face restrictions in carrying out basic social tasks and activities such as opening a bank account, activating a mobile phone or buying on credit.



People effectively stateless are discriminated against and are prevented from:

-  Accessing higher education or completing schooling;
-  Accessing formal employment;
-  Accessing adequate healthcare, social security and a retirement pension;
-  Getting married legally or registering the birth of their children, who are also effectively rendered stateless;
-  Filing a formal complaint with the authorities and seeking remedies if they are the victims of violence or human rights abuses;
-  Travelling abroad and circulating freely within their own country without risk of arbitrary detention and expulsion if they are stopped at checkpoints;
-  Exercising their right to vote, stand for election or take part in the conduct of public affairs.

KEY RECOMMENDATIONS

The Dominican authorities must:

- Recognize the impact of Judgment 168-13 in terms of statelessness and acknowledge the scale of the problem of statelessness in the Dominican Republic, as a first step towards the identification and implementation of comprehensive and effective measures for its eradication.
- Carry out a comprehensive census or mapping exercise to identify all those who are stateless and at risk of statelessness, compiling disaggregated data by gender, age, status and location, in cooperation with the UN High Commissioner for Refugees and national human rights organizations.
- Issue adequate documentation recognizing the Dominican nationality of all those in Group A and ensure that they promptly receive all the identity documents that they request.
- In consultation with Dominican human rights organizations, adopt new legislation recognizing the right to Dominican nationality of all those born in the Dominican Republic before 26 January 2010, regardless of the migration status of their parents, in accordance with the legislation in force before the 2010 Constitution, including those who have been registered as foreigners under Law 169-14, and implement such legislation in a manner ensuring that all beneficiaries are promptly registered in the Dominican Civil Registry and that the requested identity documents are issued.
- Open an investigation into individuals who have engaged in discriminatory behaviour in dealing with applications for registration and identity documents, including the Central Electoral Board and the General Directorate of Passports, and ensure that disciplinary measures are applied where appropriate.
- Establish adequate oversight mechanisms, with the participation of civil society organizations, over the actions and omissions of bodies in charge of registering births and issuing identity documents, such as the Central Electoral Board and the General Directorate of Passports, so that arbitrary decisions can be questioned and officials who act in an arbitrary manner held to account.

METHODOLOGY AND ACKNOWLEDGMENTS

This report is based on research carried out by Amnesty International between October 2013 and November 2015.

During this time, the organization reviewed judicial cases and court rulings; official reports and public statements; publications from national and international NGOs; public documents issued by international human rights mechanisms such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, UN treaty bodies, agencies and special rapporteurs; and as well as news articles.

As part of its research, Amnesty International carried out two visits to the Dominican Republic, in March 2014 and June 2015. Delegates visited the capital, Santo Domingo, and visited several *bateyes* around the country where large numbers of Dominicans of Haitian descent live, specifically in the provinces of El Seibo, Mao, Monte Plata, Puerto Plata, Santo Domingo and San Pedro de Macorís. In June 2015, delegates also visited the border town of Jimaní. Delegates interviewed 56 people in March 2014 and 87 in June 2015 (102 women and 41 men) on issues related to this report and made contact with interviewees subsequently to obtain updates on their situation. In some cases, the names of those who spoke to Amnesty International have been withheld at their request to protect their privacy.

Amnesty International is grateful to the government officials who made themselves available to the organization. In particular, the Minister and Vice-Minister for the Presidency, the Vice-Minister of the Interior, the Director of Migration, the General Director for Human Rights of the Ministry of Foreign Affairs, the Dominican Ambassador to international organizations in Geneva and, in March 2014, several parliamentary commissions. No response was received to requests to meet the President of the Central Electoral Board in June 2015.

Delegates also spoke to journalists, lawyers, human rights defenders and a wide range of civil society groups, including human rights organizations, think-tanks and community-based organizations. Discussions were also held with representatives of international organizations and foreign governments.

At the time of writing, Amnesty International had still not received crucial information primarily related to the work of the Central Electoral Board and to the arguments used by the authorities to substantiate their argument that currently "nobody is stateless in the Dominican Republic". Moreover, Amnesty International has not received statistics on the outcome of the applications to the naturalization plan under Law 169-14.

Amnesty International would like to thank all the civil society organizations and individuals who provided information and documentation for their generosity in setting aside time to discuss the issues highlighted in this report. In particular, the organization would like to thank the following organizations: Centro Bonó; Centro Cultural Dominicano-Haitiano (CCDH); Centro de Formación y Acción Social y Agraria (CEFASA); Comisión Nacional de los Derechos Humanos (CNDH-RD); Dominican@s por Derechos; Fundación Derechos Vigentes (FDV); Movimiento de Mujeres Dominicano-Haitianas (MUDHA); Movimiento Socio-Cultural de los Trabajadores Haitianos (MOSCTHA); Servicio Jesuita a Migrantes, and Yspaniola.

Amnesty International wishes to thank above all the people affected by the policies, laws and judicial decisions described in this report who agreed to come forward and share their experiences and insights. This report bears witness to their daily struggles to have their Dominican nationality recognized and to obtain identity documents essential to fulfilling their hopes and ambitions for a better life for themselves and their children and to securing full respect for their human rights.

1. THE ROAD TO STATELESSNESS

“I went through so many battles to finish school. I wanted to go to university... And then, suddenly, everything is paralysed because a small group of people wanted it that way.”

Juan Alberto Antuan Vil, Dominican of Haitian descent denied identity documents between 2008 and 2014, Amnesty International interview, March 2014

Dominicans of Haitian descent in the Dominican Republic face a series of obstacles to the full enjoyment of their human rights to a nationality, to recognition as a person before the law and to identity. The denial of these rights has increasingly been codified into Dominican laws and regulations, creating an ever more complex web of restrictions and entrenching and institutionalizing discriminatory attitudes and practices.

This report looks at the series of measures that have effectively rendered large numbers of people in the Dominican Republic stateless, and at the practical implications of this for a range of other rights, including access to education and health care. It also sets out the remedies that need to be implemented in order to address these human rights violations and ensure that the Dominican Republic fulfils its obligations under international human rights law.

The experience of the **Alcino family** shows how the maze of obstacles imposed by the Dominican authorities creates havoc in the everyday lives of the families affected.

The parents are Haitian migrants. They arrived in the Dominican Republic in 1985 to work as sugarcane cutters (braceros) and settled in the province of El Seibo. Their 10 children were all born in the Dominican Republic. The first four children were registered at birth, but the last six could not as officials at the Civil Registry would not accept the parents' workplace identity cards (fichas) as a valid documentation. The oldest and third oldest children, Domingo and Alexander, never had any problem in getting identity documents. The second and fourth children, Yolanda and Margarita, who had been registered at birth, were denied their identity cards between 2007 and 2015. Of the six children whose birth could not be registered, the three eldest have enrolled on the naturalization plan set up by Law 169-14, but have yet to receive a response to their applications. Three others were not accepted onto the naturalization plan as they are minors and needed to provide their mother's identity documents, which she does not have. The youngest son, Jeison, was born in March 2010. While his parents insist that he is Dominican like all his brothers and sisters, he may have even more trouble obtaining Dominican identity documents as the Constitution which entered into force only two months before his birth denies the children of irregular migrants the automatic right to Dominican nationality.

MIGRATION PRE-1990

The intensification of discriminatory attitudes and practices has taken place in the context of changes in migration into the Dominican Republic, primarily from Haiti, in recent decades. From the 1920s to the 1980s, Haitian migrant workers were drawn into the Dominican Republic as seasonal workers in the sugarcane industry. The workers, mostly men, were

confined to settlements called *bateyes* within the plantations. For a considerable part of that time (1952-1986), they were contracted as *braceros* (cane cutters) for the sugar cane harvest in their own country through bilateral agreements between the Dominican and Haitian governments.

Following the fall in sugar prices on the international market from the mid-1980s onwards, the demand for sugarcane workers fell drastically. New migrant workers from Haiti began to make their own way to the Dominican Republic, without authorization.⁵ They, together with other Haitian migrants who previously worked in the sugarcane plantations, increasingly sought and found employment outside the *bateyes* in the diversifying agricultural sector, in the construction sector and in the developing tourism industry.

These changes in migration patterns started to be used by some nationalist groups to stoke a fear of a “peaceful invasion” of Haitians. In recent decades, the widespread use of such rhetoric, steeped in discriminatory views, has dominated public and political debate about Haitian immigration. This led to increasing calls for stronger state action to limit the number of Haitian migrants and to restrict their descendants’ access to the Dominican nationality.⁶

RESTRICTIONS ON BIRTH REGISTRATIONS

During the 1990s there were regular reports that civil registry officers were refusing to register the births of children of parents of Haitian descent.⁷

Birth registration was often explicitly refused because civil registry officers assumed that Dominican-born children of Haitian undocumented migrants were not entitled to Dominican nationality as their parents were “in transit” (see below). In other cases, the registration was refused because the parents did not have Dominican identity cards or simply because they were Haitian.⁸

Haitian parents, or parents perceived to be Haitian, faced a barrage of obstacles when trying to register the birth of their children. Officials were often dismissive, using derogatory language, expressing suspicion about the authenticity of documents and applying the procedure for late registration of births in discriminatory and arbitrary ways.⁹ Indeed, in September 2005, the Inter-American Court of Human Rights (IACtHR) found that the

⁵ José Cuello, *Contratación de Mano de Obra Haitiana Destinada a la Industria Azucarera Dominicana 1952-1986*, Editora Taller.

⁶ For a historical perspective of Haitian migration patterns and the consequent changes in the migration and Civil Registry regulations and practices, see Riveros Natalia, *Estado de la cuestión de la población en los bateyes dominicanos en relación a la documentación*, OBMICA, January 2014.

⁷ Riveros Natalia, *Estado de la cuestión de la población en los bateyes dominicanos en relación a la documentación*, OBMICA, January 2014, p 78.

⁸ Open Society Foundations, *Dominicans of Haitian Descent and the Compromised Right to Nationality: Report Presented to the Inter-American Commission on Human Rights on the Occasion of its 140th Session*, October 2010, p 5.

⁹ Amnesty International, *“Life in transit”: The plight of Haitian migrants and Dominicans of Haitian descent*, 2007 (Index: AMR 27/001/2007), p 23.

Dominican Republic had applied discriminatory treatment when granting nationality and left such children stateless,¹⁰ violating their rights to a nationality, to equal protection of the law, to a name and to recognition as a person before the law (juridical personality), among others.¹¹

THE 2004 MIGRATION LAW

In August 2004, the General Migration Law (Ley General de Migración, Nr 284-05) turned these ad hoc discriminatory practices into law. Under this law, temporary foreign workers and undocumented migrant workers are considered foreigners “in transit” (Article 36). As a result, their children could no longer access Dominican nationality by virtue of being born in the country.

The law also introduced a different registration system for the children born in the Dominican Republic to foreign women who do not have regular migration status. Article 28 stated that the birth of these children must be formally registered at the embassy or consulate of the country of which the mothers are nationals.

In December 2005, the Supreme Court ruled that the Migration Law was constitutional and did not breach the constitutional norm on the acquisition of nationality (Article 11)¹² or the principle of equality before the law.¹³ The Court stated that children of foreign mothers who had irregular migration status at the time of giving birth cannot be Dominicans. This decision runs counter to the state’s obligation under international law to ensure the right of non-discrimination on the grounds of gender¹⁴ as well as migration status.¹⁵

THE 2007 ADMINISTRATIVE DECISIONS OF THE CENTRAL ELECTORAL BOARD

The body in charge of the civil registry, the Central Electoral Board (Junta Central Electoral, JCE), started to apply the definition of “foreigners in transit” set out in the 2004 Migration Law retroactively. It refused to issue or renew identity documents to Dominicans of Haitian descent born well before the 2004 Migration Law came into force, especially when the regular status of their parents at the time of the birth could not be proved.

¹⁰ Inter-American Court of Human Rights, *The Girls Yean and Bosico v Dominican Republic*, 8 September 2005, para 160, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf.

¹¹ *The Girls Yean and Bosico v Dominican Republic*, para 260.

¹² 2002 Constitution of the Dominican Republic.

¹³ The appeal against the 2004 Migration Law had been submitted by 15 Dominican NGOs in July 2005.

¹⁴ Under international human rights law, states have an obligation to grant equal rights to women and men with respect to the nationality of their children. See Article 9(2) of the Convention on the Elimination of All Forms of Discrimination against Women and Article 7(1) of the Convention on the Rights of the Child.

¹⁵ UN Committee on Economic, Social and Cultural Rights, General comment No. 20 (UN Doc. E/C.12/GC/20), 2 July 2009, para 30; UN Committee on the Elimination of Racial Discrimination, General Recommendation XXX on Discrimination Against Non Citizens para 7; Inter-American Court of Human Rights, *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, 17 September 2003, para 106.

In 2007, the JCE instructed Civil Registry officers to refrain from issuing or renewing identity documents where "irregularities" were suspected (Circular 017) and to mark those documents with a "temporarily suspended" stamp, pending investigation by the JCE (Resolution 012-2007). In those cases where the JCE believed that there were sufficient grounds, a judicial process would then be initiated to declare the documents null and void (*demandas de nulidad*). The JCE explicitly referred to "irregularities" as cases of birth certificates issued to Dominican-born children of foreign parents who had not proved their residency or their legal status in the country.

The vast majority of people who have had their documents "suspended" have been Dominicans of Haitian descent, especially those whose births had been registered with documents which did not prove their parents' regular migration status, for example, workplace identity cards (*fichas*) or Haitian passports.

In 2007, the JCE also established a Register of Births of Children of Non-Resident Foreign Mothers in the Dominican Republic (*Libro Registro del Nacimiento del Niño(a) de madre Extranjera NO Residente en República Dominicana*), commonly called the Register of Foreigners (*Libro de Extranjería*). The resolution creating the Register (Resolution 02-2007) sought to implement Article 28 of the 2004 Migration Law. The Register of Foreigners is a separate register to record the births of children whose mothers could not prove their regular migration status in the country.¹⁶ Registration in the Register of Foreigners is not in effect a formal birth registration; this has to be done at embassy or consulates of which the mother is a national.

THE 2010 CONSTITUTION

In an atmosphere of hardening attitudes towards Dominicans of Haitian descent, the new Dominican Constitution, which entered into force on 26 January 2010, further restricted access to Dominican nationality. For the first time, children born in the Dominican Republic to irregular migrants were denied the automatic right to Dominican nationality.¹⁷ Previously, the only people born in the country who did not have a right to Dominican nationality were the children of representatives of diplomatic missions and the children of "foreigners in transit".

Under previous constitutions, long-standing national legal interpretations limited the category "foreigners in transit" to people in the country for fewer than 10 days.¹⁸ Therefore, Dominican-born children of Haitian parents had been formally recognized as Dominican

¹⁶ As a measure to implement Article 28 of the 2004 Migration Law, in August 2007 the Health Ministry adopted Resolution 000009 which established differential treatment in hospitals for children born to foreign mothers with no regular migration status. These children are issued a pink proof-of-birth certificate (*constancia de nacimiento*), as opposed to the standard white proof-of-birth certificate issued to all other children. This provision was later restated in the Regulation No 631-11 governing the implementation of the 2004 Migration Law (Articles 36-41).

¹⁷ 2010 Constitution of the Dominican Republic, Article 18.3.

¹⁸ According to the Immigration Act No 95 of 14 April 1939 and the Immigration Regulation No 279 of 12 May 1939, which remained in force until August 2004, "foreigners in transit" were those who entered the Dominican Republic with the principle objectives of travelling to another destination, those engaging in business or leisure activities and diplomats.

citizens and issued with Dominican birth certificates, identity cards and passports irrespective of the migration status of their parents – at least in the vast majority of cases.¹⁹

The 10-day limit was in line with a 2005 decision of the IACtHR which stated that: “to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit”.²⁰

CONCERNS OF UN HUMAN RIGHTS MECHANISMS

All UN treaty bodies that have examined the periodic reports of the Dominican Republic have expressed concern at the measures adopted by the Dominican authorities as regards migrants and Dominicans of Haitian descent. In particular, they highlighted the following issues:

1. the abuse of the legal notion of “foreigners in transit”, restrictive interpretations of the Constitution which deny Dominican-born children of Haitian migrants Dominican nationality and the retroactive implementation of the 2004 Migration Law;²¹
2. the ongoing discrimination against children of Haitian descent born in the Dominican Republic, in particular through the revocation of identity documents as a result of the application of the 2004 Migration Law and Circular 017;²²
3. the extension of the groups of children born in the Dominican Republic who are denied access to birth registration, and therefore Dominican nationality, and effectively rendered stateless;²³
4. the situation of potential statelessness created by the Dominican Republic’s restrictive interpretation of the Constitution in relation to the acquisition of the Dominican nationality and by the refusal to issue identity

¹⁹ In some cases, which until the end of the 1990s were rather sporadic, Civil Registry officers denied birth registration to undocumented Haitian parents for reasons based on discrimination on the grounds of national origins or migratory status.

²⁰ *The Girls Yean and Bosico v Dominican Republic*, para 157. The IACtHR reiterated this argument in its decision *Expelled Dominicans and Haitians v Dominican Republic*, para 294.

²¹ Concluding Observations of the Committee on Economic, Social and Cultural Rights: The Dominican Republic (E/C.12/1/Add.16), 12 December 1997, para 17; Concluding Observations of the Human Rights Committee: The Dominican Republic (CCPR/CO/71/DOM), 26 April 2001, para 18; Concluding observations of the Committee on the Rights of the Child: The Dominican Republic (CRC/C/DOM/CO/2), 1 February 2008, para 40; Concluding observations of the Committee on the Elimination of Racial Discrimination: The Dominican Republic, 16 May 2008 (CERD/C/DOM/CO/12), para 14; Committee on Economic, Social and Cultural Rights, Concluding observations: Dominican Republic, 19 November 2010 (E/C.12/DOM/CO/3) para 11; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Dominican Republic, 23 July 2013, (CEDAW/C/DOM/CO/6-7), para 30.

²² E/C.12/DOM/CO/3, para 11.

²³ E/C.12/DOM/CO/3, para 11; Human Rights Committee, Concluding observations: Dominican Republic, 19 April 2012, (CCPR/C/DOM/CO/5), para 23.

documents to Dominicans of Haitian descent;²⁴

5. the use of the 2004 Migration Law to deny citizenship to children born in the Dominican Republic to women of Haitian descent;²⁵

6. the failure to fully comply with the judgment of the Inter-American Court of Human Rights in the case of the *Girls Yean and Bosico v the Dominican Republic*;²⁶

7. the fact that, as a result of these policies, Dominican-born children of Haitian descent have been denied the full enjoyment of their human rights.²⁷

Following a joint visit to the Dominican Republic in 2007, the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent expert on minority issues concluded that "persons of Haitian descent are being denied the full enjoyment of their right to citizenship on a racially discriminatory basis". They recommended, among other things, that the Dominican Republic recognize "in accordance with article 11 of the Constitution, the right of all persons born on Dominican territory, including the children of a Haitian parent, to Dominican citizenship without discrimination on the grounds of the nationality or status of the parents."²⁸

THE 2013 CONSTITUTIONAL COURT JUDGMENT

The authorities failed to implement numerous recommendations by international human rights mechanisms and a binding judgment of the IACtHR.²⁹ A number of people who had been denied identity documents, even though they had at some point been registered in the Dominican Civil Registry, decided to seek remedy through the national courts. Some cases subsequently reached the Dominican Constitutional Court.

On 23 September 2013, the Dominican Constitutional Court issued a judgment in the case of Juliana Deguis Pierre, a Dominican woman of Haitian descent (Judgment 168-13).³⁰

²⁴ CERD/C/DOM/CO/12, para 14; Committee on the Elimination of Racial Discrimination, Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, 19 April 2013 (CERD/C/DOM/CO/13-14) para 19.

²⁵ CEDAW/C/DOM/CO/6-7, para 30.

²⁶ CERD/C/DOM/CO/13-14, para 23.

²⁷ Concluding Observations of the Committee on the Rights of the Child: The Dominican Republic (CRC/C/15/Add.150), 21 February 2001, paras 22 and 26; CRC/C/DOM/CO/2, para 27; CCPR/C/DOM/CO/5, para 22.

²⁸ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, Mission to the Dominican Republic, 18 March 2008, A/HRC/7/19/Add.5 and A/HRC/7/23/Add.3, paras 108 and 125.

²⁹ Resolución de la Corte Inter-Americana de Derechos Humanos de 10 de Octubre de 2011, caso de las *Niñas Yean y Bosico vs. República Dominicana*, Supervisión de cumplimiento de sentencia, http://www.corteidh.or.cr/docs/supervisiones/yean_10_10_11.pdf.

³⁰ The ruling was adopted by 11 of the 13 judges presiding. The two dissenting judges issued a written reasoning for their decisions.

Juliana Deguis had initiated the case to seek protection of her rights (*recurso de amparo*) after the JCE seized her birth certificate in 2008 and refused to issue her identity card.

The Court dismissed Juliana Deguis’ appeal, claiming that she had been wrongly registered as a Dominican at her birth as her parents declared her birth with documents that did not prove their regular migration status in the country. The Court declared that Juliana Deguis should never have acquired Dominican nationality because her parents were “foreigners in transit” and she was, therefore, a foreigner in the Dominican Republic.

The Court stressed that Juliana Deguis was only one of the 668,145 people of Haitian origin living in the Dominican Republic³¹ and stated that its judgment applied not only to her, but to all those people of foreign descent whose births had been registered in similar circumstances. The Court went on to set out a number of measures that would apply to people of foreign descent registered in the Dominican Civil Registry after 21 June 1929.³²

In particular, the Court ordered the JCE to carry out a careful audit of all civil registries from 21 June 1929 to the present and to transfer the birth registration of all the “foreigners who had been irregularly registered” in the Civil Registry of the Dominican Republic to special registries. It also instructed the JCE to pass the list of people who had been irregularly registered to the Ministry of Foreign Affairs and the Minister of the Interior and the Police. Finally the Court urged the National Migration Council to prepare a national plan for the regularization of irregular foreigners living in the country within 90 days of notification of the ruling.³³

Judgment 168-13 has had far-reaching consequences for several generations of Dominicans of foreign descent. It establishes that all those who cannot prove their parents’ regular migration status at the time of their birth are not considered Dominican nationals. This, despite the fact that the Constitution in force at the time of their birth entitled them to Dominican nationality. The judgment also disregards the fact that many of those affected have lived all their lives in the Dominican Republic, have often maintained no connection whatsoever with their ancestors’ country of origin and have a deep feeling of belonging to the Dominican Republic.

HOW THE JUDGMENT FALLS SHORT OF INTERNATIONAL LAW

While states have a right to establish principles about how nationality is acquired, renounced or lost, they must do so within the framework of international human rights law. In particular, domestic laws and practices must not violate the right to non-discrimination and the obligation to prevent statelessness.³⁴

³¹ Judgment 168-13 of the Constitutional Court, p 23, available at [http://presidencia.gob.do/haitianossinpapeles/docs/TC-168-13-\(english\).pdf](http://presidencia.gob.do/haitianossinpapeles/docs/TC-168-13-(english).pdf) (unofficial translation). The Court refers to the results of a survey carried out in 2012 by the National Statistics Office, the United Nations Fund for Population (UNFPA) and the European Union on migrants living in the Dominican Republic and first generation descendants born in the country.

³² This date relates to the entry into force of the 1929 Constitution, under which Dominican-born children of “foreigners in transit” were no longer automatically entitled to Dominican nationality.

³³ Judgment 168-13 of the Constitutional Court, Decisions Five to Seven, pp 99-100.

³⁴ *The Girls Yean and Bosico v the Dominican Republic*, para. 140

The right to a nationality is a human right enshrined in several international human rights instruments to which the Dominican Republic is a party.³⁵ International law imposes certain limits on what states may lawfully do,³⁶ particularly if their actions could result in statelessness. The right to a nationality includes the right not to be arbitrarily deprived of one's nationality.³⁷ In order to respect this right, measures leading to deprivation of nationality must meet certain conditions. These include: being in conformity with domestic law; serving a legitimate purpose that is consistent with international law and, in particular, the objectives of international human rights law; being the least intrusive instrument to achieve the desired result; and being proportional to the interest to be protected.³⁸ The notion of arbitrariness includes not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability.³⁹

The decision of the Dominican Constitutional Court was not consistent with these principles of legality and proportionality and resulted in a large number of people being arbitrarily deprived of nationality and subsequently exposed to a situation of statelessness.

The Constitutional Court ignored previous long-standing authoritative legal interpretations when it decided to equate irregular migrant workers with "foreigners in transit".

It also applied its own interpretation retroactively when it ruled that children in this situation who had been granted Dominican nationality since 1929 should be removed from the Dominican Civil Registry.

The principle of non-retroactivity requires that the sanction must have been known (or it must be possible for it to be known) before the act or omission occurs in order for punishment for a violation of the law to be lawful⁴⁰.

³⁵ The Universal Declaration of Human Rights (Article 15); the American Convention on Human Rights (Article 20); and the American Declaration of Human Rights (Article XIX). With respect to children, in particular, the right to a nationality is enshrined in the Convention on the Rights of the Child (Article 7.1) and the International Covenant on Civil and Political Rights (Article 24.3).

³⁶ Inter-American Court of Human Rights, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica: Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para 32.

³⁷ Article 15 of the Universal Declaration of Human Rights and Article 20 of the American Convention on Human Rights.

³⁸ *Human rights and arbitrary deprivation of nationality*, Report of the Secretary-General, (UN Doc. A/HRC/13/34) 14 December 2009, para 25.

³⁹ UN Doc. A/HRC/13/34, para 25.

⁴⁰ Decision *Baena Ricardo and others v Panama* (2003) of the Inter-American Court of Human Rights of 28 November 2003, para 106. The principle of non-retroactivity is particularly important when dealing with nationality. In situations relating to constitutional amendments or changes to national legislation relating to citizenship, states should not revoke citizenship retroactively (Report of the Independent Expert on Minority Issues, Gay McDougal. A/HRC/7/23, 28 February 2008, para 79).

The decision of the Constitutional Court also disregards the IACtHR’s decision in the case of *The Girls Yean and Bosico v Dominican Republic* (2005). In that decision, which is binding on the Dominican Republic, the IACtHR established that migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of their rights. The IACtHR also ruled that the migration status of the parents is not inherited by their children.⁴¹

In its August 2014 decision in the case of *Expelled Dominicans and Haitians v the Dominican Republic*, the IACtHR confirmed this view.⁴² The Court added that Dominicans of Haitian descent were disproportionately affected by the introduction of the differentiated criteria and that “the application of this criterion deprives an individual of legal certainty in the enjoyment of the right to nationality”.⁴³ The IACtHR concluded that the judgment violated several articles of the American Convention on Human Rights, namely the rights to equal protection before the law, to juridical personality, to a name, to a nationality and, owing to these violations taken as a whole, the right to identity.

In January 2015, the UN Committee on the Rights of the Child expressed concern about “legal reforms on nationality that contravene the principles and rights enshrined in the Convention [of the Rights of the Child]”⁴⁴ and explicitly referred to the potential consequences of the judgment in terms of the statelessness of children born in the country to parents with an irregular migratory status.

According to Dominican human rights organizations and several Dominican lawyers and academics, Judgment 168-13 also contravenes several provisions of domestic legislation, including Article 39 of the Constitution, which establishes the principle of non-discrimination, and Article 110, which sets out the principle of the non-retroactivity of the law unless its effects are favourable for the affected person.⁴⁵

⁴¹ *The Girls Yean and Bosico Children v Dominican Republic*, para 155.

⁴² *Expelled Dominicans and Haitians v the Dominican Republic* (2014) of the Inter-American Court of Human Rights, 28 August 2014, para 318, states that considering the irregular migratory status of foreign parents “as grounds for an exception to the acquisition of nationality based on *ius soli* is discriminatory in the Dominican Republic, when it was applied in a context that has previously been described as discriminatory towards Dominicans of Haitian origin.”

⁴³ *Expelled Dominicans and Haitians v the Dominican Republic*, para 469.

⁴⁴ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of the Dominican Republic, 4 February 2015 (CRC/C/DOM/CO/3-5) paras 7 and 27.

⁴⁵ See, for example, Dominican@s x Derecho, *Análisis de la Sentencia No. 168-13 del Tribunal Constitucional de la República Dominicana*, available at <https://dominicanosxderecho.files.wordpress.com/2013/10/puntos-de-anc3a1lisis-de-la-sentencia-no-168-13-definitivo.pdf>; Participación Ciudadana, *Participación Ciudadana expresa que el tribunal constitucional viola la constitución y su propia ley orgánica*, 3 October 2013, available at http://www.pciudadana.org/detalle/noticia/tribunal_constitucional_viola_la_constituci%C3%B3n_y_su_propia_ley_org%C3%A1nica-918.

THE IMPACT OF THE JUDGMENT IN TERMS OF STATELESSNESS

The Constitutional Court is the highest court in the Dominican Republic and its decisions are binding on all other authorities. While the 2004 Migration Law and the 2007 administrative decisions of the JCE exposed those affected to the risk of statelessness, Judgment 168-13 made statelessness a matter of law for several generations of Dominicans of foreign descent, contrary to international law.

INTERNATIONAL OBLIGATION TO AVOID AND PREVENT STATELESSNESS

A “stateless person” is defined in international law as a person who is “not considered as a national by any State under the operation of its law” and is thus someone without any nationality or citizenship anywhere. This definition is set out in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, which is considered to have achieved the status of customary international law; that is, it is considered binding on all states whether or not they are parties to the Convention. A person is left stateless if they did not acquire any nationality to begin with (that is, at birth) or if they lose or are deprived of a nationality without acquiring another.

As citizenship and nationality are the primary legal bond between an individual and the state, the right to a nationality is crucial. It entitles a person to the protection of the state and to a variety of rights and obligations under domestic law.

States have an obligation to ensure that nationality is not denied to those who have relevant links to that state and who would otherwise be stateless. The Convention on the Rights of the Child requires state parties to ensure the implementation of the right to acquire a nationality in accordance with their national legislation and their obligations under the relevant international human rights instruments, in particular where the child would otherwise be stateless (Article 7.2).

The American Convention on Human Rights states 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” (Article 20). This is a non-derogable right (Article 27). Similarly, the Convention on the Reduction of Statelessness states that contracting states must grant nationality to a person born on their territory who would otherwise be stateless (Article 1).

The Convention on the Reduction of Statelessness provides that states may not deprive individuals of their nationality if this would render them stateless (Article 8). Although the Dominican Republic has not ratified this Convention, it is a signatory to this treaty and so has an obligation not to defeat its object and purpose.⁴⁶

RESPONSE OF THE DOMINICAN AUTHORITIES

The Constitutional Court and other Dominican authorities have rejected allegations that people in the Dominican Republic have been arbitrarily deprived of nationality rendered stateless by stating that affected people have Haitian nationality. Their argument is based on Article 11 of the Haitian Constitution of 1983, which stated that all individuals born abroad to a Haitian mother or father who have never renounced their Haitian nationality are Haitians.⁴⁷ However, this fails to take into account legislative and constitutional developments in Haiti after 1983 that have made the acquisition of the Haitian nationality far from automatic.

⁴⁶ Article 18 of the Vienna Convention on the law of the treaties.

⁴⁷ This provision has been maintained in the 1987 and 2012 constitutions.

In particular, the 1984 Nationality Decree, which remained in force at the time of writing, made it clear that if the person has manifested their choice for or actively enjoyed another nationality, they lose their right to Haitian nationality.⁴⁸ This means that it is difficult to claim that Dominican-born children of Haitian parents who, like Juliana Degus, acquired Dominican nationality by virtue of the constitutional norm in force at the time, now have Haitian nationality.

In addition, the 1987 Haitian Constitution introduced a prohibition on dual nationality. Although the 2012 Haitian Constitution removed the prohibition of dual nationality, this does not automatically confer Haitian nationality on those who had lost it on the basis of the previous ban on dual nationality. A nationality law to enable those affected to apply for Haitian nationality has yet to be adopted. So, while people affected by the ban on double nationality may be able to acquire Haitian nationality in the future, under current Haitian legislation they are not considered Haitian nationals.

Moreover, the serious shortcomings of the Haitian civil registry and the fact that many people lack identity documents make it even harder for those in the Dominican Republic who would like to prove their Haitian ancestry to claim Haitian nationality.

Finally, the Haitian authorities have given no indication that they will recognize all those affected by Judgment 168-13 as Haitian citizens. In public statements, the Haitian authorities have repeatedly made reference to “Dominicans of Haitian descent” and sometimes they have explicitly considered those affected by the ruling to be in a situation of statelessness.⁴⁹

⁴⁸ Article 26.3, Decree on the Haitian Nationality, published in *Le Moniteur* No. 18, 8 November 1984.

⁴⁹ See for example *Haiti Libre*, « Le Ministère des Haïtiens Vivant à l’Etranger déplore la décision du gouvernement dominicain d’appliquer l’Arrêt du TC », 27 October 2013 ; *Haiti Press Network*, « Allocution de l’Ambassadeur à la réunion du GRULAC », 21 July 2015, available at http://www.hpnhaiti.com/site/index.php?option=com_content&view=article&id=16349:haiti-rd-onu-allocution-de-lambassadeur-regis-a-la-reunion-du-grulac&catid=24:new-york&Itemid=38.

The road to statelessness in the Dominican Republic

An overview of Haitian migration to the Dominican Republic, of state measures to restrict access to Dominican nationality and of the response of international human rights bodies.

MIGRATION PATTERNS

End of 19th century	Around 1920s	Between 1952 and 1986	From the mid-1980s onwards
Migration from Haiti to the Dominican Republic intensifies	Haitian migrant workers start to be drawn into the Dominican Republic as seasonal workers in the sugarcane industry	Workers are contracted in Haiti for the sugarcane harvest through agreements between the Dominican and Haitian governments	The sugarcane industry declines and Haitian migrants are no longer confined to plantations

MEASURES RESTRICTING ACCESS TO THE DOMINICAN NATIONALITY

Before the 1990s	During the 1990s	15 August 2004	14 December 2005
Dominican-born children of Haitian migrants are registered as Dominicans and receive identity documents	Officials start refusing to register the births of many Dominican-born children of Haitian descent	A new Migration Law is adopted that denies Dominican nationality to Dominican-born children of irregular migrants	The Supreme Court rules that the 2004 Migration Law does not breach the Constitution
			18 April 2007 A separate Register of Foreigners is created for Dominican-born children of irregular migrants

REACTIONS OF INTERNATIONAL HUMAN RIGHTS BODIES

1997	2001	2005	2008
UN Committee on Economic, Social and Cultural Rights expresses concern about the denial of nationality to children of Haitians living and working in the Dominican Republic on the grounds that they are children born to “foreigners in transit”	UN Human Rights Committee expresses concern at the abuse of the category “transient aliens” to deny nationality to Dominican-born people of foreign descent UN Committee on the Rights of the Child calls on the authorities to ensure that the births of all children, especially those of Haitian descent, are promptly registered	Inter-American Court of Human Rights rules that the migration status of parents is not a legitimate ground for denying Dominican nationality to their children and that the notion “in transit” must be limited in time	UN Committee on the Rights of the Child calls on the authorities to ensure that nationality is granted in a non-discriminatory manner and that no child is left stateless UN Committee on the Elimination of Racial Discrimination calls for the principle of non-discrimination to be respected regarding children’s access to nationality Following a visit to the Dominican Republic in 2007, the UN experts on racism and minority rights state that people of Haitian descent are being denied their right to citizenship on the basis of racial discrimination



<p>2007</p>	<p>23 September 2013</p>	<p>22 May 2014</p>	<p>4 November 2014</p>
<p>The Central Electoral Board issues two decisions that retroactively deny Dominican identity documents to Dominican-born children of Haitian irregular migrants</p>	<p>A Constitutional Court decision (168-13) retroactively deprives Dominican nationality to children of irregular migrants born before the 2010 Constitution, rendering many of them stateless</p>	<p>A law (169-14) tries to provide some solutions for the crisis created by the 2013 Constitutional Court decision</p>	<p>The Constitutional Court issue a judgement declaring the state's acceptance of the jurisdiction of the Inter-American Court of Human Rights invalid</p>
<p>26 January 2010</p>			
<p>A new Constitution enters into force that denies Dominican-born children of irregular migrants the automatic right to Dominican nationality</p>			<p>Deadline for people to enroll on the naturalization plan set out in Law 169-14</p>
<p>2010</p>	<p>2012</p>	<p>2013</p>	<p>2014</p>
<p>UN Committee on Economic, Social and Cultural Rights calls for non-discriminatory access to Dominican nationality, irrespective of date of birth</p>	<p>UN Human Rights Committee calls on the authorities to abstain from applying the 2004 Migration Law retroactively</p>	<p>UN Committee on the Elimination of Discrimination against Women calls for the removal of all the obstacles faced by women of Haitian descent and women of uncertain migration status in obtaining birth certificates for their children</p>	<p>Inter-American Court of Human Rights rules that the 2013 Constitutional Court ruling violates the American Convention on Human Rights for being discriminatory</p>
		<p>Inter-American Commission on Human Rights visits the Dominican Republic and concludes that the 2013 Constitutional Court ruling constituted "an arbitrary deprivation of nationality" and was "discriminatory"</p>	<p>2015</p> <p>UN Committee on the Rights of the Child calls for all those affected by the 2013 Constitutional Court ruling to have their nationality restored</p>

2. THE UNSOLVED STATELESSNESS CRISIS

“This country has left a huge mark on me. I am now somebody with no flag”

Dominican of Haitian descent who has been deprived for years of her birth certificate, June 2015

The 2013 Constitutional Court judgment sparked a chorus of criticism both nationally and internationally. Several international bodies, including various UN agencies, the Inter-American Commission on Human Rights and the Caribbean Community and Common Market (CARICOM),⁵⁰ as well as several foreign governments⁵¹ expressed deep concern about its potential negative effects on the human rights of hundreds of thousands of people.

This wave of criticism was met with hostility by wide swathes of Dominican public opinion and by conservative politicians, who labelled these expressions of concern “interferences with the country’s sovereignty”.⁵² Some of those defending the Constitutional Court judgment often used xenophobic language⁵³ and a few openly harassed human rights defenders,

⁵⁰ Inter-American Commission of Human Rights, “IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic”, 8 October 2013, available at http://www.oas.org/en/iachr/media_center/PReleases/2013/073.asp; UN High Commissioner for Refugees, “UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent”, 1 October 2013, available at <http://www.unhcr.org/524c0c929.html>; UN Children’s Fund, “Statement attributable to UNICEF on the Constitutional Court decision on Dominican-born persons of Haitian descent”, 9 October 2013, available at http://www.unicef.org/media/media_70619.html; CARICOM, “Statement on the Ruling of the Dominican Republic Constitutional Court on Nationality”, 17 October 2013, http://www.caricom.org/jsp/pressreleases/press_releases_2013/pres222_13.jsp.

⁵¹ During the Universal Periodic Review of the Dominican Republic at the UN Human Rights Council in February 2014, Australia, Brazil, Ireland, Italy, Jamaica, Norway, Slovenia, Switzerland, Trinidad and Tobago and the USA expressed concern about the human rights implications of Judgment 168-13. See HRC/WG.6/18/L.13, paras 45, 50, 52, 54, 58, 65, 68, 83, 84 and 85.

⁵² See for example, Fuerza Nacional Progresista, *Sobre la sentencia 168-13*, 26 October 2013, <http://www.fuerzanacionalprogresista.org/sobre-la-sentencia-168-13/>; *El Nuevo Diario*, “El Gallo” critica carta congresista EU sobre fallo del TC, 4 November 2013, <http://elnuevodiario.com.do/app/article.aspx?id=350752>

⁵³ See for example, *Acento*, “Nacionalistas: Danilo debe “cuidarse” de “traidores” que tiene a su lado en el palacio”, 30 November 2013, <http://acento.com.do/2013/politica/1142091-nacionalistas-danilo-debe-cuidarse-de-traidores-que-tiene-a-su-lado-en-el-palacio/>; *Defiende tu patria*, “Cientos muestran su apoyo a sentencia”, <http://www.defiendetupatria.com/eventos/cientos-muestran-su-apoyo-a-sentencia-tc/>

journalists and other prominent people who had spoken out against the judgment.⁵⁴

Caught between international and national criticism of the human rights implications and strong domestic pressure to stand firm, the President made a commitment to find a “humanitarian” solution to address a “human problem”.⁵⁵

In May 2014, the President submitted a draft law to Congress “establishing a special regime for people who were born in the national territory and irregularly registered in the Dominican Civil Registry and on naturalization”. The law (Law 169-14) was swiftly adopted by Congress on 22 May 2014.

LAW 169-14, A PARTIAL SOLUTION

Law 169-14 upheld the Constitutional Court’s position that Dominican-born children of foreigners in an irregular situation were to be considered as foreigners. As a consequence, it proposed concessions rather than a remedy for human rights violations. None of the solutions identified provides for the automatic restoration of Dominican nationality to those who already had it under the domestic legal system before 2010. This contravenes the recommendations made by the Inter-American Commission of Human Rights following its visit to the Dominican Republic in December 2013⁵⁶ and the 2014 decision of the IACtHR.⁵⁷

The law divides Dominican-born children of irregular migrants into two categories. The first group (so-called “Group A”) is made up of those who had at some point been registered in the Dominican civil registry. The second (so-called “Group B”) includes those whose birth in the Dominican Republic was never registered.

The solution proposed by the law for those it categorizes as in Group A fails to provide immediate and adequate remedy. Instead of explicitly recognizing that those affected by Judgment 168-13 had Dominican nationality, the law mandates the JCE to carry out a “regularization” process through which people from that group would be formally recognized as Dominican nationals and issued with identity cards.

⁵⁴ See for example *7 días*, “¡Muerte a los traidores! Gritan los nacionalistas frente al Altar de la Patria”, 5 November 2013, http://www.7dias.com.do/portada/2013/11/05/i151260_muerte-los-traidores-gritan-los-neonacionalistas-frente-altar-patria.html#.ViVfs36rSUK; *Acento*, “Nacionalistas denuncian a Jun Bolívar y a Huchi por supuesta traición a la patria”, 20 November 2013, http://www.7dias.com.do/portada/2013/11/05/i151260_muerte-los-traidores-gritan-los-neonacionalistas-frente-altar-patria.html#.ViVfs36rSUK

⁵⁵ See for example *El Caribe*, “Danilo: hay que resolver el problema humano creado por fallo del TC”, 8 October 2013, available at <http://www.elcaribe.com.do/2013/10/08/danilo-medina-sentencia-del-creo-problema-que-hay-que-resolver>; *7 días*, “Medina habría reiterado a Directora ONU-Mujer que buscará solución humanitaria a fallo del TC”, 14 October 2013, available at http://www.7dias.com.do/portada/2013/10/14/i149857_medina-habria-reiterado-directora-onu-mujer-que-buscara-solucion-humanitaria-fallo-del.html#.Vg623PIVhBc.

⁵⁶ Inter-American Commission on Human Rights, Preliminary Observations from the IACHR’s Visit to the Dominican Republic, 6 December 2013, available at http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp.

⁵⁷ *Expelled Dominicans and Haitians v Dominican Republic*, para 469.

Under the law, those in Group B are required to follow a long process in order to re-acquire Dominican nationality (commonly referred to as the "naturalization plan"). To initiate the process, they must first register as foreigners in the Register of Foreigners, something that the Inter-American Commission on Human Rights had previously deemed in breach of the country's human rights obligations.⁵⁸ They will then be assigned a migration category⁵⁹ and a residence permit. Those affected must then wait for two years before they can apply for naturalization as Dominican nationals.

The provisions of the law relating to Group A were applicable immediately. However, those relating to Group B entered into force only after the adoption of an implementing regulation on 23 July 2014.⁶⁰ The law set a deadline of 90 days from that date for those in Group B to register themselves as foreigners. By the end of that deadline, only a minority of people had been able to register, so the authorities extended the deadline for another 90 days, which expired on 1 February 2015.⁶¹ No further extension has been granted.

In August 2014, the IACtHR explicitly considered Articles 6, 8 and 11 of Law 169-14 – which require people belonging to Group B to register as foreigners and apply for naturalization – to contravene the Dominican Republic's international obligations. It ordered the Dominican Republic to take the necessary measures within a reasonable time to ensure that Judgment 168-13 and parts of the Law 169-14 related to Group B did not result in situations that were inconsistent with international law.⁶² However, the Dominican government dismissed the ruling as "untimely, biased and inappropriate" and made clear that it would not implement it.⁶³

In January 2015, the UN Committee on the Rights of the Child expressed concern that the naturalization process set out in Law 169-14 does not comply fully with the Convention on the Rights of the Child and strongly urged the Dominican Republic to "ensure the restoration of nationality to all individuals, including children, born before the Constitution of 2010,

⁵⁸ *Expelled Dominicans and Haitians v Dominican Republic*.

⁵⁹ Section IV of the 2004 Migration Law defines two different migration categories under which foreigners can be admitted to the country which related to whether the person intended to settle in the Dominican Republic or not. These categories were "resident" and "not-resident". The "resident" category is divided into "permanent" and "temporary", depending on whether the foreigner entered the country with the intention of settling permanently or temporarily.

⁶⁰ Decree No 250-14.

⁶¹ The extension was provided for in Law 520-2014, which entered into force on 31 October 2014.

⁶² *Expelled Dominicans and Haitians v the Dominican Republic*, paras 324 and 468.

⁶³ *Diario Libre*, "El gobierno rechaza la sentencia de la Corte Interamericana de los derechos humanos", 24 October 2014, <http://www.diariolibre.com/noticias/el-gobierno-rechaza-la-sentencia-de-la-corte-interamericana-de-los-derechos-humanos-MFDL851951>. Few weeks after this ruling, the Dominican Constitutional Court issued a judgment that declared the state's acceptance of the jurisdiction of the Inter-American Court of Human Rights in 1999 invalid. Following that judgment, the Dominican government announced that it would indicate its position in relation to the decision. However, it had not done so at the time of writing.

affected by the Constitutional Court’s ruling of 23 September 2013”.⁶⁴ The authorities have taken no steps to implement this recommendation.

Not only is Law 169-14 contrary to the Dominican Republic’s human rights obligations in some of its parts; its implementation has also proved problematic for both groups. While some of those affected have been able to obtain Dominican identity documents, others have not and, in most cases, they remain effectively stateless.

DOMINICAN-BORN PEOPLE WHOSE BIRTHS WERE REGISTERED (GROUP A)

“This is serious. We can’t be left like this, with no documents. We need to progress in life”

Young Dominican woman of Haitian descent who has long been denied her identity documents, Amnesty International interview, June 2015

The law is ambiguous about the precise nature of the “regularization” process for people in Group A concretely and the implementing regulation provided no guidance on this.⁶⁵ As a consequence, the JCE continued carrying out an audit of all the people “irregularly” registered in the Dominican civil registry and stated that affected people would be able to receive their identity documents only once they had been audited and cleared.

However, the JCE failed to give a comprehensive explanation of the different stages of the audit, the criteria used and the implications of the process. For example, on 26 May 2015, the JCE announced the final results of the audit. The President of the JCE stated that 60,089 registration certificates had been audited, of which 27,510 had been “authorized”; 25,378 had been “transcribed”; 4,391 were “under further investigation”; 2,678 were “in the process of being reconstructed;” and 132 were subject to requests to be declared null and void by the courts.⁶⁶ However, the JCE provided no explanation of the different classifications or of the consequences for the affected people.

On 26 June 2015, the JCE published the names of some 55,000 people whose cases had been through the audit process. It announced that all those listed could now obtain their “certificates and registration documents which recognize them as Dominicans” by going to the competent Civil Registry offices.⁶⁷ Those included on the list published by the JCE in June are divided into two groups: “authorized” and “transcribed” but, once again, the JCE has failed to clarify what those two categories mean.

⁶⁴ Committee on the Rights of the Child, Concluding Observations on the combined third to fifth periodic report of the Dominican Republic, (CRC/C/DOM/CO/3-5), 4 February 2015, paras 27-28.

⁶⁵ The law’s implementing regulation only referred to the provisions of the law applicable to Dominican-born people who had never been registered in the Dominican Civil Registry (Group B).

⁶⁶ See for example *Listín Diario*, “La Junta presenta la auditoría al Registro Civil ordenada por el TC”, 27 May 2015, <http://listindiario.com/la-republica/2015/05/27/368695/la-junta-presenta-la-auditoria-al-registro-civil-ordenada-por-el-tc>. Amnesty International verified the numbers by accessing the JCE’s presentation of the audit to the international community.

⁶⁷ The list is available on the JCE’s website <http://beta.jce.gob.do/Registro-Civil/Auditoria-Consulta-Registros-Ley-169-14-TC0168-13>.

As far as Amnesty International was able to ascertain, the term “transcribed” appears to indicate that those individuals have, or will have, their birth certificates recorded in a separate civil register (“*libro de transcripción*”) and will be issued with new birth certificates that will not refer to the fact that they had been registered previously. There is no precise definition of this “transcription” mechanism and no legal basis for it in Dominican legislation, which could give rise to arbitrary and discriminatory interpretations in the future. A Dominican human rights organization defined transcription as “an act of segregation which regroups and identifies in special books a particularly vulnerable population already stigmatized as victims of Judgment 168-13”.⁶⁸

The Dominican government immediately used the publication of the list of around 55,000 names by the JCE as proof that all the people listed had had their status resolved and their Dominican nationality recognized.⁶⁹ However, the process has suffered from a lack of clarity, delays and inconsistencies that have created further obstacles for those affected in getting their Dominican nationality recognized in practice. Confronted with such claims from Dominican and international human rights organisations, Dominican officials later acknowledged the existence of “isolated cases” which had yet to be solved and stated that “the government is determined to do whatever it can to resolve these cases”.⁷⁰

OBSTACLES TO GETTING RECOGNITION OF DOMINICAN NATIONALITY

Amnesty International and Dominican human rights organizations have documented several cases of people of Haitian descent who have been refused identity documents for a long time and whose names are not listed. The JCE has failed to explain what the consequences are of not being included on the list.

Jackelyn Valeis Hipolita was born in 1992 in the province of San Pedro de Macorís to Haitian parents. Her parents registered her birth in the Dominican civil registry and a birth certificate was issued. In 2011, Jackelyn Valeis applied for a national identity card, but her application was rejected on the grounds that her parents were foreign nationals. Jackelyn Valeis’ name does not appear on the list of about 55,000 people published by the JCE. She has repeatedly gone to her local civil registry office to request an identity card, but she is always turned away because she has yet to be “transcribed”. Jackelyn Valeis told Amnesty International that she was very concerned because she did not know what the implications would be of not being included on the JCE list of names. As she does not have an identity card, she has not been able to register the birth of her three children or include them on her husband’s health insurance. This has meant that she has sometimes had to ask friends for loans to pay for medicines for her children.

⁶⁸ Centro Bonó, *República Dominicana 2014. La situación de los derechos humanos y el desafío de protegerlos para todos y todas*, December 2014, page 49.

⁶⁹ See for example the speech of the President of the Republic at the Central American Integration System (Sistema de la Integración Centroamericana, SICA) Summit on 26 June 2015.

⁷⁰ Statement by the Dominican Ambassador in Geneva at a side event on the situation of Dominicans of Haitian descent during the 30th session of the UN Human Rights Council, 28 September 2015; statement of the representative of the Dominican Republic at the October 2015 hearing of the Inter-American Commission on Human Rights, “The right to nationality in the Dominican Republic”, 156th Period of Ordinary Sessions, 23 October 2015, available at <https://www.youtube.com/watch?v=Tzx8ncxDVrg>

Amnesty International and Dominican human rights organizations have documented several cases of Dominican-born people of Haitian descent who, despite being included on the list of about 55,000 names, have been unable to obtain identity documents proving their Dominican nationality. In particular, people whose names the JCE had unilaterally deleted from the Dominican Civil Registry seem to be encountering difficulties in obtaining identity documents.⁷¹



Mery Jean Figaro was born in San Pedro de Macoris in 1991 to Haitian parents. She was registered in the Dominican civil registry but has been denied an identity card since 2012. In September 2014 she again requested her identity card at her local civil registry office and was given a receipt with the note “Special Register” (*Libro registro especial*). While in the JCE headquarters, she was told that there was no problem with her birth registration. However, at the beginning of August 2015, in the civil registry office in San Pedro de Macoris, she was told that she had been transferred to the Register of Foreigners. Her name is included on the list published by the JCE in June as “transcribed” but in practice she has not been able to get her identity card, despite weekly visits to the civil registry office.

Several people who were included on the JCE list are still uncertain about whether and when they will be able to fully enjoy Dominican nationality and acquire identity documents because the JCE had previously requested that the domestic courts declare their birth certificates null and void because of alleged irregularities. When it announced the results of the audit, the JCE stated that requests for the courts to declare certificates null and void had been issued in only 132 cases. However, the JCE gave no details about the nature of the alleged irregularities or about the implications of this decision for those involved. In addition, the JCE website lists 119 requests to declare certificates invalid, most of which appear to pre-date the end of the audit by some considerable time.⁷²

Moreover, according to Dominican human rights organizations, there are many more people whose birth certificates had been the subject of a request to the courts to declare them null and void but whose names are not included on the list of 119 published by the JCE. The reason provided by the JCE for such requests to the courts, most of which were generally issued before the adoption of Law 169-14, is that in the great majority of cases the person had been registered in the Dominican Civil Registry with documents that did not prove their parents’ regular status in the country.

⁷¹ Instructions signed in April 2011 by the President of the JCE (Instructivo para la aplicación de la Resolución 02-2007) provide for the creation of a Special Registry for the registry of children of mothers with no regular migration status born before the entry into force of the 2004 Migration Law. The instructions specify that this registry is established for the Register of Foreigners. As a consequence of this decision, which represents a clear example of retroactive implementation of the law, many people born before 2004 who were originally registered in the Dominican Civil Registry discovered to have been transferred to such Special Registry and were given birth certificates as foreigners.

⁷² <http://beta.jce.gob.do/web/pdf/EstatusDemandasNulidadActasLey169-2014.pdf>

Isidro Berique Delma was born in 1988 in a *batey* in the province of San Pedro de Macoris to Haitian parents. He was registered at birth and given a birth certificate. In 2007 he requested a copy of his birth certificate in order to apply for an identity card. His request was refused several times on the grounds that his parents are Haitian. In September 2011, the JCE issued a request to the courts to declare his birth certificate invalid. A court hearing to consider this request took place later that month, but a decision has never been issued. Isidro Berique was finally issued with an identity card in November 2014. However, he is included on the JCE's list of 119 birth certificates that have been the subject of a request to the courts to have them declared null and void. Oddly enough, his name is also included on the list of 55,000 people who had been audited and can be recognized as Dominicans. In that list, he is classified as "transcribed". Isidro Berique remains unclear about his situation as the JCE has provided no explanation for his inclusion in both lists.

DOMINICAN-BORN PEOPLE WHOSE BIRTHS HAD NEVER BEEN REGISTERED (GROUP B)

"I am not a foreigner, I was born here, I don't want to be registered in the Register of Foreigners"

Dominican of Haitian descent whose birth had not been registered commenting on Law 169-14, interview with Amnesty International, June 2015

The authorities confirmed that they had received 8,755 applications for naturalization from people whose births had never been registered (Group B) by the deadline (1 February 2015).⁷³ However, the Dominican authorities had originally estimated that 53,438 people could fall into Group B.⁷⁴

National and international human rights organizations documented a number of shortcomings in the implementation of Law 169-14 in relation to people in Group B.⁷⁵ These include delays in setting up application units and the failure to open offices in all provinces; inadequate public information campaigns, with insufficient outreach to affected communities;⁷⁶ onerous documentation requirements, including requests for documents not required either by the law or its implementing regulations.

⁷³ *El Día*, "8755 hijos de extranjeros se inscribieron en el proceso de Naturalización", 2 February 2015, <http://eldia.com.do/8755-hijos-de-extranjeros-se-inscribieron-en-el-proceso-de-naturalizacion/>.

⁷⁴ See for example the statement of the representative of the Dominican Republic at the October 2014 hearing of the Inter-American Commission on Human Rights, "Progress and challenges posed by Law 169-14 in the Dominican Republic", 153rd Period of Ordinary Sessions, 31 October 2014, available at <https://www.youtube.com/watch?v=yqORJEITPrs&feature=youtu.be>. The authorities stated that this figure was based on the results of the 2012 National Migration Survey.

⁷⁵ See for example Centro Bonó & MUDHA, *Balance general de la Ley 169-14 a un año en vigor*, May 2015; and Human Rights Watch, *We are Dominican: Arbitrary deprivation of nationality in the Dominican Republic*, 1 July 2015, available at <https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic>.

⁷⁶ The government advertised the naturalization plan mainly through TV and radio spots, as well as announcements in newspapers. However, they failed to organize meetings or other outreach activities in communities with a high concentration of possible beneficiaries.

Amnesty International interviewed dozens of people who did not enrol on the naturalization scheme. The reasons they gave for not applying support the analysis above of the scheme’s shortcomings. For example, some people did not know about the process, others could not afford to get the documents requested. Some could not meet the deadline, while others could not obtain their parents’ identity documents. This last requirement was established by instructions published by the Ministry of the Interior on 9 September 2014. Although it was officially rescinded only ten days later, most of the offices receiving applications continued to implement it. A few people interviewed by Amnesty International said that they were aware of the naturalization plan, but had opted not to apply because they did not consider the scheme appropriate as they were already Dominicans.



Sixteen-year old **Rosa** was heavily pregnant when Amnesty International interviewed her. Rosa was born in the Dominican Republic, but her birth was never registered as her Haitian parents did not have identity documents. Her eight brothers and sisters were able to enrol in the naturalization programme. However, Rosa was living in another province at the time and was unaware that she needed to register as she had been unable to communicate with her family. The fact that she did not register means her child will not be registered either. She said: “I would like to continue studying and working. I would like my child to have a future better than mine”.

Dilta has lived in the Dominican Republic for 27 years; she arrived from Haiti when she was 10. She has tried to register her 10 children, aged between one and 21, who were all born in the Dominican Republic, several times, but has always been refused. All children but one were born in hospital and given proof-of-birth certificates, but those went missing a few years ago when her home was flooded during a hurricane. When she heard about the naturalization plan, she requested a copy of those certificates at the hospital but was told to come back. She had no resources to go back to hospital or to obtain the other documents required to enrol her children in the naturalization plan. “What I wish for is a birth certificate for my children. This is my only wish”, she told Amnesty International.



Natali, Eliana and Gufana are sisters aged 17, 15 and 13, respectively. They were born in the northern Dominican town of Montecristi to Haitian parents. Their mother was denied a proof-of-birth certificate at the hospital and birth registration at the civil registry for all of them because she did not have a passport. The three sisters tried to enrol on the naturalization plan with the help of a local pastor, but were turned away because their mother did not have a birth certificate. The mother then went to Haiti to request a copy of her birth certificate, which only arrived in June, five months after the deadline for registration under Law 169-14 had passed. Natali said: “We feel awful. We just want another chance to register”.

OTHER SHORTCOMINGS OF LAW 169-14 FOR APPLICANTS

The regulations governing the implementation of Law 169-14 set a deadline of 30 days for application units to decide on each case; that is, 30 days from when they received the application or, in cases where files were incomplete, from receipt of additional documentation. For successful applications, officials were required to send the name and biometric details of the person to the JCE within 30 days so that these could be recorded in the Register of Foreigners and the person could be allocated a migration category by the Ministry of the Interior and Police.

However, these deadlines were not respected. At the end of March 2015, the Dominican authorities announced that approximately 40% of the 8,755 applications had been successful and that applicants would receive documents enabling them to "regularize their migration status". More than 23% of applications were judged incomplete and additional information had been requested from those applicants.⁷⁷

Nevertheless, applicants did not start receiving responses until mid-July.⁷⁸ At the time of writing, the Dominican authorities had yet to publish final or provisional statistics on the outcome of the process. In September 2015, a Dominican diplomat stated at a public event that 3,620 applicants had yet to receive a response because of an ongoing review by the competent authorities and, in some cases, because missing documentation or information was being sought.⁷⁹

According to Dominican NGOs, all permits that they had been able to verify entitle the applicants to permanent residence in the country. Amnesty International notes that these documents, called "regularization of the migration status cards", mention that the person was born in the Dominican Republic and indicate Haiti as their country of nationality. Amnesty International is not aware that this reference to Haitian nationality was verified with the Haitian authorities.

These cards do not enable people to access formal employment and services or to fully exercise their human rights because the holders of such cards would also need to obtain identity cards for foreign nationals. However, some Dominican human rights organizations told Amnesty International that civil registry officers have refused to issue such identity cards on the grounds that they had yet to receive formal instructions from the JCE to do so. One of the requirements for obtaining an identity card for foreign nationals is that the person present a passport, which people from Group B do not have.⁸⁰

Even those who have received a positive response to their application face a long and uncertain process for naturalization. Law 169-14 does not establish a special procedure for naturalization, but refers to the ordinary procedure set out in previous legislation.⁸¹ As documented by Human Rights Watch, future obstacles for naturalization could be the applicants' lack of a foreign passport and the discretion of the President in power at the point

⁷⁷ *El Caribe*, "3 mil son aptos para ser naturalizados", 3 March 2015, <http://www.elcaribe.com.do/2015/03/24/3-mil-son-aptos-para-ser-naturalizados>.

⁷⁸ On 16 July 2015, the Ministry of the Interior and the Police published a list of 376 people who had enrolled in the naturalization plan under Law 169-14 and been issued with residence permits. A week later, a new list was published including a total of 620 people. However, most recently the Ministry had included on the list of successful applicants the names of migrants who applied through the National Regularization Plan as well as those whose applications were made under Law 169-14. The lists are available at <http://mip.gob.do/index.php/documentos-pnre>.

⁷⁹ Statement by the Dominican Ambassador to international organizations in Geneva at a side event on the situation of Dominicans of Haitian descent during the 30th session of the UN Human Rights Council, 28 September 2015.

⁸⁰ <http://beta.jce.gob.do/C%C3%A9dulas-Extranjeros>

⁸¹ Law No 1683 on Naturalization, 16 April de 1948, as amended by Law No 4063.

when they become eligible to apply.⁸² Even if they are naturalized as Dominican citizens, they will not enjoy the same rights as Dominican nationals,⁸³ even though they were Dominican nationals at birth and subsequently deprived of their nationality by Judgment 168-13. Moreover, their Dominican nationality could be withdrawn in a number of circumstances detailed in the Law, some of which are ambiguous and do not meet international standards for legislation.⁸⁴

In an attempt to substantiate his claim that nobody is stateless in the Dominican Republic, the President stated at the 45th Summit of the Central American Integration System (Sistema de la Integración Centroamericana, SICA) on 26 June 2015 that: “8,755 people belonging to group B had seen their nationality recognized by the JCE”.⁸⁵ However, this statement lacks clarity and transparency. If it means that the JCE has accorded those affected a nationality other than Dominican nationality, that would exceed the JCE’s competence and would therefore be invalid for the purposes of determining whether the affected people are stateless or not. If it means that the JCE has recognized the Dominican nationality of all 8,755 applicants, that would be false, as the analysis above shows that all 8,755 applicants will not have Dominican nationality until have successfully applied for naturalization.

In short, unless they have acquired another nationality, those who registered under Law 169-14 remain stateless and will remain so until they are naturalized as Dominicans.

PEOPLE WHO DID NOT APPLY UNDER LAW 169-14

The fate of those who were not able or did not want to enrol on the naturalization plan under Law 169-14 is extremely worrying. Since the deadline set out in Law 169-14 expired, there has been no legal recourse for people in Group B to have their Dominican nationality restored or to obtain identity documents. Such documents are essential for accessing higher education, adequate medical care and formal employment. Therefore, those who do not have any other nationality and cannot obtain Dominican nationality because they were not able to register under the naturalization plan are stateless.

People in this category are in an extremely vulnerable situation. Most have no legally recognized documents to prove they were born in the Dominican Republic. Amnesty International interviewed several people who stated that their mothers had been refused even the proof-of-birth certificate that hospitals are obliged to give to mothers of newborn babies because they did not have documents or because they were or appeared to be Haitian.

⁸² Human Rights Watch, *We are Dominican. Arbitrary deprivation of nationality in the Dominican Republic*.

⁸³ Article 19 of the Dominican Constitution states that foreign nationals naturalized in accordance with the law may not seek the presidency or vice-presidency of state institutions.

⁸⁴ Law No 1683 on Naturalization, 16 April 1948, as amended by Law No 4063, Article 12.

⁸⁵ *Listín Diario*, “Discurso del excelentísimo Señor Presidente Danilo Medina en la Cumbre de jefes de Estado y de Gobierno del SICA”, 27 June 2015, <http://www.listindiario.com/la-republica/2015/06/26/377991/discurso-del-excelentisimo-seor-presidente-danilo-medina-en-la-cumbre-de-jefes-de-estado-y-de-gobierno-del-sica>.

The Dominican authorities previously estimated there were 53,438 in Group B. However, since the deadline for the naturalization plan expired, the authorities have never publicly acknowledged the existence of the tens of thousands of people who could not enrol on the plan and most of whom, therefore, remain stateless. In meetings with Amnesty International, officials insisted that civil society organizations provide documented cases before the government would consider taking any additional measures to address this situation.⁸⁶ In October 2015, the representative of the Dominican Republic told the Inter-American Commission of Human Rights that "a list of people who say that they could not register under Law 169-14 does not exist" but that "if this is produced, the government will be fully prepared to take care of these cases". Amnesty International believes that it is the state's responsibility to carry out a mapping exercise to identify all those who are stateless and at risk of statelessness.

DOMINICAN-BORN PEOPLE WHO HAD BEEN REGISTERED AS FOREIGNERS

"The last time I went to request my identity card at the civil registry, the officer told me that I am not Haitian nor Dominican"

Young man of Haitian descent born in 1997, but registered as a foreigner, June 2015

A category of people not covered by Law 169-14 are those, also mostly of Haitian descent, who were born in the Dominican Republic well before the establishment of the Register of Foreigners in 2007 and whose births were registered after that date. When they finally managed to gather all the requested documents to register, the JCE placed them on the Register of Foreigners, instead of in the Dominican Civil Registry, retroactively applying the 2004 Migration Law.

Gacies, Milito, Rogelio, Yuben, Yila, Gina and Altagracia Desrisseau were all born in the Dominican Republic between 1989 and 2001 to Haitian parents. Only Gacies was registered at birth and has never had any problem in obtaining her identity documents. All the other brothers and sisters were registered in 2014. However, they later realized that the birth certificate they had been given classified them as foreigners. When Milito, Rogelio and Yuben went to the local civil registry office to request their identity cards, they were told that they could not have them because they were foreigners. Milito works in a bakery and is afraid of losing his job because of the lack of identity cards. Yuben and Rogelio were unable to continue their education after primary school because they did not have identity documents.

Felix Monao was born in 1997 in the Dominican Republic to Haitian parents. However, he only managed to have his birth registered in 2013. It was after he requested an identity card in early 2015 that he was told that he should apply for an identity card for foreigners as he had not been registered as Dominican. Such an identity card would not ensure him equal rights as a Dominican citizen. He is a semi-professional baseball player and is afraid that without a Dominican identity card he will not be able to progress in the profession. "The possibility of getting a contract with the Baseball League is a major motivation. I want to help my family, buy them a house. I want my brothers to do better for themselves", he told Amnesty International.

In such cases, people registered as foreigners have been arbitrarily deprived of Dominican nationality, to which they were entitled because they were born before the changes in the nationality rules introduced by the 2010 Constitution. Lacking easy access to Haitian nationality, they have been left stateless. Law 169-14 offers no solution for this group of people for whom there is no clear route to get their Dominican nationality restored.

⁸⁶ "The right to nationality in the Dominican Republic", 156th Period of Ordinary Sessions of the Inter-American Commission of Human Rights, 23 October 2015.



Dominican-born girl of Haitian descent, El Seibo, June 2015. Many children of Haitian descent are denied registration at birth because their parents do not have the necessary identity documents. With no documents to prove their Dominican nationality and with no automatic access to Haitian nationality, they are effectively stateless.

CHILDREN EFFECTIVELY STATELESS

“My daughter does not exist for the Dominican State. She is dead from a civic point of view. By violating my human rights, the Dominican State has violated my daughter’s rights too.”

Dominican woman of Haitian descent who has been unable to register the birth of her daughter, Amnesty International interview, June 2015

“I want a birth certificate for my son. I want him to be able to study and decide what to do with his life”

Yafresi García, young Dominican-born woman of Haitian descent, Amnesty International interview, June 2015

Children of Haitian descent whose parents do not have identity documents and who have been deprived of their Dominican nationality were unable to be registered at birth. With no documents proving their Dominican nationality and with no automatic access to Haitian nationality, they are effectively stateless.

Every child has the right to be registered immediately after birth and the right to a name.⁸⁷ Registration is crucial to ensure that right to a name and a nationality. This is recognized not only in international human rights law, but also in Dominican law which recognizes the right of every child to a name and a nationality, to a proof-of-birth certificate and to be registered in the Civil Registry after their birth.⁸⁸

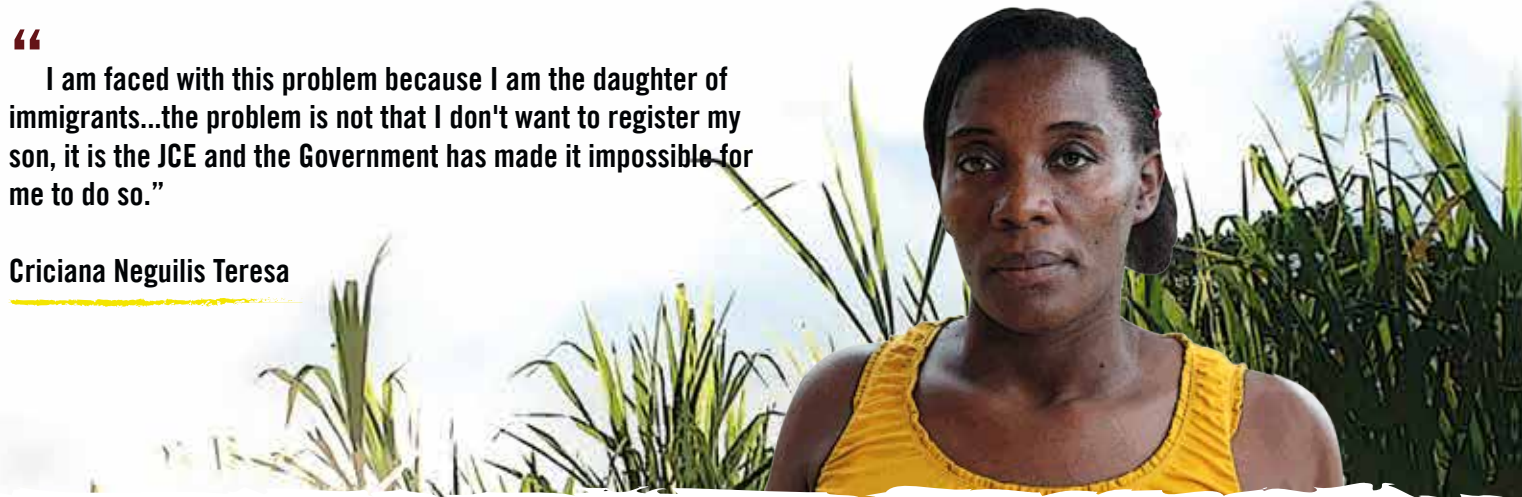
⁸⁷ Article 24.2 of the International Convention on Civil and Political Rights (ICCPR), Article 7 of the Convention on the Rights of the Child; Article 18 of the American Convention on Human Rights.

⁸⁸ Law 136-03 on the protection of children and adolescents, Articles 4 and 5.



“

I am faced with this problem because I am the daughter of immigrants...the problem is not that I don't want to register my son, it is the JCE and the Government has made it impossible for me to do so.”

Criciana Neguilis Teresa



CHILDREN OF PEOPLE IN GROUP A

Situation in law and/or according to official statements/measures	Situation in practice
<p>Law 169-14 does not explicitly benefit children of people in Group A. However, the authorities have always made clear that once people in Group A are recognized as Dominicans through Law 169-14, their children can also be registered as Dominican citizens in the Dominican Civil Registry.</p> <p>In June 2015, the authorities published the names of some 55,000 people, declaring that they had not only resolved the situation of those 55,000 people, but also that of their children, who therefore could not be considered stateless.</p>	<p>Many parents of Haitian descent continue to be prevented from registering the birth of their children. For example parents:</p> <ul style="list-style-type: none">  - Who were not included on the JCE June 2015 list;  -Whose children received pink proof-of-birth certificates and/or are registered in the Register of Foreigners. Although in 2011 the JCE issued instructions to civil registry officers on how to deal with an erroneous registration in the Register of Foreigners, there are no guidelines on how to correct the erroneous allocation of pink proof-of-birth certificates. <p>Children of people from Group A remain stateless until they can be registered as Dominicans in the Dominican Civil Registry, unless they have acquired another nationality.</p>

Ramonita and Criciana Neguilis Teresa were born in the Dominican Republic in 1980 and 1982 respectively to Haitian parents. The sisters were both registered at birth and given identity cards. However, when Criciana’s identity card expired in early 2015, the authorities refused to give her a new one. Both sisters have been denied copies of their birth certificates and refused registration of their youngest children, who were given pink proof-of-birth certificates. None of the sisters was included in the list published by the JCE in June 2015. Despite their multiple visits to the local civil registry office, officers have continued to turn them away saying that they cannot register the birth of their children until their own birth certificates had been “transcribed” to a separate register.

Felicia Jazmin was born in 1996 in the Dominican Republic to Haitian parents and was registered at birth. When her daughter was born in November 2014, she was given a pink proof-of-birth certificate because Felicia did not have an identity card, despite the fact that the child’s father is Dominican and has never had his identity documents questioned. Felicia finally obtained her identity card in June 2015 and is included in the list published by the JCE in June 2015, but at the time of writing had not been able to register her daughter in the Dominican Civil Registry because of the pink proof-of-birth certificate. “I worry a lot for my daughter’s future and the discrimination she could face because she has this pink certificate”, Felicia’s husband told Amnesty International.



“
I feel bad as I couldn't register my children.
I don't want them to leave school as I had to.”

Ramona Rellis Felisten with her daughter and grand-daughter

CHILDREN OF PEOPLE IN GROUP B

Situation in law and/or according to official statements/measures	Situation in practice
<p>Law 169-14 does not spell out the route for the children of people in Group B (Dominican-people who have never been registered in the Dominican Civil Registry) to be registered as Dominicans and acquire Dominican nationality.</p>	<p>Children whose parents applied to the naturalization plan under Law 169-14:</p> <p> In order to be registered as Dominican, parents have to wait to be naturalized before they can register their children as Dominicans.</p> <p> Some people have reportedly been told that their children must be registered as foreigners, even though the parents obtained a residency permit after enrolling on the naturalization plan.</p> <p>Unless they have acquired another nationality, these children remain stateless unless and until they can be registered in the Dominican Civil Registry.</p> <p>Children whose parents did not apply for naturalization under Law 169-14:</p> <p> There is currently no legal recourse for them to be registered as Dominicans.</p> <p>They remain stateless unless they have acquired another nationality</p>

Many parents belonging to Group B told Amnesty International that they were worried they could not give their children a better future because they did not have registration and identity documents.

Amnesty International documented the cases of families in which as many as three generations were born in the Dominican Republic, none of whom have been registered.

Ramona Rellis Felisten was born in 1982 in the Dominican Republic to Haitian parents. Her parents did not register her birth immediately and when they tried, 12 years later, they were refused registration because the civil registry officer did not want to accept the workplace identity card (ficha) as a valid document. Ramona has five children, none of whom was registered at birth because Ramona has no documents. Ramona's eldest daughter, who is 18, has a one-year-old child. She was not given a proof-of-birth certificate for him at the hospital because she has no documents. "I feel bad as I couldn't register my children. I don't want them to leave school as I had to", Ramona told Amnesty International.

CHILDREN BORN BETWEEN 18 APRIL 2007 AND 26 JANUARY 2010

Situation in law and/or according to official statements/measures

Since 18 April 2007, children born to Haitian parents with no regular migration status are registered in the Register of Foreigners and denied access to the Dominican nationality, even though under the Constitution in force at the time of their birth conferred Dominican nationality on them by virtue of being born in the country.

Law 169-14 does not explicitly address the situation of these children as it excludes them from the mechanisms for the restoration of Dominican nationality established for Group A.

Their situation in practice

According to Dominican officials, there are some 23,000 children born during this period listed in the Register of Foreigners.



Children born during this timeframe have been refused enrolment on the naturalization plan on the pretext that they had been already registered in the Register of Foreigners. As a consequence, even the route to naturalization under Law 169-14 is closed to them.



In order for a child to be registered as Haitian, parents are required to go to a Haitian consulate. According to information received by Amnesty International, the majority of Haitian parents are unaware of this procedure and do not complete the registration at the Haitian consulate. The fact that many Haitians do not have identity documents is another factor preventing parents from registering the birth of their children at the Haitian consulate.

The vast majority of these children remain stateless as they have been arbitrarily deprived of Dominican nationality and have no automatic access to Haitian nationality.

Jeancarlo Nicola

Jeancarlo Nicola, born in 2008 in the Dominican Republic, with his mother





“

I would like to continue studying, going to university but I can't... I am desperate”

Monica Santana

CHILDREN OF MIXED COUPLES


Situation in law and/or according to official statements/measures

Children who have at least one Dominican parent have a constitutional right to the Dominican nationality (Article 18 of the Dominican Constitution).

According to Dominican law, the birth registration is carried out by the father or, in his absence, by the mother (Article 56 of the Civil Code and Article 43 of Law 659 of 1944)

In 2011, the JCE issued instructions to correct erroneous registrations in the Register of Foreigners of these children.

Their situation in practice

 Dominican fathers claiming the child's registration in the Dominican civil registry face inconsistent responses from civil registry officers who, at their own discretion, deny requests for incorrect registration in the Register of Foreigners. In other cases, the children have remained unregistered and effectively stateless.

In practice, if the mother is an undocumented foreigner, children of mixed couples are denied birth registration and have no means to exercise or prove their Dominican nationality.

Monica Santana was born in 2000 in a batey in Monte Plata Province. Her father is Dominican and her mother is Haitian. She and her younger brother were denied registration at birth because their mother only had her workplace identity card (*ficha*) and civil registry officers did not accept this as a valid document, even though her father has a Dominican identity card. Monica tried to apply through the naturalization plan. However, the official refused to register her under Law 169-14 because her father is Dominican and she should claim registration at the civil registry. However, when she subsequently tried to register at the civil registry, she was again told that she could not be registered because her mother did not have a passport. Monica could not finish primary school because she was not accepted in her last year as she did not have a birth certificate. She dreams of being a doctor, but now she has no choice but to stay at home and do nothing. “I am desperate”, she told Amnesty International.

"According to the Dominican think-tank OBMICA (Centro para la Observación Migratoria y el Desarrollo Social en el Caribe), unless and until the birth registration procedure stops being based on the migration status of the mother at the time of the child's birth, the children of Dominican fathers will continue to remain in judicial limbo."



Batey Cangrejo, Puerto Plata, March 2014.

LACK OF RELIABLE DATA ON THE NUMBER OF STATELESS PEOPLE

The failure of the Dominican authorities to acknowledge the existence of stateless people and to carry out, as a very first step, a comprehensive census of the stateless population in the country, means there is no reliable way of establishing conclusively how many people are currently stateless in the Dominican Republic.

The only available document providing some general estimates of the numbers involved is the National Migration Survey carried out by the United Nations Population Fund (UNFPA), the European Union and the National Statistics Office (ONE) in 2012. The survey found that 244,151 people living in the Dominican Republic had at least one foreign parent. Of these, 209,912 were of Haitian descent (that is, the father and/or mother were born in Haiti).

In the absence of alternative sources of information, national and international human rights organizations, including Amnesty International, used the 2012 survey's figure of about 210,000 as an estimate of the number of Dominican-born people of Haitian descent rendered stateless by the 2013 Constitutional Court judgment. This, however, is very far from a reliable or adequate estimate because:

- The figure includes people who have one parent born in the Dominican Republic and the other born in Haiti. The survey does not specify whether the parent born in the Dominican Republic has Dominican nationality or not. Children of at least one Dominican parent are legally not stateless as Dominican law entitles them to Dominican nationality. However, in practice many face difficulties in being registered and recognized as Dominican nationals.
- The figure does not differentiate between people whose parents had regular migration status and those who did not; the 2013 judgment deprives only those born to foreign parents with no regular migration status of their Dominican nationality;

- The survey only took into account people born to foreign parents and not successive generations of people of foreign descent. The 2013 judgment, by contrast, retroactively deprived several generations born since 1929 of their Dominican nationality.

At present, it is not known how many of those remain stateless but it is possible to estimate that they are still in the tens of thousands. This report has shown that:

- Law 169-14 paved the way for the recognition of Dominican nationality for many of those in Group A. However, not all those included on the list of 55,000 names published by the JCE at the end of June have in reality had their Dominican nationality returned. Many of their children continue to be denied birth registration and remain effectively stateless, unless they have acquired another nationality.
- The vast majority of the people in Group B, who were estimated at 53,438 based on the 2012 National Migration Survey, remain stateless, as well as all of their children.
- Part of the estimated 23,000 children born between 18 April 2007 and 26 January 2010 and registered in the Register of Foreigners are stateless, as well as an unknown number of people who were wrongfully registered as foreigners even though they were born in the Dominican Republic well before the 2004 Migration Law and the establishment of the Register of Foreigners in 2007.

3. THE IMPACT OF CONTINUED STATELESSNESS AND LACK OF IDENTITY DOCUMENTS

“I would like to have identity documents to be somebody. Without papers, I am no one”.

Elvi Mora, born in the Dominican Republic to Haitian parents and never registered, interview with Amnesty International, June 2015

People in the Dominican Republic who have no identity documents, and little or no possibility of obtaining them, are effectively stateless.

Identity documents are essential to access services, for personal and professional development and to claim one’s rights. In particular, birth certificates serve as the primary form of identification for all Dominican citizens under the age of 18, and unrestricted access to certified copies of birth certificates is critically important. The national identity card (*cédula de identidad y electoral*), which all Dominican nationals must apply for when they reach 18 years of age, is needed to enjoy a wide variety of civil, political, social and economic rights. Identity cards are required to vote and to run for political office, to enrol at university, to pay into the social security system, to open a bank account and acquire or transfer property, to apply for a passport, to make a sworn statement before a judge, to get married or divorced and to register the birth of one’s children.

With no access to a birth certificate and identity papers, stateless people are prevented from fully exercising their human rights. This chapter illustrates the impact of statelessness on some key areas of people’s lives and on their human rights.

THE RIGHT TO EDUCATION

“I am just sitting at home. I don’t do anything because they don’t me accept in school. I would like to be a teacher, I like giving classes to students”.

Rosana Modesami, un-registered Dominican girl of Haitian descent, interview with Amnesty International, June 2015

The right to education is crucial to the full development of the human being. It is recognized in all relevant international and regional human rights conventions to which the Dominican

Republic is a party⁸⁹ and in Dominican law.⁹⁰ However, in practice, full enjoyment of this right is routinely denied to children who are stateless and/or lack birth certificates.

Children who do not have birth certificates are generally accepted in primary school, although even here some people have experienced difficulties. However, it is very difficult for students to continue their education beyond primary school as they need a copy of their birth certificate in order to take the national exam at the end of their eighth year of primary school. While some headteachers make exceptions, many encounter serious obstacles in accessing secondary education.



Jessica Profeta is a 14-year-old girl who was born in the Dominican Republic to Haitian parents. Her parents were not given a proof-of-birth certificate at the hospital where she was born. Her father later tried to register her birth at the civil registry office, but was turned away. At the end of January 2015 Jessica's parents tried to enrol her on the naturalization plan, but could not even get into the office as the queue was too long and there was not enough time to apply before the deadline expired. A few days before Amnesty International interviewed

her, the school refused to enrol Jessica in the 8th grade because she did not have a birth certificate. This was a blow to Jessica a gifted and able student who dreams of going to university.

“I want to go on studying, I would be so unhappy if I couldn't study”, she told Amnesty International. Her father looked heartbroken as he explained: “I would feel so sad if my daughter could not keep studying. I would like her to go to the university, to have a better future”.

By the time of writing, Jessica continued to be unable to access secondary education.

People who succeed in finishing secondary school encounter major obstacles in accessing university if they do not have identity documents. This translates into a massive loss of opportunity and time as the hopes of young people, mainly from disadvantaged and marginalized communities, are dashed. The vast majority of people that Amnesty International interviewed expressed frustration at their inability to continue studying and improve their socio-economic situation.

Miguel, a Dominican-born young man who had been denied his identity card for many years, told Amnesty International: “What I want is to get that identity card. Do you know how many opportunities I lost?... So many dreams started and then set aside. It is like starting writing a book and then abandoning it”

⁸⁹ Article 6 of the Universal Declaration of Human Rights; Articles 13-14 of the International Covenant on Economic, Social and Cultural Rights; Article 28 of the Convention on the Rights of the Child; Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women; and Article 26 of the American Convention on Human Rights.

⁹⁰ Article 63 of the 2010 Dominican Constitution affirms the right to free initial, primary and secondary education for “everyone”. Law 167-03 for the Protection of the rights of children and adolescents states that: “Under no circumstances can children or adolescents be denied education for reasons such as... lack of documents proving identity” (Article 45).

Liliana, a Dominican-born woman of Haitian descent, have for long been denied a copy of her birth certificate, which she needs to continue her studies. She told Amnesty International: "At a time when I felt ready to achieve something, I was denied my rights. I didn't feel like I was worth much, but I want to be somebody, to surpass myself. Why did they close off that particular path? I was denied something, a right that belongs to me. It damages my self-esteem, it makes me feel small and insignificant."

THE RIGHT TO WORK

A national identity card is needed in order to access formal employment. Forced to work in the informal sector, people without identity documents are more vulnerable to exploitation.

"You need your identity card in order to do absolutely everything... You could be somebody with a lot of experience in a specific area, but without an identity card you can't be contracted. You can do absolutely nothing".

Juan Alberto Antuan Vill, denied his identity card between 2008 and 2014, Amnesty International interview, March 2014

Amnesty International and Dominican human rights organizations have documented a number of cases where Dominicans of Haitian descent have lost their jobs or been refused employment because they do not have identity documents.

Fred* was born in the Dominican Republic to Haitian parents and wrongfully registered as foreigner. He is a semi-professional baseball player and at the end of 2014 he was offered a contract to play as a professional. However, he was unable to sign it because he does not have an identity card. "I want to raise my country's profile, support my country... It is terrible to get that far in life and to have to leave all this behind for not having identity documents".

* Not his real name

OBMICA has documented the increasing gender inequality in employment as a result of statelessness or the risk of statelessness. In particular, women with no identity documents have access to fewer jobs than men who are in the same situation, as more jobs traditionally considered suitable for men can be done without identity documents (such as working in the construction sector or in the sugarcane harvest).⁹¹ Domestic work is often the only option for many stateless women.

THE RIGHT TO HEALTH

The right of everyone to the enjoyment of the highest attainable standard of health that will permit them to live with dignity, equal and free from discrimination is protected by various international human rights instruments to which the Dominican Republic is a party.⁹² The

⁹¹ *Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes de la República Dominicana*, pp 126-131.

⁹² The International Covenant on Economic, Social and Cultural Rights (Article 12); the Convention on the Rights of the Child (Article 24); the Convention on the Elimination of all forms of Discrimination Against Women (Article 12); the Universal Declaration of Human Rights (Article 25); the American Declaration of Human Rights (Article XI); and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, "Protocol of San Salvador", (Article 10).

Dominican Constitution guarantees everyone’s right to health and provides for protection and assistance to the most vulnerable groups.⁹³

In practice, however, people who are excluded from formal employment opportunities because they do not have identity documents are also excluded from the health insurances schemes offered by employers. Even those who would like to join a health insurance scheme on a private individual basis cannot do so without identity cards. Without a health insurance, stateless people receive less specialized care in public hospitals, are often treated only after patients who do have insurance and have to cover the cost of treatment and medicines themselves. Amnesty International has documented a number of cases where public hospitals denied people care because they lacked identity papers.



Giselle was born in the Dominican Republic in 1979 to Haitian parents who did not register her birth. When she tried to register herself in 1996, the civil registry officer refused as her parents had no documents. Giselle tried twice to enrol on the naturalization plan, but was turned away as she did not have her mother’s identity documents. Giselle used to be a domestic worker but had to stop working two years ago because of health problems. She suffers from a hernia but has not been able to treat it as she cannot afford the tests and treatment. As she has no identity card, the public hospital is asking her to pay.



China, a 15-year-old Dominican-born girl of Haitian descent, has no proof-of-birth certificate as doctors refused to give one to her mother because she had no identity documents. Without that certificate, her parents were unable to register her birth. China could not enrol on the naturalization plan because her mother does not have a birth certificate. When Amnesty International interviewed her, China was in huge pain as few hours earlier she had burned her arm with hot oil while cooking. She went to the hospital, but was refused treatment because she had no documents. She left the hospital clearly in distress and pain.

INCREASED RISK OF EXPLOITATION AND VIOLENCE

The lack of education and work opportunities often leaves stateless people of Haitian descent vulnerable to exploitation, violence and discrimination. Children living in *bateyes* who cannot attend school are at particular risk of exploitation as child labour.⁹⁴

Marisol* is a young Dominican-born woman of Haitian descent. Neither she nor her brothers and sisters were registered at birth as their parents had no formal identity documents. When her parents died, she was 10 years old and had no other choice but to become a domestic worker with a wealthy family in Santo Domingo. They promised to send her to school, but instead forced her to work 15 hours a day. They beat her and never allowed her to set foot in a school. She could not enrol on the naturalization plan as, by the time she heard about it, the deadlines had already passed. She is now at risk of losing her job as a cleaner because the family she works for is afraid of the consequences of employing an undocumented person. As she has no identity papers, Marisol cannot register her children. “I hoped they could have a better future, but without identity documents it is not going to be possible” she told Amnesty International. (* Not her real name)

⁹³ Article 61.

⁹⁴ CLADEM – República Dominicana, *Informe alternativo cumplimiento de la Convención de los Derechos de los Niños y Niñas en la República Dominicana, 2007*, available at http://www.cladem.org/images/stories/Publicaciones/monitoreo/RDominicana/CDN_RD_2007.pdf.

Women with no access to identity documents are also more likely than men in a similar situation to fall victim of domestic violence. Reporting such abuses is problematic for them either because of their economic dependence on their abuser or because without identity documents, it is difficult for them to access the justice system.⁹⁵



Yolanda Alcino is a Dominican of Haitian descent who was registered at birth but then refused an identity card between 2007 and 2015. In March 2014, she told to Amnesty International that she was unable to file a complaint for domestic violence against the father of her two children because she was unable to produce an identity card. She was also unable to start court proceedings get the father of her children to pay child support because, as she did not have an identity card, she had been unable to register the children's births and so did not have proof that her former partner was the children's father.

PERPETUATING A CYCLE OF POVERTY AND MARGINALIZATION

"If I had documents, I would have finished school and I would be studying psychology at university".

Esterlina Peguero, born in the Dominican Republic and never registered, interview with Amnesty International, June 2015

With limited access to education and formal employment opportunities, stateless people of Haitian descent and those deprived of their identity documents often have no means of improving their socio-economic status, supporting their families and providing a better life for their own children.

"It is extremely serious not to have documents. I need to work for my son, I need to have a source of income. I feel powerless because I am not able to do anything in life".

Dominican-born woman whose birth was never registered, interview with Amnesty International, June 2015

Many are confined to remote *bateyes* where cycles of poverty and marginalization are perpetuated down the generations. Many girls see no option other early marriage, which often translates into economic dependence on their partner and early and frequent pregnancies.⁹⁶ For others the lack of opportunities means they resort to transactional sex or sex work.

Lisa* was born in the Dominican Republic to Haitian parents. She was refused identity documents and so had to leave school. She went on to underpaid and insalubrious jobs and engaged in transactional sex in order to provide for her two children, whose births she has not be able to register. She told Amnesty International that she had at one point contemplated suicide: "Because I had no documents, I did many things which I shouldn't have done. I did things out of need".

* Not her real name

⁹⁵ *Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes de la República Dominicana*, pp 142-144.

⁹⁶ *Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes de la República Dominicana*, pp 132-133.

Amnesty International heard countless stories of broken dreams, frustration and resentment from stateless people who cannot progress in life and are condemned to poverty and marginalization.

THE RIGHT TO FREEDOM OF MOVEMENT

“I can’t go to the capital, people say that otherwise I could be deported... I am afraid of being deported, I don’t want to leave my children in a difficult situation. If they send me to Haiti, I don’t know what I would do there, I don’t know where I would go”.

Eli Mercede, born in the Dominican Republic to Haitian parents but never registered in the Dominican Civil Registry, Amnesty International interview, June 2015

The right to freedom of movement includes liberty of movement within a country and the freedom to leave and enter one’s country.⁹⁷ Stateless people in the Dominican Republic are prevented from travelling abroad because they cannot get a passport.

Antonio Pol Emil, a human rights defender working on behalf of Dominicans of Haitian descent and a former city councillor, was born in 1951 in the Dominican Republic to Haitian parents. He never had any problems with his identity documents until January 2014, when officials of the General Directorate for Passports refused to renew his passport unless he produced a copy of his birth certificate, something which is not required by law. Despite several trips to both his local civil registry office and the JCE headquarters, he is had not been able to obtain a copy of his birth certificate by the time of writing. As a consequence, Antonio has been unable to renew his passport and has been prevented on several occasions from travelling abroad to attend meetings related to his work as a human rights defender.

Not having identity documents also has a serious impact on freedom of movement within the country. People are afraid of travelling within the Dominican Republic in case they are stopped at checkpoints and arbitrarily arrested and even unlawfully deported to Haiti. Amnesty International has documented several cases of people who had stopped travelling for fear of being arbitrarily arrested and expelled to Haiti.

Since the official resumption of deportations of undocumented migrants in August 2015, Dominican human rights organizations have reported a number of cases of young stateless people of Haitian descent being detained by migration officers.⁹⁸ Even though they were all released after it was verified that they had been born in the Dominican Republic, their detentions nevertheless violated their right to free movement within the country and in some cases amounted to arbitrary detentions.

⁹⁷ Article 12 of the International Covenant on Civil and Political Rights and Article 22 of the American Convention on Human Rights.

⁹⁸ Acento.com.do, “Movimiento Reconoci.Do denuncia discriminación y violación de derechos en deportaciones”, 17 September 2015, <http://acento.com.do/2015/actualidad/8284634-movimiento-reconoci-do-denuncia-discriminacion-y-violacion-de-derechos-en-repatriaciones/>.

RISK OF EXPULSION FROM ONE'S OWN COUNTRY

International law states that nationals should never be expelled from their own country,⁹⁹ nor should they be prevented from entering their own country.¹⁰⁰ The UN Human Rights Committee has interpreted the concept of "own country" as including the country with which a person has developed strong links, such as the country in which they were born or where they have lived for a large part of their lives.¹⁰¹

Deportation of undocumented migrants was officially suspended during implementation of a 18-month-long regularization plan for foreigners with irregular migration status.¹⁰² Nevertheless, sporadic cases of expulsions of people with a right to Dominican nationality continued to be recorded.



On 27 January 2015, migration officials arrested 30 Dominican-born children who were travelling with their Haitian mothers. The authorities ordered their immediate expulsion to Haiti. The authorities did not examine their cases individually and therefore the children's families were not able to challenge the legality of their detention or appeal the decision.

On 19 February 2015, **Wilson Sentimo**, a young Dominican man of Haitian descent, was arbitrarily arrested during a military raid because he did not have a Dominican identity card. Wilson had for years been denied his Dominican identity card and was issued one only in September 2015. At the time of the arrest, when he explained that he was

Dominican, officers told him he was "Haitian" and expelled him to Haiti on the same day with no due process.

The 30 children and their mothers and Wilson Sentimo were able to return to the Dominican Republic following the intervention of local NGOs and international pressure.

The Dominican authorities have since pledged not to expel anybody who was born in the Dominican Republic. However, people whose births were never registered and who could not enrol on the naturalization plan remain at risk of expulsion as they often do not have documents proving that they were born in the country.

⁹⁹ Article 22.5 of the American Convention on Human Rights.

¹⁰⁰ Article 12.4 of ICCPR.

¹⁰¹ Human Rights Committee, General Comment No 27 (CCPR/C/21/Rev.1/Add.9), 2 November 1999, para 20.

¹⁰² In December 2013, the Dominican government set out a National Regularization Plan for Foreigners with Irregular Migration Status aimed at foreigners who had migrated to the Dominican Republic. When this expired, on 17 June 2015, the government announced that 288,846 migrants had applied. The decree establishing the plan had declared a moratorium on deportations of irregular migrants for the duration of the plan.



Demonstrators holding the Dominican flag urge the authorities to restore their Dominican nationality, Santo Domingo, March 2014. The signs read: "I am Dominican like you" and "I am Dominican and I have rights"



Demonstration outside Presidential Palace to mark the first anniversary of the adoption of Law 169-14, Santo Domingo, May 2015.

The sign reads: "Naturalization is not an option for me." Many Dominicans of Haitian descent oppose the naturalization plan set up by Law 169-14. Born and raised in the Dominican Republic, they feel outraged that the plan requires them to declare themselves to be foreigners when they have considered themselves to be Dominicans their whole lives and had previously been entitled to Dominican nationality.

Demonstration outside Presidential Palace to mark the first anniversary of the adoption of Law 169-14, Santo Domingo, May 2015.

The signs read: "The de-nationalisation policy puts our lives on hold" and "We are Dominicans and we have rights".





Batey Prado, El Seibo, March 2014. Living conditions in the bateyes are harsh. Residents often have no access to water, electricity or other essential services.

Dwelling where a Haitian mother and her 10 children live, El Seibo, June 2015. All the children were born in the Dominican Republic and were refused registration at birth. Their mother could not afford to enrol them on the naturalization plan.



Batey in El Seybo province, June 2015.



Civil Registry Office, El Seibo, June 2015. Dominicans of Haitian descent often have to queue for hours to enquire about their requests for identity documents. Their wait at local civil registry offices often ends with officials telling them to go to the Central Electoral Board headquarters in Santo Domingo, which in turn refers them back to the local offices.



Altagracia and her daughter in Monte Plata, June 2015. Altagracia was not allowed to enrol on the naturalization plan because she did not have her mother's identity documents. There is currently no legal recourse for her or her daughter to obtain Dominican nationality and identity documents.

Camelia and Ufenda with their mother, Mao province, June 2015. Camelia and Ufenda were born in the Dominican Republic to Haitian parents, but their births were never registered. They did not know about the naturalization plan and therefore did not enrol on it. Camelia dreamed of becoming a nurse, but could not continue her education beyond primary school because she did not have identity documents. Ufenda is in high school and wants to be a lawyer but fears he will be unable to complete his education because he does not have identity documents.





Elisa Garcia, Dominican-born girl of Haitian descent, holding an Amnesty International publication calling for preventing expulsions of Dominicans of Haitian descent. El Seibo, June 2015. In June 2015, the Dominican government announced it was resuming deportations of irregular migrants. Dominicans of Haitian descent feared that they too are at risk of being deported.



Juan Alberto Antuan Vil, a young Dominican of Haitian descent living in Monte Plata, June 2015. He is holding the identity card which he finally obtained in 2014; he had been refused documentation for seven years.



Mariza Garcia with her daughter, El Seibo, June 2015. Mariza was born in the Dominican Republic. Her mother is Haitian and her father Dominican. The authorities refused to register Mariza's birth and she could not enrol on the naturalization plan. She also cannot register the birth of her daughter, who is effectively stateless.

4. CONCLUSIONS AND RECOMMENDATIONS

“The officer told me to go to Haiti, get an identity card and a passport there and apply for naturalization as Dominican. But I am Dominican!”

Young man born in the Dominican Republic in 1997 and registered in 2013 as a foreigner, Amnesty International interview, June 2015

CONCLUSIONS

The 2013 Constitutional Court judgment (Judgment 168-13) has made statelessness a matter of law for several generations of Dominicans of foreign descent whose access to Dominican nationality had been already restricted by policies and practices adopted since the 1990s.

Law 169-14 was a step in the right direction to mitigate the harsh effects of this judgment, but was ultimately inadequate as a response to the crisis as it did not provide for Dominican nationality to be automatically restored to the two groups of affected people identified (Groups A and B).

The Dominican authorities contend that nobody is stateless in the Dominican Republic and that “thanks to Law 169-14, any allegation that in the Dominican Republic tens of thousands of people have been deprived of their nationality has been disproved”.¹⁰³ However, as this report has shown, several groups of people continue to be stateless in the country. The reasons for this include the inadequacy of the solutions provided for by Law 169-14, shortcomings in its implementation and the failure to provide any solution at all for some groups of people.

IMPLEMENTATION OF LAW 169-14 IN RELATION TO PEOPLE IN GROUP A

■ Implementation of the Law for Dominican-born people who had been registered in the Dominican Civil Registry (Group A) has been slow and lacked transparency. On 26 June 2015, the JCE published a list of some 55,000 people who could obtain identity documents recognizing them as Dominicans. While the Dominican government was quick to state that it considered the cases of all the people listed to be resolved, many of those listed continue to face obstacles in obtaining identity documents and in having their Dominican nationality fully recognized, while others who have been denied identity documents do not appear on the list.

¹⁰³ “The right to nationality in the Dominican Republic”, 156th Period of Ordinary Sessions of the Inter-American Commission of Human Rights, 23 October 2015.

- Although on paper Law 169-14 restores Dominican nationality to people in Group A following a process of "regularization" by the JCE, the lack of identity documents still impedes some of them from getting access to various services and effectively exercising their full rights as Dominican citizens. As long as the Dominican authorities do not grant them nationality papers that can serve as proof of their identity, they remain effectively stateless.

INADEQUACY OF LAW 169-14 FOR PEOPLE IN GROUP B AND SHORCOMINGS IN IMPLEMENTATION

- By obliging people born in the Dominican Republic whose births had never been registered (Group B) to register as foreigners and apply for naturalization, Law 169-14 falls short of the international obligations of the Dominican Republic, as determined by the IACtHR in its decision *Expelled Dominicans and Haitians v Dominican Republic*.
- There were a number of shortcomings in the implementation of Law 169-14 in relation to people in Group B. As a result, only 8,755 people applied for naturalization under Law 169-14. Those who applied only started receiving responses in July 2015, in violation of the procedures set out by Law 169-14 and its implementing regulations. Those who received a positive response were given a residency permit indicating that they were born in the Dominican Republic and have Haitian nationality. However, the Dominican authorities unilaterally assumed that they had Haitian nationality. The Haitian authorities, in contrast, continue to consider all those affected by Judgment 168-13 to be stateless. As Law 169-14 establishes that people can apply for naturalization as Dominicans only two years after receiving a residency permit, all 8,755 people who applied under the law currently remain stateless, unless they have acquired another nationality.
- There is currently no legal recourse for people in Group B who were not able to submit an application under Law 169-14 to have their Dominican nationality restored or to obtain identity documents. The Dominican authorities have not publicly acknowledged the existence of people, estimated to be in their thousands, who could not enrol on the naturalization plan under Law 169-14, most of whom, therefore, remain stateless.

CHILDREN EFFECTIVELY STATELESS

- Even though the Dominican authorities have stated that once parents are recognized as Dominicans the children of people in Group A can be registered as Dominican citizens in the Dominican Civil Registry, in practice there are still many obstacles preventing parents in Group A from registering the births of their children. Children of people in Group A remain stateless until they are registered as Dominicans in the Dominican Civil Registry, unless they have acquired another nationality.
- With no clear guidance from Law 169-14, the vast majority of children of people from Group B who applied for naturalization under Law 169-14 are considered to be stateless until they can be registered as Dominicans in the Dominican Civil Registry, something which can happen only after their parents naturalize as Dominicans. Children of people in Group B who did not apply remain stateless too, unless they have acquired another nationality, as there is currently no legal recourse for them to be registered as Dominicans.
- Children of undocumented foreign nationals born in the Dominican Republic between 18 April 2007 and 26 January 2010 were registered as foreigners and therefore arbitrarily denied their Dominican nationality, while in most cases they have not acquired the Haitian nationality. They also do not have access to the mechanisms set out in Law 169-14 to have their Dominican nationality recognized. The vast majority of them remain therefore stateless.

- Contrary to its human rights obligations, the Dominican Republic has failed to put any measures in place to stop statelessness being passed from parent to child. Children stateless from birth may never have the protection of the state that the right to nationality entitles them to.
- The discriminatory provisions in the 2004 Migration Law and its implementing regulations obliging hospital staff to issue a proof-of-birth certificate of a different colour to newborn children of undocumented foreign mothers are contributing to statelessness being passed from parent to child. These provisions give excessive discretion to hospital staff in deciding who is a foreigner and who is not and result in countless mistakes and even in denials of any certificate at all.

OTHER GROUPS WHOSE SITUATION HAS NOT BEEN ADDRESSED

- Years of discriminatory policies and practices have created a wide variety of complex situations which the law has so far failed to address. For example, Law 169-14 failed to provide a solution for those people who were wrongfully registered as foreigners even though they were born in the Dominican Republic well before the 2004 Migration Law and the establishment of the Registry of Foreigners in 2007.
- Another situation yet to be addressed is that of children of mixed couples. Even though children with at least one Dominican parent have a constitutional right to Dominican nationality and are therefore not stateless in law, in practice, if the mother is an undocumented foreigner, children are denied birth registration and have no means of exercising or proving their Dominican nationality.

THE IMPACT OF CONTINUED STATELESSNESS AND LACK OF IDENTITY DOCUMENTS

- People who are effectively stateless in the Dominican Republic and lack identity documents face discrimination in accessing higher education and completing schooling, as well as accessing formal employment, adequate healthcare, social security and pensions. Their right to freedom of movement is severely limited and they are at risk of expulsion to Haiti. They are vulnerable to violence and exploitation and, in the vast majority of cases, are condemned to lives of poverty and marginalization. As a consequence of gender inequalities, stateless women are particularly at risk of abuse. Because statelessness is often passed from parent to child, statelessness results in a continuing cycle of alienation and marginalization down the generations.

RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS

- By allowing the arbitrary and retroactive deprivation of nationality of possibly tens of thousands of people and failing to take adequate measures to remedy their situation of statelessness, the Dominican Republic has violated its international human rights obligations.
- The Dominican authorities have not fulfilled their obligation to initiate investigations into the arbitrary denial of registration and identity documents or discriminatory practices by public officials, including the JCE and the General Directorate of Passports. Nor have the authorities held to account individuals who have engaged in discriminatory behaviour when dealing with requests for registration and identity documents.

AMNESTY INTERNATIONAL RECOMMENDATIONS

RECOMMENDATIONS TO THE DOMINICAN AUTHORITIES

Acknowledge the existence and the causes of statelessness in the Dominican Republic

- Recognize the impact of Judgment 168-13 in terms of statelessness and acknowledge the scale of the problem of statelessness in the Dominican Republic, as a first step towards the identification and implementation of comprehensive and effective measures for its eradication.
- Carry out a comprehensive census or mapping exercise to identify all those who are stateless and at risk of statelessness, compiling disaggregated data by gender, age, status and location, in cooperation with the UNHCR and national human rights organizations.

Take adequate measures to restore the Dominican nationality of those who were entitled to it under domestic legislation in force between 1929 and 2010

- Issue adequate documentation recognizing the Dominican nationality of all those in Group A and ensure that they promptly receive all the identity documents that they request.
- Ensure the registration of every person entitled to Dominican nationality, including people belonging to Group A, in the Dominican Civil Registry and avoid the creation of separate registries.
- Publish information about the alleged irregularities that led to the request by the JCE that 132 cases be declared invalid at the end of the audit and about the status of the request that cases be declared invalid that were not included on the list of 119 published by the JCE.
- Ensure that people whose birth certificates' validity will be assessed in court have access to a fair process and can challenge the decision, especially if it could entail deprivation of nationality.
- Take the necessary steps to leave without legal effect Articles 6, 8 and 11 of Law 169-14 requiring people in Group B to register as foreigners and go through a lengthy naturalization process, as ordered by the Inter-American Court of Human Rights in its August 2014 decision *Expelled Dominicans and Haitians v the Dominican Republic*.
- In consultation with Dominican human rights organizations, adopt new legislation recognizing the right to Dominican nationality of all those born in the Dominican Republic before 26 January 2010, regardless of the migration status of their parents, in accordance with the legislation in force before the 2010 Constitution, including those who have been registered as foreigners under Law 169-14, and implement such legislation in a manner ensuring that all beneficiaries are promptly registered in the Dominican Civil Registry and that the requested identity documents are issued.
- Establish and make public clear procedures to facilitate the registration of births in the Dominican Civil Registry of all the children of people who are entitled to Dominican nationality, including by amending the 2004 Migration Law and establishing a clear and simple procedure to correct mistakes such as the erroneous attribution of a pink proof-of-birth certificate for foreigners and mistaken registration in the Register of Foreigners.

- Fully cooperate with UNHCR to enable the organization to fulfil its mandate towards statelessness, including by giving due consideration to technical advice on how to adopt a robust methodology for counting the stateless and on adequate measures to eradicate statelessness.

Prevent future arbitrary restrictions to the right to nationality and to identity documents

- Take all appropriate measures to ensure that nobody born in the Dominican Republic and entitled to the Dominican nationality is in future prevented from registering the birth of their children or obtaining or renewing their identity documents on the basis of their parents' ancestry or migration status.
- Open an investigation into individuals who have engaged in discriminatory behaviour in granting registration and identity documents, including the JCE and the General Directorate of Passports, and ensure that disciplinary measures are applied where appropriate.
- Establish adequate oversight mechanisms, with the participation of civil society organizations, over the actions and omissions of bodies in charge of registering births and issuing identity documents, such as the JCE and the General Directorate of Passports, so that arbitrary decisions can be questioned and officials who act in an arbitrary manner held accountable.
- Amend the 2004 Migration Law and its implementing regulations in order to eliminate the requirement to issue a different proof-of-birth certificate to children of undocumented foreign mothers (or those perceived as foreign) and ensure that no child is denied a certificate in hospital because of their mother's lack of identity documents or other reasons.

Ensure access to remedies for people who have been wrongfully refused birth registration or denied identity documents

- Ensure access to effective legal recourse for people who have been wrongfully refused birth registration or denied identity documents and grant access to adequate reparations for those whose human rights have been violated as a result of the denial of birth registration and/or identity documents.

Ratification and implementation of international human rights conventions

- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Create or amend domestic legislation in order to ensure full incorporation into national law of the provisions of those conventions.

Cooperation with civil society organizations and human rights defenders

- Ensure the participation of Dominican civil society organizations in identifying and implementing adequate measures to prevent and eradicate statelessness and discrimination.
- Create a safe and enabling environment in which human rights defenders advocating on behalf of the stateless can safely carry out their work without fear of reprisals, threats and harassment.

RECOMMENDATIONS TO INTERNATIONAL ORGANIZATIONS, FOREIGN GOVERNMENTS AND DONORS

- If they have not already done so, publicly acknowledge the existence and the causes of statelessness in the Dominican Republic.
- Cooperate with the Dominican government to identify and implement adequate measures to eradicate statelessness.
- Support Dominican human rights organizations, including through funding, in effectively advocating with the Dominican authorities for the eradication of statelessness and in monitoring the implementation of any current solution and any future mechanism that is put in place.

RECOMMENDATIONS TO THE REPUBLIC OF HAITI

- Adopt a new nationality law enabling those affected by the prohibition of double nationality in force between 1987 and 2012 to re-acquire Haitian nationality, if they wish to.
- Establish procedures and allocate resources in order to facilitate issuing identity documents to all Haitian citizens, including those living abroad, and the registration of the births of children of Haitian parents born abroad.

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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I WANT TO HELP





'WITHOUT PAPERS, I AM NO ONE' STATELESS PEOPLE IN THE DOMINICAN REPUBLIC

A 2013 Constitutional Court judgment (Judgment 168-13) has made statelessness a matter of law for several generations of Dominicans of foreign descent.

In May 2014, a government-backed law (Law 169-14) was introduced in an effort to mitigate the harsh effects of this judgment. However, this has proved insufficient as a response to the crisis. The law does not provide for Dominican nationality to be automatically restored to the two groups of affected people identified. Moreover, it failed to address a wide variety of complex situations created by years of discriminatory policies and practices.

This report shows that several groups of people, mostly of Haitian descent, living in the country remain stateless. People who are stateless in the Dominican Republic and lack identity documents are denied a range of human rights and prevented from participating fully in society. Contrary to international law, statelessness is often passed from parent to child resulting in a continuing cycle of alienation and marginalization down the generations.

Amnesty International calls on the Dominican authorities to acknowledge the scale of the problem of statelessness and to take all necessary measures to ensure that those affected are able to fully enjoy their human rights, including their right to a nationality and to freedom from discrimination on grounds of origin or their parents' migration status.