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## State of Uncertainty: Citizenship, Statelessness and Discrimination in the Dominican Republic

Stacie Kosinski

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# STATE OF UNCERTAINTY: CITIZENSHIP, STATELESSNESS, AND DISCRIMINATION IN THE DOMINICAN REPUBLIC

STACIE KOSINSKI\*

**Abstract:** The phenomenon of statelessness is a grave and growing problem. Millions of stateless individuals are among the least visible but most vulnerable populations in the world. They are not recognized as citizens by any government and thus are forced to function at the edges of society. Without citizenship, people often have no effective legal protection, no ability to vote, and limited access to education, employment, health care, marriage and birth registration. This Note examines the root causes and overall impact of statelessness on a global scale. It also takes a closer look at the history and impact of the systematic, discriminatory denial of citizenship for Dominicans of Haitian descent in the Dominican Republic in light of the 2005 Inter-American Court of Human Rights landmark decision against the Dominican Republic affirming nationality as a human right.

## INTRODUCTION

Approximately fifteen million people throughout the world are stateless—living “in the shadows at the edge of society.”<sup>1</sup> The 1948 Universal Declaration of Human Rights (UDHR) asserts that all people have a right to citizenship,<sup>2</sup> yet millions have never acquired citizenship or have lost their citizenship and have no claim to citizenship of another state.<sup>3</sup> Staggering numbers of stateless people live and die “unprotected and unrecognized.”<sup>4</sup> Furthermore, Statelessness has a cripp-

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\* Stacie Kosinski is a Note Editor for the *Boston College International & Comparative Law Review*.

<sup>1</sup> Philippe Leclerc & Rupert Colville, *Millions Seek to Escape the Grim World of the Stateless*, U.N.H.C.R. REFUGEES MAGAZINE, Sept. 27, 2007, available at <http://unhcr.org/cgi-bin/texis/vtx/print?tbl=PUBL&id=46dbc0042>; Interview with Phillippe Leclerc, Chair, U.N.H.C.R. Statelessness Unit, Reuters AlertNet (May 18, 2007), available at <http://www.alertnet.org/thenews/newsdesk/UNHCR/14bbdcab1076d21f508b51057342262f.htm>.

<sup>2</sup> Universal Declaration of Human Rights art. 15, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter UDHR].

<sup>3</sup> See generally Leclerc & Colville, *supra* note 1.

<sup>4</sup> Maureen Lynch, *U.S. Congress Holds Briefing on Stateless Children*, REFUGEES INT'L, Feb. 16, 2007, <http://www.refintl.org/content/article/9853/?mission=9619?output=printer>.

pling impact on an individual's ability to function within a particular country or as a citizen of the world.<sup>5</sup> In a speech before the U.S. Congress in February 2007, Thomas Albrecht, a Deputy Representative for the United Nations High Commissioner for Refugees (UNHCR), succinctly articulated the overwhelming burden of a stateless existence on the individual:

No nationality means identity documents conferring legal personality and the rights that go with this—access to health care, education, property rights, freedom to leave and return to your country—are simply not available. In some instances, individuals who are stateless and are outside their country of origin or country of former residence can be detained for long periods if those countries refuse to grant them re-entry to their territories. Births and deaths may not be registered. In many ways these people simply do not exist.<sup>6</sup>

Part I of this Note will examine the root causes and overall impact of statelessness, as well as the history and impact of the systematic, discriminatory denial of citizenship for Dominicans of Haitian descent in the Dominican Republic. Part II will focus on the 2005 Inter-American Court of Human Rights (IACHR) landmark decision against the Dominican Republic affirming nationality as a human right. Part III will then analyze the reaction to the IACHR decision on the part of the Dominican Republic and the international community as a whole.

## I. BACKGROUND

### A. *Statelessness and Nationality*

The problem of statelessness is not a geographically specific phenomenon; rather, stateless people can be found across the planet as well as across socio-economic boundaries.<sup>7</sup> In international terms, a stateless individual is “any person who is not considered as a national by any state through its nationality legislation or constitution.”<sup>8</sup> The root causes of statelessness are complex and multifaceted—including state

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<sup>5</sup> *See id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See generally* Leclerc & Colville, *supra* note 1; Interview with Phillippe Leclerc, *supra* note 1.

<sup>8</sup> Interview with Phillippe Leclerc, *supra* note 1.

succession, decolonization, conflicting laws between states, domestic changes to nationality laws, and discrimination.<sup>9</sup>

Statelessness impairs the ability of an individual to function as a member of society—domestically and internationally—and its impact is felt psychologically, socio-economically, and socio-culturally.<sup>10</sup> While specific circumstances vary between countries, all stateless people are ultimately faced with the overwhelming challenge of existing without an acknowledged identity.<sup>11</sup> As one would expect, “[v]alid identity documents are crucial to accessing a wide variety of rights.”<sup>12</sup> For adults, statelessness creates significant barriers to basic freedoms such as marriage, land ownership, employment, signing of contracts, and voting.<sup>13</sup>

The overall impact of statelessness on children is particularly devastating.<sup>14</sup> For children, a lack of identity often results in the denial of access to education, health care, and the protections and constitutional rights granted by the State.<sup>15</sup> “Through no fault of their own, stateless children inherit a trying reality and an uncertain future.”<sup>16</sup> The U.N. Convention on the Rights of the Child (CRC) sets forth the international standard for the birth registration of children.<sup>17</sup> Article 7 of the Convention provides that “[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”<sup>18</sup> Contrary to standard principles of international law, stateless children and adults alike are denied internationally recognized human rights and protections due to their lack of citizenship.<sup>19</sup> They often “cannot travel freely or access justice when necessary.”<sup>20</sup> Additionally, lack of documentation and proof of identity

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<sup>9</sup> *Id.*

<sup>10</sup> See generally Leclerc & Colville, *supra* note 1.

<sup>11</sup> See Interview with Phillippe Leclerc, *supra* note 1.

<sup>12</sup> Press Release, United Nations, U.N. Experts on Racism and Minority Issues Call for Steps to Combat Reality of Racial Discrimination in the Dominican Republic (Oct. 30, 2007) (on file with author).

<sup>13</sup> Interview with Phillippe Leclerc, *supra* note 1.

<sup>14</sup> See Lynch, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (quoting U.S. Rep. Sheila Jackson Lee, Chair of the Congressional Children’s Caucus, Brief to Congress on the Problem of Statelessness).

<sup>17</sup> Convention on the Rights of the Child art.7, Nov. 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49), U.N. Doc. A/44/49 [hereinafter CRC].

<sup>18</sup> *Id.*

<sup>19</sup> Lynch, *supra* note 4.

<sup>20</sup> *Id.*

leaves individuals in immigration limbo—vulnerable to expulsion from their home country.<sup>21</sup>

United Nations agencies—such as the U.N. High Commission on Refugees (UNHCR), the U.N. Children’s Fund (UNICEF), and the U.N. Population Fund (UNFPA)—together with international human rights agencies and other non-governmental agencies work to identify stateless populations, provide guidance and support for timely birth registrations, and combat the “arbitrary deprivation of nationality.”<sup>22</sup> Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) sets forth a standard for the elimination of all racially discriminatory government policies.<sup>23</sup> This Convention requires states to condemn all forms of racial discrimination, whether based on race, color, descent, or national or ethnic origin, and to pursue a policy of eliminating racial discrimination.<sup>24</sup> Countries must guarantee all people’s right to equality before the law, and to various political, civil, economic, social and cultural rights.<sup>25</sup>

While complex issues of parentage, race, ethnicity, place of birth, and politics all play a role in determining an individual’s citizenship and nationality, one of the main causes of statelessness is conflict between the two principles upon which nationality is based at birth: *jus soli* and *jus sanguinis*.<sup>26</sup> *Jus soli*, literally translated as “right of soil,” was historically a tenant of the common law in England.<sup>27</sup> The focus of *jus soli* is on birthplace, the fact of being born in a territory over which a state maintains, has maintained, or wishes to extend its sovereignty.<sup>28</sup> *Jus sanguinis*, literally translated as “right of blood,” historically was a rule of civil law in continental European nations.<sup>29</sup> In *jus sanguinis* countries, citizenship is based on bloodline and is usually determined by the nationality of one or both parents or other more distant ances-

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<sup>21</sup> U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 2008 REVIEW OF THE DOMINICAN REPUBLIC ¶ 10 (2008) [hereinafter OHCHR REPORT].

<sup>22</sup> Interview with Phillippe Leclerc, *supra* note 1.

<sup>23</sup> See generally International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (1969) [hereinafter ICERD].

<sup>24</sup> See *id.* arts. 1 & 2.

<sup>25</sup> *Id.*

<sup>26</sup> See Patrick Weil, *Access to Citizenship: A Comparison of Twenty-Five Nationality Laws*, in CITIZENSHIP TODAY 17, 17 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

<sup>27</sup> MOHSEN AGHAHOSSEINI, CLAIMS OF DUAL NATIONALS AND THE DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW 16 n.6 (2007).

<sup>28</sup> Weil, *supra* note 26, at 17.

<sup>29</sup> AGHAHOSSEINI, *supra* note 27, at 16.

tors.<sup>30</sup> Acquisition of nationality is generally based on the operation of one of these rules.<sup>31</sup> Conflict and confusion arise because there is no single principle that nations appear willing to accept as a test of their own nationality laws, with some ascribing to the tenants of *jus sanguinis*, some looking to *jus soli* principles, and others choosing a combination of both.<sup>32</sup>

The UDHR provides that all people have a right to a nationality, however, it does not provide specific guidance with respect to which state should grant its nationality nor to what circumstances should affect this determination.<sup>33</sup> In an effort to fill this void, international treaties such as the CRC have created a framework of obligations and procedures for states to follow to prevent statelessness and arbitrary denial or deprivation of nationality.<sup>34</sup> Specifically, the CRC mandates that states should systematically register children at birth and provide them with a nationality.<sup>35</sup>

Countries within the Americas have also taken special steps toward the recognition, monitoring, and adjudication of regional human rights violations.<sup>36</sup> The American Convention on Human Rights (also known as the Pact of San José) was adopted by the twenty-four nations of the Americas in a meeting in San José, Costa Rica, in 1969 and came into force on July 18, 1978.<sup>37</sup> One of the main purposes of the Convention is “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man.”<sup>38</sup> The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are responsible for overseeing compliance with the Convention.<sup>39</sup> The stated purpose of the Inter-American Court of Hu-

<sup>30</sup> Weil, *supra* note 26, at 17.

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

<sup>33</sup> *See generally* UDHR, *supra* note 3 (notably lacking any reference to standards for determining an individual state’s responsibility for the granting of citizenship).

<sup>34</sup> Leclerc & Colville, *supra* note 1; *see also* CRC, *supra* note 16, arts. 3–40.

<sup>35</sup> CRC, *supra* note 16, art. 7.

<sup>36</sup> *See generally* American Convention on Human Rights, July 18, 1978, O.A.S. T.S., No. 36.

<sup>37</sup> *Id.*; *see also* OAS Department of Int’l Law, Multilateral Treaties, <http://www.oas.org/juridico/english/Sigs/b-32.html> (last visited Apr. 2, 2008).

<sup>38</sup> American Convention on Human Rights, *supra* note 36, pmb1.

<sup>39</sup> Welcome to the Inter-American Court of Human Rights, <http://www.corteidh.or.cr/index.cfm?CFID=192181&CFTOKEN=11993385> (last visited Apr. 2, 2008). The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are organs of the Organization of American States. *Id.*

man Rights is to act as an autonomous judicial institution whose primary function is the application and interpretation of the American Convention on Human Rights.<sup>40</sup> Questions and cases involving nationality, citizenship, and statelessness in the Americas are brought before these organs.<sup>41</sup>

### B. *Haitians and Dominicans of Haitian Descent in the Dominican Republic*

Unlike in Asia and the Middle East, where there are large concentrations of stateless people, there generally is not a statelessness problem in the Americas due to widespread adherence to the rule of *jus soli*.<sup>42</sup> The one major exception to this trend in the Americas is the problematic situation of ethnic Haitians in the Dominican Republic, where historical animus, discriminatory government policies and legislation and anti-Haitian public sentiment act as barriers to systematic birth registration for people who have in many cases resided in the country for generations.<sup>43</sup> These problems persist despite the fact that the Dominican Republic is a signatory to the 1961 Convention on the Reduction of Statelessness, which also sets forth universal requirements for access to citizenship and nationality.<sup>44</sup>

A large number of the hundreds of thousands of stateless people in the Dominican Republic are children.<sup>45</sup> While the exact number of stateless children of Haitian descent living in the Dominican Republic is unknown, an estimated two to three million individuals—between twenty to twenty-five percent of people residing in the Dominican Republic—are not documented.<sup>46</sup> Some estimates suggest that at least one-fifth of these individuals are children.<sup>47</sup> Today, the Dominican Republic is far more prosperous than Haiti.<sup>48</sup> As a result, many Haitians

<sup>40</sup> *Id.*

<sup>41</sup> See OAS Human Rights, Institutions of the Inter-American Human Rights System, <http://oas.org/oaspage/humanrights.htm> (last visited Apr. 4, 2008).

<sup>42</sup> Interview with Phillippe Leclerc, *supra* note 1.

<sup>43</sup> *Id.*

<sup>44</sup> Maureen Lynch, *Dominican Republic, Haiti, & the United States: Protect Rights, Reduce Statelessness*, REFUGEES INT'L, Jan. 17, 2007, available at <http://interaction.org/newswire/detail.php?id=5609>.

<sup>45</sup> See *id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Congressional Children's Caucus Highlights the Plight of Stateless Children Worldwide*, REFUGEES INT'L, Nov. 29, 2006, <http://www.refintl.org/content/article/detail/9676/> [hereinafter *Children's Caucus*].

<sup>48</sup> Compare Central Intelligence Agency, The World Factbook, Dominican Republic <https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html> (last visited Apr. 29, 2008) with Central Intelligence Agency, The World Factbook, Haiti,

are driven to work in the Dominican, traditionally in the sugar cane plantations cutting cane, but more recently in construction and the service industry.<sup>49</sup> Many factors, including political turmoil, violence, repression and extreme poverty drive Haitians to cross the border into the Dominican Republic.<sup>50</sup> The Dominicans rely on them for cheap labor, though widespread discrimination and prejudice against Haitians permeates society and limits access to nationality.<sup>51</sup>

As Phillipe Leclerc, Chair of the UNHCR Statelessness Unit, notes, “[t]he importance of registering births is graphically illustrated by the situation of people of Haitian descent in the Dominican Republic, where there are believed to be hundreds of thousands of stateless people.”<sup>52</sup> The Constitution of the Dominican Republic grants citizenship to all those born on Dominican soil, except the children of diplomats or those “in transit” through the country.<sup>53</sup> The state continues, however, to neglect registering births among certain groups of people, and particularly those of Haitian descent.<sup>54</sup> Historically, birth registration has been systematically withheld from children born to Haitian parents, who are often migrant workers.<sup>55</sup> Unregistered children are not issued birth certificates and thus rendered stateless, as they cannot prove their nationality, where they were born, or to whom.<sup>56</sup> This “in transit” exception was codified into law via the 2004 General Law on Migration 285–04, providing that only children of those individuals deemed to be “residents” born on Dominican soil are entitled to Dominican citizenship.<sup>57</sup> In 2005, the Inter-American Court of Human Rights (IACHR) found this law to be a discriminatory violation of human rights and

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<https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Apr. 29, 2009).

<sup>49</sup> Refugees Int’l, *Lives on Hold: The Americas* (2004), [http://www.refugeesinternational.org/section/publications/stateless\\_americas](http://www.refugeesinternational.org/section/publications/stateless_americas) (last visited Apr. 1, 2008).

<sup>50</sup> *See id.*

<sup>51</sup> OHCHR REPORT, *supra* note 20, ¶¶ 2 & 21.

<sup>52</sup> Leclerc & Colville, *supra* note 1.

<sup>53</sup> DOM. REP. CONST. art. 11, *available at* <http://pdba.georgetown.edu/Constitutions/DomRep/domrep02.html>.

<sup>54</sup> *See Lynch, supra* note 44.

<sup>55</sup> Leclerc & Colville, *supra* note 1.

<sup>56</sup> *See* Interview with Phillippe Leclerc, *supra* note 1.

<sup>57</sup> Ley de Migracion No. 285–04 [Law on Migration No. 285–04], capitulo III, § 3, art. 28 (Dom. Rep.), *available at* [http://seip.gov.do/consejo\\_nacional\\_migracion/ley/ley.pdf](http://seip.gov.do/consejo_nacional_migracion/ley/ley.pdf) (providing that a child born to a woman who lacks Dominican citizenship or documentation will not be given a birth certificate but will instead be given a pink certificate, listing the mother’s name and date, to be recorded in a book of foreigners and the mother will then be referred to the consulate for her country of origin in order to register the birth of the child and obtain citizenship for the child).



subsequently ordered the Dominican government to register all births in the country.<sup>58</sup> To date, the Dominican Republic has refused to comply with the majority of the Court's decision.<sup>59</sup>

## II. DISCUSSION

### A. *Moving Forward: Yean and Bosico v. Dominican Republic*

On September 8, 2005 the IACHR issued a landmark decision reaffirming nationality as a human right.<sup>60</sup> *Yean and Bosico* "marks the first time that an international human rights tribunal has unequivocally upheld the international prohibition on racial discrimination in access to nationality."<sup>61</sup> The IACHR would ultimately find that the Dominican Republic's denial of nationality, through their refusal to issue birth certificates, was in direct contravention of the country's constitution.<sup>62</sup>

The initial petition was brought before the Inter-American Commission on Human Rights by El Movimiento de Mujeres Dominicano-Haitiana (MUDHA) [The Movement of Dominican-Haitian Women], the Center for Justice and International Law (CEJIL) and the International Human Rights Clinic at the University of California, Berkeley, on behalf of two children of Haitian descent who were born in the Dominican Republic and had resided there for their entire lives.<sup>63</sup> In

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<sup>58</sup> *Yean & Bosico v. Dominican Republic*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 239 (Sept. 8, 2005).

<sup>59</sup> OHCHR REPORT, *supra* note 20, ¶ 8.

<sup>60</sup> *Yean & Bosico v. Dominican Republic*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005); Open Society Justice Initiative, *Inter-American Court of Human Rights Affirms the Human Right to Nationality and Upholds the International Prohibition on Racial Discrimination in Access to Nationality*, Oct. 17, 2005, available at [http://justiceinitiative.org/db/resource2?res\\_id=103001&preprint=1](http://justiceinitiative.org/db/resource2?res_id=103001&preprint=1) [hereinafter Justice Initiative].

<sup>61</sup> Justice Initiative, *supra* note 60.

<sup>62</sup> David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 No. 2 HUM. RTS. BRIEF 25, 26-27 (2006).

<sup>63</sup> See *Yean & Bosico*, 2005 Inter-Am. Ct. H.R., ¶¶ 5-6; Baluarte, *supra* note 62, at 26-27. The founder of MUDHA, Sonia Pierre, overcame the myriad of problems associated statelessness to lead a human rights movement on behalf of stateless children. Marc Lacey, *A Rights Advocate's Work Divides Dominicans*, N.Y. TIMES, Sept. 29, 2007, at A4. For this work, she was the recipient of the 2006 Robert F. Kennedy Human Rights award. *Id.* These achievements have not been without significant impact on her own citizenship. See *id.* Within months of receiving this international human rights award, the Dominican Government began questioning Ms. Pierre's citizenship and eventually suggested that she "belonged" to Haiti, not the Dominican Republic. *Id.* In March 2007, Dominican officials at the registrar's office attempted to revoke her Dominican birth certificate based on questions about the legal status of her parents and the validity of their identification documents. Diógenes Pina, *Dominican Republic: Children of Haitians Fight for Birth Certificates*, INTER PRESS SERVICE, Aug. 28, 2007. According to press reports, after her case made in-

1997, Dilicia Yean and Violeta Bosico (then ten months and twelve years old, respectively) visited the civil registry with their mothers and representatives from MUDHA to request birth certificates.<sup>64</sup> Documentation proved that the mothers of the two girls were Dominican and that they themselves were born on Dominican soil.<sup>65</sup> Despite all of the evidence presented, the girls were denied Dominican nationality, an apparent breach of the rights set forth in the Dominican Constitution.<sup>66</sup> They were subsequently unable to obtain birth certificates or enroll in school.<sup>67</sup> The girls appealed this decision through the Dominican judicial system, the refusal was upheld, and Bosico was subsequently expelled from school.<sup>68</sup> Their lack of status “also left them vulnerable to expulsion from their home country.”<sup>69</sup> The IACHR would ultimately find that the Dominican Republic’s denial of nationality, through their refusal to issue birth certificates, was in direct contravention of the country’s constitution and international law.<sup>70</sup>

In its official application against the Dominican Republic submitted to the IACHR on July 11, 2003, the Inter-American Commission on Human Rights alleged that the Dominican Republic, through the State’s Registry Office authorities, had illegally refused to issue birth certificates for the children Yean and Bosico.<sup>71</sup> The children were born within the State’s territory, and the Constitution of the Dominican Republic establishes the principle of *jus soli* to determine those who have a right to Dominican citizenship.<sup>72</sup> The Commission asked that the Court declare the international responsibility of the Dominican Republic for alleged violations of several Articles of the American Convention on Human Rights, including Articles 19 (Rights of the Child), 20 (Right to Nationality), 24 (Right to Equal Protection), 3 (Right to Juridical Personality), and 18 (Right to a Name), to the detriment of the Yean and Bosico children.<sup>73</sup>

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ternational headlines, the investigation into the legality of her documents was called off. *See id.*

<sup>64</sup> *See* Baluarte, *supra* note 62, at 26.

<sup>65</sup> *Id.*

<sup>66</sup> *See* DOM. REP. CONST., art. 11; *see also* Baluarte, *supra* note 62, at 26.

<sup>67</sup> *Yean & Bosico*, 2005 Inter-Am. Ct. H.R., ¶ 109(35).

<sup>68</sup> Baluarte, *supra* note 62, at 26.

<sup>69</sup> Justice Initiative, *supra* note 60.

<sup>70</sup> *See* Baluarte, *supra* note 62.

<sup>71</sup> *See Yean & Bosico*, 2005 Inter-Am. Ct. H.R., ¶ 1.

<sup>72</sup> DOM. REP. CONST. art. 11.

<sup>73</sup> *See Yean & Bosico*, 2005 Inter-Am. Ct. H.R., ¶¶ 110–129.

### B. Official Findings of the IACHR

After a thorough examination of the facts, the Court found that the Dominican Republic discriminatorily applied its nationality and birth registration laws to children of Haitian descent.<sup>74</sup> The Court further ruled that these discriminatory policies and regulations rendered such children interminably stateless and thus unable to access fundamental human rights and freedoms.<sup>75</sup> The Court's ruling acknowledged that these circumstances left the Yean and Bosico children without an identity.<sup>76</sup> The Court also acknowledged the dramatic consequences on their rights as children and with respect to their ability to function as individuals within Dominican society.<sup>77</sup> Lack of proof of identity in the form of a birth certificate rendered the children unable to access fundamental human rights such as the right to education, the right to health services, the right to equal protection before the law, or even a right so fundamental as the right to a name.<sup>78</sup>

In its written decision, the Court made several important observations with respect to the role of states in preventing statelessness and protecting human rights.<sup>79</sup> The Open Society Justice Initiative summarized the Court findings as follows:

- Nationality is the legal bond that guarantees individuals the full enjoyment of all human rights as members of the political community.
- Although states maintain the sovereign right to regulate nationality, the Court noted that state discretion must be limited by international human rights standards that protect individuals against arbitrary state actions. In particular, states are limited in their discretion to grant nationality by their obligations to guarantee equal protection and to prevent, avoid, and reduce statelessness.
- States must abstain from enacting or enforcing regulations that are facially discriminatory or have discriminatory effects on different groups.
- States have an obligation to avoid adopting legislation or engaging in practices with respect to the granting of nationality that would

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<sup>74</sup> *Id.* at ¶ 260(2)–(3).

<sup>75</sup> *Id.* at ¶ 260(3).

<sup>76</sup> *Id.* at ¶ 240.

<sup>77</sup> *See id.*

<sup>78</sup> Baluarte, *supra* note 62, at 27 (citing specific rights as guaranteed by the American Convention on Human Rights).

<sup>79</sup> Justice Initiative, *supra* note 60. *See generally* Yean & Bosico, 2005 Inter-Am. Ct. H.R.

lead to an increase in the number of stateless persons. Statelessness makes impossible the recognition of a jurisdictional personality and the enjoyment of civil and political rights, and produces a condition of extreme vulnerability.

- States cannot base the denial of nationality to children on the immigration status of their parents.
- Proof required by governments to establish that an individual was born on a state's territory must be reasonable and cannot present an obstacle to the right of nationality.<sup>80</sup>

In sum, the Court ordered that the Dominican Republic publicly acknowledge its responsibility for the human rights violations detailed in the decision within six months of the judgment date; reform its system of birth registration; create and implement procedures to issue birth certificates to all children born on its territory irrespective of their parents' immigration status; make available education for all children, including those of Haitian descent; and finally, pay monetary damages to the children and their families.<sup>81</sup>

As asserted by David Belaurte, attorney at the Center for Justice and International Law (CEJIL), *Yean and Bosico* is of monumental significance for several reasons.<sup>82</sup> "It was the first judgment to be entered against the Dominican Republic since the State ratified the jurisdiction of the IACHR in 1999."<sup>83</sup> Further, the case and the judgment address the incredibly contentious issue of Haitian migration in Dominican society and has "thrust Dominican society into a furious debate."<sup>84</sup> All branches of Dominican government—executive, legislative, and judicial—have been involved in responding to the decision.<sup>85</sup> Finally, and most importantly, the decision identified institutional and cultural discrimination against Haitians and "outlined the state's affirmative obligations to remedy this situation."<sup>86</sup>

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<sup>80</sup> Justice Initiative, *supra* note 60. See generally *Yean & Bosico*, 2005 Inter-Am. Ct. H.R.

<sup>81</sup> See 2005 Inter-Am. Ct. H.R. at ¶ 260.

<sup>82</sup> Baluarte, *supra* note 62, at 25.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

### III. ANALYSIS

#### A. Dominican Response to the Decision of the IACHR

The Dominican government has displayed hostility and resentment with respect to the IACHR decision, an overall unwillingness to fulfill the country's international obligations and a lack of respect for international human rights law.<sup>87</sup> The limited steps which the Dominican government has taken since the judgment in 2005 have fallen short of, and in some cases subverted, the directives of the Court.<sup>88</sup>

In the days and weeks following the release of the IACHR decision, human rights observers noted the re-emergence of a "furious debate" in Dominican society.<sup>89</sup> These issues are not unfamiliar to Dominican culture.<sup>90</sup> International organizations have been long concerned with the hostility suffered by Haitian migrants in the Dominican Republic.<sup>91</sup> "Institutionalized anti-Haitian discrimination" in the Dominican is considered by experts to be extensive and far-reaching.<sup>92</sup> Together with the international community, human rights groups decried the official reaction of the Dominican government and expressed frustration with the Dominicans' "apparent unwillingness to fulfill the country's legal obligations."<sup>93</sup>

The Dominican government's reaction is best understood by acknowledging that the decision ordering it to amend its legislation and address discrimination took place in the context of pervasive pre-existing anti-Haitian sentiment.<sup>94</sup> In 2005, prior to the IACHR decision and amid mounting pressure to regulate the migration of Haitians, the Secretary of Labor announced a plan to "dehaitianize" the country.<sup>95</sup> This official announcement led to increased anti-Haitian rhetoric and violence, culminating in a campaign of brutal mass expulsions in the

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<sup>87</sup> Lynch, *supra* note 44; see also Caroline Bettinger-Lopez & Indira Goris, *Grant Full Citizenship to All Born in Country*, MIAMI HERALD, Jun. 9, 2007, at A6.

<sup>88</sup> See generally Baluarte, *supra* note 62; Open Society Justice Initiative, *Racial Discrimination Against Dominicans of Haitian Descent in Access to Nationality, statement submitted to the United Nations Commission on the Elimination of Racial Discrimination at its 72d Session* (Feb. 28–29, 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/JusticeInitiativeDR.doc> [hereinafter Open Society Statement].

<sup>89</sup> Baluarte, *supra* note 62, at 25.

<sup>90</sup> See Lynch, *supra* note 44.

<sup>91</sup> See *id.*

<sup>92</sup> Baluarte, *supra* note 62, at 25; see Press Release, *supra* note 12.

<sup>93</sup> Baluarte, *supra* note 62, at 25.

<sup>94</sup> See *id.*

<sup>95</sup> See *id.* (citing Fadul: *Gobierno Trata de 'Deshaitianizar' el Pais*, LISTIN, Apr. 4, 2005, DIARO, <http://www.listin.com.do/antes/abril05/040405/cuerpos/ciudades/ciu3.htm> ).

fall of 2005.<sup>96</sup> To date, expulsions and attacks on Haitians have become more common and those who perpetrate such acts have enjoyed complete immunity.<sup>97</sup>

In an effort to further demonstrate their displeasure with the IACHR ruling, on October 18, 2005, the Dominican Senate issued a resolution rejecting the ruling of the Court.<sup>98</sup> The international community was quick to respond to this action by stating that the “extreme hostility of the legislature, the body responsible for executing institutional reforms ordered by the Court, is a clear cause for alarm.”<sup>99</sup>

In yet another attempt to subvert the IACHR ruling, the Dominican Republic has recently begun to implement nationality legislation enacted in 2004 that adversely affects the ability of Dominicans of Haitian descent to gain access to nationality.<sup>100</sup> The General Law on Migration (No. 285–04), adopted in 2004 and implemented in 2007, narrows the Dominican Constitution’s *jus soli* principles by denying children born in the Dominican Republic birth certificates if their parents cannot prove that they are legal residents of the Dominican Republic.<sup>101</sup> This law is being applied in a sweeping manner—“non-residents” is being defined “broadly to include temporary workers, visa overstays, undocumented migrants, and persons who cannot otherwise prove their legal residence in the Dominican Republic.”<sup>102</sup> Without proof of legal residence, thousands of children and adults continue to be denied the right to nationality in direct conflict with norms of international law and human rights.<sup>103</sup>

The Dominican Supreme Court has also interpreted the state’s constitution in such a way as to facilitate the practice of denying citizenship to Haitian Dominicans.<sup>104</sup> The Courts decision to uphold the provision in the 2004 Immigration Law that “fits undocumented immigrants squarely into the ‘in-transit’ exception to the *jus soli* rule of nationality” as put forth in Article 11 of the Dominican Constitution, is

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<sup>96</sup> *Id.*, at 26.

<sup>97</sup> *Id.*; Leopold A. Espaillet N., *La Ofensa Haitian: Tomando el Toro por el Rab*, LISTIN DIARIO, Dec. 4, 2005, <http://www.listindiario.com.do/antes/diciembre05/291205/cuerpos/república/rep15.htm>.

<sup>98</sup> Baluarte, *supra* note 62, at 26.

<sup>99</sup> *Id.* at 28.

<sup>100</sup> Open Society Statement, *supra* note 88, ¶ 5.

<sup>101</sup> *Id.*

<sup>102</sup> OHCHR REPORT, *supra* note 21, ¶ 6.

<sup>103</sup> See generally Open Society Statement, *supra* note 88.

<sup>104</sup> OHCHR REPORT, *supra* note 21, ¶ 7.

in direct defiance with a portion of the IACHR's ruling.<sup>105</sup> As mentioned above, the Dominican Constitution extends citizenship to all persons born in Dominican territory "except for the legitimate children of foreigners resident in the country as diplomats or those in transit."<sup>106</sup> When the Supreme Court ruled to uphold the constitutionality of Migration Law No. 285-04, it held that Haitian workers are to be considered "in transit" and that their offspring are therefore not entitled to citizenship.<sup>107</sup> Regardless of the fact that many of these individuals, their parents and grandparents have lived in the country for decades, this exception is being used extensively to deny documents to Dominican-born Haitians.<sup>108</sup>

Further, Dominican legislators have spearheaded a movement to amend the Dominican Constitution and change the rule of nationality from *jus soli* to *jus sanguinis* in an effort to fashion a system where Dominican citizenship would only pass to children born to Dominican nationals.<sup>109</sup> The rule of *jus sanguinis* is used in many countries throughout the world and such a proposed change is not a *per se* violation of international law or custom.<sup>110</sup> Nevertheless, an effort to change the rule for the purpose of avoiding compliance with the decision of the IACHR would serve to "reaffirm the existence of institutionalized discrimination" against Dominicans of Haitian descent.<sup>111</sup>

In April 2007, the Dominican Republic's civil registry approved a controversial new plan to create a "Pink Book of Foreigners" and assign pink certificates (in lieu of standard birth registration) to certain groups of children born on Dominican soil.<sup>112</sup> These certificates document date of birth and the names of the parents only.<sup>113</sup> They are not official birth certificates, nor can they be used to obtain official birth certifi-

<sup>105</sup> Baluarte, *supra* note 62, at 28.

<sup>106</sup> STEVEN GREGORY, *THE DEVIL BEHIND THE MIRROR: GLOBALIZATION AND POLITICS IN THE DOMINICAN REPUBLIC* 253 n.15 (2007).

<sup>107</sup> Lacey, *supra* note 63.

<sup>108</sup> Lynch, *supra* note 44. In theory, these children are entitled to Haitian citizenship under a provision in the Haitian Constitution that grants citizenship to children born to Haitian parents outside of Haiti. *Id.* According to one Haitian government official, children born to Haitian citizens on Dominican soil can be registered at the Haitian Embassy in the Dominican Republic. *Id.* However, individuals attempting to follow this procedure have had little success, often encountering opposition for various reasons such as lack of proper documentation or witnesses. *Id.*

<sup>109</sup> See Baluarte, *supra* note 62, at 28.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Bettinger-Lopez & Goris, *supra* note 87.

<sup>113</sup> OHCHR REPORT, *supra* note 21, ¶ 5.

cates.<sup>114</sup> They confer no specific rights on the holder and place no obligations on the state.<sup>115</sup> They do not “grant nationality, legal status, or record the birth officially.”<sup>116</sup> A government official openly identified the purpose of the “Pink Book of Foreigners” to be that of providing a means for the registration of all “children of foreigners born in the Dominican Republic, so that the embassies of their countries of origin can issue them an identity card.”<sup>117</sup> “Without presenting an official ‘white’ birth certificate, children cannot obtain a ‘cedula’ or national identification card.”<sup>118</sup> A “cedula” is required to obtain access to rights, services, and protections granted by the government.<sup>119</sup> The “pink” system of differentiation does not solve or address any of the complex issues associated with statelessness, migration, and identity, and therefore leaves hundreds of thousands stateless and in no better situation than before.<sup>120</sup> In fact, many international observers believe that the “Pink Book” only serves to brand children born to women (primarily those of Haitian descent) who are non-legal residents or who are unable to prove their nationality “with a modern-day scarlet letter of statelessness.”<sup>121</sup>

Even those Dominicans of Haitian descent in possession of birth certificates and cedula are not outside of the reach of the discriminatory Dominican policy directives.<sup>122</sup> In March of 2007, the Junta Central Electoral (JCE), the government agency responsible for birth registrations and the issuance of identity documents, put forth a policy directive which effectively denationalizes those who have received Dominican birth certificates under “irregular” conditions.<sup>123</sup> Circular No. 17, an internal instructional memorandum dated March 29, 2007, orders all civil registry officials to suspend processing identity documents for children found to be born of “foreign parents” who were issued birth certificates under what they deem to be “irregular circumstances.”<sup>124</sup> Individuals are then subject to investigation by the JCE, de-

<sup>114</sup> Open Society Statement, *supra* note 93, ¶ 6.

<sup>115</sup> *Id.*

<sup>116</sup> OHCHR REPORT, *supra* note 20, ¶ 5.

<sup>117</sup> *Dominican Government to Battle Unjust Campaign on Haitian Issue*, DOMINICANTODAY, Mar. 27, 2007, available at <http://www.dominicantoday.com/dr/local/2007/3/27/23303/Dominican-Government-to-battle-unjust-campaign-on-haitian-issue> (emphasis added).

<sup>118</sup> OHCHR REPORT, *supra* note 21, ¶ 5.

<sup>119</sup> *Id.*

<sup>120</sup> See Bettinger-Lopez & Goris, *supra* note 87.

<sup>121</sup> *Id.*

<sup>122</sup> See Open Society Statement, *supra* note 93, ¶ 11.

<sup>123</sup> See *id.* ¶¶ 6 & 11.

<sup>124</sup> *Id.*



spite the JCE's lack of legal authority to conduct such inquiries.<sup>125</sup> Further, the application of Circular No. 17 is subjective and unjust in that it provides no criteria by which civil registry officials are to determine "irregularity" and there is no prescribed time limit for the investigatory period.<sup>126</sup> Circular No. 17 appears specifically aimed at targeting Dominicans of Haitian descent.<sup>127</sup> Aside from those of Haitian national origin, the Dominican Republic has no other significant foreign population and some JCE officials have gone so far as to replace the phrase "foreign parents" with "Haitian parents" on official documents.<sup>128</sup>

### B. *Underlying Reasons for Lack of Compliance*

It is impossible to understand the modern day issues in Haiti and the Dominican Republic without an examination of their colonial past.<sup>129</sup> Many of the current social, cultural, and political conflicts in the region are firmly rooted in the events which shaped and reshaped its geographic borders.<sup>130</sup> The present day division of the island of Hispaniola is the end result of decades of struggle for control of the people and resources of the island.<sup>131</sup> Struggle for dominance between the French and Spanish came to a head in 1801 as the Haitian Revolution spilled over the border of Haiti into the Dominican Republic.<sup>132</sup> The division of the island into two separate colonies resulted in the formation of two distinct peoples—with different languages, cultures, and customs.<sup>133</sup> The two countries also followed very different economic paths.<sup>134</sup>

Waves of mass expulsions and violence have plagued the history of these two nations and contributed to "fueling the flames of xenopho-

<sup>125</sup> See *id.*

<sup>126</sup> See *id.* ¶¶ 12–13.

<sup>127</sup> See Open Society Statement, *supra* note 93, ¶ 14.

<sup>128</sup> *Id.*

<sup>129</sup> See Baluarte, *supra* note 62, at 25.

<sup>130</sup> See Press Release, *supra* note 12.

<sup>131</sup> See U.S. Dep't of State, History, Background Note: Dominican Republic, <http://state.gov/r/pa/ei/bgn/35639.htm> (last visited Apr. 1, 2008).

<sup>132</sup> See Baluarte, *supra* note 62.

<sup>133</sup> Compare U.S. Department of State, History, Background Note: Dominican Republic, <http://www.state.gov/r/pa/ei/bgn/35639> (last visited Apr. 1, 2008) with U.S. Department of State, History, Background Note: Haiti, <http://www.state.gov/r/pa/ei/bgn/1982.htm> (last visited Mar. 25, 2008).

<sup>134</sup> Compare U.S. Department of State, Economy, Background Note: Dominican Republic, <http://www.state.gov/r/pa/ei/bgn/35639> (last visited Apr. 1, 2008), with U.S. Department of State, Economy, Background Note: Haiti, <http://www.state.gov/r/pa/ei/bgn/1982.htm> (last visited Apr. 1, 2008).

bia.”<sup>135</sup> As one author has noted, “[e]xploitative migrant labor agreements and years of unregulated migration have created a permanent underclass of people of Haitian descent in the Caribbean, including in the Dominican Republic.”<sup>136</sup> The most infamous incident of mass expulsion took place in 1937 on the orders of then Dictator Rafael Trujillo.<sup>137</sup> Trujillo’s anti-Haitian campaign ended with the massacre of approximately 20,000–30,000 Haitians on the northwest border.<sup>138</sup> As recently as May 2005, thousands of Haitians, undocumented Dominico-Haitians and even children with Dominican birth certificates, were forcibly removed from the Dominican Republic in a period of less than a week, and such practices have continued in smaller magnitudes in the years following.<sup>139</sup>

### C. *Racism and Discrimination in Dominican Society*

The colonial history of the region has resulted in pervasive racism in Dominican society.<sup>140</sup> After a week-long visit to the Dominican Republic in October 2007, the U.N. Special Rapporteur on Racism, Racial discrimination, and Related intolerance, together with the U.N. Independent Expert on minority issues, announced their preliminary view that “while there is no official government policy of discrimination, there is nevertheless a profound and entrenched problem of racism and discrimination against such groups as Haitians, Dominicans of Haitian descent, and more generally against blacks within Dominican society.”<sup>141</sup> The report further states that while there is no Dominican legislation that is facially discriminatory, laws relating to migration, civil status, and the granting of Dominican citizenship to persons of Haitian descent impact society in a manner that can be categorized as discriminatory.<sup>142</sup> After conducting extensive interviews in an effort to understand the problems faced by blacks, both Dominican and of Haitian descent, the experts witnessed first hand:

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<sup>135</sup> Baluarte, *supra* note 62, at 25–26.

<sup>136</sup> Lynch, *supra* note 44.

<sup>137</sup> See Progressio, Dominican Republic: More than 3000 Haitians Deported in Mass Expulsion, June 3, 2005, [http://www.ciiir.org/progressio/internal/91785/dominican\\_republic\\_more\\_than\\_3\\_000\\_haitians\\_depor/](http://www.ciiir.org/progressio/internal/91785/dominican_republic_more_than_3_000_haitians_depor/) (last visited Apr. 1, 2008).

<sup>138</sup> See *id.*

<sup>139</sup> Baluarte, *supra* note 62, at 26.

<sup>140</sup> See generally Press Release, *supra* note 12.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

[B]lacks typically live in worse conditions, are employed in manual and low paid work and suffer a high degree of prejudice. Disturbing references are made to blacks as being “pig feed”, ignorant or unhygienic, and many spoke of their daily experiences of racism, including by administrative officials in registration offices, on public transportation and elsewhere. Many reported that, because of their colour or their Haitian looks or name, it is impossible to obtain documents and they are left vulnerable to deportation or expulsion to Haiti, even as Dominican citizens with no connection whatsoever with that country.<sup>143</sup>

As a result of their findings, the U.N. experts strongly suggest that the situation be given “urgent attention” by the international community “to ensure that the Dominican Republic conforms with its obligations under international human rights law, including the International Convention on the Elimination of all Forms of Racial Discrimination.”<sup>144</sup>

Steven Gregory, an Associate Professor of Anthropology and African American Studies at Columbia University, notes the following observations in his book on globalization and politics in the Dominican Republic: “It was not uncommon for persons’ identities to be publicly in dispute, ambiguous, and shot through with contradictions. In a sociopolitical milieu where full citizenship rights were difficult to achieve, subject to recurrent verification, and the risk of being diminished and even negated, much was at stake in whom people were believed to be.”<sup>145</sup> In his analysis of the close nexus between prejudice, discrimination and appearance in Dominican society, he further observes, “Rumor and gossip concerning one’s identity, as well as one’s appearance, could be significant in influencing the actions of the police or other authorities as the papers in one’s possession. It was not uncommon for those perceived to be Haitian. . . . to be detained by the police or army and deported to Haiti, irrespective of the papers in their possession.”<sup>146</sup>

Haitians are also summarily discriminated against in Dominican culture through expressions and terminology.<sup>147</sup> “Haitianization” is a pejorative term that many Dominicans, including government and political figures, use to describe the negative influences that they believe

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> GREGORY, *supra* note 111, at 171.

<sup>146</sup> *Id.*

<sup>147</sup> See Lacey, *supra* note 63.

poor Haitians bring to their country.<sup>148</sup> Part of this animus may be rooted in the fact that Dominican Republic is itself a poor nation, with thirty percent of the population living below the poverty line.<sup>149</sup> Resources are scarce, and negative sentiments about Haitians are fueled not only by historic struggles for island dominance but also by a survival mentality.<sup>150</sup>

This issue of the impact of “Haitianization” is highly volatile in the Dominican Republic, as evidenced in a letter Dominican foreign minister, Carlos Morales Troncoso, sent to Ethel Kennedy immediately following the bestowing of the Robert F. Kennedy Prize on Sonia Pierre, previously identified as the founder of the MUDHA.<sup>151</sup> In his letter, an infuriated Minister Troncoso questioned the validity of awarding Ms. Pierre the international human rights award and labeled it “ill-advised” and “myopic.”<sup>152</sup> Minister Troncoso used the term “Haitianization” in his letter and asserted that his country could not handle the large numbers of illegal immigrants flooding the Dominican Republic from Haiti.<sup>153</sup> He suggested that the blame for the conditions should fall to the United States and other countries for failing to improve conditions for Haitians in Haiti.<sup>154</sup> The letter and subsequent press release from the Ministry of Foreign Affairs, reflected the negative sentiments expressed throughout Dominican society.<sup>155</sup> Around the same time, Dominican Vice-President Rafael Alburquerque de Castro publicly denounced the Court’s holdings and “declared that the country was under siege by international organizations intent upon discrediting the Dominican Republic before the world community.”<sup>156</sup>

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<sup>148</sup> *See id.*

<sup>149</sup> OHCHR REPORT, *supra* note 21 (citing U. S. Agency for International Development, Dominican Republic Overview, <http://www.usaid.gov/pubs/cbj2003/lac/dr/>).

<sup>150</sup> *See id.* ¶ 2.

<sup>151</sup> Lacey, *supra* note 63.

<sup>152</sup> *Id.*

<sup>153</sup> *See id.* Mr. Morales’ remarks have come under scrutiny in light of his long-standing relationship as an executive and major shareholder of Central Romana Corporation, the largest sugar producer in the Dominican Republic. *See generally* Cent. Romana Corp., <http://www.centralromana.com> (last visited Apr. 1, 2008).

<sup>154</sup> Lacey, *supra* note 63.

<sup>155</sup> *See* Baluarte, *supra* note 62, at 26.

<sup>156</sup> *Id.* (citing *Vicepresidente Niega Campana Xenophobia en Contra Haitianos*, EL NACIONAL, Oct. 8, 2005, available at <http://www.elnacional.com.do/app/article.aspx?id=40267>).

### D. Prospects for Change

Because the issue is rooted in the complicated history of the two island-sharing nations, solving the problem of statelessness in the Dominican Republic will require much more than simple legislative or constitutional changes. Scholars and human rights advocates have identified “racial discrimination in access to nationality” as a global problem.<sup>157</sup> The IACHR ruling is considered to be a significant decision for its contribution to “international jurisprudence on non-discrimination” and the universal human right to nationality.<sup>158</sup> Absent implementation however, its true significance has yet to be established.

Since 1950, the United Nations has been advocating that states take measures to recognize stateless people and avoid the creation of statelessness in general.<sup>159</sup> The U.N. Economic and Social Council, “[i]nvites states to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory and, if necessary, to re-examine their nationality laws with *a view to reducing as far as possible the number of cases of statelessness created by the operation of such laws . . .*”<sup>160</sup> In light of this long-standing view, the Dominican government must take necessary steps to comply fully with the IACHR ruling without further delay.

Haiti and the Dominican Republic should develop and implement non-discriminatory citizenship policies.<sup>161</sup> More specifically, policies on documentation, recognition of citizenship, and migration that prevent future statelessness and work toward ameliorating the plight of those currently affected.<sup>162</sup> The Dominican Republic should fully comply with the 2005 Inter-American Court decision to demonstrate to the international community that they truly embrace the international principles to which they have “subscribed on paper.”<sup>163</sup> In practical terms, they must create and implement a birth registration system that will guarantee “birth certificates to all children born on Dominican soil,” irrespective of the immigration status, race, or ethnicity of their par-

<sup>157</sup> Justice Initiative, *supra* note 60.

<sup>158</sup> *Id.*

<sup>159</sup> U.N. Econ. & Soc. Council [ECOSOC] Res. 319 B iii (XI), ¶ 7 (Aug. 11 & 16, 1950), quoted in The Secretary-General, *Report of the Secretary-General on the Problem of Statelessness*, U.N. Doc. E/2230, A/CN.4/56 (May 26, 1956).

<sup>160</sup> *Id.* (emphasis added).

<sup>161</sup> See *Yean & Bosico v. Dominican Republic*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130 ¶ 260(8) (Sept. 8, 2005).

<sup>162</sup> See *Yean & Bosico*, 2005 Inter-Am. Ct. H.R. at ¶ 260(8)–(11).

<sup>163</sup> *Bettinger-Lopez & Goris*, *supra* note 87.

ents.<sup>164</sup> Perhaps even more importantly, the government must take steps to ensure that the due process of the law is respected in cases where an individual's nationality is called into question.<sup>165</sup>

Numerous suggestions and strategies for an appropriate Dominican response have been put forth by the international community. Some have called for the Dominican Republic to sign the 1954 U.N. Convention Relating to the Status of Stateless People.<sup>166</sup> Many have also suggested that the UNHCR, as the U.N. agency with a mandate on behalf of stateless persons, establish an active, permanent presence in the Dominican Republic.<sup>167</sup> Additionally, investment and participation in the creation of a rights-based regional response to the complex issue of statelessness and migration from other countries has also been proposed as a means of addressing the current situation.<sup>168</sup>

International institutions such as the World Bank have submitted projects for consideration aimed at assisting the Dominican government with the issuance of birth certificates and identity documents.<sup>169</sup> Such projects have met with resistance, however, from non-governmental organizations who feel that these programs would continue the systematic discrimination against Dominicans of Haitian descent.<sup>170</sup>

From the other side of the island, scholars and legal experts on Haitian affairs have taken preliminary steps toward addressing the problem of Haitians born in "legal limbo."<sup>171</sup> In a report stemming from a symposium on the Haitian Constitution, the parties concluded that there was a need to "[a]mend the Constitution, to grant citizenship rights to Diaspora Haitians, regardless of their citizenship status in their adopted country."<sup>172</sup> They further state that "such rights should also be bestowed the children of Haitian refugees born at Guantanamo and on the *bateys* of the Dominican Republic."<sup>173</sup> This will only be of assistance to those who both *want* and *are able* to return to Haiti. Most stateless people born in the Dominican have no remaining ties to Haiti and desire to stay in the Dominican Republic.

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> See Lynch, *supra* note 44.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> See *id.*

<sup>171</sup> FLA. INT'L. UNIVERSITY COLLEGE OF LAW, REPORT: SYMPOSIUM ON THE HAITIAN CONSTITUTION 15 (2007), available at [www.haitipolicy.org/Haiti\\_Symposium.doc](http://www.haitipolicy.org/Haiti_Symposium.doc).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

## CONCLUSION

Despite the expectation of universal respect and compliance with international norms and requirements for nationality, today the number of stateless people continues to grow with limited action being taken to ameliorate the circumstances. There is mounting international concern, with respect to the circumstances in the Dominican Republic, that Dominican laws, official government policies and practices discriminate against Dominicans of Haitian descent in relation to their right to nationality, in violation of the Dominican Republic's obligations to its citizens and norms of international law.

In the long run, the Dominican Republic and Haiti, with the help of the international community, will need to develop policies which will meet with the expectations of the international law, ensure the rights of stateless people and work towards a reduction in statelessness in years to come. The leadership must face the difficult task of cutting through the historical illusion that the people of Haiti and the Dominican Republic inhabit separate worlds. Combating the impact of statelessness on individuals and populations will require an integrated collaboration between governments, international non-governmental organizations and the agencies of the United Nations, with a large role to be played by the UNHCR. The Dominican Republic has the opportunity to set a precedent for dealing with the complex issues posed by the problem of statelessness—whether or not it will do so without additional pressure from the international community has yet to be determined.