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**THE INTER-AMERICAN
COURT ATTEMPTS TO STRIKE
A BALANCE BETWEEN
INTERNATIONAL HUMAN
RIGHTS AND STATE
SOVEREIGNTY WHILE
THOUSANDS FIGHT FOR
FUNDAMENTAL FREEDOM**

By ANDREA HUNWICK

The Dominican Republic may appear small — it is roughly double the size of New Hampshire with a total population well under 10 million¹ — but the

struggle of two young girls and their subsequent claim to the Inter-American Court place the Dominican Republic at the forefront of an international debate weighing traditionally coveted principles of state sovereignty with more modern concepts of international human rights.

In 1997, Dilcia Yean and Violeta Bosico, Dominican-born Haitians, requested birth certificates from the Dominican Republic's civil registry.² The girls demonstrated that their mothers were Dominican and that they themselves had been born in the Dominican Republic.³

Nevertheless, the civil registry found their proof of Dominican birth inadequate for failure to submit substantial supporting documents and consequently denied the request.⁴ The denial ultimately led to Violeta's expulsion from school, as a child cannot advance beyond the seventh grade in the Dominican Republic without a birth certificate.⁵

In its 2005 decision, the Inter-American Court found that the Dominican Republic deprived the two girls of their rights to nationality and equality before the law, in violation of Articles 20 and 1(1) of the Inter-American Convention on Human Rights and in violation of the Dominican Republic's state constitution.⁶

The decision opposing Dominican treatment of Haitians launched an international debate involving questions of state sovereignty. Most notably it begged the question: Can the international community dictate standards of nationality, to sovereign nation-states such as the Dominican Republic?

To fully appreciate the situation, it bears noting that Haitian migration to the Dominican Republic began in the early 1800's.⁷ The sugar industry thrived on seasonal migrant labor brought, sometimes by force, from Haiti.⁸ Despite their continued use as laborers in the Dominican Republic, there is a strong racial and ethnic sentiment that separates Haitians from the majority population.⁹

At the same time, government officials refuse to recognize Haitian migrant workers as nationals, and that illegal status passes to their Dominican-born children, creating a permanent state of illegality for many Haitians.¹⁰ A 2004 immigration law further complicated Haitians' claim to Dominican nationality

by requiring persons of apparent Haitian descent to produce documents that are not requested of others.¹¹

The Inter-American Court determined that the policy of prohibiting Dominican-born Haitians to register as citizens was invalid in large part because it proved contrary to the principle of the *jus soli* (legal doctrine under which nationality is determined by place of birth) laid out in Article 11 of the Dominican Republic Constitution.¹²

Whereas government officials cite to the “in transit” exception¹³ to citizenship in the Dominican constitution to justify their citizenship practices (the presumption is that guest workers were never meant to remain in the country and are thus in a permanent state of transit)¹⁴, the Court held that the “in transit” exception could not be read so broadly as to include all undocumented migrants.¹⁵

The Dominican Ministry of foreign affairs called the Court’s decision unacceptable and the nation’s Vice President denied its validity.¹⁶ In October 2005, the Dominican Senate issued a resolution rejecting the ruling of the court and then almost immediately initiated a movement to amend the rule of nationality from *jus soli* to *jus sanguine* (citizenship through blood) so that Dominican nationality will pass exclusively to children of Dominican nationals.¹⁷ Furthermore, the Dominican Supreme Court upheld the 2004 immigration law which defined all undocumented immigrants as “in transit” despite the Inter-American Court’s ruling to the contrary.¹⁸

Meanwhile, almost a year after the Court’s demand that the Dominican Republic employ legislative and administrative measures to ensure the non-discriminatory issuance of birth certificates, nearly 30 percent of the Dominican-born population remains without a birth certificate.¹⁹

The Dominican Republic argues that pressure from the international community to recognize Dominican born Haitians as citizens, particularly the Inter-American Court’s interpretation of the Dominican constitution, intrudes upon principles of national sovereignty.²⁰

However, the international community recognizes that state sovereignty is limited by relatively new principles of international law, especially where fundamental human rights are concerned. In 1984, the Inter-American Court

declared nationality as an “inherent right of all human beings” justifying international intervention to ensure the preservation of human rights.²¹ Furthermore, Article 20 of the Inter-American Convention on Human Rights (Convention)²² prescribes a fundamental right to nationality.²³ Moreover, the Open Society Justice Initiative argues that the right to a nationality is an issue of international human rights because the right is integral to the enjoyment of almost all other rights.²⁴

Dilcia and Violeta’s experience mirrors that of almost a million Dominican-born Haitians who also lack any form of identification.²⁵ As the international community attempts to maintain a delicate balance between state sovereignty and fundamental freedom, these people continue to live without a defined nationality. Nationality meanwhile, according to the Inter-American Court, is a human right that acts as “the gateway to the equal enjoyment of all rights.”²⁶

NOTES

1 Central Intelligence Agency, World Factbook Online, Dominican Republic <https://www.cia.gov/cia/publications/factbook/geos/dr.html#Geo>.

2 Submission from the Open Society Justice Initiative to the Inter-American Court of Human Rights (April, 2005) *available at* http://www.justiceinitiative.org/db/resource2?res_id=102760

3 Michelle Garcia, *No Papers, No Rights*, Amnesty International Magazine, Fall 2006, *available at*: http://www.amnestyusa.org/magazine/fall_2006/no_papers/print.html.

4 David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 NO. 2 HUM. RTS. BRIEF 25, 26 (WINTER 2006).

5 Michelle Garcia, *No Papers, No Rights*, Amnesty International Magazine, Fall 2006, *available at*: http://www.amnestyusa.org/magazine/fall_2006/no_papers/print.html.

6 Article 20 says, “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.” Article 1(1) defines racial discrimination as “all specified actions which have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedom.

7 David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 NO. 2 HUM. RTS. BRIEF 25, 27 (WINTER 2006).

8 Inter-American Commission on Human Rights, Organization of American States, Situation of Haitian Migrant Workers and Their Families in the Dominican Republic, <http://www.cidh.oas.org/countryrep/DominicanRep99/Chapter9.htm>

9 Press Release, Council on Hemispheric Affairs, Neighborly Quarrels: The Dominican Republic and the Perennial Haitian Immigrant Issue, (June 30, 2005) *available at* <http://www.coha.org/2005/06/30/neighborly-quarrels-the-dominican-republic-and-the-perennial-haitian-immigrant-issue/>.

10 Michelle Garcia, *No Papers, No Rights*, Amnesty International Magazine, Fall 2006, *available at*: http://www.amnestyusa.org/magazine/fall_2006/no_papers/print.html.

- 11 Submission from the Open Society Justice Initiative to the Inter-American Court of Human Rights (April 2005) *available at*: http://www.justiceinitiative.org/db/resource2/fs/?file_id=15639#search=%22%22Written%20comments%20on%20the%20case%20of%20Dilcia%20Yean%22%22.
- 12 Michelle Garcia, *No Papers, No Rights*, AMNESTY INT'L MAG., Fall 2006, *available at*: http://www.amnestyusa.org/magazine/fall_2006/no_papers/print.html.
- 13 Article 11 of the Dominican Constitution makes an exception to the rule on nationality for those individuals born in the country to persons "in transit."
- 14 Garcia, *supra* note 12.
- 15 David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 NO. 2 HUM. RTS. BRIEF 25 (WINTER 2006).
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 Submission from the Open Society Justice Initiative to the Inter-American Court of Human Rights (April 2005) *available at*: http://www.justiceinitiative.org/db/resource2/fs/?file_id=15639#search=%22%22Written%20comments%20on%20the%20case%20of%20Dilcia%20Yean%22%22 [hereinafter Open Society Justice Initiative].
- 22 Ratified by the Dominican Republic as of 1997. <http://www.cidh.org/what.htm>.
- 23 Open Society Justice Initiative, *supra* note 15.
- 24 *Id.*
- 25 Garcia, *supra* note 7.
- 26 JusticeInitiative.org, *Yean and Bosico v. The Dominican Republic*, http://www.justiceinitiative.org/db/resource2?res_id=102760 (last visited Nov. 8, 2006).