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# Building a Dangerous Precedent in the Americas: Revoking Fundamental Rights of Dominicans

by *Marselha Gonçalves Margerin\**

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## INTRODUCTION<sup>1</sup>

In late September of 2013, the Dominican Republic Constitutional Tribunal issued a highly controversial decision,<sup>2</sup> causing an uproar that permeated the island's porous border<sup>3</sup> and traveled across the oceans. The unparalleled judicial move stirred international dismay and deep concern among the world's highest human rights bodies.<sup>4</sup> In its ruling, the Constitutional Tribunal had revoked the citizenship of Juliana Deguis Pierre, a Dominican woman of Haitian descent, despite her registration as Dominican at birth and subsequent enjoyment of citizenship for decades.<sup>5</sup> Even more alarming, this far-reaching decision allows for the retroactive revocation of Dominican citizenship of all those born to Haitian parents since 1929, affecting over 200,000 people.<sup>6</sup>

This article will explore the practical implications and impact of this sweeping decision on Dominicans of Haitian descent and provide a legal analysis of the decision to de-nationalize an

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expansive minority population. First, the article briefly describes historical antecedents to discrimination against persons of Haitian descent in the Dominican Republic. The article then explains the robust international regime protecting the right to a nationality and obligation to prevent statelessness, an obligation that the Dominican Republic's latest ruling will contravene. Lastly, the article discusses the broader significance of the decision, which consolidates a model for second-class citizenship throughout the region.

## HISTORICAL CONTEXT

*No one is born hating another person because of the color of his skin or his background or his religion. People learn to hate, and if they can learn to hate, they can be taught to love.<sup>7</sup>*

The Dominican Republic and Haiti have maintained a long and troubled relationship, a tension that was first cognizable when a line was drawn in the sand between the Spanish and the French sides of the island of Hispaniola. As is the case in many Latin American countries, the history of discrimination, exclusion, and violence in both the Dominican Republic and Haiti oftentimes corresponds with remnants of colonial rule in the region. Yet, unlike most Latin American countries that celebrate independence from colonial powers, the Dominican Republic instead celebrates its independence from its neighbor to the west, Haiti.

Haiti was the first country in Latin America to declare its independence in an unprecedented slave rebellion. Despite its

independence, Haiti subsequently suffered two centuries of international meddling. For the United States and next-door Dominican Republic, Haiti was conceived as a means of securing low-cost textiles and labor. By the early 1900s, U.S.-backed dictators in Haiti and the Dominican Republic negotiated a series of guest worker programs, recruiting Haitians to live and work in the Dominican Republic and thus ensuring labor supply for the booming sugarcane industry. For the last hundred years, these Haitian immigrants made the Dominican Republic their home; their children were born Dominican citizens under Dominican law and entire generations were integrated into Dominican society as Haitian-Dominicans.

Despite the role of the Dominican government in recruiting and settling this population, the country has suffered from a vocal and often violent nativist movement, fueled for decades by dictator Rafael Trujillo. At times, the government itself would unleash nativist violence, as in 1937 when upwards of 20,000 persons of Haitian descent were massacred along the Haiti-Dominican Republic border, considered the worst in Caribbean history.<sup>8</sup>

This discriminatory sentiment has not disappeared in recent times, rather it has become deeply embedded in government policies and actions. Dominican citizens of Haitian descent and Haitian immigrants continue to suffer from widespread humiliation and outright discrimination on the basis of race, national origin, and cultural traditions. The Dominican government's most recent efforts to strip away the citizenship of persons of Haitian descent must be understood in this historically contentious context.<sup>9</sup>

#### A ROBUST INTERNATIONAL REGIME: THE RIGHT TO A NATIONALITY

In response to the Second World War, the international community set forth aspirations in the Universal Declaration of Human Rights (UDHR) in 1948. Article 15 of the UDHR provides that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his [or her] nationality."<sup>10</sup> Thus, the principle of non-discrimination enshrined in Article 15 limits the state's discretion to grant or deny nationality.<sup>11</sup> Denationalization occurs when a state divests an individual of citizenship, often through discriminatory practices, which may leave the individual effectively stateless.<sup>12</sup>

The International Court of Justice reaffirmed the link between an individual and the state in 1955, declaring that "nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties."<sup>13</sup> The right to nationality or to be a "member" within or of a state is closely linked to the realization of civil, political, economic, social, and cultural rights. Nationality entitles individuals to the protection of the state and provides a sense of identity for members of the "included" group.<sup>14</sup> Moreover, states have the obligation under the 1961 Convention on the Reduction of Statelessness to prevent statelessness, and the loss or

renunciation of nationality should be conditional upon prior possession or assurance of acquiring another nationality.<sup>15</sup> Finally, article 9 of the Convention provides that nationality may not be deprived "on racial, ethnic, political or religious grounds."<sup>16</sup> As a signatory to the Convention, the Dominican Republic has an obligation to refrain from acts which would defeat the object and purpose of the treaty, namely the reduction of statelessness.

In the Dominican Republic, as in countries around the world, the right to nationality is a prerequisite to, *inter alia*, the enjoyment of the right to education through access to public schools, the right to health through the use of social services, freedom of movement, political participation, and access to justice.<sup>17</sup> The

Dominican Republic's ratification of several key regional and universal human rights treaties provide a strong legal framework for the protection of the right to nationality for all persons under Dominican jurisdiction. In 1978, the Dominican Republic ratified the American Convention on Human Rights, which guarantees the right to nationality.<sup>18</sup> The Dominican Republic has also signed and ratified the International Covenant on Civil and Political Rights (1978), the International Convention on the Elimination of all Forms of Racial Discrimination (1983), the Convention on

the Rights of the Child (1991), and the Convention on the Elimination of All Forms of Discrimination against Women (1982), all of which recognize the right to nationality.

The jurisprudence of the Inter-American Human Rights System unequivocally recognizes the right to acquire and enjoy a nationality, and has previously addressed the matter in the context of the Dominican Republic. In the emblematic 2005 Case *Yean and Bosico v. Dominican Republic*, the Inter-American Court of Human Rights (Court, IACtHR) established that although states enjoy discretion in conferring and regulating nationality, such authority is necessarily circumscribed by their international obligations to ensure the full protection of human rights.<sup>19</sup> These obligations include prohibiting arbitrary deprivation of nationality; ensuring equal and effective protection of the law; and preventing and reducing statelessness.<sup>20</sup>

The prevalence of discrimination based on race, origin, or color leading to arbitrary denial of any and all rights, including nationality, is unfortunately still common in the Americas. Yet, the Dominican government's ongoing and unabashed defiance of the standards and principles of the right to nationality outlined above has earned the country a reputation for racial discrimination in the region.

#### TWO DECADES OF DE-NATIONALIZATIONS

For most of the last century, the Dominican Constitution enshrined the right to citizenship<sup>21</sup> by birth, or *jus soli*, whereby a person born on national territory is granted citizenship of the governing nation, regardless of national origin, skin color, or the social status of parents.<sup>22</sup> There are two exceptions to birth-right citizenship — children of diplomats and those "in transit" through the country.<sup>23</sup> During this time, Dominicans of Haitian descent who were born in the Dominican Republic grew up,

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lived their lives, and died as Dominican citizens. Two decades ago, however, the Dominican government, through its civil registry agency, began undermining the historical and constitutional guarantees of nationality to racial minorities of Haitian descent in the Dominican Republic.

In the 1980s, Dominican civil registry officials began systematically denying identity documents to Dominicans of Haitian descent. Where the exercise of citizenship is directly linked to access to a national identity card, as is the case in the Dominican Republic, lack of an identity card prevents the realization of a whole series of rights. Without identity documents, these persons were deprived of their rights to an education, housing, health, and freedom of movement. Dominican citizens could not attend school, obtain a regular job, buy a mobile phone, open a bank account, or travel without fear of expulsion. In countless cases, Dominicans who were born and lived their entire lives in the Dominican Republic had their lives administratively suspended for years. In this context, many children born in the Dominican Republic were often denied birthright citizenship when parents would attempt to register their births, despite the existing *jus soli* principle incorporated in the Dominican Constitution at the time.<sup>24</sup>

To further institutionalize anti-Haitian sentiment, the Dominican government adopted legislation that weakened the Constitutional guarantee of birthright citizenship under the auspices of “modernizing” its civil registry system. The 2004 General Law on Migration established two changes to undermine birthright citizenship.<sup>25</sup> First, the law broadened the constitutional definition of the “in transit” exception to birthright nationality. As a result, children born on Dominican soil to non-citizen parents were deemed “in transit” and could not gain citizenship regardless of the length of time their parents lived in the country. Second, the law created a Book of Foreigners to register the children of undocumented resident mothers.<sup>26</sup>

In addition to arbitrarily denying citizenship to newborns considered “in transit,” the Dominican government retroactively applied the new law to individuals born prior to the change, a move that forecasted the government’s most recent disregard for well-established international principles against retroactive stripping of rights. The new provisions in the 2004 Migration Law were not only applied from the date of passage onward, but were frequently applied to births, events, and transactions occurring decades before the law’s enactment. Additionally, administrative resolutions adopted in 2007 provided civil registry officials broad discretion to deny and void documents that they deemed “irregular,” permitting the government to arbitrarily deny documents and copies of documents and to reclassify persons as “in transit,” and thus equating them to be “illegal.”<sup>27</sup>

The retroactive application of any law that affects one’s vested rights is questionable under both Dominican and international law. The principle of non-retroactivity is enshrined in Article 47 of the Dominican Constitution, which provides that “the law applies only to the future. It is not retroactive except when it would be [favorable] to the person who is on trial or has already been sentenced. Under no circumstances may the law or any public power affect or alter the legal certainty derived from situations established in accordance with pre-existing legislation.”<sup>28</sup> Moreover, to strip a person of their citizenship is

a violation of the Dominican Republic’s obligations under the American Convention on Human Rights, as well as contradictory to the object and purpose of the Statelessness Convention since the person is left effectively stateless.<sup>29</sup>

In the face of an outcry by both local and international civil and human rights groups, on January 26, 2010, the Dominican government took the unprecedented step of amending the Constitution to incorporate a discriminatory exception to birthright citizenship. After 2010, the Constitution would grant citizenship by both bloodline and birthright, but it would preclude those who are children of foreigners “in transit” or who “illegally reside” in Dominican territory.<sup>30</sup> The retroactive application of this constitutional reform was the basis for the September 2013 Tribunal decision, which consolidated two decades of the Dominican government’s discriminatory efforts targeting persons of Haitian descent.



Leading up to the constitutional reform, human rights groups widely denounced these concerted efforts, pointing to structural discrimination against afro-descendants as the underlying cause for the denial of identity documents. Among the leading voices of this effort was the late Sonia Pierre, a Haitian-Dominican human rights defender who dedicated her life to defending the rights to identity and nationality of Dominican children of Haitian descent.<sup>31</sup> Ms. Pierre and the team of human rights defenders at the Movement of Haitian-Dominican Women in the Dominican Republic (MUDHA) continually spoke out against the abuses, contending that the denial of documents was about racial discrimination not concerns for “civil registry modernization.”<sup>32</sup> In 2007, their work led to the pivotal IACtHR case of *Yean and Bosico v. Dominican Republic*, where the Court found that the Dominican government’s refusal to provide copies of birth certificates to Dominicans of Haitian descent constituted racial discrimination.

The Dominican government, however, reacted aggressively toward the grassroots advocacy of Dominicans of Haitian descent and refused to comply with the non-repetition orders issued by the Inter-American Court. Over the years, several UN treaty bodies condemned the country’s repeated defiance of fundamental international protections for the right to nationality. The Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, and the Human Rights Council through

**“applying this new interpretation of the Constitution retroactively means having to inform 80-year-old Dominicans born in the country that they are no longer Dominicans.”**

its Universal Periodic Review process, as well as special rapporteurs on racism and minority issues have all issued recommendations calling the Dominican Republic to ensure its nationality policies are brought into compliance with Inter-American and Universal standards, respecting the principle of equality before the law and non-discrimination. In 2012, in its concluding observations, the UN Human Rights Committee specifically urged the Dominican government to “abstain from applying the 2004 General Migration Act retroactively and maintain Dominican nationality for persons who acquired it at birth.”<sup>33</sup> In addition, the Committee called on the government to “ensure that all children born within its territory are registered and receive an official birth certificate.”<sup>34</sup>

#### **A DECISION TO INSTITUTIONALIZE DE-NATIONALIZATION PRACTICES**

*This is likely one of the most discriminatory decisions ever made by a superior tribunal.*<sup>35</sup>

Despite decades of discrimination and denationalization practices against Dominicans of Haitian descent, many Dominican and international civil society groups maintained hope that internal mechanisms of protection would ensure respect for non-discrimination. The case of Juliana Deguis was the Constitutional Tribunal’s opportunity to advance a jurisprudence of inclusion that prioritizes human rights; instead the Tribunal cemented a regime of exclusion through a policy of denationalization.

Ms. Deguis was born in 1984 in the city of Yamasá, located in the Monte Plata province of the Dominican Republic. Her parents were Haitian immigrants who came to the Dominican Republic to work in the sugar cane industry. Like thousands of babies before her, Ms. Deguis’s parents registered her as a Dominican at birth using a temporary workers card, a document deemed sufficient for conferring citizenship at that time.<sup>36</sup> In 2007, Ms. Deguis attempted to obtain an identification and voter card (cédula) to allow her to vote in the election. However, the provincial and national offices of the civil registry agency<sup>37</sup> refused to provide her the card and instead confiscated her birth certificate, even though Ms. Deguis had lived her entire life as a Dominican. The government defended its actions, claiming that she was “irregularly registered” because her parents were Haitian and had a Haitian last name. After repeated actions against the electoral boards and subsequent denials, Ms. Deguis filed an amparo action, which was similarly denied because she could not produce her birth certificate, a document that was seized by the government.<sup>38</sup>

After appealing to the highest court, the Constitutional Tribunal, eleven of the thirteen justices ruled that Ms. Deguis was appropriately denied her identity documents on September 25, 2013. The Tribunal held that Ms. Deguis is not a Dominican citizen because her parents were considered foreign citizens “in transit” at the time of her birth when article 11.1 of the 1966

Constitution was in effect.<sup>39</sup> Notably, the high court did not stop with Ms. Deguis’ case and extended these findings to all similarly situated Dominican-born persons. To implement its sweeping ruling, the high court requested an audit of all civil registry books since 1929 to remove those whose parents were undocumented at the time of their birth and to register their names in the Book of Foreigners. Using the “in transit” definition of the 2004 Migration Law, the Constitutional Tribunal estimated that nearly a quarter of a million individuals fall under this description thereby authorizing the retroactive revocation of their citizenship.<sup>40</sup>

Dominican Legal Scholar, Juan Bolivar Diaz, warns that, “applying this new interpretation of the Constitution retroactively, means having to inform 80-year-old Dominicans born in the country that they are no longer Dominicans.”<sup>41</sup> The retroactive application of this decision mirrors the previous implementation of the 2004 Migration Law, further exacerbating the dangerous situation for those born on Dominican soil many years ago. Such measures directly implicate Dominican Constitutional and International obligations.

Dominican constitutional law experts raised various additional concerns about the decision beyond its discriminatory impact and retroactive application. Some legal scholars pointed to contradictions in the decision and a lack of legal rigor, describing the ruling as one based solely on the facts rather than the legal questions at hand.<sup>42</sup> Other scholars noted that the Tribunal disregarded the appropriate scope of the Court, especially in light of its own standard for judicial economy. In the 147-page opinion, the majority curiously focused on certain facts in painstakingly detail and considered far more issues than those submitted to the Tribunal.

As the two dissenting Justices describe in their own extended opinions, prior to the Tribunal decision there was already an international legal consensus condemning the Dominican denationalization policies. Yet, the ruling of the Tribunal more clearly evidenced the Dominican Republic’s disregard for its regional and international legal obligations.

The majority’s holding directly counters the IACtHR’s 2005 decision in the *Case of Yean and Bosico* in two ways. First, the ruling furthers the Dominican government’s use of migratory status as a basis for denying Dominican nationality. Second, the decision accepts that the migratory status of a parent can be transferred to their children. The Court in *Yean and Bosico* declares that “[T]he migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights. The migratory status of a person is not transmitted to the children.”<sup>43</sup>

Given the high likelihood of widespread discrimination and abuse following the decision, international human rights bodies

have unanimously condemned the shift toward segregation and exclusion. The United Nations High Commissioner for Refugees raised concerns over statelessness and warned that the decision “may deprive tens of thousands of people of nationality.”<sup>44</sup> In addition, and contrary to popular belief, persons of Haitian ancestry are not automatically entitled to Haitian citizenship.<sup>45</sup> The UN Office of the High Commissioner for Human Rights (OHCHR) expressed concerns of the “disastrous implications” which will leave “such individuals in a state of constitutional limbo and potentially leaving tens of thousands of them stateless” and without access to basic rights.<sup>46</sup>

#### A DANGEROUS PRECEDENT FOR PREJUDICE IN THE REGION

*Let us hope that the dark clouds of racial prejudice will soon pass away.*<sup>47</sup>

Given the historical presence of migrants across the Americas, and certainly in the Caribbean, the Dominican authorities’ series of executive and judicial decisions — culminating in the most recent high court’s decision — represents not only a national human rights crisis, but a problematic signal for the treatment of minorities across the region. While the ruling of the Dominican Constitutional Tribunal will directly impact the lives of nearly a quarter million Dominicans of Haitian descent, the decision also seriously undermines the civil rights regime for all Dominicans and establishes a dangerous precedent in the Americas.

As seen in the United States and Mexico, the targeting of one minority group — African-American and Latinos in the U.S. and indigenous peoples in Mexico — threatens the human rights of other minority groups as well. This applies to all types of minorities — of color, language, national origin, gender, or sexual orientation. In many cases, while the target may be one racial segment, the entire regime of civil rights protections suffers for all persons. In the United States, the targeting of undocumented immigrants has led to federal programs that create exceptions for long-established safeguards against warrantless searches and arbitrary detentions.<sup>48</sup> In Mexico, the targeting and exclusion of indigenous activists has had a chilling effect that impacts all of civil society. In the Dominican Republic, the Constitutional Tribunal’s decision creates a pretext for state action that goes against the country’s own protections against discrimination and abuse practices.

Beyond its own borders, the Dominican Tribunal’s decision represents an unfortunate model for other countries looking to exclude a minority population. No government has the right to withhold or withdraw citizenship benefits from any individual who can demonstrate an effective and genuine connection with that country,<sup>49</sup> yet the incidence of statelessness is today an emerging regional phenomenon in the Caribbean, with identified cases also in Guadalupe, Anguilla, Turks & Caicos, and the Bahamas.<sup>50</sup> The Dominican Republic Constitutional Tribunal’s

decision provides a blueprint for consolidating these cases of widespread statelessness.<sup>51</sup>

The Organization of American States and United Nations have observed with alarm the cases of denationalizations in the Dominican Republic. Most recently, the Organization of American States addressed the issue on October 29, 2013, as the Caribbean Community (CARICOM) spokesperson Ambassador Prince declared, “this issue, a domestic issue, is of interest to us in that it directly impacts the lives of fellow human beings, citizens of our Hemisphere and more specifically of our diaspora.”<sup>52</sup>

It is worthwhile to underscore the racial undertones of the decision in the Dominican Republic. The reason indigenous peoples in Brazil or in Bolivia do not have birth certificates is not because these states discriminatorily deny them documents, but rather is the consequence of access problems, such as long distances to the registry, language barriers, and excessive costs. In the Dominican Republic, the denial is directly connected to the fact that these individuals are of Haitian origin.

There are significant and useful parallels between the anti-immigrant efforts in the Dominican Republic and the United States, where seemingly impossible policies became law after fringe nativist groups gained momentum and momentary support in government. In the United States, recent laws such as SB 1070 in Arizona — the “show-me-your-papers” law — were the result of misguided federal programs combined with local race tensions. Likewise, anti-immigrant groups in the U.S. are constantly renewing efforts to overturn birthright citizenship in the U.S. Congress. Given its role in proposing anti-immigrant laws for

the entire country, Arizona became ground zero in the U.S. for developing exclusionary, “self-deportation” policies. In a sense, the Dominican Tribunal’s decision has had the effect of establishing the country’s reputation as the anti-immigrant capital of the region.<sup>53</sup>

This parallel also serves as a possible counter to the nativist initiatives. In the United States, civil society and legal advocates provided a calm and resounding rejection to such proposals. In a 2010 response to a Republican Senator’s suggestion to end birthright citizenship, the Center for American Progress, a Washington D.C. non-profit, stated, “legal reasoning for such a radical reinterpretation of settled constitutional law is specious at best. [There is] overwhelming evidence in favor of birthright citizenship, its central importance to core national values, and the devastating effect its elimination would have on our nation’s future well-being and vitality.”<sup>54</sup> Most notably, there seemed to be a clear understanding in the U.S. legal community that birthright citizenship by *jus soli* (under the 14th Amendment) is a fundamental achievement for equality and non-discrimination. As the piece noted above continues, “In many ways, conservatives’ exclusive view of citizenship traces directly back to the

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Supreme Court's most infamous [1856] decision in *Dred Scott v. Sandford*. Dred Scott held that a former slave was not welcome into the community of U.S. citizens."<sup>55</sup>

While the regional precedent and impact is among the most pressing concerns for the human rights community, it may also provide possible alternatives and avenues to pressure the Dominican government. It remains to be seen if the regional voices speak out loud enough on behalf of minorities across the Americas.

## CONCLUSION

The judgment of the Constitutional Tribunal is final, irrevocable, and cannot be appealed.<sup>56</sup> Ms. Deguis has fully exhausted any sort of domestic remedy and will turn to either the Inter-American or United Nations Human Rights Systems. She already sought protection from the Inter-American System. Ms. Deguis is one of eighty people who requested precautionary measures from the Inter-American Commission on Human

Rights in June 2013, in advance of the high court's ruling on her case.<sup>57</sup> Organizations such as the RFK Center and REDH Jacques Viau have sought precautionary measures from the IACHR and grassroots organizations such as MUDHA are leading the way to build a movement to fight discrimination and further segregation.

Today, the Dominican Republic is facing a discriminatory regime that is threatening to aggressively exclude a large racial minority from civil participation. Dominican and international civil and human rights groups warn that implementation of the Constitutional Tribunal's decision will consolidate a *de facto* apartheid in the Dominican Republic. Such a policy of denationalization builds an alarming foundation for a segregated second-class minority. In the face of such a threat to inclusion and democracy, it becomes the moral imperative for the Latin America, for the Caribbean, for neighboring countries, to refuse to be complicit to such a state of affairs.

## ENDNOTES

<sup>1</sup> The authors would like to honor the work of the late Sonia Pierre (1963-2011), a courageous human rights defender, friend, grandmother, and proud Dominican of Haitian descent. Ms. Pierre was the founder of the Dominico-Haitian Women's Movement (MUDHA) and recipient of the 2006 RFK Human Rights Award. The authors would also like to recognize the essential analysis and research contributed to this piece by MUDHA and the Robert F. Kennedy Center for Justice & Human Rights.

<sup>2</sup> See *Pierre v. No. Judgment 473/2012*, Judgment TC/0168/13 (September 23, 2013) (Dem. Rep.), available at <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.

<sup>3</sup> Jacqueline Charles & Ezra Fieser, *Haiti Recalls Envoy, Activists Plan Protests Over Dominican Court Decision*, MIAMI HERALD, Oct. 1, 2013, available at [www.miamiherald.com/2013/10/01/3663924/haiti-recalls-envoy-activists.html#storylink=cpy](http://www.miamiherald.com/2013/10/01/3663924/haiti-recalls-envoy-activists.html#storylink=cpy).

<sup>4</sup> Press Release, Organization of American States, IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic (Oct. 8, 2013), [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/073.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/073.asp); Press Release, Office of the High Commissioner, UN Urges Dominican Republic to Ensure Citizens of Haitian Origin Do Not Lose Nationality (Oct. 1, 2013).

<sup>5</sup> *Pierre v. No. Judgment 473/2012*, Judgment TC/0168/13 at 98 (September 23, 2013) (Dem. Rep.), available at <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.

<sup>6</sup> See *DirectoUSA: Fallo en Republica Dominicana* (CNN television broadcast Oct. 28, 2013) (Interview with RFK Partners for Human Rights Director Santiago Canton, former Executive Secretary of the Inter-American Commission on Human Rights), <http://www.cnn.com/video/data/2.0/video/bestoftv/2013/10/28/dusa-canton-immigration-dom-rep.cnn.html>; Randal C. Archibold, *Dominicans of Haitian Descent Cast in Legal Limbo by Court*, N.Y. TIMES, Oct. 24, 2013, <http://www.nytimes.com/2013/10/24/world/americas/dominicans-of-haitian-descent-cast-into-legal-limbo-by-court.html?smid=tw-share>. The official population of persons of Haitian descent in the Dominican Republic is 209,912 of a general population of 9.5 million. However, a century of discrimination may skew this data. Eighty-seven percent of migrants

in the country are Haitians. See *Primera ENCUESTA NACIONAL DE INMIGRANTES REVELA EL VOLUMEN DE LA POBLACIÓN DE ORIGEN EXTRANJERO RESIDENTE EN EL PAÍS*, OFICINA NACIONAL DE ESTADÍSTICA, May 1, 2013, available at <http://www.one.gob.do/index.php?module=article&func=display&ptid=13&aid=2905>.

<sup>7</sup> Nelson Mandela was a leading anti-apartheid activist and former president of South Africa who helped end the apartheid and continued until his final moments advocating for human rights worldwide. Nelson Mandela, *Long Walk to Freedom* (2000).

<sup>8</sup> For a brief history of the two countries, see *Black in Latin America: Haiti & the Dominican Republic: An Island Divided* (PBS television documentary Apr. 19, 2011), <http://video.pbs.org/video/1877436791/>.

<sup>9</sup> As an example of the reprehensible and vitriolic language used to describe a Dominican activist of Haitian descent, see the comments below the video, *Sonia Pierre y Fritz Cineas, QueEsNoticias.com* (January 27, 2011), <http://www.youtube.com/watch?v=h3Qtp6TNpos>.

<sup>10</sup> Universal Declaration of Human Rights, art. 15, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

<sup>11</sup> U.N. High Comm. for Refugees, Nationality and Statelessness: A Handbook for Parliamentarians 39 (2005) [hereinafter UNHCR Handbook].

<sup>12</sup> *Id.*

<sup>13</sup> Nottebohm Case (Liech. v. Guat.), Judgment, 1953 I.C.J. 111, 23 (Apr. 6, 1955).

<sup>14</sup> UNHCR Handbook, *supra* note 11, at 3.

<sup>15</sup> Convention on the Reduction of Statelessness, art. 5, G.A. Res. 896 (IX) (1961) (signed by the Dominican Republic on December 5, 1961, but not yet ratified).

<sup>16</sup> *Id.* art. 9.

<sup>17</sup> See Robert F. Kennedy Center for Justice & Human Rights, Brief for the Petitioner, *Benito Tide Méndez, et. al. v. Dominican Republic*, Case 12.271, Inter-Am. Ct. H.R. 15-16, [hereinafter RFK Center Amicus], available at [http://rfkcenter.org/images/attachments/article/2036/RFK%20Center%20-%20Amicus%20Curae%20re%20Case%20No.12-271\\_eng.pdf](http://rfkcenter.org/images/attachments/article/2036/RFK%20Center%20-%20Amicus%20Curae%20re%20Case%20No.12-271_eng.pdf).

<sup>18</sup> Ratification of the American Convention on Human Rights also triggers acceptance to the jurisdiction of the Inter-American Court on Human Rights.



<sup>19</sup> *The Yean and Bosico Children v. Dominican Republic*, Judgment of Sept. 8, 2005, Inter-Am Ct. H.R. (ser.C) No. 130 (2005), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_esp.pdf). The case represented the first time that the Inter-American Court ruled on the right to nationality under the American Convention in a contentious case.

<sup>20</sup> *Id.* at ¶¶ 58, 60-61.

<sup>21</sup> The terms citizenship and nationality are frequently used interchangeably in international law.

<sup>22</sup> A Crisis of Nationality: Dominicans of Haitian Descent, OPEN SOCIETY FOUNDATIONS (Oct. 2013), <http://www.opensocietyfoundations.org/fact-sheets/crisis-nationality-dominicans-haitian-descent>.

<sup>23</sup> Dom. Rep. Const. art. 11, available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

<sup>24</sup> Dom. Rep. Const. art. 11, available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

<sup>25</sup> Ley de Migracion No. 285-04 [Law on Migration No. 285-04], capitulo III, § 3, art. 28 (Dom. Rep.), available at [http://seip.gov.do/consejo\\_nacional\\_migracion/ley/ley.pdf](http://seip.gov.do/consejo_nacional_migracion/ley/ley.pdf).

<sup>26</sup> Memo: Constitutional Changes in the Dominican Republic, RFK CENTER FOR JUSTICE & HUMAN RIGHTS (Feb. 5, 2010), <http://rfkcenter.org/memo-constitutional-changes-in-the-dominican-republic>.

<sup>27</sup> Junta Central Electoral, Resolucion Num. 12-2007 (establishing the procedures by which to suspend civil identity documents).

<sup>28</sup> Dom. Rep. Const. art. 47, available at <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>.

<sup>29</sup> Convention on the Reduction of Statelessness, art. 8, G.A. Res. 896 (IX) (1961) (signed by the Dominican Republic on December 5, 1961, but not yet ratified); Organization of American States, American Convention on Human Rights, Article 20, OAS Treaty Series No. 36, 1144 UNTS 123, 9 ILM 99 (1969).

<sup>30</sup> Dom. Rep. Const. art. 18.3.

See RFK Center Amicus, *supra* note 17.

<sup>31</sup> On December 4, 2012 Sonia Pierre, born Solain Pie, also known as Solange Pierre, passed away unexpectedly of a heart attack at age 48. Her startling passing left a gap in the grassroots leadership advocating for the right to nationality for Dominicans of Haitian descent.

<sup>32</sup> Interview with 2006 RFK Human Rights Award Laureate Sonia Pierre, available at <http://www.youtube.com/watch?v=h-lpGZ0HKnl>.

<sup>33</sup> Human Rights Committee, Concluding Observations, Dominican Republic, U.N. Doc. No. CCPR/C/DOM/CO/5 (2012) ¶ 22.

<sup>34</sup> *Id.* ¶ 23.

<sup>35</sup> Santiago Canton, the former Executive Secretary of the Inter-American Commission of Human Rights and current Director of the Robert F. Kennedy Partners for Human Rights. See Press Release, RFK Center for Justice & Human Rights, Discriminatory Ruling by Dominican Court Threatens Citizenship (October 3, 2013), available at <http://rfkcenter.org/discriminatory-ruling-by-dominican-court-threatens-citizenship>.

<sup>36</sup> For decades, Haitian guest workers received a workers' card known as "ficha," with which they were able to register their children's births and thereafter the children were granted Dominican citizenship. However, because of the documentation used, Dominicans of Haitian ancestry have an annotation on their birth certificate that they were declared with a "ficha."

<sup>37</sup> Junta Central Electoral or Central Electoral Board is the Dominican Republic national agency responsible for civil registry as well as electoral registry and elections.

<sup>38</sup> Dominican@s X Derecho, Análisis de la Sentencia No. 168-13 del Tribunal Constitucional de la República Dominicana (2013), available at <http://dominicanosxderecho.files.wordpress.com/2013/10/puntos-de-anc3a1lisis-de-la-sentencia-no-168-13-definitivo.pdf>.

<sup>39</sup> *Pierre v. No. Judgment 473/2012*, Judgment TC/0168/13, at 98 (September 23, 2013) (Dem. Rep.), available at <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>. The Constitutional Tribunal is composed of thirteen judges and presided by Justice Milton Ray Guevara. The 147 page long sentence was signed by eleven judges of the Constitutional Tribunal. Justices Isabel Bonilla Hernández and Katia Miguelina offered the dissenting votes.

<sup>40</sup> MUDHA, Informe: Sentencia Tribunal Constitucional sobre Nacionalidad, La Profundizacion del Racismo Interno Del Pais (October 2013).

<sup>41</sup> Juan Bolivar Diaz, *El Constitucional Ignora la Corte Interamericana*, HOY DIGITAL, September 28, 2013, available at <http://hoy.com.do/el-constitucional-ignora-la-corte-interamericana/>.

<sup>42</sup> Legal scholars suggest several articles of the 2010 Constitution were violated, including articles 5, 6, 8, 18.2, 18.3, 26, 38, 39, 42, 43, 69, 73, 74.3. See Dominican@s X Derecho, Análisis de la Sentencia No. 168-13 del Tribunal Constitucional de la República Dominicana (2013), available at <http://dominicanosxderecho.files.wordpress.com/2013/10/puntos-de-anc3a1lisis-de-la-sentencia-no-168-13-definitivo.pdf>; *Decision on Nationality Violates at Least Four Articles of the Constitution*, 7DIAS (Sept. 26, 2013), available at [http://www.7dias.com.do/index.php/noticias/148801/Sentencia\\_sobre\\_nacionalidad\\_viola\\_al\\_menos\\_cuatro\\_articulos\\_de\\_la#Up-4MGRDfJF](http://www.7dias.com.do/index.php/noticias/148801/Sentencia_sobre_nacionalidad_viola_al_menos_cuatro_articulos_de_la#Up-4MGRDfJF).

<sup>43</sup> *The Yean and Bosico Children v. Dominican Republic*, Judgment of Sept. 8, 2005, Inter-Am Ct. H.R. (ser.C) No. 130, (2005), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_esp.pdf).

<sup>44</sup> Randal C. Archibold, *Dominicans of Haitian Descent Cast in Legal Limbo by Court*, N.Y. TIMES, Oct. 24, 2013, available at <http://www.nytimes.com/2013/10/24/world/americas/dominicans-of-haitian-descent-cast-into-legal-limbo-by-court.html?smid=tw-share>.

<sup>45</sup> In order to obtain Haitian citizenship, the Haitian Constitution requires that anyone born outside of Haiti continuously reside in the territory for five years before naturalization.

<sup>46</sup> Press Release, Office of the High Commissioner, *UN Urges Dominican Republic to Ensure Citizens of Haitian Origin Do Not Lose Nationality* (Oct. 1, 2013).

<sup>47</sup> Martin Luther King, Jr. was the foremost civil rights activist who led the U.S. Civil Rights Movement from the mid-1950s until his assassination in 1968.

<sup>48</sup> Restoring Communities: A National Community Advisory Report on ICE's Failed "Secure Communities" Program, NAT'L DAY LABORER ORG. NETWORK (2012), available at <http://altopolimigra.com/s-comm-shadow-report/>.

<sup>49</sup> UNHCR Handbook, *supra* note 11, at 3.

<sup>50</sup> Kristy A. Belton, *Different Context, Same Result? A comparison of Statelessness in The Bahamas and the Dominican Republic*, JORNADA DE DIÁLOGO SOBRE DERECHO A LA NACIONALIDAD Y ESTADO DE DERECHO EN REPÚBLICA DOMINICANA 18 (2013), available at <http://www.guadalupevaldez.com/wp-content/uploads/2013/04/relatoria-jornada-feb-2013-derecho-a-la-nacionalidad.pdf>.

<sup>51</sup> *Dominican Republic Must Retract Ruling That Could Leave Thousands Stateless*, AMNESTY INTERNATIONAL, October 18, 2013, available at <http://www.amnesty.org/en/news/dominican-republic-must-retract-ruling-could-leave-thousands-stateless-2013-10-18>.

<sup>52</sup> Press Release, Organization of American States, *OAS Permanent Council Discusses Decision of the Constitutional Tribunal of the Dominican Republic* (Oct. 29, 2013), available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-406/13](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-406/13).



<sup>53</sup> Jim Shee, *The SB1070 anti-immigrant law is a stain on Arizona's reputation*, THE GUARDIAN, April 25, 2012, available at <http://www.theguardian.com/commentisfree/cifamerica/2012/apr/25/usimmigration-us-constitution-and-civil-liberties>.

<sup>54</sup> *Reversing Birthright Citizenship Would Reverse a Unique American Achievement*, CTR. FOR A.M. PROGRESS, April 8, 2010, available at <http://www.americanprogress.org/issues/immigration/news/2010/04/08/7554/immigration-nation/>.

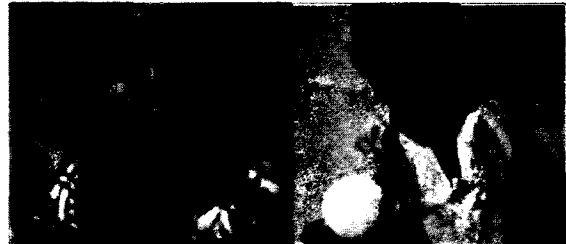
<sup>55</sup> *Id.*

<sup>56</sup> Press Release, Organization of American States, *OAS Permanent Council Discusses Decision of the Constitutional Tribunal of the Dominican Republic* (Oct. 29, 2013), available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-406/13](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-406/13).

<sup>57</sup> Press Release, RFK Center for Justice & Human Rights, *Gobierno Dominicano Exhortado a Proteger a Ciudadanos de Ascendencia Haitiana* (June 11, 2013), available at <http://rfkcenter.org/gobierno-dominicano-exhortado-a-proteger-a-los-ciudadanos-de-ascendencia-haitiana?lang=en>.

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