LEGAL UPDATE

LEFT BEHIND: HOW STATELESSNESS IN THE DOMINICAN REPUBLIC LIMITS CHILDREN’S ACCESS TO EDUCATION

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# TABLE OF CONTENTS

I. **Executive Summary** ...............................................................................................................3

II. **Methodology and Acknowledgements** ..............................................................................5

III. **Background** .........................................................................................................................6
    A. Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education ..................................................................................................................6
    B. Changes to the Legal Regime Governing Citizenship after the Constitutional Court Decision of 2013 ....................................................................................................................7
        1. Decree No. 327-13: National Plan to Regularize Foreigners in an Irregular Migratory Situation ..........................................................................................................................8
        2. Law 169 of 2014: A Special Regime for Persons Born in Dominican Territory Irregularly Registered in the Dominican Civil Registry, and on Naturalization..10
    C. Current Programs and Policies in the Dominican Education System ........................................14

IV. **Ongoing Limits on Access to Education for Dominicans of Haitian Descent** ..........17
    A. Access to Education for Children Denied Documentation ..................................................18
        1. Persistence of Barriers to Education Based on Lack of Documentation ...............19
    B. Access to Education for “Group A” ....................................................................................20
        1. Transcription, Duplication, and Annulment of Records ........................................21
    C. Access to Education for “Group B” ....................................................................................23
        1. Documentation Issued to “Group B” .........................................................................23
        2. Arbitrary Procedures for Enrollment .......................................................................24
        3. Lack of Coherent Policies in Public Schools .............................................................25
    D. The Renewal of Deportations and Their Impact on Access to Education .....................27
        1. End of the Regularization Plan and “Voluntary Returns” .......................................27
        2. The Effect of Deportations on Education ..................................................................27

V. **Conclusion** ............................................................................................................................29

VI. **Recommendations** ...............................................................................................................30
I. EXECUTIVE SUMMARY

As the start of the 2016-2017 school year loomed in August, families with children of Haitian descent in the Dominican Republic were anxious about whether they would be able to enroll their children in school. Because of new documentation issued to these children under the new citizenship regime established by Law 169-14, their ability to attend school remained in doubt.

Although domestic and international law protect the right of all children in the Dominican Republic to an education regardless of documentation, current policies and practices resulting from the new citizenship regime have prevented or discouraged Dominicans of Haitian descent from enrolling in the public school system.

The 2013-2014 Georgetown Law Human Rights Institute Fact-Finding Project documented the impact that the crisis of statelessness in the Dominican Republic has had on access to education for children who have been rendered stateless or at risk of statelessness. The report, “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education”¹ (hereinafter referred to as the “Left Behind report”), concluded that the Dominican Republic failed to comply with its domestic and international human rights obligations with regard to the right to education.

Research and drafted in early 2014, the findings of the Left Behind report dealt with the denial of documentation and the resulting barriers to education faced by Dominican children, primarily of Haitian descent. The report highlighted how, over the past decades, determining who qualifies as a citizen of the Dominican Republic has been the subject of great controversy. The information collected revealed that the Dominican Republic’s consistent and arbitrary deprivation of children’s access to nationality and its failure to prevent, avoid, and reduce statelessness has had a grave impact on the ability of children to access the education system. The report’s recommendations suggest that the challenges faced by Dominican children of Haitian descent are preventable and can be addressed.

After the publication of the Left Behind report, the Dominican Congress and Administration issued new laws and regulations throughout 2014 in response to the 2013 Constitutional Court Judgment 168-13. Despite these developments, advocates continue to report problems with the issuance of citizenship documentation and its impact on children’s access to education. This legal update addresses the legal actions taken by the Dominican government in response to Judgment 168-13, specifically: (1) Decree No. 327-13: National Plan to Regularize Foreigners in an Irregular Migratory Situation; and (2) Law 169 of 2014: A Special Regime for Persons Born in Dominican Territory Irregularly Registered in the Dominican Civil Registry, and on Naturalization. Many organizations contend that this new regime does not meet the minimum threshold for repairing and upholding the right to nationality of those affected by Judgment 168-13. Likewise, it has created new barriers in children’s access to education.

Although there has been no formal change to education laws since the Left Behind report, the Ministry of Education has implemented new programs and policies, including the reorganization of educational levels, the elimination of the eighth-grade national exam, the implementation of extended hours for public schools, and the creation of centers for the provision of quality comprehensive care to children during early childhood, among others. Thus, it is vital to analyze...

how these new education policies and programs interact with the new citizenship regime in the Dominican Republic.

Civil society organizations in the Dominican Republic have denounced the ongoing barriers to accessing education for Dominicans of Haitian descent who are stateless or at risk of statelessness. Their reports illustrate that:

- Law 169-14 established procedures for the reacquisition of nationality by creating two categories of persons affected by Judgment 168-13 who were born on Dominican territory. The groups were based solely on whether their births had been registered at the civil registry office or not.
- Under Law 169-14, individuals whose births were already registered were entitled to have their nationality immediately restored through the validation of their birth certificates (also known as Group A). However, many have faced hurdles to obtaining documentation, thus impeding access to education since they still do not have the required documentation to enroll in school.
- The second group created under Law 169-14 included individuals who were born on Dominican territory, but whose births were never registered in the civil registry. These individuals could apply for registration as foreigners and then apply for regularization of migratory status under the Regularization Plan. Finally, they could then apply for Dominican citizenship through naturalization (known as Group B). However, school administrators are often unfamiliar with the documentation issued to this group, creating additional barriers for these children in their enrollment process.
- After a series of deadlines set by the government expired in 2015, attendance in school was hindered by the resumption of deportations, primarily to Haiti. In addition, many families moved to Haiti due to widespread fear of being arbitrarily deported. Thus, many children born in the Dominican Republic, who were entitled to Dominican citizenship and whose parents were entitled to remain in the country, saw their lives upended.

This legal update documents the continued toll of statelessness in the Dominican Republic and how it affects children’s right to education. In addition to analyzing the changes in the citizenship and education laws and policies of the Dominican Republic, this update examines the new barriers that children, who have been rendered stateless or at risk of statelessness, face in practice when enrolling in public schools in the Dominican Republic.

Based on these conclusions, this legal update includes a series of additional and renewed recommendations to the Dominican Government, the Ministry of Education, and school administrators. In general, the report advocates for improved dissemination of guidance and training materials by the Ministry of Education to the relevant school officials to ensure all children, regardless of documentation, are able to enroll in school – as required by law. Additionally, the update encourages schools to evaluate and adjust their policies that may discriminate against Dominicans of Haitian descent.
II. Methodology and Acknowledgements

The present legal update of the Left Behind report was based on the study of existing data, publicly available documents, and records from advocates who work with persons who have been rendered stateless or at risk of statelessness in the Dominican Republic. The individual testimonies contained in this report have been reproduced from public testimony given before the Inter-American Commission on Human Rights. This report seeks to evaluate how the toll of statelessness in the Dominican Republic, first examined by the Left Behind project, continues to affect children’s right to education.

This report was researched and written by Raimy Reyes, Research Assistant at the Georgetown Law Human Rights Institute, with the editorial support of Shaw Drake and Patrick Griffith and the guidance and support of the Institute’s Faculty Director, Professor Andrew I. Schoenholtz.

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Asociación al Servicio de Movilidad Humana (ASCALA); Bonó Center (Centro Bonó); Center for Justice and International Law (CEJIL); Socio-Cultural Movement for Haitian Workers (Movimiento Socio-Cultural de los Trabajadores Haitianos, MOSCTHA); Movement of Dominico-Haitian Women (Movimiento de Mujeres Dominico-Haitianas, MUDHA); Center for Formation and Social and Agrarian Action (Centro de Formación y Acción Social y Agraria, CEFASA); Center for Sustainable Development (Centro por el Desarrollo Sostenible, CEDESO); Dominicans for Rights (Dominican@s x Derecho); Caribbean Migrants Observatory (Observatorio Migrantes del Caribe, OBMICA); Open Society Justice Initiative; and Reconoci.do.
III. BACKGROUND

A. Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education

In September 2013, the Constitutional Court of the Dominican Republic through Judgment 168-13 judicially mandated the retroactive revocation of the citizenship of Dominicans descended from undocumented immigrants. On account of both this development and the preexisting situation for such individuals, Dominicans of Haitian descent are often structurally and administratively excluded from the public education system because of their inability to present personal identifying documents at schools or universities. This is the case notwithstanding the existence of a constitutionally guaranteed right to education in the Dominican Republic, and the international legal obligation to provide nondiscriminatory access to all levels of schooling.

Researched and drafted in early 2014, the report “Left Behind: How Statelessness in the Dominican Republic Limits Children’s Access to Education” documented the toll of statelessness in the Dominican Republic and how it affects children’s right to education. The research mission documented that:

- The Dominican Republic had arbitrarily deprived Dominicans of Haitian descent of their Dominican nationality and identification documents, aggravating longstanding issues with documentation in this community.

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3 See generally, Left Behind report, supra note 1.

4 CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, Jan. 26, 2010 (Dom. Rep.), at article 63 “every person has the right to an integral education (…)” Law 136-03 for the Protection of the rights of children and adolescents, at article 45, paragraph II “Under no circumstances can children or adolescents be denied education for reasons such as…. lack of documents proving identity;” and MINISTRY OF EDUCATION OF THE DOMINICAN REPUBLIC, Circular Number 18 regarding the enrollment of children in schools, (July 27, 2011).


On this basis, many Dominicans of Haitian descent were exposed to violations of their human rights, including the right to education. Many Dominicans of Haitian descent interviewed were prevented from attending primary or secondary school because they did not have birth certificates. When able to attend school, many children were denied the opportunity to take national examinations required to graduate if they did not possess a birth certificate. Government officials and educators inconsistently applied and did not adequately understand the laws that guarantee access to education for all children in the Dominican Republic, regardless of documentary status. Laws, policies, and practices of the Dominican government hindered children of Haitian descent from realizing their full educational potential and prevented many from fulfilling their ambitions to work in the formal labor market, to raise their standards of living, and to contribute fully to Dominican society.

In general, the 2014 research found that access to education for children who are stateless or at risk of statelessness in the Dominican Republic is inextricably linked to the denial of official documentation. Over all, the recommendations encouraged the Dominican government to take all necessary steps to ensure equal access to education at all levels regardless of nationality and status of documentation in line with international obligations, and to ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.  

Finally, international organizations have recognized how lack of documentation limits access to education to Dominicans of Haitian descent. For example, in December 2015, the Inter-American Commission on Human Rights (IACHR) noted in its report on the Situation of Human Rights in the Dominican Republic that “out of the 3,342 people who provided information and testimonies during the [Commission’s] visit, 620 situations where these people or their relatives had faced obstacles in regard to the right to education were recorded.” Similarly, in March 2015, The UN Committee on the Rights of the Child noted that children who lack a birth certificate and children of Haitian descent who lack official documentation were not allowed to take the national examinations required to graduate from primary and secondary school.

B. Changes to the Legal Regime Governing Citizenship after the Constitutional Court Decision of 2013

In recent decades, the question of who qualifies as a citizen of the Dominican Republic has been the subject of great controversy. On September 23, 2013, the Dominican Constitutional Court’s new interpretation on the acquisition of nationality through Judgment 168-13 retroactively deprived the right to nationality to tens of thousands of people, mostly of Haitian descent.

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7 Left Behind report, supra note 1, at 56.
8 IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2; I/A Court H. R., Case of Expelled Dominicans and Haitians v. Dominican Republic, supra note 2; Amnesty International, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2; Human Rights Watch, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
9 The IACHR stressed that “although Dominican law recognizes that the right to education must be guaranteed without any discrimination, including those based on distinctions by nationality, race, economic and social position or of any other nature, during and after the visit, the Commission received many testimonies and information from families and children and adolescents of Haitian descent born in the Dominican Republic that, as a result of judgment TC/0168/13 and the existing situation, were prevented from continuing their studies at school or in college due to not having a birth certificate or an identification card required by teachers or their schools authorities.” See IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2, at para. 375.
10 UN COMMITTEE ON THE RIGHTS OF THE CHILD, Concluding observations on the combined third to fifth periodic reports of the Dominican Republic, CRC/C/DOM/CO/3-5, at para 57, (6 March 2015).
Judgment 168-13 retroactively established that only individuals born in the country to Dominican nationals or legal residents were to be considered to have Dominican nationality on the basis of birth in the territory.\(^\text{11}\)

To help address the consequences of Judgment 168-13, the Dominican government made changes to the legal regime governing the acquisition of nationality and issuance of documentation in the Dominican Republic throughout 2014. Namely, the legal actions taken by the State in response to Judgment 168-13 were: (i) Decree No. 327-13: National Plan to Regularize Foreigners in an Irregular Migratory Situation; and (ii) Law 169-14: A Special Regime for Persons Born in Dominican Territory Irregularly Registered in the Dominican Civil Registry, and on Naturalization.

1. Decree No. 327-13: National Plan to Regularize Foreigners in an Irregular Migratory Situation

Judgment 168-13 ordered Dominican authorities to take a number of actions.\(^\text{12}\) In addition to declaring that only individuals born in the country to Dominican nationals or legal residents are considered to have Dominican nationality on the basis of birth in the territory, the judgment ordered the National Migration Council to prepare a “national plan for the regularization of irregular foreigners living in the country.”\(^\text{13}\) Through Decree No. 327-13, the President of the Republic established an 18-month national plan to regularize foreigners in an irregular migratory situation, widely referred to as the “Regularization Plan.”

The Regularization Plan established a pathway for regularizing individuals in an irregular migratory status\(^\text{14}\) in the Dominican Republic. The individuals who could apply for the Regularization Plan were classified as those who: (a) entered the country irregularly; (b) overstayed his or her residence permit; or (c) violated the conditions that allowed him or her to enter regularly.\(^\text{15}\) Likewise, for those who were stripped of their nationality as a result of Judgment 168-13 and went from being considered Dominican nationals to foreigners, the Regularization Plan established the foundation for a pathway to citizenship. This specific process would later be established through Law 169-14, as explained below.

Additionally, the Regularization Plan provided that any foreigner wishing to regularize his or her migratory situation must have applied within 18 months of the date on which the Plan took effect, that is, before June 17, 2015. According to the Dominican government, 288,486 people


\(^{12}\) TC/0168/13, supra note 11, at 98.

\(^{13}\) TC/0168/13, supra note 11, at 99.

\(^{14}\) The IACHR has recommended that OAS member States avoid the use of expressions “illegal” and “illegal migrant” to refer to migrants whose immigration status is irregular. The use of the expressions “illegal” and “illegal migrant” reinforces the criminalization of migrants and the false and negative stereotype that migrants are criminals for the simple fact of being in an irregular situation. See, IACHR, Human rights of migrants and other persons in the context of human mobility in Mexico, OEA/Ser.L/V/II. Doc. 48/13, (December 30, 2013), at footnote 2.

applied to regularize their status during this period under any of the abovementioned categories, 90% of whom were Haitian nationals.16

Moreover, under Decree No. 327-13, there was supposed to be a halt in all deportations. The persons who applied for the Regularization Plan were not to be deported until the registration period for the Plan concluded, and their file was to be examined to determine whether or not they qualified for regularization of their migratory status. Out of the 288,466 persons who applied for the Regularization Plan, over 239,000 were approved and issued a corresponding identification by the immigration office. The documentation received by this group included a one- to two-year short-term residence permit to stay in the Dominican Republic. The permits of 143,000 migrants were set to expire on July 18, 2016; however, this deadline was extended for one year by order of the President of the Dominican Republic.17

Through June and July of 2015, the Directorate General of Migration (DGM) assisted migrants in a “voluntarily return” to their home countries before the official restart to deportations.18 The DGM ultimately asserted that 36,593 persons returned to Haiti between June 18 and July 6, 2015, under the “Assisted Voluntary Return Program,” the vast majority of whom were Haitian families irregularly residing in the Dominican Republic.19 On August 14, 2015, two months after the deadline for registering for the Regularization Plan ended, deportations were officially resumed. Those whose status was regularized under the Plan were not to be deported.20

Amidst the end of the Regularization Plan and the resumption of deportations, reports by civil society indicated that migration authorities were carrying out deportations without affording requisite due process. Several experts, organizations, governments, media, and others voiced their concern about the failure to follow protocols that would guarantee the full respect of human rights during deportation processes and ensure that Dominicans of Haitian descent would not be illegally expelled from the country.21 The IACHR called on the Dominican


17 7 DÍAS, Gobierno extiende un año vigencia de permisos de estadía a 143,000 extranjeros, (July 12, 2016), http://www.7dias.com.do/portada/2016/07/12/i213869_gobierno-extiende-anovigencia-permisos-estadia-143-000-extranjeros.html#.V8OdbCjhDIU.


government to “adopt any measures that may be necessary to ensure that individuals who had the right to Dominican nationality and were arbitrarily and retroactively deprived of their nationality under Constitutional Court Judgment TC/168/13 are guaranteed the right to live in Dominican territory and are protected from expulsion.”

Likewise, UN experts and the IACHR urged the Dominican government to take steps to prevent arbitrary deportation and uphold its human rights obligations.

Finally, there were concerns that many of the families that left Dominican territory had a legitimate claim to remain in the country, mostly because one of their members had been born on Dominican soil. For example, on August 14, 2015, the International Organization for Migration (IOM) reported that 32% of 6,311 people it interviewed at the Dominican-Haitian border between June 17 and August 13 had “claimed to have been deported into Haitian territory” by Dominican officials, when all deportations were supposed to have been halted. Over 27% of all those interviewed by the IOM said they were born in the Dominican Republic and 3.8% of the total declared possessing a Dominican identity document.

Similarly, out of those individuals who have been deported, expelled, or returned to Haiti, the UN High Commissioner for Refugees (UNHCR) interviewed and screened 1,272 families, of which 961 have one or more members born in the Dominican Republic.

2. Law 169 of 2014: A Special Regime for Persons Born in Dominican Territory Irregularly Registered in the Dominican Civil Registry, and on Naturalization

As noted above, the Regularization Plan was not specifically designed to address the reinstatement of citizenship to those affected by Judgment 168-13, but rather to address irregular migration. In response to the effects generated by the judgment, on May 23, 2014, the Dominican Republic adopted Law 169-14, which created two mechanisms to regain Dominican nationality for people born in the Dominican Republic and rendered stateless by Judgment 168-13.

Law No. 169-14 established a “special regime for persons born in Dominican territory irregularly registered in the Dominican civil registry, and on naturalization.” Under the law, different legal regimes were established for two groups of persons, based solely whether their births had been registered at the civil registry office. Group A, those who were registered, were supposed to have their nationality restored immediately. Group B, those who had not been registered, would have to register as foreigners and then apply for Dominican citizenship through naturalization. In greater detail the law established that:

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• Individuals who had a birth certificate issued by the Dominican Civil Registry (also known as “Group A”) were entitled under Law 169-14 to have their nationality immediately restored through the validation of their birth certificates.26

• Individuals who were born in the Dominican Republic but whose birth had never been registered (also known as “Group B”) were to register as foreigners. Once registered as foreigners, they would apply to the Regularization Plan, and finally they would have the opportunity to apply for Dominican citizenship through naturalization.27

In practical terms, Law 169-14 ordered the automatic reestablishment of Group A’s Dominican citizenship by way of restoring their identity documents. The law provided that for individuals in Group A, the Central Electoral Board (JCE) would proceed to reinstate the identity document of those whose documentation was either suspended or taken away on account of the government’s administrative measures28 or on account of Judgment 168-13 for being registered “irregularly.”

Related to Group A, in order to determine whose births had been registered “irregularly” in the civil registry, an audit was conducted. As such, Judgment 168-13 ordered the JCE to audit the Civil Registry’s record books for the period from 1929 to 2007.29 On May 26, 2015, the Central Electoral Board presented the “Results of the Audit of the Registry for the period 1929-2007.” In accordance with the audit, the JCE established that 0.58% of the Civil Registry’s record books contained records with possible irregularities.30 According to the Chair of the JCE, the audit indicated that 53,000 birth records were of foreign-born parents.31

Based on the provisions of Law 169-14, and on the findings of the audit done by the JCE, Dominican President Danilo Medina indicated that around 55,000 persons would be reissued their documents and that their previous acquisition of Dominican nationality, and that of their descendants, would be recognized.32 Later in June 2015, the JCE published the names of the abovementioned 55,000 individuals in Group A, indicating that all of them could go to the civil registry offices to obtain the identity documents that would recognize them as Dominicans.33

Despite Law 169-14 mandating the restoration of Dominican citizenship for individuals of Group A, advocates continued to report irregularities in the process of the reacquisition of identity documents. The IACHR reported receiving complaints about “the degree of discretion that the authorities exercise when issuing birth certificates, identity and voter registration cards and

26 LAW 169-14, supra note 25, at article 2 established “a special regime for children born within the national territory of nonresident foreign parents in the period between June 16, 1929 and April 18, 2007, and whose names appear in the records of the Dominican Civil Registry but were listed on the basis of documents that the current laws do not recognize as valid for those purposes.”

27 LAW 169-14, supra note 25, at article 6 established “the registration of children born in the Dominican Republic of foreign parents in an irregular migratory situation and whose names are not listed in the Civil Registry.”

28 CENTRAL ELECTORAL BOARD OF THE DOMINICAN REPUBLIC, Resolution No. 12/2007, which establishes the procedure for provisionally suspending issuance of birth, marriage and death certificates that are defective or were issued improperly, (December 10, 2007); ADMINISTRATIVE CHAMBER OF THE CENTRAL ELECTORAL BOARD, Circular No. 17-2007, (March 29, 2007).

29 TC/0168/13, supra note 11.


passports or renewing passports for Dominicans of Haitian descent.”

Likewise, Amnesty International reported that “those included on the list published by the JCE in June are divided into two groups: “authorized” and “transcribed” but, once again, the JCE has failed to clarify what those two categories mean.”

The internal administrative process of the JCE for implementing Law 169-14 resulted in the transcription and duplication of the birth records of some of the 55,000 persons listed by the JCE audit. Civil society organizations explained that the JCE ordered that the birth records of those in the audit, to first be transferred from the Civil Registry’s regular book of birth records to a “Transcriptions Book.” Then, due to a “duplication of records,” the government began filing legal actions in court seeking to declare the original birth certificates void.

Regarding the duplication and annulment of birth records, international organizations have expressed deep concern over the irregularities of the process of reissuing the identity documents of Group A. The IACHR stated that “if the courts agree to nullify the birth certificates entered into the Civil Registry’s regular book of birth records, the identification documents that these people now have (identity and voter registration card, driver’s license, passport, medical insurance, and others) would have no validity, because the original record of birth on which they were based has been nullified.”

Other irregularities in obtaining documentation for Group A have been pointed out by civil society organizations, including: the different treatment of cases for persons of the same family under the same conditions; persons who do not qualify to be on the audit list who are listed, and vice versa, persons who qualify to be on the audit list that are not listed; persons whose documents are still suspended under Judgment 168-13, despite Law 169-14; persons who are on the list who are denied their documents once they go to the civil registry office; among others. Advocates indicate that individuals who are not on the list will not get their Dominican identity documents restored, and that neither is the revalidation of identity documents guaranteed for the persons listed in the audit.

Extensive research and documentation has found that the denial of official documentation is inextricably linked to access to education for children who are stateless or at risk of statelessness in the Dominican Republic. Civil society groups report that the process of restoring identity documents and citizenship for individuals in Group A has been irregular, delayed, and arbitrary. Thus, this failure to issue proper identity documents, which give way to the recognition and effective enjoyment of their right to nationality, limits the ability to exercise all rights conditioned by these documents, such as the right to education.

By contrast, for individuals in Group B – those whose birth have never been registered – Law 169-14 requires that they register as foreigners to be eligible to apply for naturalization after two years. During that time, individuals in Group B would have to register for the Regularization

35 AMNESTY INTERNATIONAL, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2, at 27.
37 HUMAN RIGHTS WATCH, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2; AMNESTY INTERNATIONAL, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2, at 27; IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2, at para. 459.
38 See generally, Left Behind report, supra note 1.
39 HUMAN RIGHTS WATCH, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2; AMNESTY INTERNATIONAL, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2, at 27; IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2, at para. 459.
Plan created by Decree No. 327-13 and be considered migrants while they apply for Dominican citizenship through regular naturalization.

As indicated by Law 169-14, there was a special registration procedure for Group B, open for a period of 180 days, from July 2014 to February 2015. By the final deadline of February 1, 2015, the government announced they received 8,755 applications from individuals in Group B. This number of 8,755 applications is considered extremely low as, according to Human Rights Watch and Amnesty International, Dominican authorities had originally estimated that 53,438 people could fall into Group B; according to the IACHR the estimate given by the Directorate General of Migration was between 110,000 and 145,000.

With regard to the documentation issued to Group B, these individuals have received a foreign birth certificate and a migrant identification. Once registered under this special regime, the applicant received a receipt of his or her registry of biometric data in the program, and were issued a birth certificate stating the person’s nationality as “foreigner.” Later, the individual was to register for the Regularization Plan as a migrant. As documented by Amnesty International, individuals who have successfully completed an application and the requirements have received documents called “regularization of the migration status cards,” which mention that the person was born in the Dominican Republic and indicate Haiti as the country of nationality. Amnesty International has clarified that “these cards do not enable people to access formal employment and services or to fully exercise their human rights because the holders of such cards would also need to obtain identity cards for foreign nationals.”

It is important to note that after registering as foreigners and for the Regularization Plan, Group B individuals are considered migrants while they apply for Dominican citizenship through regular naturalization. The Ministry of Interior and Police, in charge of the naturalization process for this small potential group of 8,755 applicants, has reported that the Ministry still has not created the protocols that will govern the naturalization process to reacquire Dominican citizenship. As Human Rights Watch has noted, the naturalization process would raise several technical questions under Dominican naturalization law, and it is “unclear whether and how applicants will regain full rights as Dominican citizens.”

Lastly, as a result of Law 169-14, there are three other groups that are at present stateless or at a risk of statelessness due to lack of documentation proving Dominican citizenship. First, those

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43 Interview with MOSCTHA, (June 10, 2016).

44 Amnesty International, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2, at 32.

45 Human Rights Watch, We Are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
who were not able to register as part of Group B under Law 169-14;\textsuperscript{46} second, the children of Group A and Group B, whose births cannot be registered because their parents still lack Dominican identity documents;\textsuperscript{47} and third, individuals who have been historically registered as foreigners by the civil registry office despite being entitled to Dominican nationality, and thus lack documentation proving any other nationality.\textsuperscript{48} These groups currently have no access to documentation proving citizenship of any country, which makes them incapable of accessing any services that require documentation in the Dominican Republic, such as education.

C. Current Programs and Policies in the Dominican Education System

All children in the Dominican Republic, regardless of documentation, have a right to education. As a right, education is not only fundamental in itself, but it also enables individuals to realize other basic civil, political, economic, social, and cultural rights.\textsuperscript{49} At a domestic level, the right to education has been codified and developed in the Constitution of the Dominican Republic, the General Education Law, the Law For The Protection Of The Rights Of Children And Adolescents, and internal resolutions of the Ministry of Education.\textsuperscript{50} Likewise, the Dominican Republic has committed itself, through its international obligations, to respect and guarantee the right to education without discrimination.\textsuperscript{51}

On August 22, 2016, President Danilo Medina inaugurated the 2016-2017 school year by introducing new changes in education policies, modifying some practices, and enlarging existing programs.\textsuperscript{52} Although there has been no formal change to education laws, the Ministry of Education has implemented new programs and policies since 2014. These include the reorganization of educational levels,\textsuperscript{53} the elimination of the eighth-grade national exam,\textsuperscript{54} the implementation of extended hours for public schools,\textsuperscript{55} and the creation of centers for the provision of quality comprehensive care to children during early childhood,\textsuperscript{56} among others.

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\textsuperscript{46} Whether it was due to the short period of time for registering, the burdensome documentation requirements, or for not considering the scheme appropriate for restoring Dominican Citizenship, numerous individuals were not able to register as Group B under Law 169-14. See \textit{Human Rights Watch}, \textit{We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic}, supra note 2.

\textsuperscript{47} \textit{Amnesty International}, \textit{Without papers I am no one – Statelessness in the Dominican Republic}, supra note 2, at 34.

\textsuperscript{48} \textit{SAIS International Human Rights Clinic’s, Torn at the Seam: Migration, Deportations, and Humanitarian Concerns on the Island of Hispaniola}, supra note 15, at 55.


\textsuperscript{50} \textit{Constitución de la República Dominicana}, Jan. 26, 2010 (Dom. Rep.), at article 63 “every person has the right to an integral education (...)” Law 136-03 for the Protection of the rights of children and adolescents, at article 45, paragraph II “Under no circumstances can children or adolescents be denied education for reasons such as...lack of documents proving identity;” and \textit{Ministry of Education of the Dominican Republic}, \textit{Circular Number 18 regarding the enrollment of children in schools}, (July 27, 2011).

\textsuperscript{51} \textit{UDHR}, supra note 5, art. 26; \textit{ICESCR}, supra note 5, arts. 13-14; CRC, supra note 5, art. 28; CERD, supra note 5, art. 5(e)(v); CEDAW, supra note 5, art. 10; ACHR, supra note 5, art. 26.


\textsuperscript{53} \textit{Diario Libre}, \textit{La enseñanza primaria culminará en sexto grado}, (August 24, 2016), \url{http://www.diariolibre.com/noticias/educacion/la-enseñanza-primaria-culminará-en-sextio-grado-LI4758409}.


\textsuperscript{55} \textit{Ministry of Education of the Dominican Republic}, \textit{Extended School Day is taken on as State policy}, (19 December 2014).

\textsuperscript{56} \textit{Decree No. 102-13}, which declares of national interest the protection and comprehensive care for all people between 0 and 5 years of age and the inclusion of all children from five years to early childhood education, and created the National System protection and Comprehensive Care for Early Childhood. G. O. No. 10713 of April 25,
During both of his terms, President Medina has declared education to be a national priority. For example, since 2013, as a result of civil society demands to comply with the General Education Law, the Administration and Congress have allocated 4% of the gross domestic product (GDP) to pre-university education in each year's national budget. This has allowed the Ministry of Education to build more schools, invest more in teacher training and salary, as well as dedicate resources to student services in public schools.57

Since 2014, the structure of the education system in the Dominican Republic has been modified by policies and programs under the provision of the General Education Law. The Left Behind report documented that the national system in the Dominican Republic included a set grade structure that is comprised of one year of preschool, eight years of primary school, four years of secondary school, and then various universities and technical institutes. Students took national exams in the final grade of both primary school and secondary school in order to graduate.58 The findings showed how “passage of the eighth-grade national exam, required for graduation from primary school, is one of the most common barriers for children without documentation, because they must be registered in the national electronic database in order to take the exam.”59

As of the 2016-2017 school year, a reorganization of the set grade structure has been implemented. With the passage of Ordinance 1-2016, issued by the National Education Council on August 11, 2016, the educational levels will be divided into six basic and six secondary levels, the eighth-grade national exam will be eliminated, and there will only be a national exam on the final grade of secondary school in order to graduate.60 Instead, diagnostic tests will be applied to students every three years, but these are “not required for students to pass, but rather serve as a system to collect information on the educational level of students and apply the measures needed.”61

Another change since the 2015-2016 school year is the national policy for an extended school day. Up until 2014, the school day was four hours long. With this new policy, the goal is to have all public schools expand to eight hours per school day as part of the broader improvements to the education system.62 According to data provided by the government, there are already 1,029,000 students enrolled in the extended school day.63

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58 Left Behind, supra note 1, at 25.
59 Left Behind, supra note 1, at 35.
Additionally, there is the National Plan for the Protection and Integral Attention to Early Childhood. As of February 2015, the government has enacted a plan with seven priority lines of action to support children up to five years old, and their families and communities. This Plan was highlighted by the IACHR, which has acknowledged “the articulation of strategic actions with sectors and institutions responsible for providing health services, as well as to facilitate the enrollment in the civil registry so that these children can have their birth certificates.”

These efforts of the Dominican Republic to improve education have not gone unnoticed by international bodies. Both the UN Committee on the Rights of the Child and the IACHR have recognized the importance of the various measures taken by the Dominican government in recent years in the education sector. They have highlighted programs such as the National Plan for the Protection and Integral Attention to Early Childhood in 2015; increasing the budget for education, now allocating 4% of the GDP in pre-university education since 2013; implementing the adult literacy program named “Quisqueya Learns with You” (Quisqueya Aprende Contigo); as well as the national policy for an extended school day.

Despite the efforts of the Dominican government to implement these initiatives and policies, advocates continue to report problems in access to education for Dominicans of Haitian descent. They note that without proper documentation, Dominicans of Haitian descent cannot equally access the programs and policies implemented by the Dominican authorities. Individuals from Group A, Group B, and those who completely lack documentation and are stateless or at risk of statelessness face additional challenges when trying to participate in the public education system. Hereinafter these new policies, programs, and plans will be analyzed by illustrating the additional challenges faced by Dominicans of Haitian decent, as they navigate a system that maintains barriers to their access to education.

64 DECRETO 102-13, supra note 56; PRESIDENCIA DE LA REPÚBLICA DOMINICANA, supra note 56.
66 UN, COMMITTEE ON THE RIGHTS OF THE CHILD, supra note 10, at paras. 3 and 5, (March 6, 2015).
68 Interviews with Reconoci.do, ASCALA, MOSCHTA, MUDHA, CEFASA, OBMICA and CEDESO, (June, 2016).
IV. **ONGOING LIMITS ON ACCESS TO EDUCATION FOR DOMINICANS OF HAITIAN DESCENT**

Practitioners report that the lack of official documentation proving Dominican citizenship continues to be the major barrier for children who are stateless or at risk of statelessness in accessing the education system in the Dominican Republic. Current policies and practices resulting from the new citizenship regime have prevented some Dominicans of Haitian descent from enrolling in school or discouraged their attempts to enroll.

Although domestic and international law and policy protect the right to education for all children in the Dominican Republic, regardless of documentation, advocates indicate that Dominicans of Haitian descent still struggle to enroll in school due to lack of documentation. Some schools have been unable or unwilling to ensure that Dominicans of Haitian descent, who have difficulties obtaining documentation, can exercise their right to education, often delaying, deterring, or denying the enrollment and participation of these children in school.

In general, despite the new citizenship regime, some children still lack documentation to enroll in school under the established requirements. Notwithstanding the Dominican government’s efforts to create procedures for the validation of birth certificates and the reacquisition of nationality through a naturalization process, established under Law 169-14 and the Regularization Plan, Dominicans of Haitian descent still encounter multiple barriers when trying to access the education system. Families have reported that they are frequently unable to register their children, and if they are able, many obstacles make it difficult for them to stay in school and continue their studies.

> “I was born in a hospital in Mao [in the Province of Valverde, Dominican Republic] in 1999. My mom and dad are Haitians. My dad had Haitian papers [identity documents] when he came. When I was born at the hospital they were given a certificate of birth. [My parents] attempted to plead several times, but those of the Administrative Office [Civil Registry] said no because they were foreigners. The only thing I have [as documentation of identity is the medical referral of the hospital. [...] I am now studying my second year of high school but [at school] they are already asking me for birth certificate, but they don’t give it to me. I want you to help me stay in school. I feel bad because in the street they call me ‘damn,’ ‘dirty,’ and treat me badly. [...] We are all equal and that’s not right. I have as much right to be Dominican [sic] as the others. I just want to study. This is not fair.”

Testimony of a 15-year-old girl born in the Dominican Republic, before the IACHR in Batey Libertad, Dominican Republic, December 4, 2013.

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69 **CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA**, Jan. 26, 2010 (Dom. Rep.), at article 63 “every person has the right to an integral education (...);” **Law** 136-03 for the Protection of the rights of children and adolescents, at article 45, paragraph II “Under no circumstances can children or adolescents be denied education for reasons such as... lack of documents proving identity;” and **MINISTRY OF EDUCATION OF THE DOMINICAN REPUBLIC, Circular Number 18 regarding the enrollment of children in schools**, (July 27, 2011).

70 **UDHR**, supra note 5, art. 26; **ICESCR**, supra note 5, arts. 13-14; **CRC**, supra note 5, art. 28; **CERD**, supra note 5, art. 5(e)(v); **CEDAW**, supra note 5, art. 10; **ACHR**, supra note 5, art. 26.


A. Access to Education for Children Denied Documentation

As a result of Law 169-14, separate from individuals of Group A and Group B, there are three additional groups that are presently stateless or at a severe risk of statelessness due to lack of documentation proving Dominican citizenship:

- First, those who were not able to register as part of Group B under Law 169-14, whether due to the short period of time for registering, the burdensome documentation requirements, or not considering the scheme appropriate for restoring their Dominican Citizenship;
- Second, the children of Group A and Group B individuals, whose births cannot be registered because their parents still lack Dominican identity documents; and
- Third, individuals who have been historically registered as foreigners by the civil registry office despite being entitled to Dominican nationality, and thus lack documentation proving any other nationality.

As was the case before the implementation of Law 169-14 and the Regularization Plan, these groups currently have no access to documentation proving Dominican citizenship or any other citizenship. The lack of documentation proving citizenship of any State renders them stateless or puts them at severe risk of statelessness. As a result they are incapable of accessing any services that require documentation in the Dominican Republic, such as education. Many of them still face many of the same issues reflected in the 2014 Left Behind Report.

Unfortunately, numerous schools have formal or informal policies and practices that discourage, delay, or deny undocumented Dominican children of Haitian descent from enrolling and participating in school. In spite of a legal obligation, both under domestic and binding international law, to provide education for all children in the Dominican Republic, numerous schools have formal or informal policies and practices that discourage, delay, or deny undocumented Dominican children of Haitian descent from enrolling and participating in school. In spite of a legal obligation, both under domestic and binding international law, to provide education for all children in the Dominican Republic, many of them still face many of the same issues reflected in the 2014 Left Behind Report.

73 Individuals whose births were already registered, and were entitled under Law 169-14 to have their nationality immediately restored through the validation of their birth certificates (also known as Group A).
74 Individuals who were born on Dominican territory but whose birth was never registered in the civil registry. Under Law 169-14, they could apply for registration as foreigners, and then regularization of migratory status under the Regularization Plan; they will have the possibility to apply for Dominican citizenship through naturalization (known as Group B).
75 HUMAN RIGHTS WATCH, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
76 SAIS INTERNATIONAL HUMAN RIGHTS CLINIC’S, Torn at the Seam: Migration, Deportations, and Humanitarian Concerns on the Island of Hispaniola, supra note 15, at 55.
77 SAIS International Human Rights Clinic’s, Torn at the Seam: Migration, Deportations, and Humanitarian Concerns on the Island of Hispaniola, supra note 15, at 55.
78 For an analysis of the statelessness situation in Dominican Republic, see: IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2; INTER-AM. CT. H. R., Case of Expelled Dominicans and Haitians v. Dominican Republic, supra note 2; AMNESTY INTERNATIONAL, Without papers I am no one – Statelessness in the Dominican Republic, supra note 2; HUMAN RIGHTS WATCH, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
79 For a complete analysis of the report and its findings, see Left Behind, supra note 1.
80 CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, Jan. 26, 2010 (Dom. Rep.), at article 63 “every person has the right to an integral education (...);” Law 136-03 for the Protection of the rights of children and adolescents, at article 45, paragraph II "Under no circumstances can children or adolescents be denied education for reasons such as... lack of documents proving identity;" and MINISTRY OF EDUCATION OF THE DOMINICAN REPUBLIC, Circular Number 18 regarding the enrollment of children in schools, (July 27, 2011).
81 UDHR, supra note 5, art. 26; ICESCR, supra note 5, arts. 13-14; CRC, supra note 5, art. 28; CERD, supra note 5, art. 5(e)(v); CEDAW, supra note 5, art. 10; ACHR, supra note 5, art. 26.
exclusion of undocumented Dominican children of Haitian descent from the school system continues to be a problem that hinders children’s ability to effectively exercise their right to education in the Dominican Republic.

“My daughter was born here [in the Dominican Republic], but as I had no papers, I could not get her birth certificate. Two years ago, as she did not have the certificate [of birth] she could not continue studying. At school they let her study only until the eighth [grade]. My daughter has already a two-year-old daughter that she could not register either because she still doesn’t have her certificate.”

Testimony of a Haitian woman on her behalf, and on behalf of her daughter and granddaughter, before the IACHR in Batey Libertad, Dominican Republic, December 4, 2013.

1. Persistence of Barriers to Education Based on Lack of Documentation

The problem of access to documentation for Dominicans of Haitian descent and its impact on education has been extensively monitored and documented. During the 2014 fact-finding mission for the Left Behind report, families reported that they had encountered problems keeping children in school because they lacked documents requested by school officials or their documents were not accepted. In 2016, community advocates reported that the practice of denying children enrollment on the basis of lack of documentation persisted during the 2015-2016 school year.

The most common barrier for children without documentation was enrollment in grades eight and twelve due to the national exams. In order to take the exam, children must be registered in the national electronic database. This national database, set up and maintained by the Ministry of Education, requires information that is only contained in a birth certificate, such as a registration book, file, and certificate number. Civil society organizations report that children who lack documentation continue to be denied enrollment for grades eight and twelve and have been turned away by schools.

“This year my daughter cannot take the national tests because she doesn’t have papers and they will not accept her in school.”

Testimony that a Haitian immigrant gave in the presence of the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

Other arbitrary practices also persist, such as denying children enrollment or attempts to enroll them in other grade levels on the basis of a lack of documentation. Some schools have been unable or unwilling to ensure that Dominicans of Haitian descent, who lack documentation, can exercise their right to education, often delaying, deterring, or denying the enrollment and

82 On August 27, 1999, the IACHR granted precautionary measures for the girls Dilcia Yean and Violeta Bosico, who had been denied Dominican citizenship despite having been born on Dominican soil. The Commission called upon the State to take the measures necessary to prevent the Yean and Bosico girls from being deported and to ensure that Violeta Bosico was not denied her right to attend classes and receive the education provided to all other children who are Dominican citizens. See: IACHR, PM 86/99 –Dilcia Yean and Violeta Bosico, Dominican Republic, (August 27, 1999).
83 Left Behind, supra note 1, at 24.
84 Interviews with Reconoci.do, ASCALA, MOSCTHA, MUDHA, CEFASA, OBMICA, and CEDESO, (June, 2016).
85 Left Behind, supra note 1, at 35.
86 Interviews with Reconoci.do, ASCALA, MOSCTHA, MUDHA, CEFASA, OBMICA, and CEDESO, (June, 2016).
87 Interviews with Reconoci.do, ASCALA, MOSCTHA, MUDHA, CEFASA, OBMICA, and CEDESO, (June, 2016).
participation of these children in school. Once students have been denied enrollment due to
documentation, it can be hard to get them to go back to schools as reintegration of these
children poses an additional challenge.

In order to address this situation, some service providers employ informal means that include
sending letters and reaching out to individual principals to advocate for a student’s access to
school. These advocates rely on Circular No. 18 from the Ministry of Education, which
mandates the enrollment of all children in school, even where there is a lack of documentation.
Advocates report that most schools respond positively to this kind of direct engagement for
general admission in other grades, but children face the same barriers in moving forward, past
the eighth-grade and twelfth-grade national exams.

“I’m from [the Dominican Republic] … I don’t have a [birth] certificate… I’m in school, in the
fourth grade. I don’t feel right. I need the certificate. I need the birth certificate, I need to
have it. I have an older brother who was born here (in the Dominican Republic) and he has
his papers [birth certificate] … My father is in Haiti and my mother is here. She has a birth
certificate…. In school, when you don’t have a birth certificate, you need it; if you have a
birth certificate and you have a little problem, it gets fixed; so I feel like I’m missing
something…. I feel like [my classmates in school] are better than I am, because they have
certificates and I don’t… At times [my schoolmates] make me feel bad, they criticize me by
saying, why don’t I have the certificate? I tell them that I don’t have it… I feel bad… They
make fun of me. They make me feel like I’m not as good as they are… I would ask you to
please do me the favor [of giving me the birth certificate] and I’d be most grateful.
Testimony received from an eleven-year-old boy, before the IACHR in Dominican Republic,
December 4, 2013.

B. Access to Education for “Group A”

Law 169-14, enacted in May 2014, in reaction to Judgment 168-13, established a procedure
for the validation of birth certificates and the reacquisition of nationality for those whose births
were already registered. “Group A” is the common term for individuals who, under Law 169-14,
were to undergo this internal procedure with the Central Electoral Board (JCE) to have their
previously issued identification documents validated, and as such, their Dominican citizenship
restored.

The internal administrative process of the JCE to implement Law 169-14 presented various
obstacles to those attempting to register under Group A, which ultimately lead to problems in
the issuance of identity documents for Dominicans of Haitian descent. For individuals in Group
A, the lack of issuance of proper identity documents recognizing their Dominican nationality

88 Interview with CEDES, (July 1, 2016).
89 Interview with ASCALA, (June 30, 2016).
90 Interview with Reconoci.do, (June 13, 2016).
91 TC/0168/13, supra note 11; For an analysis of the ruling and its implications, see Left Behind, supra note 1, at 11;
IACHR, Report on the Situation of Human Rights in the Dominican Republic, supra note 2; INTER-AM. CT. H. R., Case of
Expelled Dominicans and Haitians v. Dominican Republic, supra note 2; AMNESTY INTERNATIONAL, Without papers I am no
one – Statelessness in the Dominican Republic, supra note 2; HUMAN RIGHTS WATCH, We are Dominican: Arbitrary
Deprivation of Nationality in the Dominican Republic, supra note 2.
92 Law 169-14, supra note 25, at article 2.
limits them in exercising all of the other rights conditioned by these documents, including education.

“Throughout my entire life, my documents had never been a problem for me. That changed in 2007. When I went to get a certified record to enroll in high school, secondary school, they told me to come back for it in 15 days. When I went with my friends, who were enrolling in school with me, they were given the certified record but I wasn’t. They didn’t want to give me one. I told them that I was registered with the El Seybo Registry Office; I told them “you have to give me my documents.” They told me they couldn’t give me the documents because my parents ‘are Haitian.’”

Testimony of a man born in the Dominican Republic of Haitian decent, given before the IACHR in Santo Domingo, Dominican Republic, December 3, 2013.

Civil society organizations in the Dominican Republic have denounced the ongoing limitation on access to education for Dominican of Haitian descent. One community advocate who works closely with Group A reported that there are many children in Group A who do not possess their birth certificates, and that children in Group A who still lack their documents cannot properly access the education system. Civil society organizations monitoring the implementation of the Group A policy indicate that ongoing issues with recordkeeping at the JCE have resulted in the denial or delay of documents required for Dominicans of Haitian decent to assert their right to education.

1. Transcription, Duplication, and Annulment of Records

In order to identify those who had been registered “irregularly” as Dominicans, Judgment 168-13 ordered the JCE to audit the Civil Registry’s record books. In May 2015, the Chair of the JCE stated that the audit results showed 53,000 records of births to foreign-born parents. Based on the provision of Law 169-14, in June the JCE published the names of approximately 55,000 people indicating that all of them could go to the civil registry offices to obtain the documents recognizing them as Dominican citizens.

The internal administrative process of the JCE resulted in the transcription and duplication of the birth records of some of the 55,000 persons listed by the JCE audit. Civil society organizations working on the ground have explained that the JCE ordered that the records of birth of those in the audit list be transferred from the Civil Registry’s regular book of birth records to a “Transcriptions Book.” Then, due to a “duplication of records,” the government began filing legal actions in court to declare the original birth certificates void.

The duplication of records resulted in different identity documents being issued to individuals of Group A. As Human Rights Watch indicated, after transcription, the Group A individuals will have two birth registries: (1) an original civil registry, identical to that of all Dominicans, with a unique book, file, and certificate number; and (2) a transcribed registry, with a different book,
file, and certificate number. The organization concluded that “this transcribed record establishes a separate juridical personality from the original civil registry.”

“Everyone thought that Group A was the most protected one, in light of the spirit of Law 169-14 that mandated immediate restitution of citizenship documents. Nonetheless, this didn’t go as expected, they had to go through very complex processes: the audit, the preparation of the list, the transcription of registry, and now the nullity lawsuits” commented one lawyer who works on the nullity lawsuits against Group A.

Civil society organizations working on the ground point out that not all listed individuals have been able to access their documentation. The Movement of Dominico-Haitian Women (MUDHA) estimated that there are 25,050 persons listed in the audit who still cannot effectively access documentation. Thus, children of Group A who still lack their documents cannot access education properly and are in the same situation as of those with no record in the civil registry.

One community advocate reported that, in some cases, schools will not enroll children if the JCE has not issued them a “transcribed” birth certificate. Therefore, individuals of Group A face an additional barrier as schools will not accept their original birth registry, and will only accept the “transcribed one.” Some schools request an updated birth certificate to enroll in the education system, which represent an additional hurdle. This practice is contrary to Dominican law and policy, which states no documentation should be required to enroll students, much less an updated registry when students already have presented their original birth certificates.

Likewise, problems have arisen due to the duplication of records. For example, a student may have trouble accessing his or her school records because they are listed under the original birth certificate information – and then face denial of registration with the explanation that his or her new transcribed birth record is not for the same person. Although advocates in certain circumstances have worked with civil registry officials to obtain a certification clarifying the discrepancy, it is not the general practice of the JCE to issue such certifications. As a result, such ad-hoc solutions do not address similar situations faced by the thousands of other students in Group A.

Practitioners generally concur that children in Group A have a better chance of exercising their right to education than children in Group B. Nonetheless, they insist that the Ministry of Education should instruct school principals and registrars to accept any documentation provided by Group A for enrollment, including an original birth record, a transcribed record, a certification, or any other form of identification. “This population has to be very well informed and empowered in order to properly exercise their rights,” affirmed one community advocate.

Lastly, the transcription and duplication of records can also present impediments when students try to access universities. In general, Group A children’s school records will be associated with original records they previously presented to enroll in school. Thus the creation of a new birth record, with a different book, file, and certificate number, can give rise to complications in the

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97 Human Rights Watch, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
98 Interview with Reconoci.do, (June 13, 2016).
99 Interview with MUDHA, (June 15, 2016).
100 Interview with community advocate, (June 10, 2016).
101 Interview with Reconoci.do, (June 13, 2016).
102 Interview with CEFASA, (June 14, 2016).
issuance of complete school records to children when they wish to attend an institution of higher education.\textsuperscript{103}

C. Access to Education for “Group B”

Law 169-14 also introduced a special registration procedure under which individuals who were born on Dominican soil but whose birth was never registered in the civil registry (commonly known as Group B) could apply for registration as foreigners, regularize their migratory status, and become eligible to apply for naturalization.\textsuperscript{104} The Dominican authorities have reported that 8,755\textsuperscript{105} individuals applied for this process.\textsuperscript{106} However, as a result of these different procedures, Group B has been issued documentation that is unfamiliar to school administrators, creating additional barriers for these children in their enrollment.

1. Documentation Issued to “Group B”

Individuals in Group B have different documentation than those usually issued to people born on Dominican territory, despite being born in the Dominican Republic. Once an individual registered under the special regime of Law 169-14, they received a receipt of registry of biometrical data in the program and were then issued a birth certificate stating his or her nationality as “foreigner.”\textsuperscript{107} Later, the individual had to register for the Regularization Plan as a migrant. Those who have successfully completed their applications and the requirements received documents called “regularization of migration status cards.”\textsuperscript{108} One advocate explained that, “there have been no specific ID’s for Group B. There is no way of knowing if the person is a migrant or Group B.”\textsuperscript{109}

Additionally, not all who applied for this special regime under Law 169-14 were successful in their application. The Ministry of Interior and Police (MIP), which is in charge of the registration process, still has not indicated if all of the 8,755 applicants have been cleared and will be able to apply for the naturalization process in 2017.\textsuperscript{110} For example, one requirement for applicants to register was to provide parental identification. For parents who lacked documentation at the outset of the process, and were unable to get it within the 180-day registration period, their children were permanently prevented from applying for the special regime and eventually obtaining Dominican nationality.\textsuperscript{111}

\textsuperscript{103} Interview with Reconoci.do, (June 13, 2016).
\textsuperscript{104} UNHCR Haiti, \textit{Statistical Update}, (August 1, 2016).
\textsuperscript{105} This number of 8,755 applications is considered extremely low as, according to Human Rights Watch and Amnesty International, Dominican authorities had originally estimated that 53,438 people could fall into Group B, while according to the Inter-American Commission the estimate given by the Directorate General of Migration was between 110,000 and 145,000. See supra note 42.
\textsuperscript{107} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{108} \textsc{Human Rights Watch}, \textit{We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic}, supra note 2.
\textsuperscript{109} Interview with MUDHA, (June 15, 2016).
\textsuperscript{110} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{111} \textsc{Human Rights Watch}, \textit{We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic}, supra note 2.
For those who were able to properly register under the special regime and are in possession of a birth certificate as “foreigner” and an identification indicating their regularization as a migrant, enrolling in school still presents a challenge. Some school authorities are not familiar with this documentation and in turn discourage or deny children’s enrollment due to lack of a proper Dominican birth certificate. When children try to enroll with the identification, some schools will not accept them, while others have accepted them discretionally.112

“The brought me here to work in the Boca Chica Sugar Plantation [Ingenio Boca Chica]. I entered legally in the year [19]72. My file number is No. [...]. Since 1972 I worked sowing sugar cane until that came to an end. My children were born and grew up here, but they did not let me register them because I am Haitian. Two of my children had to drop out of school because they don’t have their papers”.
Testimony of a 62-year-old Haitian migrant worker, before the IACHR in the Dominican Republic, December 4, 2013

The uncertainty of the nature of the documentation issued to Group B presents different challenges. Likewise, the lack of documentation for those still waiting to complete their application leaves them completely undocumented and restricts their rights to those of short-term migrants in the Dominican Republic, despite being born in the country. Families have been informed at school that, “if they do not have proper documentation, they may not be able to return next year.”113

2. Arbitrary Procedures for Enrollment

The implementation of Law 169-14 was unsuccessful in properly informing school administrators, principals, and registrars about the different types of documentation that would be issued under the special regime. Advocates report that some schools admit, discourage, or deny the enrollment of individuals in Group B based on different considerations, and insist authorities have not taken affirmative actions to help schools to understand and accept the documentation provided to Group B.114

The documentation that children of Group B present, such as a birth certificate signaling them as “foreigners” and the Regularization Plan identification, pose a challenge in the process of enrollment for schools. According to community advocates, children in Group B face obstacles because it is hard to record them in the registry system in which the children are enrolled. It is not possible to register them as Dominicans because they do not have a Dominican birth certificate, and as a result they have to be registered as foreigners with the identification issued by the Regularization Plan.115

With the help of local community advocates, some children of Group B have been able to enroll in school. These advocates report that some schools accept the Regularization Plan identification but that “it is not easy.”116 Advocates have to go to schools and talk to school administrators and principals to explain the laws and policies that mandate that every child be

112 Interview with MUDHA, (June 15, 2016).
113 HUMAN RIGHTS WATCH, interviews with Maria (last name withheld) and Ana Iris (last name withheld), residents of the Santo Domingo province, (April 15, 2015), cited in HUMAN RIGHTS WATCH, We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic, supra note 2.
114 Interviews with Reconoci.do, ASCALA, MOSCTHA, MUDHA, CEFASA, OBMICA, and CEDESO, (June, 2016).
115 Interview with CEFASA, (June 14, 2016).
116 Interview with CEFASA, (June 14, 2016).
enrolled, even without documentation.\textsuperscript{117} Some school administrators say that they don’t want to have “problems” by enrolling this population, apparently referring to reprisals they may face from the Ministry of Education for accepting these students.\textsuperscript{118}

Nonetheless, not all schools discriminate against this population on account of documentation status. It was reported that in some \textit{bateyes},\textsuperscript{119} children in Group B are able to enroll in schools with the documentation they present.\textsuperscript{120} Some school administrators in the \textit{bateyes} understand the struggles of the community and therefore make extra efforts on some occasions to enroll students. Likewise, in the southern region of the country, the documents of Group B are accepted discretionally depending on the grade of the student.\textsuperscript{121} Advocates suggest that this is the case because the majority of children in these areas do not have documentation and barring them from enrollment would mean the school would be left without students.

Under the newly implemented national policy for an extended school day,\textsuperscript{122} local advocates report that Dominican birth certificates have been required to enroll. When one is not presented, school administrators allege that the school is already at capacity. Even when some schools do accept this documentation, the children who have Dominican birth certificates are given priority over those who present an identification issued under the Regularization Plan.\textsuperscript{123} “For Group B, not even having the documents issued under Law 169-14 can guarantee they’ll go to school,” stressed one advocate.\textsuperscript{124}

Advocates also report that children in Group B who have been allowed to enroll are starting to get their “hopes up” because the documentation is starting to work and has allowed them to go to school. Still, more efforts need to be made to motivate and incorporate this population into the education system, especially those in Group B whose education have been delayed due to a lack of documentation.\textsuperscript{125}

3. \textbf{Lack of Coherent Policies in Public Schools}

As noted above, both under domestic\textsuperscript{126} and international law,\textsuperscript{127} all children in the Dominican Republic - regardless of documentation - have a right to an education. However, children of Group A, Group B, or those who completely lack documentation face arbitrary practices and a case-by-case treatment when attempting to enroll in school. In general, community advocates point to insufficient information provided to school administrators from the Ministry of

\textsuperscript{117} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{118} Interview with CEFASA, (June 14, 2016).
\textsuperscript{119} Term used to refer to the settlements located on sugar cane plantations, were Haitian migrants typically live. See: OBMICA (NATÁLIA RIVEROS), \textit{Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación}, at 15, (2014).
\textsuperscript{120} Interview with Reconoci.do (June 13, 2016).
\textsuperscript{121} Interview with CEDESO (July 1, 2016).
\textsuperscript{123} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{124} Interview with OBMICA, (September 12, 2016).
\textsuperscript{125} Interview with CEDESO (July 1, 2016).
\textsuperscript{126} \textit{Constitución de la República Dominicana}, Jan. 26, 2010 (Dom. Rep.), at article 63 “every person has the right to an integral education (…):” Law 136-03 for the Protection of the rights of children and adolescents, at article 45, paragraph ii “Under no circumstances can children or adolescents be denied education for reasons such as... lack of documents proving identity;” and \textit{Ministry of Education of the Dominican Republic}, Circular Number 18 regarding the enrollment of children in schools, (July 27, 2011).
\textsuperscript{127} UDHR, supra note 5, art. 26; ICESCR, supra note 5, arts. 13-14; CRC, supra note 5, art. 28; CERD, supra note 5, art. 5(e)(v); CEDAW, supra note 5, art. 10; ACHR, supra note 5, art. 26.
Education and the Ministry of Interior and Police regarding how to enroll this population in schools.  

It is true that school officials may request documentation to show that a student falls within the school’s minimum and maximum age requirements. Although a school might request documents such as a birth certificate to verify a child’s age, schools should not prevent or discourage children from enrolling in or attending school because they lack a birth certificate. In this regard, the Committee on Economic, Social, and Cultural Rights has explicitly cited the requirement of birth certificates for school enrollment as an example of indirect discrimination against minorities or non-nationals who are unable to obtain these documents.

Regrettably, not all schools implement the same policy at the moment of enrollment. Depending on the region and how familiar the school administration is with documentation requirements, some have been supportive in seeking enrollment for students who face documentation challenges. Teachers can be a great source of assistance when they identify that a child is having problem enrolling or staying in school due to a lack of documentation. Some teachers refer students to advocates who can assist the child. As noted above, advocates report that there are some areas, such as in some bateyes, where children have enrolled without difficulties, depending on the school principal and how well they know the challenges their children face in obtaining documents.

Advocates acknowledged that all institutions are in a transitioning process, learning how to deal with the Regularization Plan and Law 169-14, but also emphasized that the Ministry of Education should take additional action to inform school administrators of their duty to enroll all children, and to not turn children away due to lack of documentation. They also highlighted that in the interim, affected people remain vulnerable and need the support of government officials, not discouragement. “People lack knowledge of their rights, when they go enroll their children they get lost, they lose interest and are discouraged,” explained one local advocate.

Generally, there are shortcomings in the transfer of information between educational bodies and implementing staff at the local school level. Community advocates highlighted that the State has not taken any positive affirmative actions on this point, which could be addressed and remedied. As such, from the Ministry of Education, efforts should improve dissemination techniques for guidance and training materials distributed by authorities to the relevant registrars, administrators, or other officials to ensure all children, regardless of documentation, are able to enroll in school – as required by law.

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128 Interviews with CEFASA, (June 14, 2016) and CEDESO (July 1, 2016).
130 Interview with CEDESO (July 1, 2016).
131 Interview with CEDESO (July 1, 2016).
132 Term used to refer to the settlements located on sugar cane plantations, were Haitian migrants typically live. See: OBMICA (Natalia Riveros), Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación, at 15, (2014).
133 Interview with MOSCTHA, (June 10, 2016).
134 Interviews with Reconoci.do, ASCALA, MOSCTHA, MUDHA, CEFASA, OBMICA, and CEDESO, (June, 2016).
135 Interview with ASCALA, (June 30, 2016).
136 Interview with MOSCTHA, (June 10, 2016).
D. The Renewal of Deportations and Their Impact on Access to Education

After the deadline for registering in the Regularization Plan expired on June 2015, attendance in school was hindered by the renewal of deportations to Haiti. Likewise, the lives of many children born in the Dominican Republic were reportedly upended when their families decided to move to Haiti due to widespread fear of being arbitrarily deported. Consequently, children were forced to abandon their schooling in the Dominican Republic.

1. End of the Regularization Plan and “Voluntary Returns”

On August 14, 2015, two months after the deadline for registering for the Regularization Plan ended, all deportations were officially resumed, but those who had their status regularized under the Plan were not to be deported.137 Through June and July 2015, the Directorate General of Migration (DGM) assisted migrants to “voluntarily return” to their home countries before the official restart of deportations.138 The DGM ultimately reported that 36,593 persons returned to Haiti between June 18 and July 6, 2015, under the “Assisted Voluntary Return Program,” the vast majority of them allegedly Haitian families irregularly residing in the Dominican Republic.139

Many of the families who left Dominican territory had a legitimate claim to remain in the country, mostly because they were born on Dominican soil. Out of those individuals who were deported, expelled, or returned to Haiti by Dominican authorities, UNHCR interviewed and screened 1,272 families, of which 961 had one or more members born in the Dominican Republic. Likewise, UNHCR reported that 1,895 individuals had been verified to have been born in Dominican Republic,140 out of those, 75.5% were children.141

Some of the people who have been deported, expelled, or “spontaneously” returned have settled in camps close to Anse-à-Pitres. Amnesty International reported that the living conditions in the camps are “dire, with no or limited access to services such as water and sanitation, healthcare and education.”142

2. The Effect of Deportations on Education

As noted above, international and domestic law protects the right of all children to attend school regardless of immigration status. However, undocumented children are still subject to domestic immigration law, including the Directorate General of Migration’s (DGM) immigration enforcement actions that challenge their right to remain in the Dominican Republic.

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138 Amnesty International, Where are we going to live?, supra note 19, at 9.
140 UNHCR reports these children were born before January 26, 2010, qualifying them as Dominicans under the constitutional amendment of 2010.
141 UNHCR Haiti, Statistical Update, (August 1, 2016).
142 Amnesty International, Where are we going to live?, supra note 19, at 4.
Advocates report that once the deportations officially resumed, the chilling effect was not widespread, but still some cases were reported of families with children of Haitian descent fearful of leaving the house and not letting their children attend schools.\textsuperscript{143} This was reportedly directly related to the period of “voluntary returns” when 36,593 individuals returned to Haiti, amongst them families who had a legitimate claim to remain in the Dominican Republic – some even before the school year ended in May 2016.\textsuperscript{144} In this context, some reportedly fear approaching schools to enroll out of concern that the school will report their irregular status to the DGM and they might be deported.\textsuperscript{145}

Those who are in Haiti after having been deported, expelled, or “spontaneously” returned have limited access to education because of a lack of formal schools in the camps. Some camp residents reported to Amnesty International that their children continued to attend school in the Dominican Republic.\textsuperscript{146} These children are living in the camp in Tête à l’Eau, located very close to an unofficial border crossing point, and they report going to school in the Dominican Republic by crossing the border unofficially. They report Dominican soldiers generally let them cross if they are wearing a school uniform.\textsuperscript{147}

As a result, the renewal of deportation has contributed to fear and anxiety for children who lack identity documents and have affected children’s attendance to school. It is important that the Ministry of Education and the DGM develop and implement policies that protect children’s access to education from the broader effects of the DGM’s enforcement actions.

\textsuperscript{143} Interview with community advocate, (June 10, 2016)
\textsuperscript{144} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{145} Interview with MOSCTHA, (June 10, 2016).
\textsuperscript{146} AMNESTY INTERNATIONAL, Where are we going to live?, supra note 19, at 14.
\textsuperscript{147} See: CE-JILAP and all, Situation des familles dans les camps d’Anse-à-Pitres au regard des droits humains, Rapport d’investigation des organisations de droits humains, page 9, as cited in: AMNESTY INTERNATIONAL, Where are we going to live?, supra note 19, at 15.
V. CONCLUSION

Access to education for children of Haitian decent in the Dominican Republic continues to be predominantly affected by lack of documentation. Law 169-14 and the Regularization Plan were implemented as a response to Judgment 168-13 to restore the nationality of tens of thousands – mostly Dominicans of Haitian descent – who were stripped of their Dominican nationality. Still, the documentation issued to individuals through Law 169-14 has proven to be insufficient to uphold their right to education. While the broader issues surrounding access to citizenship are debated, steps should be taken to guarantee access to education.

Under both domestic and international law, all children in the Dominican Republic regardless of documentation have a right to education. Nevertheless some schools have been unable or unwilling to ensure that Dominicans of Haitian descent can exercise their right to education, often delaying, deterring, or denying their enrollment and participation in school. Whether on account of delays in the reissuance of documents for those in Group A, or because schools have been unwilling to accept the documents issued in the case of those applying for naturalization under Group B, documentation is still an impediment to accessing education.

In general, this report advocates for improved dissemination of guidance and training materials distributed by the Ministry of Education to the relevant school officials, registrars, administrators, teachers, or other officials to ensure all children, regardless of documentation, are able to enroll in school – as required by law. Additionally, this update encourages schools to evaluate and improve policies that may discriminate against Dominicans of Haitian descent who lack a Dominican birth certificate. Finally, both the General Directorate of Migration and the Ministry of Education should develop and implement policies that protect children’s access to education from the effects of immigration enforcement actions.
VI. RECOMMENDATIONS

- **To the Government of the Dominican Republic**
  - Ensure equal access to education at all levels, regardless of nationality and status of documentation, in particular for children of Haitian descent and children lacking a birth certificate.

- **To the Dominican Ministry of Education**
  - Remove any requirement that forces a child to submit a birth certificate in order to be officially included in the school records.
  - Prepare and disseminate guidance and training materials distributed to the relevant school officials, registrars, administrators, teachers, or other officials to ensure compliance with the principle of nondiscrimination when enrolling children lacking a Dominican birth certificate.
  - Instruct school principals and registrars to accept any documentation provided by Group A for enrollment, whether an original birth record, a transcribed record, a certification, or any other form of identification provided by the government.
  - Ensure that schools understand and accept the documentation of students in Group B and enroll them with any documentation provided by the government, even if that includes a “foreign” birth certificate or Regularization Plan identification.
  - Ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.
  - Allow children who lack a birth certificate to take the examinations required to graduate from primary and secondary education.
  - Engage in an interagency conversation with the Directorate General of Migration to discuss enforcement actions and their impact on children’s access to education.

- **To Public Schools in the Dominican Republic**
  - Evaluate and revise the enrollment procedures to ensure documentation requirements do not discriminate against undocumented children who may be unable to produce traditional birth registration documents.
  - Ensure all enrollment information materials list alternative options for documentation and express a flexible documentation policy to prove age other than the birth certificate.