

U.N. HUMAN RIGHTS COUNCIL

Submission to the 18th Session of the Universal Periodic Review

Review of the Dominican Republic

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The Center for Justice and International Law presents this submission for the U.N. Human Rights Council's Universal Periodic Review of the Dominican Republic in its 18th session. This submission focuses on the Dominican Republic's non-compliance with judgments from the Inter-American Court of Human Rights.



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Executive Summary

The Center for Justice and International Law (CEJIL) presents this submission in preparation for the Human Rights Council's Universal Periodic Review during its 18th session. This submission focuses on the Dominican Republic's non-compliance with judgments from the Inter-American Court of Human Rights, particularly regarding the Dominican government's continued discrimination against Dominicans of Haitian descent¹ and their right to nationality.

The Council conducted its last Universal Periodic Review of the Dominican Republic in December 2009 and expressed concern about a range of discriminatory laws and practices undermining the right of Dominicans of Haitian descent to nationality as well as their enjoyment of a host of other human rights.² Similar concerns have been expressed by the Inter-American Court of Human Rights and other U.N. Committees.³ Regrettably, the Dominican Republic rejected the Council's recommendations regarding non-discriminatory citizenship practices during the last Universal Periodic Review,⁴ and, rather than comply with recent Inter-American Court decisions and the recommendations from several U.N. Committees, the Dominican Republic has further entrenched discriminatory practices within the legal system and exacerbated problems of discrimination and statelessness.

Similarly, the Dominican Republic has failed to demonstrate timely progress in complying with other important judgments of the Inter-American Court, which also mandate structural reforms.

The Center for Justice and International Law (CEJIL), founded in 1991, protects and promotes human rights in the Americas, including in the Dominican Republic, through the strategic use of the tools offered by international human rights law. CEJIL offers advice and free legal representation to victims of human rights abuses - and to organizations that defend their causes - when justice proves impossible to achieve in their own countries.

Recommendations

We urge the Council to encourage the Dominican Republic to comply with the decisions of regional human rights bodies, including the Inter-American Commission's recommendations and Inter-American Court's judgments, when it conducts its Universal Periodic Review. In particular, we urge the Council to recommend that the Dominican Republic:

Fully implement the judgment in the *Case of the Girls Yean and Bosico*:

- Guarantee non-discriminatory birth registration and personal identification policies that ensure that all individuals born in the Dominican Republic receive the same proof of birth and access to identity documents;
- Address discriminatory nationality and birth registration laws described in this submission, including reviewing and amending the 2010 constitutional provisions regarding nationality and the 2004 General Law on Migration to ensure access to citizenship irrespective of an individual's ethnicity or the national origin of one's parents, repealing Circular 17 and Resolution 12, and ensuring that these provisions are not applied retroactively to strip persons of their nationality;

Fully implement the judgment in the *Case of Nadege Dorzema*:

- Investigate the massacre in the case, and incorporate international standards governing the use of force into national legislation;
- Train State agents on standards for the use of force, the requirements of due process, and the principle of non-discrimination as applied to migrants, women, and children;
- Provide full redress, including measures of compensation, rehabilitation, non-repetition, and satisfaction as ordered in the *Nadege Dorzema* judgment;

Fully implement the judgment in the *Case of Narciso González Medina*:

- Guarantee adequate investigations into forced disappearances, including by enacting reforms to domestic laws and institutions as necessary;
- Fulfill the international obligations to investigate the forced disappearance of Narciso González Medina, establish the truth, and prosecute those responsible, and to undertake a serious search to determine his whereabouts;
- Fully implement other required measures of redress including publication of the judgment, public recognition of responsibility, creation of a commemorative plaque and documentary, and compensation to the victims, family members, and representatives; and
- Otherwise comply with the judgments of the Inter-American Court of Human Rights, including the international obligation to provide timely reports on compliance.

Questions for the State

We further encourage the Council to seek clarification from the government delegation on the following questions:

- What has the Dominican government done to implement the accepted recommendations from the 2009 UPR?
- Did the Dominican government take its obligations from *Yean & Bosico* into account when it rejected the recommendations concerning nationality and discrimination in the last UPR?
- Why are the provisions in the 2010 Dominican Constitution and the 2004 General Law on Migration regarding nationality being applied retroactively to persons born prior to the adoption of these laws, despite the Inter-American Court's holding in *Yean & Bosico*?
- What criteria are used to investigate the validity of identity documents, and what guarantees of due process are in place for decisions to issue copies of existing identity documents to Dominicans of Haitian descent in consideration of *Yean & Bosico*?
- What steps is the State adopting to comply with the Inter-American Court's judgment in *Nadege Dorzema*?
- What steps has the State taken to investigate the forced disappearance of Narciso González Medina and improve the country's laws and institutions to ensure adequate investigations of forced disappearances?

Discrimination against Dominicans of Haitian Descent

A. Constitutional changes and retroactive application of nationality laws have intensified the country's discriminatory practices

1. In the last Universal Periodic Review of the Dominican Republic in 2009, the Council was concerned about discrimination against Dominicans of Haitian descent in access to nationality and birth registration.⁵ Similarly, in its landmark decision in *Dilcia Yean and Violeta Bosico v. Dominican Republic* in 2005, the Inter-American Court of Human Rights also found that the Dominican Republic's nationality and birth registration laws violated the right to nationality, with the potential to increase statelessness,⁶ and expressed concern over the implication of these discriminatory practices for other fundamental human rights.⁷ The Court ordered the State to reform its birth registration policies so as to recognize the right to nationality of all children born in the Dominican Republic and prevent cases of statelessness.⁸

2. Since the Court's judgment in 2005 and the Council's last review of the Dominican Republic in 2009, the situation concerning nationality for Dominicans of Haitian descent has deteriorated further. After openly denouncing the Inter-American Court's decision in *Yean & Bosico*,⁹ the Dominican government has refused to comply with either the Court's ruling or the Council's recommendations to ensure the right to nationality and eliminate discrimination in birth registration policies.¹⁰

3. Instead, the Dominican government has implemented a series of legislative acts and constitutional changes that have intensified discrimination against Dominicans of Haitian descent. Although the Dominican Constitution recognized the *jus solis* principle of nationality until 2010,¹¹ the 2004 General Law on Migration (Law 285-04) barred all children of "illegal" residents from acquiring citizenship.¹² The Supreme Court upheld the law's constitutionality in December 2005 through a reinterpretation of the Constitution,¹³ a position also espoused by the Executive,¹⁴ in defiance of the Inter-American Court's ruling just three months before.

4. The adoption of a revised Constitution in January 2010 gave constitutional status to the 2004 General Law on Migration.¹⁵ As a result, all children of "illegal residents" born in Dominican territory are now prevented from acquiring Dominican nationality, even in cases where the parents have been living in the Dominican Republic for decades, or in cases of Dominican-born parents who were unable to prove their Dominican nationality due to arbitrary denials of personal documentation.

5. Moreover, through the government's retroactive application of nationality restrictions, Dominicans of Haitian descent born before the aforementioned laws have been stripped of their Dominican nationality. In 2007, the Dominican Central Electoral Board (*Junta Central Electoral – JCE*) prohibited officials from issuing duplicate identity documents to people of "irregular" status.¹⁶ Since 2007, many Dominicans of Haitian descent in possession of state-issued birth certificates have also faced serious difficulties in obtaining the mandatory identity document for persons over 18 years, called a *cédula de identidad y electoral*.¹⁷ The JCE has regularly denied these identity documents to Dominicans of Haitian descent by claiming that the applicants' parents were "non-residents" at the time their births were registered and, as such, they never had the right to Dominican nationality.¹⁸ This practice has the effect of depriving multiple generations of Dominicans of their right to nationality without due process, as there is no procedure by which persons whose documents are classified "irregular" are notified.¹⁹

6. The discretion granted to state employees in denying documents has disproportionately affected people of Haitian descent. In some cases, Dominicans of Haitian descent have been explicitly denied identity documents because of their parents' real or imputed Haitian nationality,²⁰ and civil registry officials have also admitted to using skin color, racial features, accents, and "Haitian-sounding names" to determine who might be carrying irregular or suspect documents.²¹ This directly contravenes what the Inter-American Court ordered in *Yean & Bosico*.²²

B. Discriminatory denial of personal documents leads to further human rights violations

7. By further entrenching discriminatory practices within the legal system, the Dominican Republic has caused the concerns of the Inter-American Court and U.N. Committees regarding statelessness to become a sad reality,²³ with an estimated 300,000 Dominicans of Haitian descent at risk of becoming stateless.²⁴ The Inter-American Court

affirms that “[s]tatelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.”²⁵

8. In the Dominican Republic, identity documents (*cédulas de identidad*) are required to vote, register for education, pay into the Dominican social security system, open a bank account, make a sworn statement before the judicial system, get married or divorced, and receive a passport. The discriminatory denial of personal documents therefore has severe implications for the rights to education, work, political participation, freedom of movement, and access to justice. Without a *cédula*, Dominicans of Haitian descent are unable to register the births of their own children, thereby perpetuating the denial of their rights across generations. Nonetheless, the Dominican Supreme Court upheld the practice of retroactively revoking the citizenship of Dominicans of Haitian descent in November 2011. The victim in this case currently has a petition before the Inter-American Commission to halt the retroactive application of migration laws and the resulting violations to a range of rights enshrined in the American Convention.²⁶

9. Without necessary identity documents, Dominicans of Haitian descent are placed in extremely vulnerable situations and subject to further discrimination and human rights abuses, as shown in recent Inter-American Court cases. The Dominican government has carried out massive deportations of Haitians and Dominicans of Haitian descent to Haiti, in which armed State agents violently enter homes without notice or judicial order and deportees have no opportunity to appear before a competent authority to prove their legal status, as is the case of *Benito Tide Méndez* currently before the Inter-American Court.²⁷ After one particularly violent expulsion wherein seven Haitian migrants were killed at the hands of State agents, the Inter-American Court declared the Dominican Republic responsible for violating the rights to life, personal liberty, freedom of movement, and judicial protection in *Nadege Dorzema*.²⁸ Dominican authorities have justified mass deportations on the basis that individuals lacked personal documents to prove their legal status, even though many of these individuals have been deprived of identity documents precisely because of the discriminatory laws and practices the Inter-American Court and U.N. Committees have called on the Dominican Republic to change. At present, the Dominican Republic has made no progress in complying with the judgment in *Nadege Dorzema*.

Forced Disappearances and Impunity

10. The Dominican government has also refused to comply with a recent Inter-American Court case concerning the forced disappearance of Narciso González Medina in 1994, a well-known journalist and university professor who openly criticized President Joaquín Balaguer, successor to Trujillo, and alleged electoral fraud in Balaguer’s 1994 re-election.²⁹ The Inter-American Court required the Dominican Republic to conduct an investigation into the forced disappearance of Narciso González and punish those responsible, in addition to changing domestic laws and institutions to ensure effective investigations into forced disappearances and other measures of reparations.³⁰ Although the Dominican Republic was obligated to submit a compliance report within a year of the decision, the deadline passed on April 2, 2013, without any submission, and there is no evidence the State has taken any steps in furtherance of the judgment. As a result, the family members of Narciso González Medina are prevented from knowing the truth about his disappearance, while the perpetrators continue to enjoy impunity.

The Dominican Republic’s Continued Failure to Meet International Obligations

A. Violations of the Right to Nationality and Non-Discrimination

11. By discriminating against Dominicans of Haitian descent in access to nationality, the Dominican Republic is violating its obligation to respect the right to nationality under Article 15 of the Universal Declaration of Human Rights, and articulated in Article 20 of the American Convention on Human Rights, in relation to Article 1(1) of the Convention. While states have the right to determine nationality criteria, this is subject to a crucial qualification: nationality laws may not discriminate against any particular group.³¹ The Dominican government has not established any objective criteria for deprivation of nationality. Instead, officials often rely on patently discriminatory criteria such as “Haitian-sounding names” or physical characteristics to arbitrarily declare the documents of Dominicans of Haitian descent retroactively invalid. This has created a disproportionate impact on Dominicans of Haitian descent in their deprivation of nationality.

12. In its 2009 concluding observations, the Council expressed concern at the discriminatory impact of the 2004 General Law on Migration on Dominicans of Haitian descent and the retroactive application of the law. Working Group members recommended that the Dominican Republic “[a]dopt measures to ensure that Dominicans of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancelation of birth and identity documents” and that it “[a]pply consistent and non-discriminatory citizenship policies and practices.”³² The Dominican Republic’s current practice of retroactively declaring invalid the identity documents previously issued to Dominicans of Haitian descent clearly contradicts this recommendation. Rather than respond to the Council’s recommendations, and comply with the Inter-American Court’s decision in *Yean & Bosico*, the government has continued its discriminatory nationality policies and entrenched them in the nation’s new Constitution.

B. Violation of the right to truth

13. The Dominican Republic’s failure to investigate and prosecute those responsible constitutes an ongoing violation of the right to truth. An investigation into Narciso’s forced disappearance can serve as a form of reparation for the family members, as “[t]he return of the body of a forcibly disappeared person is extremely important for the family, because it allows them to bury him or her in accordance with their beliefs, and to bring closure to the process of mourning they have been experiencing all these years.”³³

14. The failure to undertake an investigation into Narciso González’s forced disappearance deprives his family members of the right to know the truth and grants the perpetrators immunity for their acts. Moreover, the government has not reformed its domestic institutions to ensure adequate investigations, another requirement from the judgment, and thus there is no guarantee that the Dominican Republic will fulfill its obligations to investigate and prosecute other cases of forced disappearances.

C. Disregard for the Judgments of the Inter-American Court

15. The Dominican Republic ratified the American Convention on Human Rights in 1978 and accepted the jurisdiction of the Inter-American Court of Human Rights in 1999. The State is therefore obligated to promptly comply in full with the decisions of the Inter-American Court under Article 68(1) of the American Convention, which stipulates that Parties to the Convention “undertake to comply with the judgment of the Court in any case to which they are parties.” The obligation to comply corresponds to a basic principle of international responsibility, in which states must carry out their international obligations in good faith (*pacta sunt servanda*) and, as required by the Inter-American Court and Article 27 of the Vienna Convention on the Law of Treaties, a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” The States Parties to the Convention must not only respect the substantive provisions of human rights treaties but also with the procedural rules relating to compliance with Court decisions.

16. The Dominican Republic has failed to fully comply with judgments from the Inter-American Court, in addition to disregarding recommendations consonant with these judgments from various U.N. Committees. In the eight years that have passed since its decision in *Yean & Bosico* in 2005, the Inter-American Court has issued four resolutions calling on the Dominican Republic to fully comply with the decision, yet instead the situation of discrimination and statelessness in the country has deteriorated.³⁴ Similarly, the Dominican Republic has made no progress in complying with the Court’s decisions in *Narciso González* and *Nadege Dorzema*.

Conclusion

17. Since the Council’s last review in 2009, the Dominican Republic has disregarded its obligations to comply with several Inter-American Court judgments. CEJIL encourages the Council to refer to applicable regional judgments when it issues recommendations to the Dominican Republic during the 18th session of the Universal Periodic Review, and to call on the State to accept all recommendations leading to compliance with the international obligations described in these judgments.

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

² U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/13/3 (Jan. 4, 2010), para. 53, where Working Group members expressed concern about “the major barriers Dominicans of Haitian descent faced in establishing their citizenship,” and paras. 54, 58, and 78.

³ For the most recent findings of international human rights monitoring bodies on discrimination in the Dominican Republic, please see: U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Dominican Republic*, U.N. Doc. CCPR/C/DOM/CO/5 (Apr. 19, 2012), para. 22, wherein the Committee expressed concern “at reports that the 2004 General Migration Act has been applied retroactively in a number of cases in which recognition of the Dominican nationality of Dominican adults of Haitian origin has been withdrawn because their parents were ‘in transit’ at the time of their birth, regardless of the duration of their stay in the country” and also regretted “the serious consequences of this situation in terms of the affected persons’ access to education, justice, employment, housing, health services and to all the civil and political rights related to migration status and nationality”; U.N. Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall: addendum: mission to the Dominican Republic*, U.N. Doc. A/HRC/7/19/Add.5, A/HRC/7/23/Add.3 (Mar. 18, 2008); U.N. Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, U.N. Doc. CRC/C/DOM/CO/2 (Feb. 11, 2008), para. 40, where the Committee “encourage[d] the State party to adopt a procedure to acquire nationality which is applied to all children born in the Dominican Republic in a non-discriminatory manner and to make sure that no child becomes stateless”; U.N. Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, U.N. Doc. CERD/C/DOM/CO/12 (May 16, 2008), para. 14, wherein the Committee “strongly recommend[ed] the State party take appropriate measures to guarantee respect for the principle of non-discrimination in children’s access to nationality”; U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/13/3 (Jan. 4, 2010), para. 89, where Working Group members recommended that that the Dominican Republic “[a]dopt measures to ensure that Dominicans of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancelation of birth and identity documents” and that it “[a]pply consistent and non-discriminatory citizenship policies and practices.”

⁴ U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/13/3 (Jan. 4, 2010), para. 89(1), (2), (4), and (5).

⁵ U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/13/3 (Jan. 4, 2010), paras. 53, 54, 58, and 78.

⁶ *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 130, (Sept. 8, 2005). The case was brought by two young girls of Dominican descent who were denied Dominican birth certificates, even though their mothers were born in the Dominican Republic and possessed valid *cédulas* (identity documents). In its judgment, the Inter-American Court found that the Dominican Republic was misapplying the “in transit” constitutional exception to *jus solis* citizenship and thereby depriving children of Haitian descent of their right to Dominican nationality. The Court made clear that migratory status of parents could not be transmitted to children born on national territory and must never constitute justification for depriving a person of the right to nationality (para. 157). The Court recognized that although states enjoy broad discretion in determining who has the right to be a national, its regulations cannot be discriminatory or have discriminatory effects on particular groups of people (para. 141).

⁷ *Yean & Bosico*, para. 137, where the Court stated “The importance of nationality is that, as the political and legal bond that connects a person to a specific State, it allows the individual to acquire and exercise rights and obligations inherent in membership in a political community. As such, nationality is a requirement for the exercise of specific rights.”

⁸ *Yean & Bosico*, operative paragraph 8, requiring the Dominican government to “adopt within its domestic law, within a reasonable time, in accordance with Article 2 of the American Convention, the legislative, administrative, and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth. This procedure should be simple, accessible, and reasonable since, to the contrary, applicants could remain stateless. Also, an effective remedy should exist for cases in which the request is rejected in terms of the American Convention, in accordance with paragraphs 239 to 241 of this judgment.”

⁹ *Atribuyen sentencia a una campaña contra la RD*, Diario Libre, October 13, 2005, available at:

http://www.diariolibre.com/noticias/2005/10/13/i76695_atribuyen-sentencia-una-campana-contra.html; *Senado condena sentencias*, Diario Libre, October 19, 2005, available at: http://www.diariolibre.com/noticias/2005/10/19/i77217_senado-condena-sentencias.html; *Leonel define política para proteger la nacionalidad*, Hoy Digital, January 20, 2006, available at: <http://www.hoy.com.do/el-pais/2006/1/14/189408/>.

¹⁰ As part of the Court’s judgment in *Yean & Bosico* on September 8, 2005, the Dominican Republic was obligated to 1) perform a public act acknowledging international responsibility [operative paragraph 7] and 2) adopt legislative, administrative, and any other

measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth [operative paragraph 8]. Six years after the judgment in *Yean & Bosico*, on October 10, 2011, the Inter-American Court issued its fourth Resolution stating that, despite complying with other measures of redress ordered in the case, the Dominican Republic had yet to fulfill these two remaining obligations. The Court gave the Dominican Republic until January 16, 2011, to send its compliance report. On January 13, 2011, the Court granted the Dominican Republic an extension until March 7, 2012, but the Dominican government again failed to comply. On January 18, 2013, the Court again requested the Dominican government to issue its compliance report and, on May 28, 2013, convened a hearing to monitor compliance. The Dominican government has yet to present its report and continues to take steps contravening the Court's judgment.

¹¹ Article 11 of the previous Dominican Constitution granted nationality to all people born within the Dominican Republic except for (1) children of diplomats or (2) "people in transit." According to Immigration Act No. 95 of April 14, 1939 and Immigration Regulation No. 279 of May 12, 1939, which were the applicable migration regulations until August 2004, foreigners "in transit" were those who entered the Dominican Republic with the principle objectives of traveling to another destination, engaging in business or leisure activities, and diplomats. According to statements made by the Dominican Republic before the passage of the 2004 General Law on Migration, a period of transit was considered 10 days or less.

¹² The full text of the General Law on Migration No. 285-04 (*Ley General de Migración* No. 285-04) was published in the *Gaceta Oficial* on August 27, 2007. It is available (in Spanish) at: <http://www.wdalaw.com/espanol/pdf/ley-285.pdf>.

¹³ The complete text of the holding is available (in Spanish) at:

<http://www.suprema.gov.do/sentscj/sentencia.asp?B1=VR&llave=114110009>.

¹⁴ *Leonel define política para proteger la nacionalidad*, Hoy Digital, January 20, 2006, available at: <http://www.hoy.com.do/el-pais/2006/1/14/189408/>.

¹⁵ Article 18(3) gives constitutional status to the language of the 2004 General Law on Migration and limits the right to Dominican nationality to the children of legal residents. Article 18 of the new Constitution defines Dominican citizens as: (1) The children of Dominican mothers or fathers; (2) Those who enjoyed Dominican nationality prior to the entry into force of this Constitution; (3) Persons born on national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and foreigners who find themselves in transit or reside illegally on Dominican territory. Foreigners shall be considered as being in transit as defined in Dominican laws; (4) Persons born abroad to Dominican mothers or fathers, regardless of having acquired, by virtue of their place of birth, a different nationality than their parents. Having reached the age of 18, they may express their will, to the competent authority, to assume dual nationality or renounce one of them; (5) Whoever marries a Dominican, as long as they opt for their spouse's nationality and meet the requirements established by law; (6) Naturalized persons, in accordance with the conditions and formalities required by law. The full text of the new Constitution is available (in Spanish) at: <http://www.procuraduria.gov.do/Novedades/PGR-535.pdf>.

¹⁶ Under current Dominican law, all holders of civil registry documents have unfettered and automatic right of access to these documents under Law 659 of 1955 on Civil Status Acts, Article 31. However, Circular No. 17 and Resolution 12-2007 ordered all civil registry officials to refrain from delivering, signing, or copying "any identity documents to children of foreign parents who had received birth certificates under irregular circumstances."

¹⁷ Upon reaching 18 years of age, all Dominican nationals must apply for a *cédula de identidad y electoral*. In order to obtain a *cédula*, applicants must first present a certified copy of their birth certificate issued by the JCE. Possession of a valid *cédula* is mandatory under law and persons unable to present one risk fines, imprisonment, and even deportation. For adult Dominicans, *cédulas* are a necessary prerequisite for enjoying a wide variety of civil, political, social, and economic rights.

¹⁸ When *cédula* applications are rejected, it is done orally, rather than in writing; in a public place; and in an informal, often derogatory fashion. Interviews with several Dominicans of Haitian descent whose *cédula* applications have been denied show that most have been instructed to come back only when their parents' migration status is "sorted out" – presumably, when their parents' migration status has been regularized, leaving them in a legal limbo because this requirement is almost impossible to fulfill.

¹⁹ Most affected people only discover the status of their documents when they try to access the local registrar for any procedure related to their identity documents, such as renewing a passport or accessing a copy of their birth certificate.

²⁰ The Open Society Justice Initiative has on file an example of a copy of Circular 17 where the phrase "foreign parents" has been replaced with "Haitian parents."

²¹ In an Open Society Justice Initiative interview with an administrative assistant at a civil registry office in Puerto Plata, Dominican Republic, August 24, 2007, the assistant admitted that she determined who was born to foreign parents "by the physical traits of the person, the manner of talking." For a report on the effects of Resolution 12 on Dominicans of Haitian descent, see Centro Bono, *Vidas Suspendidas*, November 2011, available at: <http://bono.org.do/wp-content/uploads/2011/11/ODH11.pdf>.

²² *Yean & Bosico*, para. 191. "In accordance with the obligation arising from Article 2 of the American Convention, the Court considers that the requirements for obtaining nationality must be clearly and objectively established previously by the competent authority. Likewise, the law should not provide the State officials applying it with broad discretionary powers because this creates opportunities for discriminatory acts."

²³ For concerns about statelessness, see: *Yean & Bosico*, para. 142, wherein the Inter-American Court held that "States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness

deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability”; U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Dominican Republic*, U.N. Doc. CCPR/C/DOM/CO/5 (Apr. 19, 2012), para. 22, wherein the Committee regretted “the serious consequences of this situation in terms of the affected persons’ access to education, justice, employment, housing, health services and to all the civil and political rights related to migration status and nationality”; U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc. A/HRC/13/3 (Jan. 4, 2010), para. 88(11), wherein Working Group members recommended that the Dominican Republic ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons; U.N. Committee on the Rights of the Child, *Concluding Observations: Dominican Republic*, U.N. Doc. CRC/C/DOM/CO/2 (Feb. 11, 2008), para. 40, wherein the Committee “encourage[d] the State party to adopt a procedure to acquire nationality which is applied to all children born in the Dominican Republic in a non-discriminatory manner and to make sure that no child becomes stateless.”

²⁴ *Desnacionalización: los dominicanos que rechaza República Dominicana*, Otramérica, August 5, 2012, available at: <http://otramerica.com/causas/desnacionalizacion-los-dominicanos-que-rechaza-republica-dominicana/2237>.

²⁵ *Yean & Bosico*, para. 142.

²⁶ *Emildo Bueno v. Dominican Republic*, (P 816-10), a petition filed in June 2010 by the Open Society Justice Initiative and CEJIL. Emildo Bueno, born in the Dominican Republic to Haitian parents, had been officially recognized as a Dominican citizen since birth. Although he had previously received a birth certificate, *cédula*, and passport, Mr. Bueno was denied copies of his birth certificate in 2007, which he needed for his application for his permanent residency in the United States. Although the U.S. government granted him permanent residency and he currently resides in the United States, his Dominican passport is due to expire shortly, in which case he will be unable to travel abroad. For more information, please see: <http://www.opensocietyfoundations.org/litigation/bueno-v-dominican-republic>

²⁷ *Benito Tide Méndez et al. v. Dominican Republic*, Case 12.271, Inter-Am. Comm’n H.R., Report No. 68/05, OEA/Ser.L/V/II.124, doc. 5 (2005). In July 2010, the Inter-American Commission on Human Rights submitted the case of *Benito Tide Méndez et al. v. Dominican Republic* to the jurisdiction of the Inter-American Court, a case concerning the arbitrary detention and summary expulsion of both Dominican nationals and long-term Haitian residents.

²⁸ *Nadege Dorzema et al. v. Dominican Republic*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 251, (Oct. 24, 2012). This case involved the excessive use of force by the Dominican military in an expulsion where seven Haitians lost their lives and several others were wounded, with the Court noting “in the context of discrimination against migrants, the use of excessive force in the case revealed the failure to implement reasonable and appropriate measures to the detriment of this group of Haitians” (para. 91). The Court held the Dominican Republic violated the right to life (Article 4), the right to personal integrity (Article 5), and the right to freedom of movement and of residence (Article 22). Additionally, the Court focused on the lack of due process and judicial guarantees during the detention and expulsion of Haitian migrants, thereby violating the right to personal liberty (Article 7) and the right to judicial protection (Article 25).

²⁹ *González Medina and Family v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 240, (Feb. 27, 2012). The Court found the Dominican Republic had violated the right to juridical personality (Article 3), right to life (Article 4.1), right to humane treatment (Article 5.1 and 5.2), and right to personal liberty (Article 7), in relation to Articles 1.1 and 2, of the American Convention on Human Rights, as well as Articles 1, 6, and 8 of the Inter-American Convention Against Torture. After serving as Vice President and President during the oppressive military regime of Rafael Leonidas Trujillo, Joaquín Balaguer served as President again from 1966-1978 after Trujillo’s death in 1961. Balaguer continued many of the repressive practices of his predecessor. Balaguer was re-elected President in 1994 under alleged electoral fraud due to the close result (1%) of the vote.

³⁰ The complete set of obligations in the Inter-American Court’s decision required the Dominican Republic to: (1) investigate the facts and punish those responsible for the forced disappearance [operative paragraph 2], (2) search for the whereabouts of Mr. Narcisco González Medina [operative paragraph 3], (3) provide medical and psychological assistance to family members [operative paragraph 4], (4) publish the sentence in certain required government reports [operative paragraph 5], (5) organize a public act to acknowledge international responsibility [operative paragraph 6], (6) perform certain symbolic acts [operative paragraph 7-8], (7) change domestic laws and institutions to permit adequate investigations of forced disappearances [operative paragraph 9], (8) pay compensatory damages [operative paragraph 10], and (9) submit a report to the Court on compliance within one year of the judgment [operative paragraph 11].

³¹ For arguments limiting the powers of the state to determine nationality requirements, see: *Yean & Bosico*, para. 138, wherein the Inter-American Court held, “It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual’s legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights” (citing *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (ser. A) No. 4, para. 35 (Jan. 19, 1984)); Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol.II) (Oct. 1, 2004), para. 2, where

the Committee said states must “[e]nsure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization.”

³² U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, U.N. Doc A/HRC/13/3 (Jan. 4, 2010), para. 89.

³³ *González Medina*, para. 289.

³⁴ The Court issued resolutions on the Dominican Republic’s compliance with the judgment on: (1) November 28, 2007, (2) May 18, 2009, (3) August 27, 2010, and (4) October 10, 2011.