

Submission from the International Institute on Race, Equality and Human Rights to the Call for Inputs for the Thematic Report on racial and ethnic based discrimination through nationality and citizenship exclusion of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume

I. Introduction

1. The Dominican Republic has a long history of racial discrimination against persons of Haitian descent. For years, Dominicans of Haitian descent were denied birth certificates because of the color of their skin and their perceived Haitian identity. This discrimination was given constitutional approval in 2013, when the Constitutional Tribunal retroactively stripped citizenship of thousands of Dominicans of Haitian descent born in the Dominican Republic, in gross violation of international law. Since then, despite the Dominican government's claims that subsequent legislation rectifies the situation, many Dominicans have been unable to access the identity documents necessary to participate in civil life. Without an identity card, these individuals cannot vote, receive a high school diploma, attend university, buy health insurance, get married, travel internationally, or do many of the activities that require a form of identification. The problem is multiplying, as persons affected by the judgment are unable to register their children or grandchildren. The Dominican Republic has been denounced by regional and international human rights mechanisms for violating the right to nationality and the right to be free from discrimination.

II. Background on the National Situation in the Dominican Republic

2. **Judgment 168-13.** On September 23, 2013, the Dominican Constitutional Tribunal issued Judgment 168-13, a ruling that effectively revoked the citizenship of thousands of persons born in the Dominican Republic to foreign parents. The vast majority of the persons affected by the decision were Dominicans of Haitian descent. The case resulted from a lawsuit brought by a young woman named Juliana Deguis Pierre after authorities confiscated her birth certificate when she tried to apply for an identity and voter card.¹ According to the authorities, she would not be issued an identity card because she had two Haitian last names² and, since she was born to Haitian parents, she had been illegally registered as Dominican at birth.³
3. Under the Dominican Constitution in effect between 1929 and 2010, anyone born in Dominican territory was entitled to full Dominican citizenship rights except those born to

¹ Constitutional Tribunal of the Dominican Republic, Judgment No. 168-13, Sept. 23, 2013, p. 3, available at http://www.refworld.org/cases,DR_CC,526900c14.html.

² *Id.*

³ *Id.* at par. 8.1.

diplomats and persons who were “in transit.”⁴ For most of the time that constitution was in effect, “in transit” was interpreted to mean being in the country for a period less than ten days, meaning that children of foreigners who permanently moved to the Dominican Republic were automatically citizens at birth.⁵ In 2010, the Constitution was amended to specify that “in transit” did not include persons considered foreigners under Dominican law and to explicitly deny citizenship to persons born to parents “residing illegally” in the Dominican Republic.⁶ The amended Constitution also specified that persons who had Dominican citizenship under the previous Constitution would retain that citizenship.⁷

4. Despite the fact that the law in effect at the time of Ms. Deguis Pierre’s birth in 1984 entitled her to citizenship,⁸ the Constitutional Tribunal agreed with the authorities and determined that Ms. Deguis Pierre was a foreign national.⁹ Even more troubling, they ordered the Central Electoral Board to audit their birth records and find cases of others who were “incorrectly” given Dominican birth certificates between 1929 and the date of the decision and register them in a “Book of Foreigners,” taking away their citizenship.¹⁰ This retroactive application of the decision is a gross violation of international law and has left thousands of people without access to the identity documents necessary to participate in civil life.
5. **National Regularization Plan.** Shortly after Judgment 168-13 was issued, the Dominican government issued an immigration reform decree, known as the “Regularization Plan,” which provided a means for undocumented immigrants in the country to gain residency status.¹¹ Under the plan, undocumented immigrants would self-report as foreigners and, after providing a long list of documents and undergoing an approval process, receive a two-year residency card.¹²
6. **Law 169-14.** In response to Judgment 168-13, the Dominican legislature passed a law that purportedly would “fix” the problem, but it fell drastically short. Law 169-14 recognized people affected by the situation in two different positions: people born to foreign parents who had been registered at birth and given a Dominican birth certificate (known as “Group A”),

⁴ Constitution of the Dominican Republic (1999), Art. 11(1).

⁵ See Immigration Act No. 95 of April 14, 1939 and Immigration Regulation No. 279 of May 12, 1939, in effect until August 2004, defining foreigners “in transit” to be those entering the country with the main purpose of traveling to another foreign destination and specifying that ten days is sufficient time to do so.

⁶ Constitution of the Dominican Republic (2010), Art. 18.

⁷ *Id.* at Art. 18(2).

⁸ See Constitution of the Dominican Republic (1966), Art. 11(1), available at <http://www.consultoria.gov.do/Documents/GetDocument?reference=58c65f00-01f9-40bf-a4d7-917fe3e5a9a7>.

⁹ Constitutional Tribunal of the Dominican Republic, Judgment No. 168-13, *supra* note 1, at p. 98.

¹⁰ *Id.* at p. 99.

¹¹ Decree 327-13, Nov. 29, 2013, *available at*

<https://presidencia.gob.do/themes/custom/presidency/docs/gobplan/gobplan-15/Decreto-327-13-Plan-Nacional-de-Regularizacion-de-Extranjeros.pdf>.

¹² *See id.*

and people born to foreign parents who had not been registered at birth¹³ (known as “Group B”).¹⁴

7. Under the law, the Central Electoral Board is directed to “regularize” persons in Group A and register them in the Civil Registry, without requiring the affected persons to take any administrative steps.¹⁵ The law allows those that had identification cards to keep the same ones with the same number, and provides that those who did not have identification cards would be given them by the Central Electoral Board.¹⁶ Although Law 169-14 states members of Group A are entitled to Dominican citizenship, the law is problematic because the basis of this citizenship is not because they were born in the Dominican Republic, but rather because the government illegally registered them initially.¹⁷ This type of different treatment of these individuals perpetuates discrimination against persons of Haitian descent.
8. Unlike persons in Group A, persons in Group B were not granted immediate citizenship. Under Law 169-14, they were required to self-report and be registered in the “Book of Foreigners,” if they could provide a long list of requirements established by the government.¹⁸ Once they were registered in the Book of Foreigners, the law gave them sixty days to register under the National Regularization Plan.¹⁹ After two years, they would be eligible to apply for citizenship under the regular naturalization process.²⁰ Law 169-14 therefore treated persons in Group B as complete foreigners.
9. **Implementation of Law 169-14.** In practice, the implementation of Law 169-14 has not been successful for persons in either Group A or Group B. Nearly four years after Law 169-14 was passed, many people in both groups are unable to access identity documents. In June 2015, the

¹³ Because of the lack of institutional presence in many areas of the country, many Dominicans are not registered at birth. Others attempt to register but are denied registration if they are perceived to be Haitian. See Inter-American Commission of Human Rights, *Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II, Dec. 31, 2015, par. 75, available at <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

¹⁴ See Law 169-14, May 23, 2014, available at

<https://presidencia.gob.do/themes/custom/presidency/docs/gobplan/gobplan-15/Ley-No-169-14.pdf>.

¹⁵ *Id.* at Art. 2.

¹⁶ Law 169-14, *supra* note 14, at Art. 4.

¹⁷ See Law 169-14, *supra* note 14, at “Consideration 8”: “...*el Estado dominicano, a través de sus órganos representativos, está llamado a buscar una solución al problema que enfrentan las personas que, si bien irregularmente inscritas en el Registro Civil por el propio Estado, han actuado a través de sus vidas bajo la premisa de que gozan de la nacionalidad dominicana y en función de la misma han tenido un arraigo indiscutible en nuestra sociedad...*” [“...the Dominican State, through its representative bodies, is called to seek a solution to the problem that faces persons who, although illegally registered in the Civil Registry by the State itself, have acted throughout their lives under the premise that they enjoy Dominican nationality and because of that have an indisputable rootedness in our society...”]

¹⁸ *Id.* at Art. 6.

¹⁹ *Id.* at Art. 7.

²⁰ *Id.* at Art. 8.

Central Electoral Board completed its audit as ordered by the Constitutional Tribunal and published the names of 53,827 people who were “irregularly registered” in the Civil Registry, or persons in Group A who were deprived of their nationality. Although it was not contemplated by Law 169-14, the Central Electoral Board decided to “transcribe” the registry of persons in Group A by first invalidating their identity documents and re-registering them into the “Transcription Book.”²¹ This “transcription” process not only has further marked members of Group A as separate from the rest of the Dominican population, but has severely hindered their ability to obtain identity documents by creating procedural hurdles. For example, many people were transcribed into the new book with a different name than what appears on their original identity documents and this has caused them to be denied identity cards. Furthermore, the JCE did not notify members of Group A that they were canceling their current documents and needed to get new documents.²²

10. The process for Group B has been even more difficult and confusing. Many did not register under Law 169-14 before the deadline to apply, and others tried but were unable to meet the onerous documentation requirements or had their documentation rejected.²³ According to the government, only 8,755 persons registered,²⁴ and over 44,000 were unable to register.²⁵

III. The Inter-American System and the Situation in the Dominican Republic

11. The human rights bodies of the Inter-American System (the Inter-American Commission and the Inter-American Court of Human Rights) have been monitoring the situation of the rights to nationality, legal personality, equality and nondiscrimination in the Dominican Republic for more than two decades. During that period, several cases have been brought before the Inter-American Court of Human Rights (IACtHR, or “the Court”) and others are still pending before the Inter-American Commission of Human Rights (IACHR, or “the Commission”). As of February 2018, two cases specifically dealing with the nationality rights of Dominicans of Haitian descent²⁶ have been ruled by the Court, and others are still under review by the

²¹ See Human Rights Watch, *We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic*, July 1, 2015, available at <https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic>,

²² Robert F. Kennedy Human Rights, *Dreams Deferred: The Struggle of Dominicans of Haitian Descent to Get Their Nationality Back*, May 2017, p. 32, available at <http://rfkhumanrights.org/news/news/dreams-deferred/>.

²³ Human Rights Watch, *We Are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic*, *supra* note 21.

²⁴ Llenis Jiménez, *Libro de Extranjería registró 8,755 que nacieron en el país*, Feb. 3, 2015, Hoy.com, available at <http://hoy.com.do/libro-de-extranjeria-registro-8755-que-nacieron-en-el-pais/>.

²⁵ Human Rights Watch, *We Are Dominican*, *supra* note 21.

²⁶ Inter-American Court of Human Rights (IACtHR) Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf; IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2006. Series C No. 156, available at

Commission. Besides the cases, there are two provisional measures that were requested to the Court²⁷ and several press releases issued by the Commission.²⁸

12. ***Case of the Yean and Bosico Children v. the Dominican Republic.*** The first case decided by the Court regarding the nationality rights of Dominicans of Haitian descent was the *Case of the Yean and Bosico Children v. the Dominican Republic*, decided in 2005. In this case, the petitioners were two young girls of Haitian descent who were born in the Dominican Republic and denied birth certificates and, because of that, had difficulty accessing public schools.²⁹
13. The Court unanimously found that by denying birth certificates to the petitioners because of their perceived Haitian identity, the Dominican Republic violated their rights under the American Convention to nationality and equal protection, as well as their right to a name and juridical personality.³⁰ While the State argued that the petitioners were children of persons “in transit” under the Dominican Constitution and therefore were not entitled to citizenship, the Court found that “to consider a person as a transient or in transit irrespective of the classification used, the State must respect a reasonable time frame and be coherent with the fact that an alien who develops ties in a State cannot be compared to a transient or to a person in transit.”³¹ Therefore, because the parents of the petitioners had made their home in the Dominican Republic, they could not be considered “in transit.”
14. According to the Court, nationality is a legal expression of the existence of a connection between the individual and the State.³² Furthermore, the Court reaffirmed that the American Convention recognizes two aspects of the right to nationality. First, the right to nationality gives the individual legal protection for a series of relationships by establishing the individual’s

http://www.corteidh.or.cr/docs/casos/articulos/seriec_156_ing.pdf; IACtHR., IACtHR, Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_282_ing.pdf,

²⁷ IACtHR, Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic. Provisional Measures. Order of the Inter-American Court of Human Rights, 2000-2015, *available at* http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_medidas_provisionales.cfm?lang=en; IACtHR., Case of Nadege Dorzema et al. v. Dominican Republic. Rejection to the Request of provisional measures. Order of the Inter-American Court of Human Rights of February 23, 2016, *available at* http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_medidas_provisionales.cfm?lang=en.

²⁸ IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic, Press Release, October 8, 2013, *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/073.asp; IACHR Condemns Death of Haitian Immigrant at Hands of State Agents in the Dominican Republic, Press Release, June 12, 2013, *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/042.asp; IACHR Wraps Up Visit to the Dominican Republic, Press Release, December 6, 2013, *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/097.asp.

²⁹ Inter-American Court of Human Rights (IACtHR) Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130.

³⁰ *Id.* at par. 260.

³¹ *Id.* at par. 157.

³² *Id.* at par. 136.

connection to a specific State.³³ Second, the right to nationality includes protection against arbitrary deprivation of nationality.³⁴

15. Significantly, the Court emphasized for the first time that although the decision of who is a national of a state continues to be within the state's discretion, this discretion is "limited, on the one hand, by [the State's] obligation to provide individuals with the equal and effective protection of the law, and, on the other hand, by their obligation to prevent, avoid and reduce statelessness."³⁵ In this regard, the immigration status of a parent cannot be transmitted to their child.³⁶ Additionally, when a person born within a State's territory does not have access to nationality of a different state, the state of birth is required to recognize them as a national.³⁷
16. The Court also found that the obligation to respect and ensure the right to equal protection and to be free from discrimination applies irrespective of a person's immigration status. According to the Court, States have the obligation to ensure these protections "to its citizens and to any foreigner who is on[sic] its territory, without any discrimination based on regular or irregular residence, nationality, race, gender or any other cause."³⁸
17. ***Case of Expelled Dominicans and Haitians v. Dominican Republic.*** In 2000, the Dominican Republic arbitrarily detained and then expelled hundreds of people to Haiti, with no due process and without following the expulsion procedure set out in domestic law.³⁹ Included in the expulsions were both Dominicans and foreigners. Those who had documents proving their legal presence in the country were not given time to produce them. Others did not have documents because "a series of obstacles prevented Haitian immigrants from registering their children born in Dominican territory."⁴⁰ In 2014, the Court heard the case and issued a judgment in *Case of Expelled Dominicans and Haitians v. Dominican Republic*. The Court found that the State's failure to afford due process to the petitioners and allow them to identify themselves before expelling them from the country violated their right to juridical personality, a name, a nationality, and an identity under the American Convention.⁴¹
18. Although the facts of the case occurred years before Judgment 168-13 was issued and Law 169-14 was passed, the Court found it "necessary to rule on" them as supervening facts that

³³ *Id.* at par. 139.

³⁴ *Id.*

³⁵ *Id.* at par. 140.

³⁶ *Id.* at par. 156.

³⁷ *Id.*

³⁸ *Id.* at par. 155.

³⁹ IACtHR, *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, available at http://corteidh.or.cr/docs/casos/articulos/seriec_282_ing.pdf.

⁴⁰ *Id.* at par. 1.

⁴¹ *Id.* at par. 273-276.

affected the right to nationality of many of the petitioners.⁴² The Court found that both Judgment 168-13 and Law 169-14 violated the right to juridical personality, the right to a name, the right to nationality, and the right to equal protection under the law under the American Convention.⁴³ According to the Court, “the introduction of the standard of the irregular permanence of the parents as an exception to the acquisition of nationality by *ius solis* was discriminatory in the Dominican Republic, when it was applied in a context that was...discriminatory towards Dominicans of Haitian origin.”⁴⁴

19. Similarly, the Court found that “Law No. 169-14, in the same way as [Judgment 168-13] on which it is based, is founded on considering that those born in Dominican territory, who are the children of aliens in an irregular situation, are aliens. In practice, this understanding, applied to persons who were born before the 2010 constitutional reform, entails a retroactive deprivation of nationality...”⁴⁵ Law 169-14 was also discriminatory because even though it could result in the affected persons “acquiring’ Dominican nationality, this would be the result of treating them as aliens, which is contrary to the full respect for the right to nationality which they should have had access [to] since birth.”⁴⁶
20. In issuing its decision, the Court called attention to the structural discrimination against Dominicans of Haitian descent. Significantly, it also ordered the Dominican Republic to take measures to prevent Judgment 168-13 and certain provisions of Law 169-14 from continuing to have legal effects.⁴⁷
- 21. IACHR Report on the Situation of Human Rights in the Dominican Republic.** In addition to the Court’s case law, the IACHR examined the situation regarding the rights to nationality, legal personality, equality and nondiscrimination, as well as other related human rights from the situation created by Judgment 168-13 during an in loco visit.⁴⁸ Following the visit, the Commission published a report on “The Situation of Human Rights in the Dominican Republic”.
22. In this report, the Commission analyzed the grave situation of persons born on Dominican soil of Haitian descent or persons perceived as such in the Dominican Republic, especially in light of Judgment 168-13. In the Commission’s view, the judgment was a critical turning point in the arbitrary denationalization of Dominicans of Haitian descent that illustrates the

⁴² *Id.* at par. 308 – 310, 319.

⁴³ *Id.* at par. 325.

⁴⁴ *Id.* at par. 318.

⁴⁵ *Id.* at par. 323.

⁴⁶ *Id.* at par. 324.

⁴⁷ *Id.* at par. 512.

⁴⁸ IACHR Wraps Up Visit to the Dominican Republic, Press Release, December 6, 2013, *available at* http://www.oas.org/en/iachr/media_center/preleases/2013/097.asp.

considerable racial discrimination in the Dominican Republic.⁴⁹ The Commission also noted the detrimental effects that this situation has had in the form of violations of the other rights of persons of Haitian descent.⁵⁰

23. Furthermore, the Commission noted that the denationalization of Dominicans of Haitian descent occurred in the context of a long history of discrimination against this population.⁵¹ This discrimination manifests itself in a number of ways, including policies, laws and practices aimed at denying them their right to Dominican nationality on the basis of such criteria as skin color, their parents' nationality or descent, surname, command of language, and other inappropriate criteria.⁵² The report also noted that Haitian migrants are victims of racial profiling by immigration officials.⁵³
24. The Commission found that many provisions of the laws now in force as well as the practices of Dominican authorities do not comply with the Dominican Republic's obligations as spelled out in the American Convention and other Inter-American and international instruments.⁵⁴
25. Disturbingly, the Commission found that since its 1991 visit to the Dominican Republic the violations of the right to nationality that the Commission observed not only continue to persist, they have been aggravated by Judgement 168-13.⁵⁵
26. **Inclusion of the Dominican Republic in Chapter IV(B) of the 2016 Annual Report of the Commission.** The Commission publishes an annual report which includes a special analysis of OAS member states "whose human rights practices merited special attention" by the Commission.⁵⁶ To be included in this special analysis, located in Chapter IV(B), there must be "a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter."⁵⁷ In 2016, the Commission decided to include an analysis of the Dominican Republic in Chapter IV(B) of its annual report because of the continued violation of the right to nationality of Dominicans of Haitian descent and "the continued structural problems in relation to discrimination against people of actual or perceived Haitian descent born on Dominican soil, coupled with the lack of response from the

⁴⁹ IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Dec. 31, 2015, available at <http://www.oas.org/en/iachr/reports/pdfs/dominicanrepublic-2015.pdf>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at par. 5-6.

⁵⁶ IACHR, *Annual Report 2016*, March 15, 2017, Chapter IV, par. 3, available at <http://www.oas.org/en/iachr/docs/annual/2016/TOC.asp>.

⁵⁷ *Id.* at Chapter IV, par. 5.

State” to the various requests of the Commission for reports on how the state had implemented Commission recommendations.⁵⁸

27. In the report, the Commission highlighted how the Dominican Republic has failed to respond to recommendations of both the Commission and the Court regarding the right to nationality of and discrimination against Dominicans of Haitian descent.⁵⁹ The Commission expressed deep concern for the “serious challenges [that] persist with regard to the effective enjoyment of the rights to nationality and legal personality by persons of Haitian descent born in the Dominican Republic.”⁶⁰

IV. Statements by UN Bodies

28. **Committee overseeing the Convention on the Elimination of All Forms of Racial Discrimination.** In its Concluding Observations on the Dominican Republic in 2012, a year before Judgment 168-13, the Committee overseeing the Convention on the Elimination of All Forms of Racial Discrimination (CERD Committee) expressed concern over the Dominican Republic’s refusal to issue birth certificates and other identity documents to Dominicans of Haitian Descent, as well as the confiscation of such documents.⁶¹ The Committee noted that these denials of identity documents and birth certificates “lead to a situation of statelessness.”⁶² Additionally, the Committee regretted that the “constitutional framework on migration... does not fully meet international standards with regard to nationality” and that new migration legislation was “being applied retroactively, to the detriment of Dominicans of Haitian origin and Haitian migrants...”⁶³
29. **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.** The former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, as well as the Independent Expert on Minority Issues, Gay McDougall, visited the Dominican Republic in 2007 and found “there is a profound and entrenched problem of racism and discrimination in Dominican society, generally affecting blacks and particularly such groups as black

⁵⁸ *Id.* at Chapter IV.B., pars. 1-5.

⁵⁹ *Id.* at Chapter IV.B., pars. 119-125.

⁶⁰ *Id.* at Chapter IV.B., par. 134.

⁶¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February-1 March 2012)*, April 19, 2013, CERD/COM/CO/13-14, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fCO%2fDOM%2fCO%2f13-14&Lang=en.

⁶² *Id.* at para. 19.

⁶³ *Id.* at para. 20.

Dominicans, Dominicans of Haitian descent and Haitians.”⁶⁴ The Special Rapporteur also noted that many Dominicans are denied identity documents because of their “colour or Haitian looks or name” and without those documents, are vulnerable to deportation.⁶⁵ Together, the Special Rapporteur and the Independent Expert recommended that “the Government of the Dominican Republic should recognize 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 nationality or status of the parents...The requirements to prove birth on Dominican territory should be reasonable and not represent an obstacle for acceding to the right of nationality.”⁶⁶

30. **United Nations High Commissioner for Refugees.** Shortly after Judgment 168-13 was issued, the United Nations High Commissioner for Refugees (UNHCR) called on the Dominican Republic to restore the nationality of the persons affected by the ruling, stating that the ruling “deprives tens of thousands of Dominicans of Haitian descent of their nationality, rendering them stateless.”⁶⁷ UNHCR has a strong presence in the Dominican Republic and has been instrumental in assisting many individuals in recovering their identity documents. In 2015, UNHCR’s spokesperson called on the DR to “take necessary action to prevent any expulsions of stateless individuals because of the human rights implications and to avoid creating a new refugee situation.”⁶⁸
31. **United Nations Children’s Fund.** The United Nations Children’s Fund also criticized Judgment 168-13 after it was issued and urged the Dominican government “to adopt, with the support of the United Nations system, a procedure to protect every child’s right to nationality, in accordance with the country’s international human rights obligations.”⁶⁹
32. **Universal Periodic Review.** During the 2009 Universal Periodic Review of the Dominican Republic, several countries recommended that the Dominican Republic consider changing its

⁶⁴ UN 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*, March 18, 2008, A/HRC/7?19/Add. 5, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/117/66/PDF/G0811766.pdf?OpenElement>.

⁶⁵ *Id.* at para. 55-56.

⁶⁶ *Id.* at para. 125.

⁶⁷ UNHCR Press Release, *UNHCR urges Dominican Republic to restore nationality*, Dec. 5, 2013, available at <http://www.unhcr.org/en-us/news/press/2013/12/52a0a59b9/unhcr-urges-dominican-republic-restore-nationality.html?query=Dominican%20republic>.

⁶⁸ UNHCR Briefing Notes, *UNHCR urges Dominican Republic to refrain from deportations of stateless individuals*, June 19, 2015, available at <http://www.unhcr.org/afr/news/briefing/2015/6/558417759/unhcr-urges-dominican-republic-refrain-deportations-stateless-individuals.html>.

⁶⁹ UNICEF, *Statement attributable to UNICEF on the Constitutional Court decision on Dominican-born persons of Haitian descent*, Oct. 9, 2013, available at https://www.unicef.org/media/media_70619.html.

discriminatory nationality policies.⁷⁰ These recommendations were echoed in the 2014 Universal Periodic Review, with many countries calling on the Dominican Republic to reconsider Judgment 168-13.⁷¹ In both cycles, the Dominican Republic rejected the recommendations.

V. Conclusion and Recommendations

33. Despite repeated condemnations by both regional and international human rights mechanisms, the Dominican Republic continues to violate the rights of Dominicans of Haitian descent by enforcing discriminatory migration policies and refusing to recognize the right to nationality of these individuals. This is in gross violation of the Dominican Republic's international obligations and violates the rights of thousands of individuals. The international community must continue to apply pressure on the Dominican Republic until it fully respects the rights of all Dominicans of Haitian descent.
34. In light of the difficult situation facing Dominicans of Haitian descent, we recommend the following to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance to contemplate the following recommendations in the upcoming report:

A. On the Dominican Republic:

- a. Request an invitation from the Dominican State for a fact-finding visit in order to meet civil society organizations and Dominicans of Haitian Descent and assess the situation on the ground;
- b. Urge the Dominican Republic to respect its obligations under international and regional human rights treaties and immediately implement procedures to restore full citizenship rights and return identity documents to those affected by Judgment 168-13;
- c. Denounce the persistent racial discrimination in the Dominican Republic against Dominicans because of their actual or perceived Haitian ancestry, including the ingrained institutional discrimination.

⁷⁰ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, Jan. 4, 2010, A/HRC/13/3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/100/63/PDF/G1010063.pdf?OpenElement>.

⁷¹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Dominican Republic*, Jan. 4, 2010, A/HRC/13/3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/100/63/PDF/G1010063.pdf?OpenElement>.

- d. Include detailed information about the discrimination against Dominicans of Haitian descent and violations of their right to nationality in the thematic report on racial and ethnic based discrimination through nationality and citizenship exclusion.

B. Generally:

- a. Recommend that States immediately annul any legal frameworks and/or public policies that impede access to the right of nationality and/or legal residence to persons based on race, national origin, migration situation and ethnicity, including any policies that prevent every child born within the State's jurisdiction from receiving proper birth documentation and registration;
- b. Call on States to adopt and implement strong legal frameworks that create protections against statelessness, including de facto statelessness;
- c. Recommend that States review and reinforce their internal procedures to guarantee that every child born within its jurisdiction is given the proper birth documentation and registration.