

A PRODUCT OF THE
GEORGETOWN LAW HUMAN RIGHTS INSTITUTE FACT-FINDING PROJECT

Left Behind

How Statelessness in the Dominican Republic
Limits Children's Access to Education



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Cover Photo: Children at play in a *bateye* in the Dominican Republic

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EXECUTIVE SUMMARY

Over the past decade, who qualifies as a citizen of the Dominican Republic has been the subject of great controversy. Recent changes to Dominican law and its interpretation have heightened the crisis of statelessness in the country by denationalizing many Dominican citizens of Haitian descent. Often overlooked in this situation, however, is the impact that these changes in law and policy have had on children who have been rendered stateless or at risk of statelessness. This report focuses on education as a lens through which to look at the effects of statelessness on the Dominican Republic's youngest residents. From children kept out of primary school to ambitious adolescents prevented from realizing their dream of a university education, the effects have been immediate and tangible, and children are conscious of the impact.

"It feels bad," explained Victoria, a child told to leave school this academic year because she does not have documents. "I am young and want to study for the future – and I can't."¹

Access to education for Dominicans of Haitian ancestry has been curtailed by discriminatory school policies and the arbitrary application of laws guaranteeing equal access to education. This is of particular concern because the right to education is recognized as both a fundamental right and an enabling right, necessary for the realization of other civil, political, economic, social, and cultural rights.

The government of the Dominican Republic has denied persons of Haitian descent born on Dominican soil birth certificates, identity cards, and other essential documentation to which they are entitled. Withholding documentation has commonly been based on presumptions and allegations that the parents or ancestors of these individuals entered the country without legal authorization. This has created a multi-generational problem, where entire families lack official documentation of their Dominican nationality. These circumstances confine affected children and their families to situations of poverty and exclusion, with many continuing to occupy the isolated and impoverished *bateyes* built to house laborers during the heyday of the sugarcane industry.

In September 2013, the Constitutional Court of the Dominican Republic judicially mandated the retroactive revocation of the citizenship of Dominicans descended from undocumented immigrants. On account of both this development and the pre-existing situation, 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 school or university. 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 non-discriminatory access to all levels of schooling.

¹ Interview with Victoria (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

Without documentation and divested of the chance to enroll in high school or attend university, Dominicans of Haitian descent reported being forced to work in the informal labor market and consequently being prevented from improving their socio-economic situation, or that of their children. Rendered stateless by their own government, these individuals are denied the opportunity to realize their potential and remain trapped in an insidious cycle of deprivation from which they have the desire, but not the means, to escape.

Researched and drafted in early 2014 by the members of the Georgetown Law Human Rights Institute's Fact-Finding Project, this report documents the toll of statelessness in the Dominican Republic and how it affects children's right to education. During the research mission, which was carried out in the area surrounding Santo Domingo and a northern province, interviews with affected families, lawyers, service providers, educators, and government officials illustrated that:

- The Dominican Republic has arbitrarily deprived Dominicans of Haitian descent of their Dominican nationality and identification documents, aggravating longstanding issues with documentation in this community. This is in violation of internationally-accepted human rights standards, and consequently has made a considerable proportion of the Dominican Republic's population stateless.
- On this basis, many Dominicans of Haitian descent are increasingly exposed to violations of their human rights, including the right to education.
- Many Dominicans of Haitian descent interviewed for the purpose of this report were prevented from attending primary or secondary school because they do 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. Without a national identity card, most were denied the possibility of attending university.
- Government officials and educators inconsistently apply and do not adequately understand laws that guarantee access to education for all children in the Dominican Republic, regardless of documentary status. As a result, the government is falling short of ensuring equal access to education, as required by the Constitution and international human rights law.
- Laws, policies, and practices of the Dominican government hinder children of Haitian descent from realizing their full educational potential and prevent 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.

The findings of this project, which relate to the denial of documentation and the resulting barriers to education faced by children, have serious international human rights implications. The information collected reveals that the Dominican Republic has consistently and arbitrarily deprived children of their nationality and has failed to prevent, avoid, and reduce statelessness, with a grave impact on the ability of the children affected to properly access an education. This runs contrary to a range of legal obligations binding on the Dominican Republic in the realms of nationality, education, children, and discrimination. The objective of this report is to document the most formidable barriers impeding the full enjoyment of the right to education by children affected by statelessness and to contribute to the finding of solutions.

With this objective in mind, this report contains recommendations addressed to the government of the Dominican Republic, international and regional organizations, treaty-monitoring bodies, and United States government entities, as key actors in the response to the problems documented. These recommendations as a whole suggest that the current challenges faced by Dominican children are preventable and can be addressed. The full recommendations appear at the end of the report. The following highlights a few of our primary recommendations:

To the government of the Dominican Republic

- 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.
- Ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.
- Eliminate any requirements that a child must specifically present a birth certificate in order to be officially included in school records.
- Issue and enforce transparent, consistent, fair, and practical procedures for the national identity card and birth certificate acquisition processes and make those procedures accessible to the public.
- Establish an independent administrative mechanism with the right of appellate review that would allow for individuals to challenge both the issuance of a certificate of live birth labeling a child as a foreigner and denials of national identity cards.
- Fully comply with the orders of the Inter-American Court of Human Rights decision in the case of *Yean and Bosico v. the Dominican Republic*.

To the government of the United States of America

- Push the Dominican Republic to take all necessary steps to ensure equal access to education at all levels regardless of nationality and documentation, in line with its international obligations. Although there are already some legal safeguards for equal access to education in place, they are not effective in practice.
- Call on the Dominican government to investigate the serious labor violations of the Labor Chapter of the bilateral free-trade agreement CAFTA-DR found by the U.S. Department of Labor in its Public Report of Review of U.S. Submission 2011-03 (Dominican Republic). Children rendered stateless and forced out of school are more vulnerable to child labor and other labor violations that run afoul of CAFTA-DR.
- Make future U.S. support and training of the Dominican Republic's border security force CESFRONT contingent upon the resolution of the situation of statelessness in line with the government's obligations under international human rights law. The Dominican Republic has previously deported children and adults with claims to Dominican citizenship and the United States should not facilitate such activities.
- Take actions outlined by the civil society open letter to Secretary of State John Kerry of October 30, 2013 on this topic. The letter suggests numerous ways to elevate the issue of statelessness and apply diplomatic pressure on the Dominican Republic.

The situation as documented in this report cannot be allowed to persist. A prompt and adequate State response to the issues documented in this report is paramount to the full protection of the rights to nationality and education for all Dominican children.

For additional information on the situation in the Dominican Republic, such as legal source materials, please visit the report website at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/>. An appendix on terminology also can be found at the end of this report.

METHODOLOGY

The topic of this research, as part of the Human Rights Institute Fact-Finding Project, was proposed by a member of the student group Georgetown Human Rights Action-Amnesty International working with the Human Rights Institute. The project was then developed, in conjunction with the Georgetown Human Rights Institute, by a group of student researchers at the Georgetown University Law Center enrolled in a year-long human rights practicum course. A team of eleven investigators, including eight students, two adjunct law professors, and the Institute's Dash/Muse fellow, conducted the fact-finding mission and subsequently drafted this report. The mission sought to investigate whether statelessness or the risk of statelessness affects the ability of children to realize their right to education in the Dominican Republic. Although many organizations have previously reported on the issue of statelessness in the Dominican Republic, there is a considerable research gap with regard to how this affects children of Haitian ancestry, and particularly their ability to access education services.

During the fall of 2013, the research team studied relevant Dominican laws and policies, along with international and regional human rights standards relating to the rights to education and nationality. While developing the focus of this report, the research team engaged in substantial consultation with a broad set of stakeholders, including civil society organizations, academics, and government officials in the Dominican Republic, United States, and further afield.

The fact-finding mission which resulted in this report took place between January 6-11, 2014, in the area surrounding Santo Domingo and a northern province of the Dominican Republic. In total, the research team interviewed ninety-five individuals, including seventy-two affected persons (people with firsthand experience of difficulties with or exclusion from the education system because of statelessness or being at risk of statelessness), civil society organizations, government officials, politicians, teachers, school directors, lawyers and other relevant stakeholders. Interviews were generally held in individuals' homes or places of work, community gathering places, or schools.

The research team worked with reputable local and international organizations to identify communities of affected persons for potential participation in the research. Prospective interviewees were predominantly selected by convenience sampling. All interviews were carried out following a robust and thorough informed consent process, and the research team clearly communicated that individuals taking part would receive no personal benefit as a result. Following return to Washington D.C., the research team synthesized its findings into this report.

In order to preserve the anonymity and privacy of those who described personal circumstances and experiences to the research team, this report uses pseudonyms where appropriate. Otherwise, individuals and families are identified using general descriptive terminology. In situations where consent was received to do so, the names of professionals, their job titles, and/or the names of their organizations are included.

I. INTRODUCTION

“It has been said that knowledge is power. We need to strengthen education systems so that young people can benefit from cultural diversity, and not be victimized by those who exploit differences.”

— U.N. Secretary General Ban Ki-Moon²

Born to Haitian parents in the province of San Pedro de Macoris in 1995, Sophia is one of approximately 500,000 Dominicans of Haitian descent living in the Dominican Republic.³ Like many Haitians, Sophia's parents had little opportunity to attain a decent standard of living in Haiti and moved to the Dominican Republic following recruitment by Dominican companies. Her parents subsequently had five children, all of whom were born on Dominican soil. Although Sophia's mother gave birth to all of her children in a hospital and received certificates of live birth for each child, neither Sophia nor any of her siblings have been able to obtain official Dominican birth certificates. This is despite the fact that the Constitution of the Dominican Republic conferred nationality on the basis of birthright at the time they were born.

Now nineteen years old and with a two-year-old daughter of her own, Sophia sits quietly whilst confirming that she has been unable to obtain personal identifying documentation or fully access the public education system in the Dominican Republic. Although able to register for primary school following the intervention of a relative who helped with an obstructive school official, without a birth certificate Sophia was not allowed to take the eighth-grade national test that is a pre-requisite for enrollment in secondary school. Consequently, Sophia has been unable to continue her education and realize her dream to go to university and, as she put it, “be something.”⁴

Furthermore, with no government-issued birth certificate of her own, Sophia says she has been unable to obtain documentation for or formally declare her own daughter with the Dominican civil registry. Without any documentation, it is almost as if, in the eyes of the state, Sophia's daughter does not exist.

² U.N. Secretary-General's remarks to the Security Council on Intercultural Dialogue for Peace and Security (May 26, 2010) (transcript available at <http://www.un.org/sg/statements/?nid=4572>).

³ *A Crisis of Nationality: Dominicans of Haitian Descent*, OPEN SOCIETY FOUNDATIONS (OSF) (Oct. 2013), <http://www.opensocietyfoundations.org/sites/default/files/factsheet-dominicans-haitian-descent-10012013.pdf> [hereinafter OSF, *A Crisis of Nationality*]. A recent UN-backed study indicated there are approximately 210,000 first-generation Dominicans of Haitian descent currently living in the Dominican Republic. See U.N. POPULATION FUND, *Primera Encuesta Nacional de Inmigrantes en la República Dominicana* [First National Survey of Immigrants in the Dom. Rep.] (ENI-2012) (Apr. 2013), <http://countryoffice.unfpa.org/dominicanrepublic/drive/ResumenENI-2012II.pdf> [hereinafter UNFPA, *Encuesta*].

⁴ Interview with Sophia (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

Without official birth certificates or state identity cards, many Dominicans of Haitian descent live on the sidelines of Dominican society, with a significant number continuing to occupy the isolated and impoverished *bateyes* that grew up during the heyday of the sugarcane industry. These people, many of whom are stateless or are at risk of statelessness, are disqualified from practical realization of rights that the mainstream of Dominican society takes for granted. They cannot register the births of their children, vote, access health care coverage, open bank accounts, leave the Dominican Republic without fear of being unable to return, or obtain a meaningful education. It is a precarious existence, replete with limitation.

The right to nationality has famously been described as the “right to have rights,”⁵ recognizing that whereas all human beings are born free and equal in dignity and rights,⁶ citizenship of a sovereign state continues to be the primary means by which individuals are able to practically realize those fundamental human rights, such as the right to education, to which all are entitled.⁷ For this reason, there is widespread agreement that nation states should not arbitrarily deprive citizens of their nationality, especially when this would leave them stateless.⁸

The right to education also occupies a privileged place amongst the suite of human rights to which all persons are entitled. It is enabling in nature, crucial to the full development of the human personality, and a means to effective participation in society.⁹ In addition to being recognized in the international bill of rights,¹⁰ the right to education also has binding force based on the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the American Convention on Human Rights (ACHR).¹¹

⁵ HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 177 (3rd ed. 1968); *Trop v. Dulles*, 356 U.S. 86, 102 (1958).

⁶ Universal Declaration of Human Rights, G.A. res. 217A (III), art. 1, U.N. Doc A/810 at 71 (1948) [hereinafter UDHR].

⁷ See LAURA VAN WAAS, *NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW* 217 (2008). This report will use “nationality” and “citizenship” interchangeably, acknowledging that the terms are not in all circumstances synonymous but noting that for present purposes the distinctions are of no relevance.

⁸ See, e.g., *Secretary of State for the Home Department (Appellant) v. Al-Jedda* [2013] UKSC 62; U.N. Convention on the Reduction of Statelessness, art. 7(6), *opened for signature* Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975) [hereinafter 1961 Statelessness Convention]; U.N. Human Rights Council, *Human Rights and the arbitrary deprivation of nationality: report of the Secretary General*, ¶ 21-29, U.N. Doc. A/HRC/13/34 (Dec. 14, 2009).

⁹ See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 13, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, *available at* <http://www.refworld.org/docid/3ae6b36c0.html> [hereinafter ICESCR].

¹⁰ UDHR, *supra* note 6, art. 26; ICESCR, *supra* note 9, arts. 13-14.

¹¹ Convention on the Rights of the Child G.A. res. 44/25, art. 28, annex, 44 U.N. GAOR Supp. (No.49) at 167, U.N. Doc. A/44/49 (1989); 1577 U.N.Y.S. 3, 28 ILM 1456 (1989) [hereinafter CRC]; International Convention on the Elimination of All Forms of Racial Discrimination A/6014 (1966), art. 5(e)(v), 660 U.N.T.S. 195 [hereinafter CERD]; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, art. 10, 34 U.N.

In General Comment No. 1, the Committee on the Rights of the Child considered education to “provide [a] child with life skills, to strengthen the child’s capacity to enjoy the full range of human rights and . . . to empower the child by developing his or her skills, learning . . . human dignity, self-esteem and self-confidence.”¹² Acknowledged as a bellwether for the rights of children and with mind to the overarching principle of the best interests of the child, violations of the right to education must be viewed with particular concern.¹³

For generations, children born in the Dominican Republic to migrants were recognized as citizens under Dominican law, but the legal framework has changed over the last ten years.¹⁴ Persons born in the Dominican Republic, but with ancestors who migrated from Haiti, have been dramatically affected by this shifting landscape. Recently, the Constitutional Court stripped a disputed number of Dominicans of Haitian and other ancestry of their Dominican citizenship, by retrospectively reinterpreting the provisions of a previous version of the Constitution.¹⁵

Despite widespread criticism,¹⁶ the Dominican Republic continues to justify its actions on the basis of national sovereignty and as a legitimate response to irregular migration from Haiti, while simultaneously denying the existence of a statelessness problem in the country.¹⁷ Consequently,

GAOR Supp. (No.46) at 193, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 [hereinafter CEDAW]; American Convention on Human Rights, art. 26, Nov. 22, 1969, OAS Treaty Series No. 36; 1144 U.N.T.S. 123; 9 ILM 99 (1969) [hereinafter ACHR]; see also U.N. Educational, Scientific and Cultural Organization [UNESCO] Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93, arts. 1,3-4,7 [hereinafter CADE].

¹² Comm. on the Rights of the Child [CRC Comm.], *Gen. Comment No. 1: Article 29 (1): The Aims of Education*, U.N. Doc. CRC/GC/2001/1 (Apr. 17, 2001), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en [hereinafter CRC Comm., Gen. Comment No. 1].

¹³ See CRC, *supra* note 11, pmb1.

¹⁴ Ley General de Migracion, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.); Yean & Bosico v. Dominican Republic, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005); Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

¹⁵ See OSF, *A Crisis of Nationality*, *supra* note 3. The Inter-American Commission on Human Rights has referred to estimates of approximately 200,000 individuals being affected by the ruling. Inter-American Comm. on Human Rights (IACHR), *Annex to the Press Release: Preliminary Observations from the IACHR's Visit to the Dominican Republic* (Dec. 6, 2013), http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp [hereinafter IACHR, Preliminary Observations].

¹⁶ See Letter from Ralph Gonsalves, Prime Minister of St. Vincent, to Danilo Medina, President of the Dom. Rep. (Oct. 11, 2013), available at <http://www.slideshare.net/Stanleylucas/prime-minister-gonsalves-letter-to-pres-dr>; Press Release, U.N. High Comm’r for Refugees [UNHCR], UNHCR concerned by potential impact of Dominican court decision on persons of Haitian descent (Oct. 1, 2013), <http://www.unhcr.org/524c0c929.html>; Yean & Bosico, Inter-Am. Ct. H. R. (Sept. 8, 2005).

¹⁷ See Letter from Mr Anibal De Castro, Ambassador of the Dominican Republic to the United States, *Respuesta al artículo del periódico New York Times: “Dominicans of Haitian Descent Cast Into Legal Limbo by Court”* (last visited Mar. 4, 2014) (available online at <http://www.domrep.org/letter.html>).

children in the Dominican Republic continue to be born stateless or at risk of statelessness. Generations of Dominicans of Haitian descent either have no personal identifying documents, or have had previously issued paperwork confiscated because of “irregularities”.¹⁸

While statelessness creates the conditions for a variety of rights deprivations, restrictions to educational opportunities are of particular concern. As a prerequisite to many employment opportunities, education is of significant importance to achievement in life and the attainment of an adequate standard of living.¹⁹ Education also has a particularly vital role in empowering women and girls, safeguarding children from exploitative and hazardous labor, and in promoting human rights and democracy.²⁰ These issues should be borne in mind when reading this report. Although several internationally respected organizations have carried out studies on statelessness in the Dominican Republic and the difficulty of life on the margins of society,²¹ there is little specific information concerning how this situation affects the ability of children and adolescents of Haitian ancestry to pursue an education. This report seeks to fill that void.

This report measures factual findings against regional and international human rights standards to assess the impact of statelessness or the risk of statelessness on the ability of Dominicans of Haitian ancestry to access public education services in the Dominican Republic. The report concludes that Dominicans of Haitian ancestry face significant and often insurmountable barriers when trying to exercise their right to education, because of an inability to provide documentary verification of Dominican citizenship. How the Dominican Republic responds to the issues addressed in this report will shape young lives, careers, and the country’s human capital for generations to come.

¹⁸ OSF, DOMINICANS OF HAITIAN DESCENT AND THE COMPROMISED RIGHT TO NATIONALITY: REPORT PRESENTED TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE OCCASION OF ITS 140TH SESSION 7 (Oct. 2010), available at http://www.crin.org/docs/DR%20Compromised%20Right%20to%20Nationality%20_IACHR%20report_.pdf [hereinafter OSF, DOMINICANS OF HAITIAN DESCENT].

¹⁹ RHONA K.M. SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 330 (5th ed. 2012).

²⁰ U.N. Comm. on Econ., Soc. & Cultural Rights [ICESCR Comm.], *Gen. Comment No. 13: The Right to Education*, ¶ 31, U.N. DOC. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter ICESCR Comm., Gen. Comment 13]; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), art. 1, *opened for signature* June 17, 1999, 2133 U.N.T.S. 161, entered into force Nov. 19, 2000 [hereinafter ILO No. 182]; CEDAW, *supra* note 11, art. 10.

²¹ OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18; CHRISTIAN AID, ON THE MARGINS: DISCRIMINATION AGAINST HAITIAN MIGRANTS AND THEIR DESCENDANTS IN THE DOMINICAN REPUBLIC (2006); UNIVERSITY OF CALIFORNIA BERKELEY, BOALT HALL SCHOOL OF LAW, UNWELCOMED GUESTS: A STUDY OF EXPULSIONS OF HAITIANS AND DOMINICANS OF HAITIAN DESCENT FROM THE DOMINICAN REPUBLIC TO HAITI (2002).

The background section of this report will address the history of statelessness and discrimination in the Dominican Republic, looking at domestic law and current events and providing an overview of the types of documents relevant to education. This section also will describe the legal framework of the education system in the Dominican Republic and promises of equal access to education in domestic law.

The findings section of the report will first relay problems with access to documentation in the Dominican Republic followed by information on how these documentation problems result in barriers to education based on interviews with families, service providers, educators, and government officials. The findings on access to education will look at primary school, secondary school and university, as well as several cross-cutting challenges.

The section on the Dominican Republic's legal obligations will then focus on the right to nationality and the right to education with regards to international human rights obligations as well as gaps and shortcomings in the state response.

Finally, the conclusion and recommendations will describe a path forward to ensure that all children in the Dominican Republic are able to access their rights to nationality and education.

II. BACKGROUND: STATELESSNESS, DOCUMENTATION, AND EDUCATION

Occupying different sides of the same island, the historical relationship between the Dominican Republic and Haiti is long, complex, and important to understand in the context of the current situation of statelessness in the Dominican Republic. Pursuant to changes in law and policy in the Dominican Republic over the last ten years, tens of thousands of Dominicans of Haitian descent have been rendered stateless or at risk of statelessness. Specifically, the criteria for conferral of citizenship have been modified both prospectively by the 2010 Constitution and retroactively by the decision of the Constitutional Court in *Sentencia 168/13* of September 2013 (hereinafter the Constitutional Court ruling).

These legal and policy restrictions have resulted in Dominicans of Haitian descent being either denied or deprived of personal identification documents, like birth certificates and national identity cards, and consequently rendered stateless or at risk of statelessness. As a result, Dominicans of Haitian descent often encounter insurmountable difficulties in accessing basic services for which presentation of documentation may be required, such as at school.

This section provides key information related to the background and context regarding the human rights violations documented by this report.

A. HISTORY OF DISCRIMINATION AND STATELESSNESS

As Haitian migrant workers have come to the Dominican Republic over the years, many have settled down and raised families, resulting in a sizable population of Dominicans of Haitian descent now living in the country.²² The labor of Haitians and their Dominican-born descendants has been integral to the Dominican economy for decades, particularly in the sugarcane fields.²³ Now, as the sugarcane industry continues to fade away, many Dominicans of Haitian descent work in construction, as domestic workers, or in the tourism industry.²⁴ Several Dominican families of Haitian descent interviewed for this report have now been in the Dominican Republic for multiple generations, with few of the current generation ever having set foot in Haiti or speaking Haitian Creole.²⁵

²² See UNFPA, Encuesta, *supra* note 3. See Expert report by anthropologist Samuel Martínez, Yean & Bosico, Inter-Am. Ct. H. R. ¶ 85(a)(b)(1) (Sept. 8, 2005).

²³ Stephen Holden, *The Price of Sugar*, N.Y. TIMES, Sept. 28, 2007, http://www.nytimes.com/2007/09/28/movies/28suga.html?_r=0.

²⁴ HUMAN RIGHTS WATCH, ILLEGAL PEOPLE: HAITIANS AND DOMINICO-HAITIANS IN THE DOMINICAN REPUBLIC (2002), available at <http://www.hrw.org/reports/2002/domrep/domrep0402.pdf> [hereinafter HRW].

²⁵ Interviews with nine individuals in the Dom. Rep. (Jan. 8, 2014).

For decades, children born in the Dominican Republic to both legal and irregular immigrants were recognized as Dominican citizens.²⁶ However, since the 1950s, decreasing numbers of Dominicans of Haitian descent have been able to obtain documentation and recognition of their citizenship.²⁷ This is in part the result of increasingly burdensome requirements to obtain personal identifying documentation.²⁸ Dominicans of Haitian descent are given various justifications when they experience difficulties in obtaining identity documents, including investigations prompted by “irregularities,” such as the nationality of their ancestors.²⁹

As a consequence of these recent developments, many thousands of Dominicans of Haitian descent have been rendered stateless or at risk of statelessness.³⁰ Dominican officials have often argued that children born in the Dominican Republic to parents with Haitian ancestry are Haitian, not Dominican.³¹ However, under international law and standards, the possibility that a child might be able to apply for nationality in another country at some point in the future does not mean that the child is not stateless in the moment.³² Indeed, despite the Dominican government's protestations, the international community has long viewed the problem as an issue of statelessness.³³

²⁶ Ley de inmigración, Ley No. 95 de 1939 (Apr. 14, 1939) (Dom. Rep.), available at <http://www.refworld.org/docid/3dbe9eed4.html>; Reglamento de migración No. 279 (May 12, 1939) (Dom. Rep.), available at <http://www.refworld.org/docid/3dbe9f374.html>; OPEN SOC'Y JUSTICE INITIATIVE (OSJI) & CTR. FOR JUSTICE & INT'L LAW (CEJIL), SUBMISSION TO THE COMM. ON THE ELIMINATION OF RACIAL DISCRIMINATION [CERD COMM.]: REVIEW OF THE DOM. REP. 11 (2013), available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/OSJI_Cejil_DominicanRepublic82.pdf.

²⁷ OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18.

²⁸ *Id.* at 4-5.

²⁹ Telephone Interview with Victoria “Noemi” Mendez, Attorney (Jan. 27, 2014).

³⁰ See Press Release, UNHCR, *supra* note 16; UN agency urges Dominican Republic to restore nationality of people of Haitian descent, UN News Centre (Dec. 6, 2013), [https://www.un.org/apps/news/story.asp?NewsID=46681&Cr=dominican+republic&Cr1=](https://www.un.org/apps/news/story.asp?NewsID=46681&Cr=dominican+republic&Cr1=;); IACHR, Preliminary Observations, *supra* note 15; Liliana Gamboa, *Dominican Republic: How Statelessness Threatens Women and Families*, OSJI (Oct. 16, 2013), available at <http://www.opensocietyfoundations.org/voices/dominican-republic-how-statelessness-threatens-women-and-families>.

³¹ Interview with José Ricardo Taveras Blanco, Director, General Directorate of Immigration, in the Dom. Rep. (Jan. 8, 2014).

³² See UNHCR, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, ¶¶ 17 & 43, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012) (“An individual’s nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention.”); UNHCR Expert Meeting on the Concept of Stateless Persons under International Law, May 27-28, 2010, Prato, Italy, *Expert Meeting: The Concept of Stateless Persons under International Law, Summary Conclusions*.

³³ Press Release, UNHCR, UNHCR urges Dominican Republic to restore nationality (Dec. 5, 2013), available at <http://www.unhcr.org/52a0a59b9.html>; CRC Comm., *Concluding Observations: Dominican Republic*, ¶ 39,

1. Domestic Law Regarding Citizenship

Domestic laws on citizenship, documentation, and education have had a significant effect on Dominicans of Haitian descent attempting to obtain personal identifying documents to prove their nationality and access the education system.

From 1929 until 2004 and in accordance with the principle of *jus soli*, anyone born in the Dominican Republic was a Dominican citizen, with the exception of children born to parents who were “in-transit,” meaning they were in the country for ten days or less.³⁴ Then, in 2004, a new migration law was passed and stated that only the children of a legal resident parent could qualify for Dominican nationality.³⁵ Despite criticism from the international community that this would result in significant levels of statelessness, the government of the Dominican Republic began to deny citizenship to the children of irregular migrants born in the country by providing their parents with pink birth certificates, to distinguish these children as non-citizens.³⁶

In the *Yean and Bosico* decision, the Inter-American Court of Human Rights found the Dominican Republic to be in violation of several rights under the ACHR, including the right to nationality and the obligation to prevent, avoid and reduce statelessness, because of the refusal to issue birth certificates to the children in that case.³⁷ Since the adoption of this judgment, the Dominican government has consistently underscored that nationality is a domestic issue.³⁸

U.N. Doc. CRC/C/DOM/CO/2 (Feb. 11, 2008); OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 8. The U.S. State Department reports: “The two groups at greatest risk of statelessness were undocumented Haitian migrants who were unable to access documentation abroad and descendants of Haitian migrants abroad who may not have acquired another nationality at birth but were at risk of having their Haitian citizenship revoked on the assumption that they had.” U.S. STATE DEP’T, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: HUMAN RIGHTS COUNTRY REPORTS: HAITI 2012 HUMAN RIGHTS REPORT 19 (2012).

³⁴ Ley de inmigración, Ley No. 95 de 1939 (Apr. 14, 1939) (Dom. Rep.); Reglamento de migración No. 279 (May 12, 1939) (Dom. Rep.), at Section V; U.N. Human Rights Comm., *Concluding Observations of the Human Rights Comm.: Dom. Rep.*, ¶ 18, U.N. Doc. CCPR/CO/71/DOM (Apr. 26, 2001); U.N. Human Rights Comm., *Comments by the Government of the Dom. Rep. on the concluding observations of the Human Rights Comm. (CCPR/CO/71/DOM)*, ¶ 57, UN Doc. CCPR/CO/71/DOM/Add.1 (May 28, 2002); An exception existed for the children of diplomats. *See, e.g.*, CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA, Aug. 14, 1994, art. 11 (Dom. Rep.).

³⁵ Ley General de Migración, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.).

³⁶ Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); Junta Central Electoral, Resolution 12-2007 (Dec. 10, 2007) (Dom. Rep.).

³⁷ *Yean & Bosico*, Inter-Am. Ct. H. R. ¶ 140, 172 (Sept. 8, 2005).

³⁸ Press Release, Human Rights Comm., *Concluding Consideration of Dom. Rep.’s Report, Experts on Human Rights Comm. Pose Questions on Police Reform: After Two Day Discussion, Delegation Says Gov’t Committed To Strengthening Human Rights Protections, Compliance with Covenant, Treatment of Migrants*, 4 U.N. Press Release HR/CT/740 (Mar. 13, 2012). The Supreme Court of the Dominican Republic issued a resolution rejecting the Inter-American Court’s ruling in *Yean and Bosico* and upheld a previous decision that all undocumented migrants were “in-transit.” *Litigation: Yean and Bosico v. Dominican Republic*, OSF, (July 1, 2009), <http://www.opensocietyfoundations.org/litigation/yeen-and-bosico-v-dominican-republic>.

In 2010, the Dominican government incorporated this distinction in the Constitution, with a provision that widened the definition of “in-transit” to include any irregular immigrants.³⁹

Therefore, any children born in the Dominican Republic after 2010 will not be Dominican citizens unless at least one parent is a Dominican national or legal resident.

It has come to the attention of the research team that this constitutional change has increased the number of stateless children, due to the difficulty of gaining Haitian documents for Dominican-born children of Haitian descent, whether or not they are descended from irregular immigrants.⁴⁰ Furthermore, consistent with previous studies, this research suggests that Dominicans of Haitian descent are often given “foreigner” live pink birth certificates, even when one or both parents have Dominican identity papers.⁴¹

2. Current Events Related to Documentation

In September 2013, the Constitutional Court issued a landmark judgment regarding the Dominican citizenship of descendants of Haitian migrants born in the Dominican Republic.⁴² The international community has been very active in its criticism of the text of this decision and its provisions, because of the arbitrary and discriminatory deprivation of nationality involved and consequent situation of vulnerability in which those affected have been placed.⁴³

The Constitutional Court ruled that the definition of “in-transit” included in both the 2004 migration law and 2010 Constitution applies retroactively to all persons born in the Dominican Republic after 1929.⁴⁴ Therefore, if someone was a Dominican citizen under the old definition, this status is now considered erroneous, and that person and any of their descendants are no longer recognized to be Dominican citizens. The Constitutional Court ruling goes further by requiring that the civil registry identify individuals who have been granted citizenship where neither parent is or was a legal resident, and remove those whose parents were undocumented at the date of their birth, and to register their names in the Book of Foreigners.⁴⁵

³⁹ CONSTITUCIÓN DE LA REPUBLICA DOMINICANA, Jan. 26, 2010, art. 18(3) (Dom. Rep.).

⁴⁰ Ricardo Rojas, *Dominican court ruling renders hundreds of thousands stateless*, Reuters (Oct. 12, 2013), available at <http://www.reuters.com/article/2013/10/12/us-dominicanrepublic-citizenship-idUSBRE99B01Z20131012>.

⁴¹ Interviews with families in the Dom. Rep. (Jan. 6-11, 2014); OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 7-8.

⁴² Tribunal Constitucional de República Dominicana [Constitutional Court] Sept. 23, 2013, TC/0168/13 (Dom. Rep.), available at <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.

⁴³ Press Release, UNITED NATIONS CHILDREN'S FUND [UNICEF], Statement attributable to UNICEF on the Constitutional Court decision on Dominican-born persons of Haitian descent (Oct. 9, 2013), available at http://www.unicef.org/infobycountry/media_70619.html; Press Release, UNHCR, *supra* note 16; IACHR, Preliminary Observations, *supra* note 15.

⁴⁴ Tribunal Constitucional de República Dominicana [Constitutional Court] Sept. 23, 2013, TC/0168/13 (Dom. Rep.).

⁴⁵ *Id.* The Court held that these people never qualified as citizens to begin with and were wrongly granted status

The court ordered implementation of the judgment within six months to the government, which has stated that the ruling will not result in mass deportations and that every case will be considered individually and humanely.⁴⁶

President Danilo Medina issued Presidential Decree 327-13 in November 2013, creating a new framework for regularization but without providing exact details for the regularization process itself.⁴⁷ It includes temporary, permanent, and non-immigrant classifications and mentions factors for eligibility such as length of stay in the country at a fixed address, ties to society, employment, socio-economic status, knowledge of spoken and written Spanish, children born in the Dominican Republic, and criminal record.⁴⁸ The Decree anticipates that those affected by the ruling will have eighteen months to file for citizenship from the date the law goes into effect and have immunity from deportations in the meantime.⁴⁹ Article 4 of the plan states that foreigners who are in the Dominican Republic without authorization will be deported, presumably after the eighteen-month period has elapsed.⁵⁰

based on confusion over what “in-transit” meant. See Q&A ON THE RULING TC/0168-13, Embajada Dominicana en Washington, D.C. (Nov. 22, 2013), <http://embajadadominicanaenwashington.blogspot.com/2013/11/q-on-ruling-tc0168-13.html>. Commentators have argued that the Dominican Republic is trying to give retroactive effect to recent changes to the interpretation of “in-transit.” See Press Release, OSJI, Dominican Republic Court Ruling Raises Mass Statelessness Threat (Oct. 2, 2013), *available at* <http://www.opensocietyfoundations.org/press-releases/dominican-republic-court-ruling-raises-mass-statelessness-threat>; Dominican Republic must retract ruling that could leave thousands stateless, AMNESTY INTERNATIONAL (Oct. 18, 2013), <http://www.amnesty.org/en/news/dominican-republic-must-retract-ruling-could-leave-thousands-stateless-2013-10-18>; see also Interview with Victoria “Noemi” Mendez, Attorney, in the Dom. Rep. (Jan. 11, 2014).

⁴⁶ See Embajada Dominicana en Washington, Q&A, *supra* note 45; *Dominican Republic President Promises No Mass Deportations After Anti-Migrant Court Ruling*, LATIN AMERICAN HERALD TRIBUNE (Nov. 25, 2013 11:00 PM), <http://www.laht.com/article.asp?ArticleId=1172873&CategoryId=14092>.

⁴⁷ República Dominicana: Decreto No. 327-13 de 2013, Plan Nacional de Regularización de extranjeros en situación migratoria irregular en la República Dominicana [Presidential Decree 327-13] (Nov. 29, 2013) (Dom. Rep.), *available at* <http://www.scribd.com/doc/188044925/Decreto-327-13>; Manuel Jimenez, *Dominican government gives details of naturalization plan for ‘foreigners’*, Reuters (Nov. 30, 2013), *available at* <http://www.reuters.com/article/2013/12/01/us-dominicanrepublic-citizenship-idUSBRE9B000O20131201>.

⁴⁸ República Dominicana: Decreto No. 327-13 de 2013, Plan Nacional de Regularización de extranjeros en situación migratoria irregular en la República Dominicana (Nov. 29, 2013) (Dom. Rep.); Manuel Jimenez, *supra* note 47.

⁴⁹ Manuel Jimenez, *supra* note 47.

⁵⁰ República Dominicana: Decreto No. 327-13 de 2013, Plan Nacional de Regularización de extranjeros en situación migratoria irregular en la República Dominicana (Nov. 29, 2013) (Dom. Rep.); *Poder Ejecutivo emite decreto que instituye Plan de Regularización de Extranjeros* [Executive Power issues decree establishing Regularization Plan of Foreigners], NCDN (Nov. 29, 2013), <http://cdn.com.do/noticias/2013/11/29/poder-ejecutivo-emite-decreto-que-instituye-plan-de-regularizacion-de-extranjeros/>.

The Dominican authorities have made clear that the regularization plan should in no way be considered a grant of amnesty.⁵¹ Rather, the plan is presented as a pathway to regularized status. The President has also sent legislation to Congress to create a means of naturalizing those people granted status under the plan. The plan requires individuals to declare themselves foreigners before they can seek regularized status and it is unclear what will happen if someone makes such a declaration and is later informed he or she does not qualify for regularization.⁵²

Predictions on the impact of the Constitutional Court's ruling have varied dramatically. Some advocates have claimed it could strip as many as 200,000 people of their nationality, basing their estimate on the United Nations Population Fund (UNPFA) census of descendants of immigrants.⁵³ Meanwhile, the Dominican Republic announced that an audit conducted by the civil registry found 53,847 foreigners registered as citizens and determined that, of those, 24,392 do not have documents sufficient to prove citizenship.⁵⁴ The audit also stated that only 13,672 of these people are of Haitian descent.⁵⁵ At the time of writing, in early March 2014, the full impact of the Constitutional Court ruling remains to be determined.

3. Personal Identifying Documentation and Documentation Required For Accessing Education

The Dominican Constitution enumerates the requirements for entitlement to Dominican nationality, and tangible proof of this status is demonstrated in the form of various documents issued by government agencies.⁵⁶ This section of the report provides an overview of those principal documents. An understanding of the different types of personal identifying documentation is indispensable to appreciating how the various requirements affect the ability of children to obtain access to education in the Dominican Republic. Unless otherwise indicated, the following is based on the situation in early March 2014.

In the Dominican Republic, three types of personal identification documents are prerequisites to the exercise of a number of fundamental rights, including the right to an education: the *certificado de nacimiento*, the *acta de nacimiento*, and the *cédula de identidad*.

⁵¹ Danilo Medina firma decreto del Plan Nacional de Regularización [Danilo Medina signs National Regularization Plan], EL NACIONAL (Nov. 29, 2013), available at <http://elnacional.com.do/danilo-medina-firma-el-decreto-del-plan-nacional-de-regularizacion-2/>.

⁵² Interview with FINJUS in the Dom. Rep. (Jan. 10, 2014).

⁵³ OSJI, Press Release, *supra* note 45; see UNPFA, Encuesta, *supra* note 3.

⁵⁴ EMBAJADA DOMINICANA EN WASHINGTON, D.C., Q&A, *supra* note 45.

⁵⁵ *Id.*

⁵⁶ CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 18 (Dom. Rep.); Interview with José Ricardo Taveras Blanco, *supra* note 31.

The *certificado de nacimiento* is a live birth certificate issued by a hospital or medical center where a child is born. Hospitals are required to issue a *certificado de nacimiento* to parents who can demonstrate that they are Dominican.⁵⁷ Otherwise, the hospital or medical center issues a pink “foreigner” live birth certificate.⁵⁸ A *certificado de nacimiento* is important because it is a prerequisite to obtaining an *acta de nacimiento*.

The *acta de nacimiento* is an official birth certificate issued by local civil registry offices. The *acta de nacimiento* functions as the primary form of identification for persons under the age of eighteen and is required when applying for a passport, getting married, obtaining health care, and seeking social services.⁵⁹ To obtain an *acta de nacimiento*, parents must provide the civil registry with both the *certificado de nacimiento* and their own personal identification document, a *cédula de identidad*.⁶⁰

A *cédula de identidad*, or national identity card, is the main form of personal identification for Dominicans aged eighteen and above. The *cédula* is a requirement for meaningful participation in mainstream Dominican society, as it is necessary for legal employment, to open a bank account, to register for social security, and myriad other rudimentary tasks.⁶¹ The *Junta Central Electoral* (JCE) is the government agency responsible for issuing *cédulas*. In order to obtain a *cédula* an individual must have an *acta de nacimiento* and be able to obtain an extract of it from a civil registry office.⁶²

⁵⁷ Ley No. 218-07 de Amnistía de Declaración Tardía de Nacimiento, 2d Consideration (Dom. Rep.) (Aug. 14, 2007), available at http://www.unicef.org/republicadominicana/Ley_No.218-07_amnistia_declaracion_nacimiento.pdf (stating in the Second Consideration that the Dominican Republic is a signatory to the Convention on the Rights of the Child and pursuant to Art. 7 and 8 the Dominican Republic is required to provide documentation of birth immediately following birth).

⁵⁸ These pink certificates are issued as temporary birth certificates and registered in a separate foreigners registry book. They are issued in order for foreign parents to use them at a foreign embassy to obtain an official birth certificate from their country of origin. The practice of issuing pink certificates can be traced to Article 28(1) of the 2004 General Migration Law. Ley General de Migración, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.), art. 28(1).

⁵⁹ See Ley No. 659 sobre Actos del Estado Civil que dicta disposiciones sobre los registros y las actas de defunción (1944).

⁶⁰ *Id.*; Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 45 (2003), available at http://www.educando.edu.do/Userfiles/P0001%5CFile%5CLey_136-03.pdf. This process must be completed within two months of the date of birth of the child, otherwise the registration is considered to be late and further requirements then apply. (Interview with July Clemente, ASCALA, in the Dom. Rep. (Jan. 8, 2014)).

⁶¹ Telephone Interview with Paola Pelletier, Centro Bono (Feb. 6, 2014). Interviewees confirmed a *cédula* is also required to purchase real property, buy a car or purchase a cell phone. Interview with Serge (pseudonym) in the Dom. Rep. (Jan. 6, 2014); Interview with Valentina (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

⁶² *Servicios y Requisitos, Inscripción para Mayores de edad*, [Services and Requirements, Registration for Age of Majority], Junta Central Electoral, [http://www.jce.gob.do/Dependencias/Cedulación/ServiciosyRequisitos.aspx#LiveTooltip\[InscripcionesMayores](http://www.jce.gob.do/Dependencias/Cedulación/ServiciosyRequisitos.aspx#LiveTooltip[InscripcionesMayores) (last visited March 8, 2014) (stating that if you are getting a *cedula* for the first time you need to bring an original birth certificate and a recent copy of birth certificate for purpose of getting a *cedula*, and a blood test).

B. THE DOMINICAN EDUCATION SYSTEM

Even though documents are not legally required for access to education in the Dominican Republic, school is often the first place where children encounter problems because they lack documentation.

The Dominican Constitution guarantees all children the right to an education, and the government has emphasized that this includes children without documentation.⁶³ Over the past two decades, the Dominican Republic has addressed the question of equal access to education several times. For example, the 2003 Code for the Protection of the Fundamental Rights of Children and Adolescents states that “[u]nder no circumstances can children or adolescents be denied education for reasons such as . . . lack of documents proving identity . . .”⁶⁴ The General Education Law of 1997 establishes a universal right to free primary and secondary education.⁶⁵

The 2010 Dominican Constitution also affirms the right to free initial, primary, and secondary education for “everyone” in Article 63,⁶⁶ and primary school is compulsory.⁶⁷ Additionally, the Constitution promises a general right to equality regardless of national origin, language, family ties, color, and other factors in Article 39.⁶⁸ Education also is addressed in Article 75 on fundamental duties, which establishes that primary school education is compulsory.⁶⁹

Interpretation of how many years of education are guaranteed to non-citizens has varied, and the research carried out for this report found that there is concern that some local school officials may be confused about what the current law says.⁷⁰ In 2005, a directive from the Ministry of Education

⁶³ Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.).

⁶⁴ Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 45 (2003), *available at* http://www.educando.edu.do/Userfiles/P0001%5CFile%5CLey_136-03.pdf.

⁶⁵ Ley General de Educación, Ley No. 66-97 (II)(4)(m) (Apr. 15, 1997) (Dom. Rep.), *available at* <http://www.dol.gov/ilab/programs/ocft/tvpra/20100408-12.pdf>. That same year, the Dominican Republic also passed the Code of the Minor, which was meant to fulfill the country’s obligations under the Convention on the Rights of the Child. Articles 97 and 98 discuss the right to compulsory, free education and state that children should have equal opportunity to access and stay in school. Ley No. 14-54 Código para la Protección de Niños, Niñas y Adolescentes, ¶ 1, *available at* <http://docs.republica-dominicana.justia.com/nacionales/leyes/ley-14-94.pdf>.

⁶⁶ CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA Jan. 26, 2010, art. 63(3) (Dom. Rep.), *available at* <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

⁶⁷ Constitución Política de la República Dominicana, proclamada el 26 de enero, art. 51. Publicada en la Gaceta Oficial No. 10561, del 26 de enero de 2010, *available at* <http://www.procuraduria.gov.do/Novedades/PGR-535.pdf>.

⁶⁸ *Id.* at art. 39.

⁶⁹ *Id.* at art. 75.

⁷⁰ Telephone Interview with Liliana Gamboa, Special Rapporteur for Statelessness in the Dominican Republic, Open Soc’y Initiative (Nov. 12, 2013).

limited the right to education for children without documents to four years.⁷¹ However, Circular 18 of July 27, 2011 asserted that children should be registered for school, regardless of documentation – including schooling beyond grade four.⁷²

However, while the right to education is enshrined in domestic law, our findings indicate that children without documentation are in practice sometimes unable to go to school.

STRUCTURE OF EDUCATION SYSTEM IN THE DOMINICAN REPUBLIC

In the Dominican Republic, educational standards and policies such as the curriculum, length of the school day, and allocation of funding are set by the Ministry of Education, although local school districts do have a substantial amount of autonomy.⁷³ The national system includes a set grade structure that is comprised of one year of pre-school, eight years of primary school, four years of secondary school, and then various universities and technical institutes.⁷⁴ Students take national exams in the final grade of both primary school and secondary school in order to graduate. While both private and public schools are available, all levels of basic public school are free.⁷⁵ Foreign students, however, pay a higher rate for university tuition.⁷⁶

The Ministry of Education has reported that for 2011-2012 there were approximately 48,000 undocumented children in the public primary school system, including 22,732 registered as foreigners.⁷⁷ However, it is unclear how many other undocumented children may have been denied access to a quality education.

⁷¹ Esther Kim, *Smaller Steps Toward Progress in the Dominican Republic: Securing Equal Access to Education for Dominican-Haitian Children*, 31 B.U. INT'L. L.J. 165, 191 (2013); ROBERT F. KENNEDY CENTER FOR JUSTICE AND HUMAN RIGHTS [RFK CENTER], RIGHT TO EDUCATION OF AFRO-DSCENDENTS AND INDIGENOUS PEOPLE IN THE AMERICAS, REPORT PREPARED FOR A THEMATIC HEARING BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 118 (2008), available at http://www.law.virginia.edu/pdf/news/hrclinic_report.pdf.

⁷² Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.).

⁷³ ORG. FOR ECON. CO-OPERATION AND DEV. [OECD], *Reviews of National Policies for Education: Dom. Rep. 2008*, ch. 2 (Feb. 20, 2008), available at http://www.oecd-ilibrary.org/education/reviews-of-national-policies-for-education-dominican-republic-0082_9789264040823-en;jsessionid=jj10c4hsc725.delta.

⁷⁴ *Id.*

⁷⁵ CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA Jan. 26, 2010, art. 75 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>. See also Ley General de Educación, Ley No. 66-97 (Apr. 15, 1997) (Dom. Rep.).

⁷⁶ Seventeen interviews with families and officials in the Dom. Rep. (Jan. 6-11, 2014).

⁷⁷ Letter from Victor R. Sanchez Jaquez, Director, National Office of Educational Planning and Development, Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (Feb. 14, 2014) (on file with author).

II. FINDINGS

“Without a nationality, stateless children can be denied access to basic social protection programmes, cannot earn education certificates or graduate, or obtain an identity card or a passport. Without these basic protections and opportunities, these children are more vulnerable to exploitation and abuse.”

— UNICEF Statement on the Dominican Republic⁷⁸

Our 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. Dominicans of Haitian ancestry interviewed by the research team reported experiencing significant difficulties in obtaining personal identifying documents. Where documents have been denied or invalidated, children have been rendered stateless or at risk of becoming stateless and have been placed in a condition of extreme vulnerability.⁷⁹

Dominicans of Haitian descent interviewed by the research team frequently encountered intractable problems when trying to access the education system because of their inability to produce identity documents. These findings will show that Dominicans of Haitian descent encounter discrimination and arbitrary treatment with regard to both the provision of documents and progress in the school system. The research presented in this report will demonstrate that children sometimes encounter barriers to accessing primary education and are often prevented from entering or completing secondary education. Families, educators, and service providers reported various incidents of less-favorable treatment when comparing those of Haitian descent to classmates of Dominican ancestry. This is only one of the many serious divergences that exist between law, policy, and practice regarding documentary requirements for enrolling in school and taking national examinations.

There continue to be serious and long-lasting repercussions for Dominicans of Haitian descent who were interviewed for this report. In addition to reporting exclusion from the formal labor market and socio-economic immobility, families and service providers said that inability to continue school had negative psychological effects on children and led to a sense of resignation as children gave up on their dreams. This report finds that statelessness is an inter-generational problem in the Dominican Republic, with far-reaching consequences for Dominicans of Haitian descent trying to improve their own lives and contribute positively to society.

⁷⁸ Press Release, UNICEF, *supra* note 43.

⁷⁹ Yean & Bosico, Inter-Am. Ct. H. R. ¶ 142 (Sept. 8, 2005).

A. LACK OF ACCESS TO DOCUMENTATION

The barriers that children who are stateless or at risk of statelessness face in accessing education can be attributed in part to their inability to obtain a *certificate of live birth*, an official birth certificate, or a *cédula*. When attempting to acquire any of these documents, Dominicans of Haitian descent face a number of obstacles. Research carried out for this report found that children of Haitian descent are denied government-issued birth certificates, due to the application, in practice, of ambiguous and discriminatory criteria such as skin color and name. When they are able to obtain a certificate of live birth, Dominicans of Haitian ancestry reported being unable to obtain an official birth certificate, even where they had the other documents required. Finally, Dominican families of Haitian descent reported that, at the age of eighteen, they were unable to obtain *cédulas* from the JCE as a result of arbitrary administrative requirements, specific targeting based on ethnic origin, and a lack of transparency in JCE proceedings.

The research carried out for the purposes of this report suggests a significant problem of under-documentation amongst Dominicans of Haitian descent.⁸⁰ Forty-four families of Haitian descent interviewed by the research team reported being unable to obtain certificates of live birth, government-issued birth certificates, or *cédulas* for their children, despite those children having been born in the Dominican Republic and having no other nationality.⁸¹

Although changes to law and policy introduced formal barriers to Dominicans of Haitian descent obtaining documents to verify their Dominican citizenship, testimony obtained for the purposes of this report confirms that arbitrary and discriminatory practices of civil registry officials have long presented and continue to be obstacles for these families.⁸²

⁸⁰ See COLUMBIA UNIVERSITY SCHOOL FOR INTERNATIONAL AND PUBLIC AFFAIRS, A DREAM DEFERRED: BIRTH REGISTRATION AND ACCESS TO EDUCATION IN THE CALLEJÓN DE LA LOMA, 3, 10 (April 2011), <http://www.dominicandream.org/SIPA%20Report.pdf>, (finding that 28.6% of children surveyed did not have a birth certificate, and that in 28.9% of these cases, the parents were Dominican but one or more parent lacked the necessary documentation to declare the child). This study also identified that having a parent from Haiti was the single greatest risk factor determining whether a child born in the Dominican Republic will have a government issued birth certificate. A more general problem of under-documentation exists in the Dominican Republic. See *At a Glance: Dominican Republic*, UNICEF (last updated Dec. 24, 2013) http://unicef.org/infobycountry/dominican-republic_statistics.html (indicating a birth registration rate of 82.4% for the Dominican Republic for the period 2004-12).

⁸¹ Interviews with individuals in the Dom. Rep. (Jan. 6-11, 2014). The research team also interviewed seventeen families of Haitian descent who reported being denied certificates of live birth, government issued birth certificate or *cédulas*, despite having at least one Dominican national parent.

⁸² See Ley General de Migración, Ley No. 285-04 (Aug. 15, 2004) (Dom. Rep.); Junta Central Electoral, Circular No. 17 (Mar. 29, 2007) (Dom. Rep.); Junta Central Electoral, Resolution 12-2007 (Dec. 10, 2007) (Dom. Rep.); CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 18 (Dom. Rep.). Regarding preexisting problems, see OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 5 (describing civil registry officials turning away Dominicans of Haitian descent with valid *cédulas*, when attempting to obtain formal birth certificates for their children).

Families reported being given pink “foreigner” certificates of live birth by hospitals or medical centers, rather than the standard equivalent certificate, indicating that the state considers them to be “foreigners” and thereby rendering it impossible for parents to obtain a government-issued birth certificate for their child.⁸³ This is what happened to Valeria’s children, despite the fact that they were born in the Dominican Republic and she had a Dominican passport as proof of her citizenship.⁸⁴ The hospital refused to issue a certificate of live birth for the children, simply on the basis that the parents “looked Haitian.”

Alain, a Haitian immigrant who has been living in the Dominican Republic for decades, was unable to register his Dominican-born daughter and obtain a birth certificate for her, although the civil registry would not explain why.⁸⁵ Similarly, Dominicans of Haitian descent interviewed for this report said that JCE officials often asked for supporting documents which are not otherwise obligatory when reviewing their *cédula* applications.⁸⁶ For example, as a precondition to getting a *cédula*, Martina was asked to provide the *cédulas* of her parents, her eighth-grade school certificate, her high school diploma, a certificate of her live birth, and the *cédula* of one of her siblings.⁸⁷ Consistent with other studies, the research team received testimony indicating that Dominicans of Haitian descent encounter significant difficulties in obtaining *cédulas*, even when in possession of a government-issued Dominican birth certificate.⁸⁸

A number of interviewees reported being unable to obtain personal identifying documents for children because of their own inability to obtain paperwork verifying their Dominican nationality, thus underlining the multi-generational impact of this problem.⁸⁹ For example, Astryd, a mother of nine children who came to the Dominican Republic legally from Haiti, was told by the civil

⁸³ Interviews with individuals in the Dom. Rep. (Jan. 7-10, 2014).

⁸⁴ Interview with Valeria (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

⁸⁵ Interview with Alain (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

⁸⁶ Interviews with two individuals in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interviews with three individuals in the Dom. Rep. (Jan. 11, 2014).

⁸⁷ Interview with Martina (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

⁸⁸ Interview with individual in the Dom. Rep. (Jan. 6, 2014); Interviews with two individuals in the Dom. Rep. (Jan. 11, 2014); See also OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 9.

⁸⁹ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interview with individual in the Dom. Rep. (Jan. 12, 2014); Interview with July Clemente, ASCALA, *supra* note 60. According to Ms. Clemente, the Civil Code, Ley No. 659 sobre Actos del Estado Civil que dicta disposiciones sobre los registros y las actas de defuncion (1944), requires documentation from both parents and the live birth certificate of the child, unless two years have passed since the child was born. At that point, individual civil registries will make their own requirement for obtaining birth certificates. This aspect of the issue was explicitly acknowledged by the Inter-American Commission almost fifteen years ago. See INTER-AMER. COMM. ON H.R., REPORT ON THE SITUATION OF THE DOMINICAN REPUBLIC, ¶ 350, Inter-Am. C.H.R. OEA/Ser.L/V/II.104 doc. 49 rev. 1 (Oct. 1999).

registry office that “if you don’t have a *cédula*, you cannot declare your children.”⁹⁰ Consequently, all nine of Astryd’s children have grown up without documentation and, according to current interpretations of Dominican law, are stateless.

Unable to obtain personal identifying documents, most of the Dominicans of Haitian descent interviewed for this report have been prevented from fully participating in society and are unable to enjoy the basic rights for which possession of documentation is a practical prerequisite. Rendered stateless by their own government, they have been relegated to the outer fringes of Dominican society and often cannot obtain employment in the formal labor market, participate in civic life or exercise freedom of movement without fear of expulsion. As the remainder of this report will show, they are also unable to access the education system without significant or intractable difficulty.

⁹⁰ Interview with Astryd (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

B. BARRIERS TO EDUCATION BASED ON LACK OF DOCUMENTATION

“Those born here are here, so we have to give them the opportunity to study.”

— Dominican Primary School Principal⁹¹

Despite the national law and policy that all children, regardless of documentation, have a right to education,⁹² families reported that they have encountered problems keeping children in school because they lacked documents requested by school officials or their documents were not accepted.⁹³ For children who are stateless or at risk of statelessness, requests for documentation may occur at specific points in elementary, secondary, and tertiary education, as well as in some cross-cutting situations that may occur at any level.⁹⁴ In some cases these requests are based on official policy, but in many they are the result of the arbitrary application of law and policies.

Before addressing the challenges that our research found children face in practice, it is important to provide an overview of the official laws, regulations, and policies related to education and documentation in the Dominican Republic. In response to a written request for information, the Ministry of Education stated that primary school is free and mandatory for all children and that there are mechanisms for getting around administrative requirements for documentation.⁹⁵

⁹¹ Interview with High School Principal in the Dom. Rep. (Jan 8, 2014).

⁹² CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 63 (Dom. Rep.), available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>; Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.); Interview with José Ricardo Taveras Blanco, *supra* note 31.

⁹³ See Human Rights Council, Working Group on the Universal Periodic Review, *Compilation prepared by the Office of the U.N. High Comm'n for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council Resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, ¶ 69, U.N. Doc. A/HRC/WG.6/18/DOM/2 (Nov. 8, 2013); see also OSJI & CEJIL, *supra* note 26, at 9.

⁹⁴ The existence of barriers to education are supported by previous reports. See U.N. Human Rights Comm., *Concluding Observations of the Human Rights Comm.: Dom. Rep.*, ¶ 22, U.N. Doc. CCPR/C/DOM/CO/5 (Apr. 19, 2012) (“The Committee regrets the serious consequences of this situation in terms of the affected persons’ access to education...”); OSJI, SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW: DOM. REP. 7 (2013), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRDOStakeholdersInfoS18.aspx> [hereinafter OSJI, Submission UPR]; CEJIL, SUBMISSION TO THE 18TH SESSION OF THE UNIVERSAL PERIODIC REVIEW: REVIEW OF THE DOM. REP., ¶ 8 (June 24, 2013), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRDOStakeholdersInfoS18.aspx>.

⁹⁵ See Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (Feb. 25, 2014) (on file with author); Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 3, 2014) (on file with author); Letter from Miriam Camilo Recio, General Director, Ministry of Educa-

Schools are supposed to register all children in the Ministry's national database, which records each child's annual progress.⁹⁶ Lists of who is eligible to take the eighth- and twelfth-grade graduation exams also are based on this national database.⁹⁷ The Ministry stated that in order to avoid excluding children based on documentary requirements, children may continue their education on a provisional basis while they attempt to obtain documents.⁹⁸ This is intended as a way to comply with the constitutional right to education for all children.⁹⁹

In order to enroll for primary school, a child accompanied by a parent or guardian must submit an enrollment form,¹⁰⁰ two photos, and a birth certificate.¹⁰¹ However, the Ministry stated that children should still be allowed to attend school without documents, and these children should be entered into the Ministry of Education database with a notation that their documents are pending.¹⁰²

Each year, primary schools also send a list of eighth-grade students who have met the requirements for graduations to the National Exam Director.¹⁰³ Based on this, officials prepare a list of children eligible to take the eighth-grade national exam, a prerequisite for completion of high school.¹⁰⁴ The Ministry stated that a birth certificate is no longer required to take the exam, although a child should be in the national database.¹⁰⁵

tion of the Dominican Republic, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 4, 2014) (on file with author); Letter from Victor R. Sanchez Jaquez, Vice-Minister of Education, Director of the National Office of Planning and Education Development, to Henry A. Nunez, Director of the Office of Free Access to Public Information (March 3, 2014) (on file with author).

⁹⁶ Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, (Mar. 3, 2014), *supra* note 95, at 2.

⁹⁷ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 3.

⁹⁸ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 1; MINISTERIO DE EDUCACIÓN DE LA REPÚBLICA DOMINICANA OFICINA NACIONAL DE PLANIFICACIÓN Y DESARROLLO EDUCATIVO, DIRECCIÓN DE DESARROLLO ORGANIZACIONAL [Ministry of Education of the Dominican Republic National Office of Planning and Educational Development, Director of Organizational Development], MANUAL OPERATIVO DE CENTRO EDUCATIVA PÚBLICO [Operations Manual of Public Education Centers], (Dom. Rep.) (2013). See CONSTITUCIÓN DE LA REPÚBLICA DOMINICANA Jan. 26, 2010, art. 63(3) (Dom. Rep.), *available at* <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

⁹⁹ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 1.

¹⁰⁰ This form includes sections for providing information from the child's birth certificate or information about pending documents. Operations Manual of Public Education Centers, *supra* note 98, at 173.

¹⁰¹ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 1.

¹⁰² *Id.*; Operations Manual of Public Education Centers, *supra* note 98, at 173.

¹⁰³ Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, (Mar. 3, 2014), *supra* note 95, at 2.

¹⁰⁴ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 3.

¹⁰⁵ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican

This process is repeated for secondary school with additional limitations. For secondary school, a child must present a certificate of eighth-grade completion, a birth certificate, two photographs, a medical certificate, a school identity card, and a grade transcript.¹⁰⁶ The Ministry of Education stated that children who do not have all of these documents are permitted to enroll in secondary school on the basis that they will later submit a complete set of documents, but children cannot enroll without any documents.¹⁰⁷ At the end of high school, schools again compile a list of students qualified to take another national exam that is mandatory for graduation.¹⁰⁸

Once a student turns eighteen, he or she also must present a *cédula* in order to stay in school, regardless of the grade the student has attained at that time.¹⁰⁹ However, the Ministry of Education again noted that students often can attend basic adult education classes on the assumption that they will have their documents in order by the time they graduate.¹¹⁰

The Ministry also has programs intended to help children obtain documentation,¹¹¹ although it remains to be seen how the Constitutional Court ruling will affect these programs. The Ministry also stated that schools have been instructed not to impede the educations of any children,¹¹² and there are intervention programs for cases where a child is blocked from attending school.¹¹³ However, our findings indicate that educators do not uniformly understand and apply these rules and that the provisional arrangements for children with pending documents do not work in a system where children increasingly struggle to obtain any form of documentation.

In practice, school officials indicated that the Ministry of Education instructs school districts to check for documents and to encourage children to obtain birth certificates, at minimum.¹¹⁴ Some school districts may try to help families seek Dominican or foreign documents if possible, but at least one principal noted that this is not widely advertised because then everyone would ask for help.¹¹⁵

Republic, (Feb. 25, 2014), *supra* note 95, at 3-4.

¹⁰⁶ *Id.*

¹⁰⁷ Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, (Mar. 3, 2014), *supra* note 95, at 2.

¹⁰⁸ Letter from Elsa Rosalia Sanchez, General Director of Secondary Education, Ministry of Education of the Dominican Republic, (Mar. 3, 2014), *supra* note 95, at 2; Letter from Rita Caballos (Feb. 25, 2014), *supra* note 95, at 3.

¹⁰⁹ Letter from Miriam Camilo Recio, General Director of Education, Ministry of Education of the Dominican Republic, (Mar. 4, 2014), *supra* note 95, at 2.

¹¹⁰ *Id.*

¹¹¹ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95, at 1.

¹¹² Letter from Victor R. Sanchez Jaquez, Vice-Minister of Education, Director of the National Office of Planning and Education Development, (Mar. 3, 2014), *supra* note 102, at 1.

¹¹³ Operation Manual for Public Education Centers, Ministry of Education of the Dominican Republic (July 2013), *supra* note 98, at 27.

¹¹⁴ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹¹⁵ *Id.*

Parents in some regions are aware of efforts by schools and the government to help document children, but they often are worried that if they come forward, the documents they have may be taken away or that their children will be registered as foreigners and deported. In recent years, the government has sometimes confiscated and destroyed documents, a practice noted with concern by the U.N. Committee on the Elimination of All Forms of Racial Discrimination.¹¹⁶

Having schools ask about documentation is justified by government officials as a way to ensure that schools have reliable records for registering children under the correct names and to confirm the identity of test takers.¹¹⁷ However, as will be seen below, the requirements also can be used to keep children of Haitian descent out of school based on discrimination, limited resources, confusion about regulations, and lack of enforcement and consequences.

1. Primary School

“My oldest children know what is going on. They keep saying ‘Mom, Mom, what are we going to do at school? They are going to start asking for our papers.’”

— A Mother¹¹⁸

a. General Arbitrary Deprivation

Children who are stateless or at risk of statelessness may face barriers to accessing primary school as the result of the requirement for a birth certificate for formal enrollment and arbitrary action by school officials. Still, our research indicates that primary school traditionally has been somewhat more open than other levels of education. For example, one public elementary school director noted that approximately 25 of 150 students attending her school in early 2014 had no documents.¹¹⁹ A teacher at another primary school said that more than 10 of 130 students at that school had no birth certificate.¹²⁰

¹¹⁶ In 2008, the U.N. Committee on the Elimination of All Forms of Racial Discrimination raised concerns that a circular from the JCE was resulting in the confiscation and destruction of documents when people of Haitian descent sought to obtain or renew documents. CERD Comm., *Concluding observations of the Comm. on the Elimination of Racial Discrimination: Dom. Rep.*, ¶ 16, U.N. Doc. CERD/C/DOM/CO/12 (May 16, 2008); see AMNESTY INTERNATIONAL, DOMINICAN REPUBLIC: FEAR FOR SAFETY/DEATH THREATS (2008), available at <http://www.amnesty.org/en/library/asset/AMR27/002/2008/en/eb8b550f-5977-11dd-bc96-55b5ceea4018/amr270022008eng.html>.

¹¹⁷ Interview with José Ricardo Taveras Blanco, Director, General Directorate of Immigration, *supra* note 31.

¹¹⁸ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹¹⁹ Interview with Primary School Principal in the Dom. Rep. (Jan. 8, 2014); Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

¹²⁰ Interview with Primary School Teacher in the Dom. Rep. (Jan. 8, 2014).

However, problems of arbitrary denial of education in primary school still exist. Although the Ministry of Education has stated that children are allowed to attend primary school while pursuing documentation,¹²¹ not all schools seem to understand this policy. Of those interviewed, fourteen school officials and families reported that some primary schools turn away children without birth certificates,¹²² and some officials have publicly stated that they are opposed to letting “Haitians” attend school.¹²³

As an example of the arbitrariness, one Dominican man, whose wife is from Haiti, said that school officials told him that his son could no longer attend school in the fifth-grade because the son had no documents.¹²⁴ Since then, the father has been unable to get documents for his son, despite his own Dominican citizenship. Eventually, he gave up trying, and now his son is working off-and-on as the assistant to a bricklayer, instead of continuing his education.

In cases where children attended class but were not officially in the electronic enrollment system because of lack of documentation, interviews suggested that the lack of school records could result in children being forced to repeat a grade or difficulty in continuing to high school.¹²⁵

Pressure to seek documents also can cause children anxiety and make school an unwelcoming place. Of the handful of young children interviewed with their parents, four indicated an awareness that school officials wanted documents and that their parents were worried.¹²⁶

For example, at fourteen years old, Mariana already is concerned about the future of her education. She wants to be an engineer so that she can “build beautiful houses,” but she has no documents and explains that schools do not like children without documents. She is regularly called out of the classroom to the principal’s office and questioned about her lack of documents. Even though school officials have said Mariana can stay in school while her mother tries to obtain papers, officials regularly ask whether she has documents yet.¹²⁷

¹²¹ Letter from Rita Caballos, General Director of Basic Education, Ministry of Education of the Dominican Republic, (Feb. 25, 2014), *supra* note 95 at 1.

¹²² Interviews with families and educators in the Dom. Rep. (Jan. 6-11, 2014).

¹²³ *Director regional de Educación niega que autorizara inscribir los haitianos ilegales* [Regional Director of Education refuses to authorize registering illegal Haitians], DIARIO DIGITAL RD (July 28, 2007), <http://www.diariodigital.com.do/arti.php?id=18562>; See OSJI, Submission UPR, *supra* note 94.

¹²⁴ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹²⁵ Interview with individual in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014)

¹²⁶ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interviews with two individuals in the Dom. Rep. (Jan. 11, 2014).

¹²⁷ Interview with Mariana (pseudonym) and her mother in the Dom. Rep. (Jan. 11, 2014).

Mariana’s mother said that one of her older daughters quit school because she was sick of being harassed about papers:

My daughter felt ashamed, and I felt terrible and lost because I did not have the papers to declare her. It is really important for my children to go to school. If they are educated, they can find better jobs and have a good life.¹²⁸

Mariana plans to stay in school as long as possible, but says it is a “bad feeling” knowing that she is unlikely to be allowed to attend much longer. In her young mind, documents and an education are already critically linked:

I would tell the president to help the people get documents, not just for them, but so that their children can have a better future. It is important because, if you are educated, you are ready to go places.¹²⁹

“We just want a miracle from God to get our documents, to have the opportunity to go to school.”

— 14-year-old Girl¹³⁰

b. The Eighth-Grade National Exam

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.¹³¹ Nearly every child or family interviewed believed that documents were required to take the exam and to proceed to high school.¹³²

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Interview with individual in the Dom. Rep. (Jan. 10, 2014).

¹³¹ Interview with High School Counselor in the Dom. Rep. (Jan. 9, 2014). *See also* Ordenanza 7’2004, Consejo Nacional de Educacion [National Council of Education] (Dom. Rep.) (2004), *available at* http://sitios.educando.edu.do/biblioteca/index.php?option=com_booklibrary&task=view&id=226&catid=64&Itemid=102; DIRECCIÓN GENERAL DE EVALUACIÓN DE LA CALIDAD DE LA EDUCACIÓN Y LA DIRECCIÓN DE PRUEBAS NACIONALES [GENERAL DEP’T OF QUALITY ASSESSMENT OF EDUC. AND THE DEP’T OF NAT’L TESTS], MANUAL PARA LA APLICACIÓN DE LAS PRUEBAS NACIONALES DEL NIVEL BÁSICO Y DEL NIVEL MEDIO [MANUAL FOR THE IMPLEMENTATION OF THE NATIONAL TESTS OF PRIMARY AND SECONDARY SCHOOL], (Dom. Rep.) (1st ed. 2012), *available at* http://sitios.educando.edu.do/biblioteca/index.php?option=com_booklibrary&task=view&id=382&catid=68&Itemid=104.

¹³² Interviews with families, educators, and service providers in the Dom. Rep. (Jan. 6 - 11, 2014).

Families often start worrying about the exam long before children reach high-school age. Camila and Luciana are both bracing for the end of primary school after the civil registry refused to give them birth certificates.¹³³ They both were born in the Dominican Republic and their father has a *cédula*. However, when their father went to register the two girls, the officials demanded their mother's documents. The officials denied their request for birth certificates, saying it was because their mother only had a migrant worker's card.

"We just want a miracle from God to get our documents, to have the opportunity to go to school," Luciana said.¹³⁴

The family of another student, Sofía, has been trying everything to get her birth certificate so that she can register for the exam.¹³⁵ She has a certificate of live birth, so her mother tried to apply for an official birth certificate for Sofía. The family took out loans to cover the expenses of the application process – primarily for getting copies made and transportation to government offices. However, ultimately they were denied.

"We don't know what to do and we have spent lots of money," said Sofía, who at the time planned to show up on the first day of high school anyway in the hopes of being allowed to attend. "I am Dominican. I was born here and I've never been to Haiti. I don't know it. I've only seen it on TV."

Sofía's experiences are also already having an effect on the next generation. At seventeen years old, she has an infant son, and the hospital refused to give her son a certificate of live birth because they said Sofía was Haitian. Sofía said she is planning to try and save up money so that her son can attend private school when he is old enough and so that he does not have to face what she has been through.

Many proud parents have been rendered helpless by the national exam requirements. Elice and Chantale are siblings with ambitions to serve their country: Elice wants to be in the Dominican military and Chantale would like to work as a police officer in counter-narcotics.¹³⁶ They both add the caveat that they would need papers to pursue these dreams. Their mother has tried to obtain documents for them, but she said she has been turned away because she has no *cédula*.

Now they have arrived at the end of the eighth grade, and the whole family knows the answer to the question: Can you take the national exam? "No."¹³⁷

¹³³ Interview with Camila & Luciana (pseudonyms) in the Dom. Rep. (Jan. 11, 2014).

¹³⁴ *Id.*

¹³⁵ Interview with Sofía (pseudonym) in the Dom. Rep. (Jan. 10, 2014).

¹³⁶ Interview with Mother, Astryd (pseudonym); Son, Elice (pseudonym); and Daughter, Chantale (pseudonym), *supra* note 90.

¹³⁷ *Id.*

2. Secondary School

“They have been told by the teachers that they cannot go further. They can only reach eighth grade.”

— A Mother of Ten Children¹³⁸

a. General Arbitrary Deprivation

Although some government officials and teachers stated that children without documents can easily attend high school, several school officials and families reported that in reality children almost always must present documents to enroll.¹³⁹ Again, this is in spite of constitutional and regulatory guarantees of access to education regardless of documentation.¹⁴⁰

One principal interviewed for this report stated that in order to enroll in high school, a student needs to present two photos, a certificate indicating completion of eighth grade, medical records, and an original birth certificate.¹⁴¹ If the child does not have a birth certificate, that particular school requires two copies of a parent’s *cédula*.¹⁴² In cases where parents complain because they have no documents, some schools will reportedly allow the child to stay in school while giving the parents approximately a month to acquire documents.¹⁴³

Another school official indicated that some schools required a different set of documents or no documents at all,¹⁴⁴ although overall interviewees indicated that access to high school without documentation was substantially less common than access to primary school.

Much of a child’s fate may depend on the kindness of individual teachers and school administrators who are willing to overlook missing documents or actively help children obtain them. However, like the families, even the teachers are sometimes uncertain what will be best for a child’s future.¹⁴⁵

¹³⁸ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹³⁹ This is consistent with the Preliminary Observations from the Inter-American Commission on Human Rights’ visit to the Dominican Republic in December of 2013. IACHR, Preliminary Observations, *supra* note 15; *see* Interviews with High School Principals and families in the Dom. Rep. (Jan. 6-11, 2014). *See also supra* note 95.

¹⁴⁰ *See supra* Part II.B.

¹⁴¹ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014). *See also supra* note 106 (discussing also the requirement to present a school identity card, grade transcript and certified copy birth certificate, according to the Ministry of Education).

¹⁴² Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁴³ Interviews with two individuals in the Dom. Rep. (Jan. 12, 2014); Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014)

¹⁴⁴ Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

¹⁴⁵ Interview with Primary School Principal in the Dom. Rep. (Jan. 8, 2014); Interview with Primary School Principal

July Clemente, who works for the non-governmental organization ASCALA, recalled a near-miss where a group of gifted students in advanced-level courses were threatened with expulsion from high school because they lacked documents.¹⁴⁶ One of these students had reached the first year of high school by the age of twelve; Clemente said, “He used to say, ‘It seems like the government wants me to cut sugar cane like my father did. But I want to study engineering. But if I can’t study, I’m not going to finish high school.’”

Through a one-on-one meeting with the principal, Clemente was able to convince the school to keep the boy enrolled long enough for her to help his family obtain documents.

Yet, at another school, a principal has already begun making assumptions based on the recent Constitutional Court ruling. Flore said her daughter, Victoria, was only sixth months into the ninth grade when the principal came to her in December 2013 and said that Victoria could not continue at school. The principal explained that this was because the ruling means that Victoria will never be able to obtain Dominican documents as a person of Haitian descent.¹⁴⁷

“It feels bad,” Victoria said. “I am young and want to study for the future – and I can’t.”

These contrasting cases indicate just how arbitrary decisions can be, dependent as they are on the individual whims of administrators.

Identity documents lost between the start of primary school and end of high school can also be a significant barrier to entry into high school. Children interviewed who had lost their papers reported that they have then been unable to obtain new copies as the result of Haitian appearance or ancestry.¹⁴⁸ Several families said they lost birth certificates and *cédulas* in moves, storms, or fires.¹⁴⁹

For example, Francisco said his birth certificate and his parents’ *cédulas* were lost when he was in the eighth grade, after his home caught fire and burned down.¹⁵⁰ In addition to the trauma of the fire, he had to repeat the eighth grade because he needed a birth certificate before he could continue to high school. He tried to obtain new copies, but officials at the civil registry said his file did not exist. As a result, Francisco ended up having to drop out without ever getting past the eighth grade.

in the Dom. Rep. (Jan. 11, 2014).

¹⁴⁶ Interview with July Clemente, ASCALA, *supra* note 60.

¹⁴⁷ Interview with Flore & Victoria (pseudonyms) in the Dom. Rep. (Jan. 8, 2014).

¹⁴⁸ Interview with individual in the Dom. Rep. (Jan. 6, 2014); Interview with family in the Dom. Rep. (Jan. 10, 2014); Interview with individual in the Dom. Rep. (Jan. 10, 2014); Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹⁴⁹ *Id.*

¹⁵⁰ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

b. Turning Eighteen

Although coming of age by definition takes the discussion out of the realm of childhood, the common inability to continue school after the age of eighteen often means that young people are unable to finish high school. This is generally the result of schools asking students to provide copies of their *cédula* when they turn eighteen.¹⁵¹

This barrier to completing school means that many children are discouraged from their schooling earlier in secondary school, knowing that they will be unable to obtain a high school diploma.¹⁵² This problem is compounded because many students have barely started high school or may not have even finished primary school by the time they are eighteen years old. One reason for this can be that struggles with documentation during childhood forced them to miss several years of school.

Students also often start school at an older age in rural communities. For example, Georges started school late but was bright enough that he managed to skip a grade and convinced the principal to help him register for the eighth-grade exam without documents.¹⁵³ After his mother died, paying to take the bus 15 kilometers to high school every day became expensive and he started looking for work on the side. However, that soon became a moot point when the school told him he was an adult and needed a *cédula* to continue school. After nearly completing high school and working hard to do so, he was not allowed to graduate.

Some students also are forced to take time off from school for other reasons, such as pregnancies or the need to help support their families. Many of these students reported that when they tried to return to finish high school a few years later, after turning eighteen, the school refused to re-enroll them without a *cédula*.¹⁵⁴

c. National Testing as a Hurdle to High School Graduation

Those students who are stateless or at risk of statelessness and are able to remain in high school face obstacles in being allowed to sit for the twelfth-grade national exam. Students' ability to take this exam varies depending on which high school they attend. Some students reported being able to take the exam without any formal documentation,¹⁵⁵ while others were required to present official copies of their birth certificates.¹⁵⁶ This is problematic because official copies of birth

¹⁵¹ See OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 4.

¹⁵² Interview with individual in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 11, 2014).

¹⁵³ Interview with individual in the Dom. Rep. (Jan. 6, 2014).

¹⁵⁴ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 11, 2014); Interview with individual in the Dom. Rep. (Jan. 12, 2014).

¹⁵⁵ Interview with individual in the Dom. Rep. (Jan. 6, 2014).

¹⁵⁶ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 8, 2014).

certificates are commonly denied to children of foreign parents and their descendants.¹⁵⁷ Furthermore, other students who did secure official copies of their official birth certificates reported being discouraged from taking the national exam by school officials, due to their inability to pursue future educational opportunities without a *cédula*.¹⁵⁸

A child of Haitian sugarcane workers, Manuel saw the importance of higher education, even as he followed the sugarcane harvest with his parents and worked while attending school. Manuel was able to take the national exam twice, although, due to his struggles with math, he was unsuccessful in passing that portion of the exam. Refusing to give up on university, he returned to attempt the test again. However, this time, Manuel encountered a different administrator who demanded presentation of a *cédula*, a document that had not been previously requested. Manuel described this experience as both discouraging and humiliating.

I could tell I wasn't being respected. I asked him if it was because I was black or Haitian, but he said it doesn't matter what color I am if I don't have a *cédula*. 'Bring me documents.'

It was difficult. I felt I wasted my time. I was so close to reaching the top and some other person stopped me from reaching it. It ruined by future plans. I couldn't go to college. I couldn't do anything else.¹⁵⁹

The confusion over which documents are required to take the national exam is further illustrated by accounts of advocates, practitioners, and high school principals themselves. Lawyers reported that presentation of a birth certificate is required for completion of twelfth-grade testing.¹⁶⁰ One high school principal supported this understanding and suggested that even if she permitted students to attend school without a birth certificate, they would not be able to take the national

¹⁵⁷ U.N. Human Rights Council, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance & Indep. Expert on Minority Issues, *Promotion and Prot. of all Human Rights, Civil, Political, Econ., Soc. and Cultural Rights, Including the Right to Dev.: Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance: Follow-up to and Implementation of the Durban Declaration and Programme of Action: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the indep. expert on minority issues, Gay McDougall: Mission to Dom. Rep.*, ¶ 55, U.N. Doc. A/HRC/7/19/Add.5 & A/HRC/7/23/Add. 3 (March 18, 2008) (by Doudou Diène & Gay McDougall) ("Without exception, individuals of Haitian descent born in the Dominican Republic reported that, because of their colour or their Haitian looks or name, it is virtually impossible to obtain identity documents or even copies or renewals of previously issued documents. NGOs, community representatives and individuals described ill-treatment, insults and even ejection from registration offices of those that are or are presumed to be of Haitian descent.").

¹⁵⁸ *E.g.* Interview with individual in the Dom. Rep. (Jan. 7, 2014); Interview with individual in the Dom. Rep. (Jan. 8, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 9, 2014).

¹⁵⁹ Interview with Manuel (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

¹⁶⁰ Interview with individual in the Dom. Rep. (Jan. 9, 2014); Interview with individual in the Dom. Rep. (Jan. 8, 2014).

exam in their final year.¹⁶¹ However, another high school principal stated that documents are not required for testing, as long as the student's name remains consistent throughout all four years of high school.¹⁶² These varying understandings of policies mirror the mixed experiences of students, whose ability to take the national exam depends on their respective principals' application of the rules.

Bridget Wooding of Observatorio de Migrantes del Caribe (hereinafter OBMICA) asserted that students may be able to take the national exams but might not be credited for the years in school they have completed if they are unable to provide the documentation demanded by their respective schools. In these circumstances, students are prevented from obtaining a diploma.¹⁶³

Denied the opportunity to sit for the national exam, students are precluded from demonstrating their academic abilities and future potential. If blocked from the exam, students' dreams of high school graduation and higher education are regularly lost before they even begin.

d. Proof of High School Completion

Once successfully past the twelfth-grade national exam, students face additional obstacles to high school graduation and validation of years completed in school.¹⁶⁴ Again, in practice, students' experiences and professionals' understanding of regulations demonstrate an arbitrary application of national policies, which requires presentation of birth certificate to receive official validation from the Ministry of Education for the years completed in school.¹⁶⁵

Without full receipt of diplomas and transcripts, students cannot prove their academic accomplishment to future employers or universities. One attorney we interviewed confirmed that many students are denied any form of certificate of completion if they lack the documents demanded by the high school – and attested to the difficulties caused by this withholding of certification, such as loss of employment and further educational opportunities.¹⁶⁶

Principals also diverge in their interpretation and implementation of policies regarding high school graduation. One principal reported that there are no obstacles for students to obtain their high school diploma, even without a birth certificate.¹⁶⁷ This principal firmly asserted that students are allowed to complete high school and graduate, saying:

¹⁶¹ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁶² Interview with High School Principal in the Dom. Rep. (Jan. 8, 2014).

¹⁶³ Interview with Bridget Wooding, Observatorio de Migrantes del Caribe (OBMICA) in the Dom. Rep. (Jan. 7, 2014).

¹⁶⁴ This challenge also was noted by Human Rights Watch. See HRW, *supra* note 24.

¹⁶⁵ *Alumnos, Servicios a los Alumnos - Convalidación de Estudios* [Alumni, Services for Alumni, Recognition of Studies.], MINERD: Ministerio de Educación, <http://www.minerd.gob.do/Lists/Servicios%20a%20los%20Alumnos/AllItems.aspx> (last visited March 8, 2014).

¹⁶⁶ Interview with July Clemente, ASCALA, *supra* note 60.

¹⁶⁷ Interview with High School Principal in the Dom. Rep. (Jan. 11, 2014).

All that come to start first grade are allowed to go to the fourth grade of secondary [twelfth grade]. They can all graduate. All that come in graduate and yes, you can get a graduate diploma without a birth certificate.¹⁶⁸

Another high school principal reported a different understanding of the national policy, saying, “If you can’t find the name in the system, you get in trouble and it is questioned why you are not in the system” – leading to problems when attempting to prove completion of the four years of high school.¹⁶⁹

If students are able to provide the documentation required by their particular school and they successfully sit for the national exam (and obtain proof of high school graduation), students may also wish to continue to university. However, students once again may face significant obstacles to the fulfillment of their scholastic potential because they lack a *cédula*.

3. Higher Education

In contrast to the capricious implementation of state regulations regarding high school enrollment, graduation, and national testing, access to university is uniformly denied to those students over the age of eighteen who are unable to obtain a *cédula*.¹⁷⁰ Legal experts¹⁷¹ and service providers¹⁷² agree that the ability to attend university is consistently denied to those students without a *cédula*. Students reported an end to their academic careers when they tried to register for university, and were unable to produce a *cédula*, despite, in some cases, years of trying.¹⁷³

Since 2008, Patrice, one of nine siblings, has been attempting to get his *cédula* in order to attend university.¹⁷⁴ Following each of seven attempts, Patrice was told he was ineligible to receive a *cédula* because his parents are foreigners, even though he was born in the Dominican Republic. He wants to be a teacher or an engineer and graduate from university just like his older sister. Patrice’s sister, Mahalia, was able to obtain her *cédula* in 2004 with the exact same type of birth certificate as her brother, and without any mention of her parents being foreigners. Mahalia continued on to university, graduating with a degree in education that she has put to use as a teacher.¹⁷⁵

¹⁶⁸ *Id.*

¹⁶⁹ Interview with High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁷⁰ Proceso de Admisión, UNIVERSITY AUTÓNOMA DE SANTO DOMINGO (last visited Mar. 7, 2014), <http://www.uasd.edu.do/index.php/es/proceso-de-admision> (Admissions requirements for entrance into state universities, including certified copy of birth certificate and presentation of *cédula*).

¹⁷¹ Interview with Attorney in the Dom. Rep. (Jan. 9, 2014); Interview with Legal Expert in the Dom. Rep. (Jan. 10, 2014).

¹⁷² Interview with Bridget Wooding, OBMICA, *supra* note 163; Interview with July Clemente, ASCALA, *supra* note 60; Interview with Rosa Iris Diendomi Alvarez, Community Leader, Reconoci.do in the Dom. Rep. (Jan. 10, 2014).

¹⁷³ *E.g.* Interviews with fourteen individuals in the Dom. Rep. (Jan. 6-11, 2014).

¹⁷⁴ Interview with Patrice (pseudonym) in the Dom. Rep. (Jan. 6, 2014).

¹⁷⁵ Interview with Mahalia (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

Another young man, Juan, has been denied his *cédula* since turning eighteen in 2007.¹⁷⁶ Upon graduating from high school in 2009, Juan was denied entry into university despite an excellent academic record. In 2011, Juan sued the JCE and was awarded a judgment ordering the agency to grant his application for a *cédula*. According to Juan, “this was like a check without funds” because the JCE still refuses to comply with the judgment.¹⁷⁷ When reflecting on his experience, Juan recognized all the valuable time lost in his pursuit of a better future:

I don't know what to think because my future has been destroyed. As a poor person, you work hard in school to be someone. Very early I had a vision that at twenty I would finish high school, go to college, and earn a degree and by 25 have a family. Now I am 25 and I have not even begun.¹⁷⁸

Juan described his three role models as Jesus Christ, the fathers of the Dominican Republic who fought for his country's freedom, and Martin Luther King Jr. for his fight against injustice. Juan says the hope, strength, and determination of these men motivate him to continue to fight for his rights to participate fully in Dominican society through getting identity documents and pursuing higher education.

Unfortunately, some other academically gifted Dominican-born students of Haitian-born parents share the experience of Juan. Martina graduated from high school in 2009 with outstanding grades but was unable to attend university without a *cédula*. She said that she was offered two prestigious scholarships to pursue studies in either accounting or engineering.¹⁷⁹ With such scholarships, Martina would have been well positioned for gainful employment upon graduation, giving her the ability to move her family out of the impoverished *bateye* in which she still resides.

Some students reported being able to enter university prior to their eighteenth birthday – without a *cédula*. However, when they reach the age of eighteen, they reported that public universities demand they produce a *cédula* or face expulsion. One such student, Edgard, now faces being expelled following his eighteenth birthday.¹⁸⁰ He expressed his despair at the prospect of losing another opportunity due to lack of documents:

I was expelled from the baseball academy and the choir. Nobody wants people without papers. Imagine I have my legs and arms tied: university is the only thing I have.¹⁸¹

¹⁷⁶ Interview with Juan (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Interview with Martina (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

¹⁸⁰ Interview with Edgard (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

¹⁸¹ *Id.*

4. Cross-Cutting Issues

Several factors or events may affect access to education at multiple or all levels of school for children who are stateless or at risk of statelessness. This section will discuss how the added complication of transferring schools or discrepancies in written records each may create opportunities for arbitrary action. There are also indirect barriers, such as societal pressures to drop out, which are triggered by statelessness and in turn affect a child's ability to stay in school.

a. Transferring Schools

School transfers appear to be a common barrier to the education of stateless children, in large part as a consequence of how arbitrarily policies vary from school to school.¹⁸² Transfers also are reportedly complicated by schools that do not keep proper records.¹⁸³

One high school principal indicated that transfer students must present a report card and certificate of good behavior from their previous school, in addition to a birth certificate.¹⁸⁴ Some students reported they did not have any problems with transferring schools, but families in other regions said they were suddenly confronted with new or additional document requirements or their children were told they had to repeat grades because the new school would not accept their old school records.¹⁸⁵ Other students were unable to provide old school records because their previous school had not formally enrolled them due to lack of documents.¹⁸⁶

While being forced to repeat grades does not directly force children out of the school system, the resulting feelings of humiliation, frustration and boredom in the classroom can cause children to give up on their studies.

Take for example Julián, who currently has no documentation.¹⁸⁷ He wants to be a helicopter pilot or a classical and blues musician and practices guitar so often that he hardly lets his mother catch a moment of peace. Although he is in the third grade, most of Julián's friends are in eighth grade.

"I should be in that grade too," he said. "I don't really want to talk about it."¹⁸⁸

Julián used to be an enthusiastic student, but school has been a sore subject ever since he moved north from Santo Domingo and was sent back to first grade. This happened because there was no record of him at the old school. His mother tried to appeal to the director of the new school, but the director was unmoved.

¹⁸² Interview with a service provider in the Dom. Rep. (Jan. 7, 2014).

¹⁸³ *Id.*; Interview with an individual and his mother in the Dom. Rep. (Jan. 9, 2014).

¹⁸⁴ Interview with a High School Principal in the Dom. Rep. (Jan. 9, 2014).

¹⁸⁵ Interview with a High School Principal in the Dom. Rep. (Jan. 9, 2014); Interview with an individual in the Dom. Rep. (Jan. 9, 2014); Interview with an individual in the Dom. Rep. (Jan. 8, 2014).

¹⁸⁶ Interview with a service provider in the Dom. Rep. (Jan. 7, 2014).

¹⁸⁷ Interview with Julián (pseudonym) and his mother in the Dom. Rep. (Jan. 9, 2014).

¹⁸⁸ *Id.*

Another student, Atabei, said that when she moved to a new town, she had all of the correct transfer papers, but school officials put her in the first grade simply out of spite because she looked Haitian.¹⁸⁹ She said starting school all over again felt terrible and the redundant classes seemed to go on forever. She also reported having a math teacher who pretended like he could not hear children who appeared Haitian and also refused to explain the material when children who appeared Haitian asked a question. Despite that, Atabei said she loves school and learning, and she wants to become a psychologist.

“My Christian faith tells me that I need to be educated,” she explained.

b. Discrepancies in Written Records

Discrepancies in a child’s school records, such as misspelled names or name changes can also cause problems for stateless children when school officials rely on these discrepancies to deny children diplomas or the opportunity to take national exams.

Three principals indicated that it is common for the name a child used to register at one school to be different from the name used at another school, or on other records.¹⁹⁰ This may result from mistakes made by illiterate parents, a parent getting remarried, or the family registering the child under the last name of a friend or relative who has Dominican documents. Families also may change a child’s name to make it sound more Dominican.¹⁹¹

When the child tries to take the national exam or enroll in high school, the name change can make it difficult to show that the child has fully completed primary school, acting as a barrier to enrollment. However, in some cases children have been able to get letters from their primary schools certifying for the Ministry of Education that both names are the same person and that the child has completed primary level education.¹⁹²

Parents and students also are sometimes misled or made desperate enough to consider adopting false names or documents in order to get around document requirements and overcome statelessness.¹⁹³ Later, these efforts may sometimes backfire when the discrepancies are caught and investigated. School officials said that mistakes by parents often have tragic consequences for their children later.¹⁹⁴ One educator said there is little advice she can give in these situations: “I say to them, do not lose hope. I advise them that the last thing you can lose is hope, and you cannot do things illegally. I tell them to keep studying until the end.”¹⁹⁵

¹⁸⁹ Interview with Atabei (pseudonym) in the Dom. Rep. (Jan. 8, 2014).

¹⁹⁰ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 8 & 11, 2014).

¹⁹¹ *Id.*

¹⁹² Interview with a Primary School Principal in the Dom. Rep. (Jan. 8, 2014).

¹⁹³ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 8 & 11, 2014).

¹⁹⁴ *Id.*

¹⁹⁵ Interview with a Primary School Principal in the Dom. Rep. (Jan. 10, 2014).

c. Students Discouraged from Continuing School

A lack of educational prospects and professional employment opportunities may pressure children who are stateless or at risk of statelessness to drop out of school and can affect their sense of self-worth. Bridget Wooding of Observatorio de Migrantes del Caribe explains: "People can take exams, but might not be credited for what they have done. There are cases of self-discrimination. People do not see a point in investing in education, if they are not credited."¹⁹⁶

Children and young adults are cognizant of how probable it is that they will be barred from attending or completing high school without proof of citizenship.¹⁹⁷ They are further conscious that without a *cédula*, it is nearly impossible for them to attend and graduate from university. Employment opportunities in the formal labor market that require high school or university-level education also require *cédulas* and are therefore not accessible. Therefore, from some students' perspectives, pursuing education would be a waste of time that could be better spent supporting their families. Children and young adults who dropped out of high school and ceased pursuit of education expressed feelings of helplessness and surrender.¹⁹⁸ These children and young adults have internalized their oppressed position in society and made self-discriminatory choices.

For example, although Jimena was able to remain in school and take the twelfth-grade national exam, her siblings decided they were not going to be able to study without a *cédula* and dropped out.¹⁹⁹ They did not see any opportunity to attend university without a *cédula* and, thus, lost their desire to study.

Similarly, Damián stopped attending school because, he said, he felt impotent. He felt studying would be meaningless in the future without documents.²⁰⁰

Another former student, Johanne, dropped out of school when she was fifteen years old and following constant pressure from school officials to provide documentation that she did not have.²⁰¹ Although her attendance at school was being recorded, the officials insisted that she needed to provide her documents for registration. Sensing that the day she would be ejected from the school was imminent, she simply stopped attending class.

It seems clear to these children and young adults that life without documentation lacks any meaningful prospects in education. Valentina went so far as to take the national test and yet never completed the official graduation process because she knew she could not attend universi-

¹⁹⁶ Interview with Bridget Wooding, OBMICA, *supra* note 150.

¹⁹⁷ Interviews with families in the Dom. Rep. (Jan. 6-11, 2014).

¹⁹⁸ *E.g.* Interview with an individual in the Dom. Rep. (Jan. 11, 2014); Interview with an individual in the Dom. Rep. (Jan. 9, 2014).

¹⁹⁹ Interview with Jimena (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

²⁰⁰ Interview with Damián (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

²⁰¹ Interview with Johanne (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

ty without a *cédula*.²⁰² Decisions to drop out among people who lack documentation are particularly alarming, and may be one of the possible causes of the high rate of school dropouts among Dominicans of Haitian descent.²⁰³



In summary, these findings indicate that a mix of administrative barriers and arbitrary application of the law have forced stateless children to watch their peers continue school without them. First, children may face barriers at the primary school level as the result of arbitrary school practices related to enrollment and requirements for taking the eighth-grade exam. Those students who are able to get through primary school again face arbitrary requests for documents in addition to challenges based on document requirements tied to turning eighteen, national testing, and proof of high school completion. Then, access to university is uniformly denied to those students over the age of eighteen who are unable to obtain a *cédula*. Furthermore, several cross-cutting issues cause problems at multiple levels of education, including school transfers, discrepancies in written records, and pressure to drop out.

Many families interviewed sought to remedy these barriers to documentation and education through informal complaints to school and government officials and informal interventions by third party advocates.²⁰⁴ None mentioned an awareness of a mechanism for presenting complaints for the threat or violation of the right to education under the Dominican Code for the Protection of the Fundamental Rights of Children and Adolescents.²⁰⁵ Furthermore, one student stated that he was unable to obtain a *cédula* even with a court order.²⁰⁶ In practice, families routinely were unable to resolve the issue.

Many factors may result in a child leaving school, but the research and interviews described in this report demonstrate a pattern of problems specifically tied to statelessness and lack of documentation. These restrictions, in turn, have lasting consequences throughout a child's life. Without *cédulas* or proof of graduation, Dominicans of Haitian descent are only able to find employment in sugarcane fields or informal service industries such as cleaning or construction, which pay significantly lower wages and offer little job security or other benefits.²⁰⁷

²⁰² Interview with Valentina (pseudonym) in the Dom. Rep. (Jan. 11, 2014).

²⁰³ U.N. Econ. and Soc. Council, ICESCR Comm., *Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Dom. Rep.*, ¶ 33, U.N. Doc. E/C.12/DOM/CO/3 (Nov. 26, 2010).

²⁰⁴ Interviews with two Primary School Principals in the Dom. Rep. (Jan. 7 & 8, 2014); Interviews with two individuals in the Dom. Rep. (Jan. 6 & 11, 2014).

²⁰⁵ Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 50 (2003).

²⁰⁶ Interview with an individual in the Dom. Rep. (Jan. 9th, 2014).

²⁰⁷ United Nations, Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, 72th Session, Geneva, Consideration of reports submitted by States parties under articles 9 of the Convention, Dominican Republic, CERD/C/DOM/CO/12, 16 May 2008, ¶ 15.

For example, Lyne wanted to study psychology.²⁰⁸ A bright student, she obtained a scholarship from a church to attend a private high school. Upon graduating, she intended to pursue her studies at a university. However, she was unable to matriculate because she could not get her *cédula*. The disappointment left her feeling despondent. She ended up cooking at a small school because it was the only job accessible to her without documents.

Education affects much of a child's private and public life, which makes protection of the right to education particularly important. While the Dominican school system as a whole is in a state of transition and development, children should not be turned away simply because they lack documentation, especially when Dominican law explicitly includes safeguards that are meant to ensure that all children have access to education.²⁰⁹

While this study focuses on the right to education itself, several children and families emphasized the repercussions of being unable to finish school.²¹⁰ The ultimate impact of statelessness is to create a vicious cycle of poverty and disenfranchisement. In many cases, decisions to drop out result in informal, low-wage employment.²¹¹ Once these children and young adults become parents, it is difficult for them to provide for their families. Then, the new generation faces its own difficulties obtaining documentation and hence an education. The financial strain on the parents puts pressure on the new generation to drop out and seek employment, and, with the path to graduation uncertain, there is little incentive to stay in school.²¹²

²⁰⁸ Interview with Lyne (pseudonym) in the Dom. Rep. (Jan. 8, 2014.).

²⁰⁹ See *supra* Part II.B.

²¹⁰ See *supra* Part III.B.4.c.

²¹¹ Interview with six individuals in the Dom. Rep. (Jan. 7-11, 2014).

²¹² See *2012 Findings on the Worst Forms of Child Labor - Dominican Republic*, U.S. Dep't of Lab. 3 (Sept. 30, 2013), <http://www.dol.gov/ilab/programs/ocft/2012TDA/dominicanrepublic.pdf>.

IV. THE DOMINICAN REPUBLIC IS FAILING TO COMPLY WITH ITS INTERNATIONAL AND DOMESTIC LEGAL OBLIGATIONS

The formidable barriers that Dominican children face to fully access the education system resulting from statelessness or the risk thereof have serious international human rights implications. As discussed in the findings section, the information collected shows that the Dominican Republic has consistently and arbitrarily deprived children of their nationality, and has failed to prevent, avoid, and reduce statelessness, with a significant impact on the ability of the children affected to properly access an education. This contravenes a range of legal obligations binding on the state of Dominican Republic in the realms of nationality, education, children, and discrimination, as will be discussed in this section.

A. THE RIGHT TO NATIONALITY

1. International Human Rights Obligations

It is important to understand that difficulty accessing education is only one of the many negative results of statelessness.²¹³ While determining nationality policies is a sovereign right,²¹⁴ states also have obligations to apply these policies in a non-arbitrary, non-discriminatory fashion and to take action when a child is born or rendered stateless.

Article 20 of the American Convention on Human Rights, to which the Dominican Republic is a party, firmly states:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.²¹⁵

²¹³ ARENDT, *supra* note 5 at 102.

²¹⁴ RUTH DONNER, THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW 121 (1994).

²¹⁵ ACHR, *supra* note 11, art. 20.

These principles reflect Article 15 of the Universal Declaration of Human Rights,²¹⁶ and the United Nations General Assembly has also called “upon States to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality.”²¹⁷

Furthermore, the Dominican Republic has signed but not ratified the 1961 Convention on the Reduction of Statelessness, meaning that the government is under an international legal obligation not to act contrary to the object and purpose of that treaty.²¹⁸ The International Law Commission also has found the definition of statelessness “as a person who is not considered as a national by any State under the operation of its law” to be enshrined in customary international law.²¹⁹

Despite the Dominican government's protestations, UNHCR and other international bodies and agencies have viewed revocation of the Dominican nationality of persons born in the Dominican Republic as an issue of statelessness,²²⁰ and under Article 20 of the ACHR, states are obliged to grant citizenship to people born within their territory if the child would otherwise be stateless.²²¹ Although the Dominican Republic has suggested that these children should seek Haitian nationality, statelessness is determined based on a child's nationality at the moment it is assessed,

²¹⁶ UDHR, *supra* note 6, art. 15.

²¹⁷ G.A. Res. 50/152, ¶ 16 U.N. Doc. A/RES/50/1, (February 9, 1996), *available at* <http://www.un.org/documents/ga/res/50/ares50-152.htm>. The United Nations Human Rights Council reinforced this principle in resolution 7/10, as it called “upon all States to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, gender, religion, political opinion or national or ethnic origin, especially if such measures and legislation render a person stateless.” Human Rights Council Res. 7/10, Rep. of the Human Rights Council, March 27, 2008, *available at* <http://www.refworld.org/pdfid/49997add1d.pdf>.

²¹⁸ 1961 Statelessness Convention, *supra* note 8. Per Article 18 of the Vienna Convention on the Law of Treaties, the Dominican Republic has an obligation not to act contrary to the object and purpose of the treaty. Art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980); *see also* UDHR, *supra* note 6, art. 15; CRC, *supra* note 11, art. 7; ICESCR, *supra* note 9, arts. 6-15; International Covenant on Civil and Political Rights, art. 24, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), *opened for signature* Dec. 16, 1966, 999, U.N.T.S. 171 (entered into force March 23, 1966) [hereinafter ICCPR]; ACHR, *supra* note 11, art. 20; Yean & Bosico, Inter-Am. Ct. H. R. (Sept. 8, 2005) (holding that the Dominican Republic discriminated against the plaintiffs based on their Haitian parentage by denying them nationality and birth certificates).

²¹⁹ Rep. of the Int'l Law Comm'n, 58th Sess., May 1 - June 9, July 3 - Aug. 11, 2006, U.N. Doc. A/61/10, *Articles on Diplomatic Protection with commentaries, the International Law Commission* 49 (2006), *available at* http://legal.un.org/ilc/texts/9_8.htm (The Article 1 definition can “no doubt be considered as having acquired a customary nature.”).

²²⁰ Press Release, UNHCR, *supra* note 16; CRC Comm., Concluding Observations, *supra* note 33; OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 8.

²²¹ ACHR, *supra* note 11, art. 20.

not based on theoretical future applications for citizenship that may or may not be granted.²²² Dominican children of Haitian descent have no effective nationality *now*, and that means the state obligations owed to them as stateless children are applicable *now*.

The legal issues of statelessness and education in the Dominican Republic came to the fore in a 2005 decision of the Inter-American Court of Human Rights.²²³ In that case, two children, Dilcia Yean and Violeta Bosico, were born in the Dominican Republic to Dominican mothers and Haitian fathers.²²⁴ The parents of each were not permitted to officially register the birth of their child in accordance with the standard late registration procedure, and as a consequence the girls were not able to obtain birth certificates. Furthermore, Violeta Bosico was forced out of primary school because she did not have a birth certificate.²²⁵

The Inter-American Court of Human Rights held that racial discrimination and the discriminatory application of nationality and birth registration processes, specifically the nationality laws that existed in the Dominican Republic prior to 2004, violated the American Convention on Human Rights and rendered children of Haitian descent stateless.²²⁶ In a legally binding decision, the Court held that the Dominican Republic had an “obligation to prevent, avoid, and reduce statelessness.”²²⁷ It also determined that refusing to give the children birth certificates violated their right to be recognized before the law.²²⁸

The Inter-American Court held that statelessness had resulted in the violation of other critical rights, including the right to education.²²⁹ The Court also noted the particular vulnerability of stateless children and held that the Dominican Republic had failed to respect the special protection to which children are entitled under Article 19 of the Convention.²³⁰ Furthermore, this tribunal recognized that the Convention obligates states parties to adopt positive measures to guarantee the rights enshrined therein, including the existence of an effective remedy.²³¹

To this day, the Dominican Republic has not complied with the terms of the Inter-American Court’s judgment.²³²

²²² *See, supra* note 32.

²²³ Yean & Bosico, Inter-Am. Ct. H. R. (Sept. 8, 2005).

²²⁴ *Id.* at ¶ 109(6) (Dilcia Yean was born in 1996; Violeta Bosico in 1985. Both girls have Haitian ancestry on their mothers’ side, even though their mothers were themselves Dominican).

²²⁵ *Id.* ¶ at 109(35) (describing how Violeta Bosico was denied access to fourth grade because she did not have a birth certificate).

²²⁶ *Id.* at ¶ 172.

²²⁷ *Id.* at ¶ 140.

²²⁸ *Id.* at ¶ 113(c).

²²⁹ *Id.* at ¶ 110.

²³⁰ *Id.* at ¶ 167.

²³¹ *Id.* at ¶ 173.

²³² The Yean & Bosico Children (Republica Dominicana), “Supervision de cumplimiento de sentencia,” (Oct. 10, 2011), Inter-Am Ct HR [Cumplimiento, 2011].

2. Gaps and Shortcomings in the State Response

The facts of *Yean and Bosico* closely mirror the stories of many of the children and parents interviewed for this report, illustrating how the Dominican Republic has engaged consistently in the arbitrary deprivation of nationality and has failed to prevent, avoid, and reduce statelessness. In the execution of this initiative, interviews were conducted with a number of families evidencing incidents of the arbitrary deprivation of nationality. Families interviewed identified seventeen individuals who were denied a certificate of live birth, official birth certificate, and/or *cédula* despite having at least one Dominican parent.²³³ These families said the reason given for the denial often was that they looked too Haitian or had Haitian ancestors. Families interviewed also identified six individuals who obtained documents that were later confiscated, lost, or placed under investigation, stripping them of an effective nationality.²³⁴ Moreover, families interviewed identified fifty individuals with Haitian parents who were denied a certificate of live birth, official birth certificate, and/or *cédula*, even though they were born in the Dominican Republic and had no other nationality.²³⁵ Based on the holding in *Yean and Bosico* and the various pronouncements of the international community, these are clear cases of arbitrary deprivation of nationality, and illustrate the failure of the State to prevent and reduce statelessness.

It is important to note that there is also a category of children at risk of statelessness because they are of Haitian ancestry or look Haitian, even though their documents have not yet been challenged. Since the recent Constitutional Court ruling held that the descendants of irregular immigrants are not citizens, the Dominican Republic has identified 24,392 people registered as Dominicans whose citizenship will be stripped from them.²³⁶

In sum, despite its international and domestic legal obligations, the Dominican Republic has placed children at risk of statelessness, which continues to result in those of Haitian descent facing difficulties in realizing their right to education.²³⁷ A series of legal changes in the Dominican Republic since 2004, including the Dominican Republic's response to the *Yean and Bosico* decision and culminating with the 2013 Constitutional Court ruling, have systematically given a veil of legislative approval to a long-standing practice of discrimination. This has had the effect of rendering thousands of Dominicans of Haitian descent stateless or at risk of statelessness, and placing them in a situation in which many are deprived of the fundamental right to education.²³⁸

²³³ Interviews with seventeen families in the Dom. Rep. (Jan. 6-11, 2014).

²³⁴ Interviews with six families in the Dom. Rep. (Jan. 6-11, 2014).

²³⁵ Interviews with fifty families in the Dom. Rep. (Jan. 6-11, 2014).

²³⁶ EMBAJADA DOMINICANA EN WASHINGTON, D.C., Q&A, *supra* note 45.

²³⁷ Press Release, Human Rights Comm., *supra* note 38, at 2-3 (In considering the Dominican Republic in 2012, the Human Rights Committee expressed concern regarding racial discrimination towards migrants as well as the Dominican government's attempt to gloss over the issue of revoking the nationality of someone who had been in the country for decades.).

²³⁸ OSF, DOMINICANS OF HAITIAN DESCENT, *supra* note 18, at 5; EMBAJADA DOMINICANA EN WASHINGTON, D.C., Q&A, *supra* note 45 (stating that the civil registry of the Dominican Republic conducted an audit that found that 24,392 undocumented foreigners reside in the DR, and at least 13,672 are of Haitian descent and could be

B. THE RIGHT TO EDUCATION

1. International Human Rights Obligations

The right to education includes a core minimum requirement of access to primary school, progressive realization of access to secondary school, and a prohibition of discrimination in access to any level of available school. Furthermore, the right to education is not only a fundamental right in itself, but it is also an enabling right that allows individuals to realize other basic civil, political, economic, social, and cultural rights.²³⁹

The right to education, in addition to being recognized in the UDHR at Article 26, is included in the ICESCR, the UNESCO Convention against Discrimination in Education, and the Protocol of San Salvador.²⁴⁰ A right to education is also recognized in several other international human rights instruments, including the CRC and the CERD.²⁴¹ As part of the 2000 Millennium Development Goals, all UN member states also agreed to ensure that by 2015 all children would be able to enroll in and complete a full course of primary education.²⁴²

Even though the right to education under the ICESCR is subject to progressive realization, certain minimum core obligations are immediate treaty obligations.²⁴³ Progressive realization means that parties are not required to comply with their obligations immediately, but must do so to the extent of their maximum available resources.²⁴⁴ Minimum core obligations are the baseline requirements that states must comply with immediately.²⁴⁵ With respect to primary education, a state's minimum core obligation is to "provide free and compulsory primary education," or if it has not secured compulsory, free primary education at the time of ratification, it must develop a plan within two years and implement this within a reasonable amount of time.²⁴⁶ At the level of secondary school, states have to "adopt and implement a national education strategy which includes provision for secondary, higher and fundamental education."²⁴⁷

affected by *Constitutional Court Ruling*).

²³⁹ See ICESCR Comm., Gen. Comment No. 13, *supra* note 20, at ¶ 1 & ¶ 31; CRC Comm., Gen. Comment No. 1, *supra* note 12, at ¶ 1; U.N. Human Rights Comm., Gen. Comment No. 17: Rights of the Child (Art. 24), ¶ 3, U.N. Doc. Supp. No. 40 A/44/40, Annex VI (Sept. 29, 1989).

²⁴⁰ UDHR, *supra* note 6, art. 26; ICESCR, *supra* note 9, art. 13-14; CADE, *supra* note 11.

²⁴¹ See CRC, *supra* note 11 arts. 28 & 29; CERD, *supra* note 11, arts. 5 & 7.

²⁴² United Nations Millennium Declaration (2000), G.A. Res. 55/2 U.S. Doc. A/55/L.2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm>.

²⁴³ See ICESCR, *supra* note 9, art. 2(1); ICESCR Comm., Gen. Comment No. 3 (1990): *The nature of States Parties obligations (art. 2, para. 1 of the Covenant)*, ¶ 1, U.N. Doc. E./1991/23, E/C.12/1990/8, Annex III (Dec. 14, 1991).

²⁴⁴ See ICESCR Comm., Gen. Comment No. 3, *supra* note 243 at ¶ 9.

²⁴⁵ *Id.* at ¶ 10.

²⁴⁶ ICESCR Comm., Gen. Comment No. 13, *supra* note 20, at ¶ 51 & 57.

²⁴⁷ *Id.*

International law is less settled with regard to university access. However, the CRC and the ICESCR both mandate that all states shall make higher education accessible to all on the basis of capacity by every appropriate means.²⁴⁸ Standards regarding accessibility, acceptability, and adaptability also apply, meaning that higher education must be available and affordable for all, without discrimination.²⁴⁹ The only caveat is that higher education is available to all on the basis of capacity, which is assessed according to an individual's relevant experience and expertise. As a party to both of these international treaties, these obligations bind the Dominican Republic to ensure that higher education is made available and accessible without discrimination.

The Dominican Republic also is required under international law as well as its own domestic law to guarantee the right to education to children within its jurisdiction free from discrimination on the basis of race, color, sex, language, religion, national or social origin, property, birth²⁵⁰ or other status.²⁵¹ The Committee on the Rights of the Child explicitly recognizes that the right to education is guaranteed to all children, regardless of nationality or statelessness.²⁵² Furthermore, non-discrimination constitutes an immediate minimum core obligation under Article 2(2) of the ICESCR that is not subject to progressive realization.²⁵³

Discrimination can be both direct and indirect,²⁵⁴ and the Committee on Economic, Social and Cultural Rights explicitly cites the requirement of birth certificates for school enrolment as an example of indirect discrimination against minorities or non-nationals who are unable to obtain

²⁴⁸ ICESCR, *supra* note 9, art. 13.

²⁴⁹ *Id.*

²⁵⁰ ICESCR, *supra* note 9, arts. 2(2), 13; CRC, *supra* note 11, arts. 2, 28; ACHR, *supra* note 11, arts. 24, 26; CADE, *supra* note 11, arts. 1 & 3. *See also* CERD, *supra* note 11 at 1-2, & 5(e)(v); Charter for the Organization of the American States, arts. 3, 34, *available at* http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm.

²⁵¹ ICESCR, *supra* note 9, art. 2(2); CRC, *supra* note 11, art. 2(1) (explicitly mentioning "other status" as prohibited ground of discrimination); *see also* ACHR, *supra* note 11, art. 1 (also prohibiting discrimination on any other social condition); *see also* RFK CENTER, *supra* note 71, at 16; ICESCR Comm., Gen. Comment No. 13, *supra* note 20, at ¶ 6(b)(i) & ¶ 31-37.

²⁵² CRC Comm., *Concluding Observations: Iran*, ¶ 61(b), U.N. DOC. CRC/C/15/Add.254, 38th session (Mar. 31, 2005).

²⁵³ ICESCR Comm., *Gen. Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 7, U.N. DOC. E/C.12/GC/20 (July 2, 2009) [hereinafter ICESCR Comm. *Gen. Comment No. 20*]; ICESCR Comm., *General Comment No. 13: supra* note 20, at ¶ 31; ICESCR Comm., *General Comment No. 3, supra* note 243, ¶ 1; Esther Kim, *supra* note 75.

²⁵⁴ Direct discrimination constitutes the less favorable treatment of persons compared to other persons in a similar situation based on or in relation to a prohibited ground. Indirect discrimination, on the other hand, occurs when laws, policies or practices seem to be neutral, but have a disproportionate impact on a certain group of people distinguished by prohibited grounds of discrimination. ICESCR, Gen. Comment No. 20, *supra* note 253, at ¶ 10.

these documents.²⁵⁵ Logically, the same discrimination against children who are stateless or at risk of statelessness equally constitutes indirect discrimination.

Furthermore, persons who cannot establish the nationality of the State on whose territory they live are also recognized as a group of concern by the Committee on the Elimination of Racial Discrimination in its General Recommendation No. 30 on Discrimination against Non-Citizens. The Committee recognized states parties' obligation "to guarantee equality between citizens and non-citizens in the enjoyment of these rights..."²⁵⁶ Consequently, the Committee recommended that states parties make sure that public education is accessible to non-citizens and children of undocumented immigrants.²⁵⁷

2. Gaps and Shortcomings in the State Response

Dominican legislation in its text is largely compliant with international obligations mandating the protection of the right to education. However, arbitrary and discriminatory practices and policies still hinder the full respect of the right to education.

The Dominican Constitution guarantees the right to free initial, primary, and secondary education for "everyone"²⁵⁸ and it also provides separately for a right to equality.²⁵⁹ Circular 18 of 2011 and a series of other laws also declare that all children should be permitted to enroll at school, whether documented or not.²⁶⁰

However, what happens in practice departs significantly from these laws and policies. As outlined above, domestic law and administrative practice diverge in providing for an equal right to education. According to the Ministry of Education, children are not officially enrolled in the na-

²⁵⁵ *Id.*

²⁵⁶ CERD Comm., *Gen. Recommendation No. 30: Discrimination against Non Citizens*, 10/01/2004, ¶ 3, A/59/18 (Oct. 1, 2004), available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/e3980a673769e229c1256f8d0057cd3d?Opendocument>.

²⁵⁷ *Id.*

²⁵⁸ CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 63 (Dom. Rep.).

²⁵⁹ *Id.* at 39.

²⁶⁰ Circular No. 18, Ministerio de Educación [Ministry of Education] (July 27, 2011) (Dom. Rep.); Ley General de Educación, Ley No. 66-97 (II)(4)(m) (Apr. 15, 1997) (Dom. Rep.) (establishing a universal right to free primary and secondary education); Ley No. 14-54 Código para la Protección de Niños, Niñas y Adolescentes, ¶ 1; Código de los Niños, Niñas y Adolescentes, Ley 136-03, art. 45 (Para. 2) (2003) (Dom. Rep.); Operations Manual for Public Education Centers, Ministry of Education of the Dominican Republic (July 2013) *supra* note 98, at ¶ 173; In Dominican law, circulars are considered to be administrative documents directed only to the people addressed in the circular, similar to an agency memo in U.S. law. Telephone Interview with Victoria "Noemi" Mendez, Attorney, *supra* note 29.

tional database when they do not have a birth certificate,²⁶¹ and some primary schools will deny children even informal access to school if they have no birth certificate.²⁶² Not being officially enrolled then bars children from taking national exams that are required to graduate from primary and secondary school. In addition, access to university requires a *cédula* for students over the age of eighteen and access is consistently denied to those who are unable to obtain a *cédula*.

Thirteen families interviewed said that a child was unable to take an exam because of lack of documentation²⁶³ and twenty-four families interviewed said a child was unable to finish primary or secondary school because documentation was requested by school officials at another stage.²⁶⁴ These numbers do not account for additional children who decided to quit school because they believed the school would force them out eventually, or those who have been allowed to stay in school temporarily while their parents seek documents.²⁶⁵

It is apparent that some school officials, even with the best intentions, do not know what the law is and therefore cannot apply it fairly due to this deficiency. Some principals allow undocumented students to attend school and some do not.²⁶⁶

The Dominican Republic also is obligated as a matter of international law to provide for an effective remedy for individuals who have suffered violations of fundamental rights granted by the Constitution or by law²⁶⁷ and to ensure appropriate means of governmental accountability.²⁶⁸ This includes the obligation to provide for mechanisms addressing individual harm caused by discrimination in economic, social, and cultural rights.²⁶⁹

When it comes to cases where an individual teacher or principal wrongly denies undocumented children access to education, there again is a gap between law and practice. The Dominican Code for the Protection of the Fundamental Rights of Children and Adolescents provides for the establishment of an administrative mechanism allowing children and their representatives to present a complaint for the threat or violation of their right to education.²⁷⁰ Furthermore, the

²⁶¹ Letter from Antonio Flores Pichardo, Director, Ministerio de Educación, Dom. Rep. to Henry Núñez, Director of the Office of Free Access to Public Information (Feb. 28, 2014) (on file with author).

²⁶² See *supra* Part III.B.1.

²⁶³ Interviews with thirteen families in the Dom. Rep. (Jan. 6-11, 2014).

²⁶⁴ Interviews with twenty-four families in the Dom. Rep. (Jan. 6-11, 2014).

²⁶⁵ See *supra* Part III.B.4.c.

²⁶⁶ Interview with Primary School Principal in the Dom. Rep. (Jan. 11, 2014).

²⁶⁷ UDHR, *supra* note 6, art. 8; ACHR, *supra* note 11, art. 25; CERD, *supra* note 11, art. 6 (regarding racial discrimination in violation of CERD); See ICCPR, *supra* note 218, art. 2.

²⁶⁸ ICESCR Comm., *Gen. Comment No. 9: The domestic application of the Covenant*, ¶ 2, U.N. Doc. E/C.12/1998/24 (Dec. 3, 1998).

²⁶⁹ ICESCR Comm., *Gen. Comment No. 20*, *supra* note 253, at ¶ 40.

²⁷⁰ Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 50 (2003).

Ministry of Education is obliged to make this policy and procedure publicly known.²⁷¹ In practice however, this complaint mechanism is not commonly known among affected persons and service providers²⁷² and consequently does not constitute an effective and accessible remedy.

The Dominican Republic has failed to provide effective remedies for the violation of the rights of families of Haitian descent generally. As noted by one student who still could not obtain a *cédula* even with a court order, formal decisions are “like checks without funds” for people of Haitian descent.²⁷³ Often informal means – like writing letters – must be employed with limited success. Furthermore, the complaint mechanisms are ineffective due to lack of information about their existence.

The government of the Dominican Republic also is legally obligated as a matter of both domestic and international law to act in conformity with the principle of non-discrimination. Devolving sole responsibility for access to education to school officials, without adequate guidance or oversight, facilitates arbitrary and discriminatory application of the law and violates the rights of thousands of children.

The findings documented in this report show that the Dominican Republic both directly and indirectly discriminates against persons of Haitian ancestry born on Dominican soil and stateless by curtailing their access to education, thereby violating its international and domestic obligations.²⁷⁴ These state practices amount to both direct and indirect discrimination against children who are stateless or at risk of statelessness, based on race and nationality.²⁷⁵ The practices have a disproportionate impact on these groups, because – as our findings show – they are systematically denied birth certificates and *cédulas* and are consequently barred from enjoying their right

²⁷¹ *Id.*

²⁷² Interview with July Clemente, ASCALA, *supra* note 60. The availability of a complaint mechanism has not been mentioned in any of the interviews conducted in the Dominican Republic regarding access to education. Service Providers like ASCALA employ informal means that include sending letters and reaching out to principals to help students get access to school rather than utilize this complaint mechanism, which illustrates its ineffectiveness.

²⁷³ Interview with Juan (pseudonym) in the Dom. Rep. (Jan. 9, 2014).

²⁷⁴ See CRC Comm., *Concluding Observation: Dominican Republic*, *supra* note 33, at ¶ 73: (stating, “the Committee is concerned about discriminatory effects on children of Haitian descent and recommends that the DR guarantees the enrolment in schools on all levels to children without a birth certificate and to make sure that they are not discriminated against in practice”).

²⁷⁵ This discrimination violates ICESCR, *supra* note 9, arts. 2(2) & 13; CRC, *supra* note 11, arts. 2 & 28(1)(a), (b), (c); ACHR, *supra* note 11, arts. 1 & 26; CADE, *supra* note 11, arts. 3 & 1; CERD, *supra* note 11, arts. 5(e)(v) & 2. See ICESCR Comm., Gen. Comment No. 20, *supra* note 253, at ¶ 10; See UNESCO, Universal Periodic Review (18th session, Jan. – Feb. 2014): Contribution of UNESCO to Compilation of U.N. info.: Dom. Rep., (2013), available at <http://www.upr-info.org/Review-2014-1756.html>; CERD Comm., *Concluding observations*, *supra* note 116, at ¶ 15 & ¶ 18.

to education. The discriminatory actions of local public school officials are attributable to and the responsibility of the government of the Dominican Republic.²⁷⁶ Consequently, the Dominican Republic's discriminatory practices amount to a violation of its international obligations under the ICESCR, CRC, ACHR, the UNESCO Convention against Discrimination in Education and the CERD²⁷⁷, as well as its own domestic law.²⁷⁸

Little has changed since Violeta Bosico could not remain in the fourth grade. In practice, many children are still asked to produce documents to attend school. Without personal documents, children are denied entry to primary school, are forced out of school before they finish, and are encouraged to give up before they graduate. The Dominican Republic's current system is failing to provide primary school education to all on a non-discriminatory basis, and the same failings exist at the secondary level. There is glaring inconsistency between schools in different communities in the application of laws and policies as well as interpretational divergence which creates further uncertainty for those affected.

Finally, it is worth reiterating that education is an empowering right – often the only means by which marginalized people are able to lift themselves out of poverty, rise on the financial and social scale, and become full participants in their communities. Several young adults interviewed stated that without diplomas and documents there were few opportunities outside of manual labor and the informal job market.²⁷⁹ A system that arbitrarily and discriminatorily denies children their right to education makes them more vulnerable to other human rights violations, with regard to both economic, social, and cultural rights and civil and political rights. For example, children unable to complete school may be vulnerable to child labor,²⁸⁰ as illustrated by the case of the boy who became a brick layer's assistant when removed from the fifth grade.²⁸¹

The Committee on Economic, Social and Cultural Rights has stated in two general comments that education is essential to the indivisibility and interdependence of all human rights. It is fundamental to the development of the full human personality's sense of dignity, enabling all persons to participate effectively in a free society.

²⁷⁶ See ICESCR, *supra* note 9, art. 28; CRC Comm., *Gen. Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6), ¶ 40-41, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

²⁷⁷ ICESCR, *supra* note 9, arts. 2(2) & 13; CRC, *supra* note 11, arts. 2 & 28; ACHR, *supra* note 11, arts. 1, 26; CADE, *supra* note 11, arts. 1 & 3; CERD, *supra* note 11, arts. 2 & 5.

²⁷⁸ CONSTITUCIÓN DE LA REPUBLICA DOMINICANA Jan. 26, 2010, art. 18 (Dom. Rep.); Ley General de Educación, Ley No. 66-97, art. 4(a)(Apr. 15, 1997) (Dom. Rep.); Ley No. 136-03 Código de los Niños, Niñas y Adolescentes, art. 45(2) (2003).

²⁷⁹ *E.g.*, Interviews with five individuals in the Dom. Rep. (Jan. 7-11, 2014).

²⁸⁰ CRC, *supra* note 11, art. 27 (regarding protections against child labor); ILO No. 182, *supra* note 20.

²⁸¹ Interview with individual in the Dom. Rep. (Jan. 11, 2014).

V. CONCLUSION

“Ensuring equality of opportunity in education is an overarching principle that is reflected in core human rights treaties. States have the duty to adopt measures to eradicate discrimination and ensure equal access for all to education.”

– Kishore Singh (UN Special Rapporteur on the right to education).²⁸²

Without documentation, many children of Haitian descent in the Dominican Republic live their lives in the shadows. They are unable to fully access important rights, such as the right to education, and the inability of these children to go to school both illustrates and aggravates the problem.

With broad international consensus that citizens should not be arbitrarily deprived of their nationality, especially when this results in statelessness, the Dominican Republic is in clear breach of its international human rights obligations. Often unable to access hospital certifications of live birth, official birth registration, certified copies of birth certificates, and national identity cards, Dominicans of Haitian descent suffer detriment due to both domestic legal developments and discriminatory exercise of administrative discretion within government agencies in ways that render them unable to prove their Dominican nationality.

Notwithstanding these obstacles, the research carried out for this report suggests that many Dominicans of Haitian descent desperately continue to try to obtain personal identification documents to substantiate their Dominican citizenship. According to this research, one of the primary motives for Dominican families of Haitian descent in doing so is to ensure that their children can realize their right to an education. This report concludes that statelessness or the risk of statelessness has a significantly adverse impact on the ability of children to realize their right to education in the Dominican Republic and that this disproportionately disadvantages Dominicans of Haitian descent.

²⁸² Kishore Singh, UN Special Rapporteur on the Right to Education, *Report to the Human Rights Council on promotion of the equality of opportunity in education*, 1 GE.11-12940 (April 18, 2011).

Although the Dominican Constitution includes a guaranteed right to education, confirmed by the Ministry of Education to apply irrespective of personal documentation status, Dominicans of Haitian descent experience serious difficulties enrolling in school and may be excluded if they cannot produce documentation to prove their Dominican citizenship. Whereas at primary level this may be attributed to particular school directors either failing to understand government policy, or intentionally excluding undocumented children, Dominican children of Haitian descent who cannot produce documentary verification of their status are in practice prevented from taking the national tests required to graduate from both primary and secondary school. There is no clear and well-understood complaint or appeals mechanism available to challenge these decisions. Children may be permitted to attend at the discretion of a sympathetic school director, but are in practice denied the opportunity to obtain a tangible reward for their hard work and application at school. This has a demotivating effect, with many seeing little point in continuing to attend school in these circumstances. Without a *cédula*, this entire section of Dominican society is simply prohibited from enrolling at university.

Within the school system, Dominicans of Haitian descent interviewed for this report described suffering less favorable treatment at the hands of teachers, school directors, and fellow students. Whether held back grades or harassed to provide personal identifying documents when none should be required, Dominican children of Haitian descent reported experiencing distractions to the education that they are able to receive and which no child should be expected to tolerate. Unable to obtain a high school diploma or a university education, these children are subsequently excluded from the formal labor market and thwarted in their ambitions for a better life for themselves and their families. Prevented from achieving their full potential by state sponsored or tolerated barriers, they remain trapped in a cruel cycle of deprivation from which they have the desire, but not the means, to escape.

The impact of this problem is multi-generational, with Dominicans of Haitian descent finding their Dominican nationality invalidated by the alleged irregularity of their parents' or grandparents' citizenship. This is a particularly cruel burden to bear for a parent who is unable to educate a child because of the revocation of his or her nationality. Siblings within the same family interviewed for this report frequently cited disparate treatment, underscoring the inconsistent application of law and policy at the administrative level.

In recent years, the Dominican Republic has made progress towards improving its public education system and meeting the Millennium Development Goal objective that all children should be able to complete a full course of primary schooling. Moreover, Dominican law includes a constitutionally-guaranteed right to education, and the Dominican Republic is under an international legal obligation to provide equal access to schools at all levels of the education system. The practical exclusion of undocumented Dominican children of Haitian descent from the school system violates these legal obligations and runs counter to the spirit of complimentary development objectives.

Following the decision of the Constitutional Court in 2013, the Dominican Republic has proposed dealing with those consequently denationalized by means of an immigration regularization plan, for which the foundations were laid in 2004, and an associated naturalization law. Dominicans of Haitian descent interviewed for this report have some awareness of these recent developments and there is a level of fear and uncertainty that any action taken will neither acknowledge their Dominican nationality nor improve their position regarding access to the education system.

The situation as documented in this report cannot be allowed to persist. Enshrined in the international human rights system and a host of international conventions to which the Dominican Republic is bound, the rights to education and nationality are prerequisites for the realization of other fundamental rights to which all members of the human family are entitled and indispensable to the ability of children to enjoy a life in which their opportunities are not inherently limited.

Recommendations for measures that may be taken to address the problems encapsulated in this report are provided for the government of the Dominican Republic and other relevant stakeholders.

VI. RECOMMENDATIONS

To the government of the Dominican Republic

- 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.²⁸³
- Ensure implementation of measures providing for the non-discriminatory issuance of birth certificates and access to education.²⁸⁴
- Fully comply with the Inter-American Court of Human Rights decision in the case of *Yean and Bosico v. the Dominican Republic*.
- Establish and ensure meaningful access to judicial and administrative complaint mechanisms that review denials of access to education in a consistent and timely manner.
- Reevaluate the current regularization plan in accordance with the Dominican Republic's international obligations and based on consultation with the Inter-American Commission and the broader international community.
- Remove from any regularization plan provisions requiring those entitled to nationality, such as those who were denationalized under the Constitutional Court decision of September 2013, to declare themselves foreign in order to be regularized.²⁸⁵
- Ratify and fully implement the Protocol of San Salvador with particular attention to Article 13(3)(b) and (c) ensuring the general availability and equal accessibility to secondary and higher education.²⁸⁶
- Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.²⁸⁷
- Ratify the Convention on the Reduction of Statelessness and sign and ratify the Convention relating to the Status of Stateless Persons.²⁸⁸

²⁸³ ICESCR, *supra* note 9, arts. 2(2) & 13; CRC, *supra* note 11, arts. 2 & 28; ACHR, *supra* note 11, arts. 1 & 26; CADE, *supra* note 11, arts. 1 & 3; CERD, *supra* note 11, arts. 2 & 5.

²⁸⁴ *Yean & Bosico*, Inter-Am. Ct. H. R. (Sept. 8, 2005).

²⁸⁵ See IACHR, Preliminary Observations, *supra* note 15.

²⁸⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador," Nov. 16, 1999, OAS Treaty Series, No. 69 (1988), *available at* <http://www1.umn.edu/humanrts/oasinstr/zoas10pe.htm>.

²⁸⁷ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, U.N. Doc. A/RES/66/138 (Jan. 27, 2012).

²⁸⁸ 1961 Statelessness Convention, *supra* note 8; Convention relating to the Status of Stateless Persons, opened for signature Sept. 28, 1954, 360 U.N.T.S. 117, (*entered into force* June 6, 1960).

To the Dominican Ministry of Education

- Ensure that school officials are sufficiently trained in understanding and applying the documentation requirements for each level of education.
- Establish, monitor, and enforce a uniform and accessible complaint mechanism for reporting cases of denial of access to education by school administrators.
- Eliminate any requirements that a child must specifically present a birth certificate in order to be officially included in school records.
- Fully investigate all cases of denial of school enrollment or denial of access to national examinations to determine if denial is consistent with national policies that ensure the right to education.
- Provide proof of completed levels of school to all students regardless of access to particular identification documents.
- Guarantee uniform access to national examinations for all qualified students, regardless of the presentation of a birth certificate, in line with current Ministry of Education official policy.
- Ensure non-discriminatory university access for all those born in the Dominican Republic.

To the Dominican Central Electoral Board (*Junta Central Electoral*)

- Issue and enforce transparent, consistent, and fair procedures for the *cédula* and birth certificate acquisition process and make those procedures accessible to the public.
- Establish an independent administrative mechanism with the right of appellate review that would allow individuals to challenge the issuance of a certificate of live birth labeling the child as a foreigner and denials of *cédulas*.
- Cease all investigations pursuant to the 2013 Constitutional Court ruling until consultations with the Inter-American Commission and the wider international community concerning the proposed regularization plan are complete.
- Immediately and fully comply with domestic court judgments regarding individual cases of eligibility for *cédulas*.
- Immediately halt the confiscation of original documents, particularly original birth certificates, without due process of law.

To the government of the United States of America

- Take further steps to encourage the Dominican Republic to cease the retroactive application of the policy resulting in statelessness as highlighted by the U.S. State Department in its 2013 Human Rights Report.²⁸⁹
- Investigate the serious labor violations of the Labor Chapter of CAFTA-DR²⁹⁰ found by the U.S. Department of Labor Public Report of Review of U.S. Submission 2011-03 (Dominican Republic)²⁹¹ in light of the thousands made vulnerable to these violations due to deprivation of nationality.
- Make all future support and training of CESFRONT contingent upon the Dominican Republic resolving the situation created by the Constitutional Court decision of September 2013 in line with its international human rights obligations.
- Secretary of State John Kerry should take actions outlined by the civil society open letter of October 30, 2013.²⁹²

To the United Nations Committee on the Rights of the Child

- Issue a general comment that provides further guidance on the interpretation of the Convention with respect to stateless children as well as the right to nationality and birth registration as articulated in Article 7 and Article 8.²⁹³
- Focus on the situation of stateless children and those at risk of statelessness during the 2014 consideration of the Dominican Republic and explore the role of the government in perpetuating the situation in its concluding observations.

²⁸⁹ HUMAN RIGHTS REPORTS: DOMINICAN REPUBLIC, U.S. DEP'T OF STATE (2013), *available at* <http://www.state.gov/documents/organization/220649.pdf> ("The most serious human rights problems were discrimination against Haitian migrants and their descendants, including the Constitutional Court's September ruling that state that descendants of individuals considered to be illegally in the country, most of whom are of Haitian descent, are not entitled to Dominican nationality...").

²⁹⁰ Dominican Republic-Central America Free Trade Agreement ch. 16, Aug. 5, 2004, *available at* http://www.ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf.

²⁹¹ REPORT PUBLIC REPORT OF REVIEW OF U.S. SUBMISSION 2011-03 (DOMINICAN REPUBLIC), U.S. OFFICE OF TRADE AND LABOR AFFAIRS, BUREAU OF INT'L LABOR AFFAIRS, DEP'T OF LABOR (2013), *available at* <http://www.dol.gov/ilab/programs/otla/20130926DR.pdf>.

²⁹² Letter from Human Rights Organizations to John Kerry, Secretary of State, Oct. 30, 2013, *available at* <http://lacaadvocacy.files.wordpress.com/2013/12/letter-to-sect-kerry-10-30-13.pdf>.

²⁹³ CRC, *supra* note 11, arts. 7-8.

To the United Nations High Commissioner for Refugees (UNHCR)

- Continue to provide vital supportive services to those who are stateless or at risk of statelessness and focus particular attention on the effects of statelessness on children in the Dominican Republic.²⁹⁴

To the United Nations Children’s Fund (UNICEF)

- Make children who are stateless or at risk of statelessness a top priority in the application of the 2012-2016 Programme of Cooperation with the Dominican Republic.

To the Inter-American Commission on Human Rights

- Expand on the economic, social and cultural dimensions of the problem of statelessness, especially the right to education, in the forthcoming report on the Dominican Republic following the December 2013 on-site visit.

To the Caribbean Community (CARICOM)

- Reiterate disapproval of the Dominican Republic’s regularization plan and continue to hold the membership of the Dominican Republic contingent upon the appropriate resolution of this crisis.

To the European Union

- Apply the Cotonou Agreement’s principle of the joint advancement of human rights and economic development in the Dominican Republic through the 2008 Economic Partnership Agreement between the European Union and the CARIFORUM states.²⁹⁵

²⁹⁴ Press Release, UNHCR, *supra* note 33.

²⁹⁵ See Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part (Cotonou Agreement), art. 9, Nov. 2010, O.J.L. 287; Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, art. 3, Oct. 2008, L 289/I/3.

APPENDIX 1: TERMINOLOGY

SCHOOL TERMS

pre-school – School for children under six years of age.

primary school – There are eight years of primary school, and it is intended for children aged six to fourteen, although it is common for children to start or finish late.

secondary school – There are four years of secondary school, and it is intended for children aged fourteen to eighteen.

higher education – This includes both public and private universities as well as technical schools.

DOCUMENTATION TERMS

acta de nacimiento – An official birth certificate is the primary form of personal identification for persons under the age of eighteen in the Dominican Republic.

carnet de trabajador de temporero -- A document, often referred to as just a “carnet,” which temporarily authorizes the presence of a migrant worker within a particular geographic area while working for a specified employer.

cédula de identidad – The national identity card required for all Dominican adults.

certificado de cédula – This is a receipt showing proof that the holder has a pending application for a cédula de identidad.

certificado de nacimiento – A “certificate of live birth” issued to parents at the hospital for purposes of seeking an official birth certificate.

constancia de nacimiento – A “certificate of live foreign birth,” also called a “pink certificate,” is supposed to be issued upon the birth of a non-citizen.

extranjero – Foreign.

ficha – A company ID card, typically issued by a private Dominican employer.

Junta Central Electoral (JCE) – The Central Electoral Board is the government agency responsible for issuing cédulas.

Oficialia de Registro – The Civil Registry keeps national records and issues official birth certificates.

OTHER TERMS

bateye – A company town, typically associated with the sugarcane industry and Haitian migrants.

ACRONYMS

CARICOM – Caribbean Community and Common Market

CEDAW – Committee on the Elimination of Discrimination against Women

CERD – Committee on the Elimination of Racial Discrimination

CRC – Convention on the Rights of the Child

IACHR – Inter-American Commission on Human Rights

JCE – Junta Central Electoral / Central Electoral Board

UDHR – Universal Declaration of Human Rights

UNHCR – United Nations High Commissioner for Refugees

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