

Submission to the Committee on the Elimination of Discrimination against Women: Review of the Dominican Republic

JUNE 2013

The Open Society Justice Initiative and the Caribbean Migrants Observatory present this submission in preparation for the Committee on the Elimination of Discrimination against Women's review of the Dominican Republic during its 55th session. This submission focuses on the Dominican Republic's discriminatory practices against Haitian women and Dominican women of Haitian descent with respect to their equal rights regarding the nationality of their children, their children's access to education, and their own access to health care.

Executive Summary

The Open Society Justice Initiative and the Caribbean Migrants Observatory present this submission in preparation for the Committee on the Elimination of Discrimination against Women's review of the Dominican Republic during its 55th session. This submission focuses on laws and practices that discriminate against Haitian migrant women and Dominican women of Haitian descent in relation to the rights to nationality, education, and health care in violation of the Dominican Republic's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

When the Committee last reviewed the Dominican Republic's compliance with CEDAW in July 2004, it expressed concern about the discriminatory nature of the definition of nationality affecting Dominican women and girls of Haitian descent and their enjoyment of a host of human rights. For this upcoming review, the list of issues and questions requires the State to present information in regards to these nationality provisions. However, the Dominican Republic's combined 6th and 7th periodic report simply presents the clauses related to nationality in the 2010 Constitution, with no analysis of the discriminatory nature or actual impact of the new restrictions, especially on women of Haitian descent.

Since 2004, revisions to relevant laws and the constitution have further entrenched this discrimination. Moreover, discriminatory practices which this Committee has previously questioned continue unabated. The Dominican Republic's nationality laws, policies and practices constitute impermissible discrimination against women and girls of Haitian descent as defined in Article 1 of CEDAW, and constitute significant and widespread breaches of Articles 9, 10 and 12.

The Open Society Justice Initiative promotes the rule of law through litigation, legal advocacy and reform of legal institutions aimed at enhancing the protection of human rights. Since 2005 the Justice Initiative has been systematically challenging the Dominican Republic's discriminatory nationality policies through documentation, litigation, advocacy and legal capacity development.

The Caribbean Migrants Observatory (OBMICA) is a Santo Domingo-based think tank focusing on migration to and from the Dominican Republic and related social justice issues, including the right to nationality and gender equality. OBMICA has carried out key research on documentation issues and access to nationality for Haitians and Dominicans of Haitian descent. Most recently, OBMICA investigated the specific issues facing women and girls related to birth registration, their and their children's access to Dominican nationality, and corresponding risk of statelessness.

Recommendations

We urge the Committee to address the discriminatory nationality and birth registration laws, policies, and practices described in this submission when it conducts its periodic review of the Dominican Republic's compliance with CEDAW. In particular, we urge the Committee to recommend that the Dominican Republic:

- Review and amend the 2010 constitutional provisions regarding nationality as well as the 2004 General Law on Migration to ensure that they comply with CEDAW, and ensure that women are not the target of discriminatory policies because of their gender, ethnicity or migratory status. In particular, the government should review and amend:
 - Article 18 (3) of the Constitution, granting nationality to persons born on the territory, unless their parents are residing there illegally or are considered to be “in transit”;
 - Article 28 of the General Law on Migration, instructing non-resident women to register their children born on Dominican soil with the consulate of their nationality. It also requires health centres to provide a pink certification of birth (*constancia de nacimiento*), different from the white one assigned to all other children, to Dominican-born children of non-legally resident mothers. As well, the law obligates health centres to deliver the birth records of such children to the Central Electoral Board and the Foreign Ministry, to be recorded in a foreigners' book. Finally, the Central Electoral Board must notify the General Directorate for Migration of these births;
 - Article 36 (10) of the General Law on Migration, providing that non-residents are considered persons in transit for the purposes of Article 11 of the Constitution.
- Cease retroactive application of the 2010 constitution and the 2004 General Law on Migration to strip women of their nationality.
- Repeal Circular 17 and Resolution 12 and adopt and implement non-discriminatory birth registration and personal identification policies that ensure that all girls born in the Dominican Republic receive the same proof of birth and non-discriminatory access to identity documents and guarantee due process.
- Implement a non-discriminatory, gender-sensitive National Regularization Plan, with flexible documentation requirements to allow for the regularization of the widest possible group of migrant women and men.
- Divest health centers and hospitals of migration inspection and control responsibilities, so that all women in the Dominican Republic, regardless of their migration or documentation status, may freely access health care services.

Discrimination against Dominican women of Haitian descent

At its last review of the Dominican Republic in 2004, the Committee was concerned about the discriminatory nature of the definition of nationality and its serious implications for access to education and other basic services for Dominican women and girls of Haitian descent.¹ The Inter-American Court of Human Rights expressed similar concerns in its 2005 decision in the case of two young Dominican girls of Haitian descent, *Dilcia Yean and Violeta Bosico v. Dominican Republic*.² The Court found that the Dominican Republic applied its nationality and birth registration laws in a discriminatory manner and ordered it to reform its birth registration system to eliminate discriminatory elements, and to create an effective procedure to issue birth certificates to all children born on Dominican territory, regardless of their parents' migratory status.

In the intervening nine years since the Committee's last review, the situation concerning nationality for persons of Haitian descent has deteriorated. Rather than complying with the Committee's recommendations (and the Inter-American Court's decision) to eliminate discriminatory provisions against Dominican women and girls of Haitian descent, the Dominican government has exacerbated the long-standing discrimination by instituting specific discriminatory legislative and administrative measures that negatively affect women and girls of Haitian descent in particular.

A. 2004 Migration Law and its implementation

A new General Law on Migration (Law 285-04, the "Migration Law"), adopted in 2004,³ in addition to regulating the entry, stay, and employment of immigrants, effectively ended the automatic grant of Dominican nationality to anyone born on the territory with very limited exceptions.

The Migration Law extended the constitutional exception denying nationality to Dominican-born children of persons "in transit" to all "non-residents" regardless of the amount of time in country.⁴ "Non-residents" were broadly defined to include not only tourists and temporary foreign workers, but also persons with expired residency visas, and undocumented migrant workers. Despite having been born on Dominican territory, children of "non-resident" parents – including persons who for bureaucratic reasons were unable to obtain documentary proof of legal residence – would be excluded from Dominican nationality and would henceforth be considered as foreign residents.

The Migration Law is implemented through a birth certification system that exclusively applies to foreign-born women – but not men – who have children while residing in the Dominican Republic. Instead of receiving the standard proof-of-birth document (*constancias de nacimiento*) issued by hospitals to Dominican mothers, this law explicitly provides that children of "non-resident" mothers should receive *constancias de nacimiento* (certified birth documents provided by hospitals) "of a different type and color" (in practice, pink) than those given to "resident"

mothers.⁵ The pink *constancias de nacimiento* are not official birth certificates and cannot be used to obtain official birth certificates issued by the Dominican Republic. “Non-resident” mothers instead must register their children with the relevant embassy or consulate of a foreign government. In the case of children of Haitian descent, they and their parents often have no meaningful link to Haiti as the parents either have themselves been born in the Dominican Republic or have lived there for many years.⁶ Many women and girls of Haitian descent have no valid identity documents even though they were born and have lived in the Dominican Republic their entire lives.⁷

This birth registration regime has a discriminatory impact on women and their children, and puts them at risk of statelessness. Only the mother is able to register her child and the documentation provided for the child depends on the mother’s purported documentation status. Even when the father has Dominican citizenship documents, the mother cannot register child’s birth and guarantee its access to nationality if she cannot produce the proper residency documents at the time she gives birth.⁸

The Migration Law not only has affected the prospective right of Dominicans of Haitian descent to Dominican nationality. The Dominican Central Electoral Board (Junta Central Electoral, or JCE) is also retroactively applying the law to remove the nationality of all Dominicans of Haitian descent who cannot prove the legal residency of their parents even if they were born decades before the law entered into force.⁹ Many of these persons were previously recognized as citizens by the Dominican state. However, the government now claims that these persons never had a right to Dominican citizenship.¹⁰ In pursuing this policy, the Dominican government is falling afoul of a constitutional prohibition against retroactive application of laws.¹¹

The Junta Central Electoral is basing its retroactive application of the law on a series of internal memoranda effectively barring Dominicans of Haitian descent from obtaining certified copies of their birth certificates.¹² Circular No. 17 and Resolution 12-2007 ordered all civil registry officials to refrain from delivering, signing or copying “any identity documents to children of foreign parents who had received birth certificates under irregular circumstance”. This generally has been interpreted to apply also to children of foreign-born mothers who had not proven their residency or legal status in the Dominican Republic at the time of the children’s births. This interpretation has disproportionately affected the children of Haitian migrant women, who very often were not provided with documentation of their legal status (including work visas) due to the informal manner in which they came to the Dominican Republic in the first place – often either accompanying their husbands or to work informally within the sugar cane industry.¹³

Since 2007, many Dominicans of Haitian descent with state-issued birth certificates have also been unable to obtain the mandatory identity document for persons over 18 years, called *cédula de identidad y electoral*.^{14 15} This denial has severe implications for the enjoyment of the rights of many Dominicans of Haitian descent to education, to work, political participation, freedom of movement and access to justice.¹⁶

Cases exist of officially issued identity documents retroactively declared invalid through administrative fiat. Starting in 2012, the JCE began conducting administrative “de-

nationalizations” removing the records of people, including children, who were registered years ago in the Dominican birth registry and transferring them to registration books for foreigners.¹⁷ No review of individual cases has been undertaken to ensure that people do not become stateless as a result of their removal from the Dominican birth registry.

The practices of limiting access to nationality and administrative de-nationalization through the retroactive application of the Migration Law have a disproportionate and differentiated impact on women and girls stripped of their right to nationality. Since birth registration is legally tied to the mother (and her ability to produce identity documents¹⁸), the child’s nationality is often determined – or denied – based exclusively on her residency status. In practice, it is common for poorly trained hospital personnel to assume that the mother lacks nationality or a positive migration status based on her skin color, accent, or last name, effectively constituting both gender discrimination and racial/ethnic discrimination.¹⁹

B. New Constitution entrenches discrimination

On January 26, 2010 the Dominican Republic formally adopted a significantly revised Constitution,²⁰ which effectively excludes Dominicans of Haitian descent from enjoying the right to Dominican nationality. Article 18(3) gives constitutional status to the Migration Law, which limited the right to Dominican nationality to children of legal “residents,”²¹ as indicated in the Dominican Republic’s combined 6th and 7th periodic report to the Committee.²²

Dominican women of Haitian descent unable to prove their Dominican nationality because of arbitrary and discriminatory practices resulting in denial of personal documentation can now be considered “illegal residents” for the purposes of Article 18, and as a result, their children will have no constitutional right to Dominican nationality.²³ Those born before the entry into force of the Migration Law and the new Constitution have in many cases been stripped of their Dominican nationality through the government’s retroactive application of the nationality restrictions imposed on “non-residents”. They will also be barred from obtaining recognition of Dominican nationality under Article 18(2), which recognizes as Dominican anyone who “enjoyed” Dominican nationality prior to the entry into force of the new Constitution.

As a result, Dominicans of Haitian descent are now encountering two distinct legal obstacles to their attempts to assert their Dominican nationality. Those whose access to identity documents and formal recognition of Dominican nationality were impeded by the retroactive application of the Migration Law continue to suffer the effects of this policy under the new Constitution. And Dominican children of Haitian descent born after January 26, 2010 are denied citizenship directly by the new Constitution – which entrenches the denial of citizenship of their parents.

C. Failure to regularize undocumented migrants

The Migration Law includes provisions that could mitigate the multi-generational discriminatory impact. Articles 151 and 152 require the Dominican government to develop a National Regularization Plan that would regularize the status of “non-residents” based on criteria such as how long they have lived in the Dominican Republic, whether they immigrated to the country

under the previous migration law, their links to Dominican society, and their socioeconomic situation.²⁴

To date, however, aside from preparing the draft plan, the government has taken no action to implement these provisions and regularize the status of thousands of undocumented migrants and “non-residents”.²⁵ If and when a regularization plan is put into place, the plan should take account of obstacles that migrant women may face in demonstrating their residency and links to Dominican society. Migrant worker women, who are often employed in the informal sector or domestic service, face greater difficulties producing the necessary documents, since they often have no formal work contracts and rental or other service contracts, and where they exist, may be in their male partners’ name.²⁶ The plan should therefore ensure that regularization requirements allow women to present a wide array of documents to prove their link with the Dominican Republic beyond formal labor contracts, such as proof of membership in a church or other social organization, school registration of their children, or birth certificates of children.

The Dominican Republic’s Failure to Meet its Obligations under CEDAW

Article 9 Violations: Discrimination regarding Women’s Equal Rights with Men with Respect to the Nationality of their Children

The Migration Law and the 2010 Constitution effectively make the acquisition of nationality dependent on the documentation status of the parents. While the Migration Law states that fathers can recognize the birth of their child at the Civil Registry,²⁷ in practice they are unable to do so without the mother’s documents.²⁸ Thus, the requirements for access to nationality effectively tie the child’s possibilities for birth registration, and consequently the right to nationality, to the documentation status of the mother alone. This constitutes a violation of CEDAW Article 9 paragraph 2, which declares: “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

The 2010 Constitution is applied retroactively to children of foreign-born mothers who were born before January 26, 2010, thus violating its own principle of non-retroactive application, as well as Article 18 clause 2, which recognizes the Dominican nationality of all those who already had Dominican nationality before the adoption of the Constitution. It is also treating children born to Dominicans of Haitian descent, who previously had Dominican nationality, as if they were born to “non-resident” mothers.

The retroactive application of restrictions on access to nationality has hindered efforts of children born to foreign women before the Constitutional changes of 2010 to access Dominican nationality. Fathers – and mothers – used to be able to declare the birth of their children using a variety of documents which are no longer accepted by the JCE. As 57-year-old Haitian migrant woman Rosalie explains:

“Before it was easier because the father or mother could go to the Civil Registry with whatever documents they had and declare their child. The father could do it, too. But now they can’t, it’s more difficult now.”²⁹

The nationality restrictions not only affect Haitian migrant women, but also Dominican women of Haitian descent who were issued *bona fide* birth certificates by the Dominican Republic, but whose validity has been questioned or canceled by the JCE. The tightened restrictions on access to nationality have prevented Dominican mothers of Haitian descent and Haitian women from obtaining Dominican birth certificates for their children born after 2004. Marie Jean, for example, a Dominican of Haitian descent whose Haitian parents obtained a Dominican birth certificate for her in 2001, was able to obtain her *cédula* upon coming of age and Dominican birth certificates for the first two of her three children in 2002 and 2004, respectively. However, when she attempted to register the birth of her third child in 2009, JCE authorities refused to grant her child Dominican nationality and instead told her to go to Haiti to do so, a country which she has never visited and to which she has no current connection. She explained:

“When I went to declare her one month after her birth, the judge told me she could not declare the child because my parents entered the DR illegally, and that my Dominican documents were not valid. I think she was judging me because my parents are Haitian and came illegally, but what she is saying is that [by extension] I am illegal.”³⁰

Francia, a 22-year-old Dominican of Haitian descent, was unable to continue her studies because the birth certificate, obtained with documents accepted by the Dominican Civil Registry at the time of her birth, has been invalidated by the JCE. Since turning 18 years in 2006, she has not been able to obtain a *cédula*, and has spent seven years visiting different Civil Registry offices as well as the JCE headquarters in the capital. Now a mother of two, one of whom has a Dominican father, she has been unable to declare her own children’s birth, and she has effectively been denationalized:

*“I went to declare my daughter and they told me that I had to have a *cédula* to declare her. I can’t work and I can’t continue my studies. I tried going to school, but they told me I have to fix my papers.”³¹*

Haitian mothers or Dominican mothers of Haitian descent who are unable to declare their children’s birth are sometimes driven to take risky decisions, such as sending their children – especially daughters – to live with another family whom they hope will be able to facilitate their access to nationality and send them to school. A better future for their children may result, but many times leads to their exploitation, including denial of their right to education, child labor, and risk of abuse.

Article 10 Violations: Discrimination in Access to Education

In its previous Concluding Observations in 2004,³² the Committee took note of the Migration Law in its draft form, expressing concern over the “discriminatory nature of the definition of nationality” and fear that this definition could hamper access to education and other basic services.³³ The government failed to bring the Migration Law in line with CEDAW’s provisions effectively denying Dominican and Haitian-descended children their right to education as a direct consequence of the new restrictions on access to nationality.

The right to education is guaranteed to all children in the Dominican Republic,³⁴ and the Ministry of Education in 2011 instructed all regional, district and school directors, to accept the school registration of all children and adolescents regardless of their documentation status.³⁵

Despite the ministerial guidance, school directors are often unaware of their obligation to enroll children who lack birth certificates, and turn parents away until they produce one. Other directors do allow the child to attend classes while the parents (in practice, the mother) resolve their documentation situation and produce a birth certificate for the child. However, from 8th grade onward students must take national exams, and to register for exams, they must have a birth certificate. They also must have documents in order to graduate from secondary school. Even if these children manage to receive some education, they are unlikely to be able to complete secondary school if their mother is not able to obtain valid documentation. Thus, the denial of the right to nationality of children born to Haitian women or Dominican women of Haitian descent lacking proper identification documents compromises the children's right to education, disadvantaging in society and perpetuating their social exclusion.

Article 12 Violations: Discrimination in Access to Health Care

Haitian women and Dominican women of Haitian descent alike have also seen their right to health care compromised by the Migration Law. Article 28 of the law orders health personnel assisting in the birth of foreign women lacking legal residency documents to issue a different *constancia de nacimiento* and to report the births to the JCE and Ministry of Foreign Relations, which, in turn, must report all such births to the corresponding consulate of the mother's nationality. The provision instructs the Civil Registry to notify the Migration Directorate of the birth of children whose mothers do not possess the required documentation. Health care personnel is also directed to contact the migration authorities when a mother does not have a passport, valid foreigners' *cédula*, or residency permit so that an investigation can be conducted into her legal status.³⁶

The Migration Directorate is authorized to carry out such inspections inside health centers to ensure compliance.³⁷ These provisions have repercussions that go well beyond limiting the right to nationality of foreign-born women's children. These policies inhibit access for migrant women and their female descendants to sexual and reproductive health services, to which they legally have a right.³⁸

Indeed, studies on Haitian women and Dominican women of Haitian descent's access to documentation and to health care services indicate that hospital health care workers subject these women to arbitrary questioning about the validity of their documents. To comply with the new birth registry procedures, hospital personnel often extensively question any woman appearing to be Haitian or of Haitian descent. They reportedly ask wide-ranging questions about the mother's family and origins, or on the opposite extreme, to simply assume that the mother is a "non-resident" because she speaks Creole, has an accent when speaking Spanish, has a Haitian-sounding last name, or dark skin or other ethnic features.³⁹ Such practices confirm the multiple forms of discrimination to which migrant women are often subjected, as noted in CEDAW General Recommendation 26: "Women migrant workers often experience intersecting forms of discrimination, suffering not only sex- and gender-based discrimination, but also xenophobia and

racism. Discrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status may be expressed in sex- and gender-specific ways.”⁴⁰

Turning health centers, including maternity units, into potential sites of migration inspection clearly violates CEDAW Article 12, which stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” In Article 12 paragraph 2, the Convention states that “States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

These practices also contravene CEDAW General Recommendation 26 on women migrant workers, which recognizes that “women migrant workers often suffer from inequalities that threaten their health” and that “discrimination may be especially acute in relation to pregnancy”.⁴¹ The General Recommendation also notes that “While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle.”⁴² This includes the right to health, and especially sexual and reproductive health.

An essential step to eliminating such discriminatory measures is divesting health centers of migration inspection and control responsibilities, so that all women in the Dominican Republic, regardless of their migration or documentation status, may freely access health care services.

Conclusion

Since the Committee’s last review in 2004, the Dominican Republic has further entrenched discriminatory nationality laws, policies and practices that disproportionately affect Haitian migrant women and Dominican women of Haitian descent. The Migration Law, JCE resolutions, and the 2010 revised Constitution (especially when applied retroactively to children born before 2010 and to children of Dominican women of Haitian descent) demonstrate the Dominican Republic’s explicit state policy of limiting access to Dominican nationality to persons of Haitian descent, specifically through gender discriminatory practices violating its obligations under CEDAW Articles 9, 10 and 12.

The Justice Initiative and OBMICA encourage the Committee to address these issues when it examines the Dominican Republic’s implementation of CEDAW during its 55th session, and to urge the government to stop gender discrimination against all women in the Dominican Republic, regardless of their national origin, ethnicity or migratory status, in accord with this submission’s suggested recommendations.

¹ The Committee, in its 2004 Concluding Comments on the fifth periodic report of the Dominican Republic (CEDAW/C/DOM/5), expressed the following: “300. The Committee takes note of the draft immigration bill which has been submitted to the National Congress; however, it remains concerned about the discriminatory nature of the definition of nationality, which directly affects one of the most vulnerable groups in the country, namely Dominican women and girls of Haitian descent. The Committee fears that this definition could hamper their access to education and other basic services...301. The Committee urges the State party to promote discussion of the draft immigration bill and to ensure that it complies with article 9 of the Convention through elimination of all the provisions that discriminate against Dominican women and girls of Haitian descent, or any foreigners who find themselves in a similar situation, and against Dominican women who marry foreigners. The Committee requests the State party to include information on the implementation of these measures in its next periodic report.”

² In 2005, the Inter-American Court of Human Rights issued a landmark judgment against the Dominican Republic affirming that these policies discriminated against Dominicans of Haitian descent and left them vulnerable to statelessness. The case was brought by two young girls of Dominican descent who were denied Dominican birth certificates even though their mothers were born in the Dominican Republic and possessed valid *cédulas*. In its judgment, the Inter-American Court found that the Dominican Republic was misapplying the “in transit” constitutional exception to deprive children of Haitian descent of their right to Dominican nationality, making them vulnerable to statelessness. The court ordered the State not to adopt arbitrary rules that ignore the enduring links that long term migrants develop with the country, noting that “to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit” (para. 157). The court made clear that the migratory status of parents could not be transmitted to children born on national territory and must never constitute justification for depriving a person of the right to nationality (para. 156). The court recognized that although states enjoy wide discretion in determining who has the right to be a national, its regulations cannot be discriminatory or have discriminatory effects on particular groups of people (para. 141). *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R. (Ser. C), No. 130 (2005).

³ The full text of the General Law on Migration no. 285-04 (Ley General de Migración No. 285-04) was published in the *Gaceta Oficial* on August 27, 2007. It is available (in Spanish) at <http://ww.seip.gov.do/cnm.php>.

⁴ Previously, this exception had applied only to parents who were transiting through the Dominican Republic for no more than ten days.

⁵ General Law on Migration No. 285-04, Article 28, enacted on August 15, 2004.

⁶ According to Haitian law, children born to Haitian nationals outside Haiti and who were not declared by the parents before Haitian authorities within three years after their birth or who accepted another nationality have no direct access to Haitian nationality. They must first establish residency in Haiti before being recognized as Haitian nationals. As a result, the Dominican Republic’s retroactive de-nationalization of these persons makes them stateless and this status will be inherited by their children. Please see Articles 11, 12.1 13a of the Haitian constitution.

⁷ Human Rights Watch, “Illegal People: Haitians And Dominico-Haitians In The Dominican Republic”, April 2002 Volume 14, Number 1 (B), www.hrw.org/reports/2002/domrep/; Amnesty International, *Dominican Republic: A life in transit - The plight of Haitian migrants and Dominicans of Haitian descent*, Amnesty International, March 2007, www.amnesty.org/en/report/info/AMR27/001/2007.

⁸ Even though in Article 28 of the Migration Law 285-04 there is a special clause that explicitly states that in cases where the father is Dominican the child also has the right to Dominican nationality, in practice by requiring the mother’s identity document this clause is not applied in practice.

⁹ UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, UN Doc. CERD/C/DOM/CO/12, 16 May 2008, para.14 and *Concluding Observations of the 13 and 14 periodical reports of the Dominican Republic*, UN Doc. CERD/C/DOM/CO/13-14, 1 March 2013 para. 19 (b).

¹⁰ In a lawsuit challenging these discriminatory practices filed by a victim, the Dominican Central Electoral Board stated the following: “[T]he birth certificate of [...] was registered in a fraudulent manner because she is not Dominican but Haitian as she is the daughter of Haitian parents who arrived in the country on a visa and then fell into the “transit” category. Her birth registration is therefore an act contrary to the Constitution, and as such, it should be annulled.” Supplementary brief filed on November 30, 2010 by the Central Electoral Board before the Civil and Commercial Court of the First Judicial District of San Pedro de Macoris regarding the *amparo* filed on November 15, 2010 by Ana Maria Belique.

¹¹ According to Article 47 of the 1999 Dominican constitution, Dominican laws can only be applied prospectively. Furthermore, “in no case may the law or [any other] public power affect or alter the juridical security derived from situations established under previous legislation.” Article 110 of the January 26, 2010 constitution upholds this prohibition.

¹² Under current Dominican law, all holders of civil registry documents have unfettered and automatic right of access to these documents. See Law 659 of 1955 on Civil Status Acts, Article 31.

¹³ For a description of Haitian women's participation in migration to the Dominican Republic, see Magloire, D. y Daza, C. C. 2005. *En busca de vida: Un estudio sobre las mujeres haitianas implicadas en la migración en la República Dominicana*. Santo Domingo, RD: Movimiento de Mujeres Dominicano Haitianas (MUDHA), Grupo de Apoyo a los Refugiados y Repatriados (GARR).

¹⁴ Upon reaching 18 years of age, all Dominican nationals must apply for a *cédula de identidad y electoral*. In order to obtain a *cédula*, applicants must first present a certified copy of their birth certificate issued by the JCE specifically for the purposes of applying for a *cédula*. Possession of a valid *cédula* is mandatory under law and persons unable to present one risk fines, imprisonment, and even deportation. For adult Dominicans, *cédulas* are a necessary prerequisite for enjoying a wide variety of civil, political, social and economic rights. *Cédulas* are required to vote and to run for political office, to register for university education, to pay into the Dominican social security system, to open a bank account and acquire or transfer property, to apply for a passport, to make a sworn statement before the judicial system, to get married or divorced, and to register the birth of one's children.

¹⁵ When *cédula* applications are rejected, it is done orally, rather than in writing; in a public place; and in an informal, often derogatory fashion. Interviews with several Dominicans of Haitian descent whose *cédula* applications have been denied show that most have been instructed to come back only when their parents' migration status is "sorted out" – presumably, when their parents' migration status has been regularized, leaving them in a legal limbo as for most, this is a requirement almost impossible to fulfill.

¹⁶ See Human Rights Watch, "Illegal People: Haitians and Dominico-Haitians in the Dominican Republic", 2002.

¹⁷ JCE, Directive for the application of Resolution No. 02-2007 of April 18, 2007, for the registration of children of foreigners born after the entry into force of the Migration Law 285-04 and the creation of a special book for those born prior to its entry into force, see paragraph 4. (*Instructivo para la aplicación de la resolución No. 02-2007 del 18 de abril del 2007, para el registro de los hijos de extranjeros nacidos con posterioridad a la ley de migración 285-04 y la habilitación de un libro especial para aquellos nacidos con anterioridad a dicha ley, abril 28, 2011*).

¹⁸ Civil Registry Law.

¹⁹ Such a practice confirms the multiple forms of discrimination to which migrant women are often subjected, as noted in CEDAW General Recommendation 26, paragraph 14: "women migrant workers often experience intersecting forms of discrimination, suffering not only sex- and gender-based discrimination, but also xenophobia and racism. Discrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status may be expressed in sex- and gender-specific ways."

²⁰ The full text of the revised constitution is available at <http://www.suprema.gov.do/codigos/Constitucion.pdf>.

²¹ Article 18 of the new constitution identifies as Dominican citizens: (1) The children of Dominican mothers or fathers; (2) Those who enjoyed Dominican nationality prior to the entry into force of this Constitution; (3) Persons born on national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and foreigners who find themselves in transit or reside illegally on Dominican territory. Foreigners shall be considered as being in transit as defined in Dominican laws; (4) Persons born abroad to Dominican mothers or fathers, regardless of having acquired, by virtue of their place of birth, a different nationality than their parents. Having reached the age of 18, they may express their will, to the competent authority, to assume dual nationality or renounce one of them; (5) Whoever marries a Dominican, as long as they opt for their spouse's nationality and meet the requirements established by law; (6) Naturalized persons, in accordance with the conditions and formalities required by law.

²² Combined sixth and seventh periodic report of the Dominican Republic, CEDAW/C/DOM/6-7, para. 140.

²³ On June 1, 2011, the president of the JCE was asked about the thousands of Dominicans of Haitian descent who are being left without documents due to Resolution 12 and he answered that the JCE was simply applying the Constitution. For the full interview please see: *La JCE no cede en caso de hijos de haitianos nacidos en RD que reclaman nacionalidad*, Lisette Rojas. June 1, 2011, Acento.com.do, <http://www.acento.com.do/index.php/news/3485/56/La-JCE-no-cede-en-caso-de-hijos-de-haitianos-nacidos-en-RD-que-reclaman-nacionalidad.html>. Please also see: *La Suprema entiende que la Junta actuó en base a las disposiciones legales de la Constitución*. November 30, 2011, Diario El Día, <http://www.eldia.com.do/nacionales/2011/11/30/68965/La-Suprema-Corte-de-Justicia-valida-circular-de-la-Junta-Central-Electoral>.

²⁴ The UN Committee on the Elimination of Racial Discrimination recommended the implementation of this Regularization Plan giving priority to long-standing residents in its *Concluding Observations of the 13 and 14 periodical reports of the Dominican Republic*, UN Doc. CERD/C/DOM/CO/13-14, 1 March 2013 para. 20.

²⁵ In June 2012, the Minister of Interior and Police and the head of the Migration Directorate presented a draft National Regularization Plan to outgoing president Leonel Fernández. In theory, regularization should provide an opportunity for many immigrants with irregular migration status—the great majority of them Haitian—to obtain papers in order to live and work legally in the country. However, the draft plan appears to be yet another tool of social exclusion, setting the bar so high for regularization that it would likely only benefit those who already qualify for residency in country.

26 See Organization for Security and Co-operation in Europe (OSCE). 2009. Guide on Gender-Sensitive Labour Migration Policies. Vienna: OSCE Secretariat.

²⁷ General Migration Law 285-04 article 28 states: “In cases in which the father of the child is Dominican, he can register the child before the corresponding Dominican civil registry according to the laws regulating this matter.”

²⁸ Many Haitian and Dominico-Haitian mothers interviewed within the OBMICA gender and statelessness study (forthcoming 2013) stated that fathers, including Dominicans, are unable to declare the birth of their children. One such case is that of Yolette, a 26-year-old Haitian mother of two children with a Dominican father, whose partner is not able to register her children’s birth “*because I am Haitian and all children born to Haitian mothers have this problem, it doesn’t matter if the father is Dominican. The father went [to the Civil Registry] and presented his documents, but he couldn’t declare them because it is the mother who has to declare them. If I had documents, I could declare their birth alone*” (Interview with Yolette (pseudonym), Municipio Consuelo, San Pedro de Macoris, Dominican Republic, 15 April 2013).

²⁹ Interview with Rosalie (pseudonym), 57-year-old Haitian migrant, Ingenio Santa Fé, San Pedro de Macoris, Dominican Republic, 17 April 2013.

³⁰ Interview with Marie Jean (pseudonym), 27-year-old Dominican of Haitian descent, Ingenio Santa Fe, San Pedro de Macoris, Dominican Republic, 18 April 2013.

³¹ Interview with Francia (pseudonym), 22-year-old Dominican of Haitian descent, Municipio Consuelo, San Pedro de Macoris, Dominican Republic, 23 April 2013.

³² Committee’s Concluding Comments on the fifth periodic report of the Dominican Republic (CEDAW/C/DOM/5), on 15 July 2004.

³³ Committee’s Concluding Comments on the fifth periodic report of the Dominican Republic (CEDAW/C/DOM/5) at its 658th and 659th meetings on 15 July 2004, article 300.

³⁴ The right to education is universally guaranteed through the Dominican Constitution, article 83 numerals 3 and 4; the Convention of the Rights of the Child, articles 23, 24, and 28; Law 136-03 protecting the rights of the child, articles 45 and 46; and the General Education Law, article 9, points a, b,c and d, as noted in Ministry of Education circular memo 18 dated 27 July 2011.

³⁵ Ministry of Education circular memo 18 dated 27 July 2011.

³⁶ Reglamento de Aplicación No. 631-11 de la Ley de Migración 285-04

³⁷ Reglamento de Aplicación No. 631-11 de la Ley de Migración 285-04, articles 39 and 40.

³⁸ This practice contradicts article 55 number 6 of the Dominican Constitution, which stipulates that “Maternity, regardless of the social condition or civil status of the woman, shall be protected by public authorities and shall garner the right to official assistance in case of abandonment.” It also violates the established functions and ethical obligations of health care personnel to attend all persons seeking their care. Chapter 2 of the General Health Law establishes that the national health system in the Dominican Republic has the objective of promoting, protecting, improving, and restoring health to people and communities, and preventing disease. Medical services are not to be limited by citizenship status, based on article 3 of Law 42-01.

³⁹ Interview with personnel of the Movimiento de Mujeres Dominico Haitianas (MUDHA), Santo Domingo, 13 April 2013.

⁴⁰ CEDAW, General recommendation No. 26 on women migrant workers CEDAW/C/2009/WP.1/R, para. 14.

⁴¹ CEDAW, General recommendation No. 26 on women migrant workers CEDAW/C/2009/WP.1/R, para. 17 and 18.

⁴² CEDAW, General recommendation No. 26 on women migrant workers CEDAW/C/2009/WP.1/R, para 3.

**E-mail: info@justiceinitiative.org
www.justiceinitiative.org**



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**Email: obmicard@gmail.org
www.obmica.org**



In collaboration with researchers, civil society organizations, and public policy makers from the Global South and North, the Caribbean Migrants Observatory aims to develop a holistic and long-term perspective on migration dynamics in the Caribbean. Our objectives are to contribute to the application of more just migration policies in the region, strengthen the capacity of key civil society groups working on issues of mobility and human development, facilitate dialogue between key stakeholders to strengthen the migration-development nexus, and promote inter-ethnic integration and respect for diversity in the Caribbean. Our staff is based in Santo Domingo, Dominican Republic.