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## Soy Dominicano - The Status of Haitian Descendants Born in the Dominican Republic and Measures to Protect Their Right to a Nationality

Monique A. Hannam

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## NOTES

# Soy Dominicano – The Status of Haitian Descendants Born in the Dominican Republic and Measures to Protect Their Right to a Nationality

“I have no country. What will become of me?”<sup>1</sup>

### ABSTRACT

*On September 25, 2013, the Constitutional Tribunal of the Dominican Republic retroactively interpreted the Dominican Constitution to deny Dominican citizenship to children born to irregular migrants in Dominican territory since 1929. The tribunal’s decision disproportionately affects approximately two hundred thousand persons of Haitian descent. In general, states have the right to determine their nationality criteria. However, the Dominican Republic violated international law by arbitrarily and discriminatorily depriving the Haitian descendants of their Dominican nationality and by increasing the incidence of statelessness. The international community should intervene urgently and decisively on behalf of the Haitian descendants. This Note proposes specific ways in which stakeholders, such as the United Nations High Commissioner for Refugees (UNHCR), Caribbean Community and Common Market (CARICOM), Organization of American States (OAS), and the United States, should intervene to persuade the*

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1. Ricardo Rojas, *Dominican Court Ruling Renders Hundreds of Thousands Stateless*, REUTERS (Oct. 12, 2013), <http://www.reuters.com/article/2013/10/12/us-dominicanrepublic-citizenship-idUSBRE99B01Z20131012> [<http://perma.cc/G44G-ZJJS>] (archived Sept. 25, 2014) (reporting statement by Blemlé, a twenty-seven-year-old Haitian descendant in the Dominican Republic).

*Dominican government to pass proper remedial nationality legislation. Moreover, after concluding that the recent legislative developments in the Dominican Republic are insufficient to bring the state into compliance with its international law obligations, this Note proposes more robust legislative reform and recommends continued international pressure.*

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I. INTRODUCTION

On September 25, 2013, in a far-reaching, provocative ruling, the Constitutional Tribunal of the Dominican Republic relegated hundreds of thousands of Haitian descendants born in the Dominican Republic to a state of uncertainty, or worse, statelessness.<sup>2</sup> The case arose from Juliana Dequis Pierre’s request for a Dominican<sup>3</sup> national identification card.<sup>4</sup> In 1984, two Haitian cane farmers welcomed the birth of Juliana Dequis Pierre in the Yamasa municipality of the Dominican Republic.<sup>5</sup> Under the 1966 Dominican Constitution then in effect, persons born in Dominican territory were entitled to Dominican nationality unless their parents were diplomats or foreigners in transit.<sup>6</sup> Believing she was thus entitled, Ms. Pierre applied to the Dominican authorities for a Dominican national identity card. When the authorities denied her application, she appealed to the Constitutional Tribunal.<sup>7</sup> To her surprise, the Constitutional Tribunal reinterpreted the 1966 Dominican Constitution to hold that illegal residents are “foreigners in transit,”

2. See *id.* (describing results of case); República Dominicana Tribunal Constitucional [Constitutional Court of the Dominican Republic], Sept. 23, 2013, Sentencia TC/0168/13, pp. 98–99 [hereinafter *Pierre*], available at <http://www.refworld.org/docid/526900c14.html%20and%20http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%2001%2068-13%20-%20C.pdf> (last visited Sept. 5, 2014) [<http://perma.cc/9FCV-R2WU>] (archived Sept. 8, 2014).

3. In this paper, *Dominican* refers to matters related or attributable to the Dominican Republic, including its nationals, and should not be confused with nationals of the state of Dominica.

4. See *Pierre*, *supra* note 2, § 2.1.4, at 20.

5. See *id.* § 2.1, at 3.

6. See, e.g., CNN IREPORT, *Constitutional Court: Children of Foreigners ‘In Transit’ Are Not Dominicans* (Mar. 20, 2014), <http://ireport.cnn.com/docs/DOC-1110073> [<http://perma.cc/7ENP-45S5>] (archived Sept. 25, 2014) (“It was indicated that according to [Article 11.1 of the 1966 Constitution] the Dominican nationality can be acquired by, ‘all the people that [are] born in the territory of the Republic, with the Exception of the legitimate children of foreigners residing in the country in diplomatic representation or those who are ‘in transit.’”).

7. See *Pierre*, *supra* note 2, at 98 (deciding that children born in the Dominican Republic to irregular migrants do not obtain Dominican nationality).

that Ms. Pierre's parents were illegal residents, and that as a result, Ms. Pierre was not entitled to Dominican nationality.<sup>8</sup>

The breadth of the *Pierre* decision raises serious issues. Beyond the narrow question of Ms. Pierre's entitlement, the Constitutional Tribunal held that children born to Haitian migrants in the Dominican Republic since 1929 were not entitled to Dominican citizenship since their parents were "in transit."<sup>9</sup> This raises questions regarding the duty of the Dominican Republic to respect the Haitian descendants' right to a nationality under international law and to apply Dominican nationality law in a nondiscriminatory manner. Several international and regional organizations expressed their concern that the decision jeopardizes the human rights of the Haitian descendants.<sup>10</sup> The historically acrimonious relationship between the Dominican Republic and Haiti and the perception that anti-Haitian discrimination is pervasive and ingrained in Dominican culture fuel this concern.<sup>11</sup> The situation is tense and volatile, thus demanding urgent and decisive international intervention.

This Note will explore the implications of the *Pierre* decision in light of the international law on nationality and statelessness, the sovereign rights of states to protect their economic interests, and the historically tumultuous nature of the Haitian-Dominican relationship. The Note's scope is limited to those Haitian descendants who were born in the Dominican Republic. Part I provides an in-depth examination of the Constitutional Tribunal's decision and the resulting Dominican law on nationality,<sup>12</sup> as well as Haiti's nationality framework. Part II explores the economies of Haiti and

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8. See CNN IREPORT, *supra* note 6 (explaining that the ruling denies citizenship to children born to non-residents in the Dominican Republic).

9. See *Pierre*, *supra* note 2, at 98.

10. See, e.g., Press Release, UN High Comm'r for Refugees, Dominican Republic: UNHCR Concerned by Potential Impact of Dominican Court Decision on Persons of Haitian Descent (Oct. 1, 2013) [hereinafter UNHCR Press Release 1], <http://www.unhcr.org/524c0c929.html> [<http://perma.cc/VPT5-9LAH>] (archived Sept. 25, 2014) (stating that UNHCR is "deeply concerned" with the Constitutional Tribunal's ruling and that due to its retroactive effect, it has the potential to affect tens of thousands of people born in the Dominican Republic); Press Release, Caribbean Cmty. Secretariat, CARICOM Statement on Developments in the Aftermath of the Ruling of the Constitutional Court of the Dominican Republic on Nationality, CAPRICOM Press Release 265/2013 (Nov. 26, 2013), [http://www.caricom.org/jsp/pressreleases/press\\_releases\\_2013/pres265\\_13.jsp?null&prnf=1](http://www.caricom.org/jsp/pressreleases/press_releases_2013/pres265_13.jsp?null&prnf=1) [<http://perma.cc/DAR5-FNCW>] (archived Sept. 8, 2014) (expressing concern with the adverse effects of the *Pierre* decision on Haitian nationals).

11. See David Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 HUMAN RIGHTS BRIEF, no. 2, 2006, at 25 [hereinafter Baluarte], <http://www.wcl.american.edu/hrbrief/13/2baluarte.pdf> [<http://perma.cc/3848-3TA7>] (archived Sept. 8, 2014) (discussing the historical relationship between Haiti and the Dominican Republic and the reactions of human rights groups to the *Pierre* decision).

12. In this Note *nationality* and *citizenship* are used synonymously.

the Dominican Republic and the highlights of their historical and contemporary relationship. Part III analyzes the international and regional law on nationality and statelessness binding on the Dominican Republic in order to determine whether the state has violated international law. After examining laws adopted during the revision of this Note and finding them inadequate to bring the Dominican Republic into compliance with international law, Part IV proposes that the members of international community—in particular the Organization of American States (OAS), United Nations High Commissioner for Refugees (UNHCR), Caribbean Community and Common Market (CARICOM), and the United States—take concrete steps to protect the rights of the Haitian descendants. Finally, Part V concludes by recognizing the need to balance the rights of the Haitian descendants against the rights of the Dominican Republic and proposing more appropriate remedial action.

This Note takes a dynamic approach to assessing the nationality crisis and will refer to treaties and cases without regard to chronological order. For a timeline of the major relevant events referred to in this Note, see Appendix.<sup>13</sup>

## II. ROCK AND A HARD PLACE: THE NATIONALITY LAW OF THE DOMINICAN REPUBLIC AND HAITI

### A. *Nationality Law of the Dominican Republic before and after Pierre*

Prior to the 2010 Amendments, the Constitution of the Dominican Republic granted nationality under a fairly generous *jus soli* regime. From 1929 until 2009, the constitution conferred Dominican nationality on all persons born within Dominican territory, except for children of diplomats and “those who are in transit.”<sup>14</sup>

Though the 2010 amendments recognized the Dominican nationality of persons born during the *jus soli* regime, Haitian descendants complained that Dominican state authorities

13. See *infra* Part VIII.

14. See Pierre, *supra* note 2, §§ 2.1.6–2.1.8, at 51–52 (describing the nationality framework of Dominican constitutions from 1929 to 2010). The Dominican Republic has gone through over twenty-nine constitutions. “This statistic is a somewhat deceiving indicator of political stability, however, because of the Dominican practice of promulgating a new constitution whenever an amendment was ratified . . . [M]ost new constitutions contained in reality only minor modifications of those previously in effect.” JONATHAN HARTLYN, LIBRARY OF CONG., FED. RESEARCH DIV., A COUNTRY STUDY: DOMINICAN REPUBLIC ch. 4, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstty:@field\(DOCID+do0079](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstty:@field(DOCID+do0079) [<http://perma.cc/N8ZB-EMFN>] (archived Sept. 8, 2014).

consistently denied birth certificates to their children who were born in the Dominican Republic.<sup>15</sup> When three Haitian parents brought this issue before the Inter-American Court of Human Rights, the Dominican government countered by stating that by virtue of “being born on Dominican territory, the children had the right to opt for [Dominican] nationality and never lost this privilege.”<sup>16</sup> According to the state, its authorities denied birth certificates because the petitioners in the case failed to present the requisite documentation for late birth registration.<sup>17</sup> Thus, the Dominican Republic at one point admitted that children born in its territory had a right to Dominican nationality regardless of the migratory status of their parents.

In the scathing *Yean & Bosico* decision that resulted, the Inter-American Court of Human Rights found that Dominican nationality law granted those born in Dominican territory Dominican nationality.<sup>18</sup> The Court held that the Dominican Republic violated the Inter-American Convention on Human Rights (IACHR) by depriving those born in Dominican territory Dominican nationality and ordered the state to adopt a simple, accessible, and reasonable procedure for the children to acquire Dominican nationality.<sup>19</sup>

In response to *Yean & Bosico*, the Dominican Republic amended its constitution to make children born to illegal residents ineligible for Dominican nationality.<sup>20</sup> Proponents and opponents hotly debate the motivation behind the amendment, with the former pointing to the burdens illegal Haitian immigrants impose on the Dominican infrastructure and economy and the latter identifying evidence of xenophobia and anti-Haitian rhetoric.<sup>21</sup> The 2010 Constitution of the Dominican Republic, currently in force, provides,

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15. See *Yean and Bosico v. Dom. Rep.*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 130, ¶ 3 (Sept. 8, 2005), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_%20ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf) [<http://perma.cc/66FK-KRMF>] (archived Sept. 8, 2014) (describing allegations that the Dominican Republic refused to issue birth certificates to the children born in its territory to Haitian descendants).

16. *Id.* ¶ 121(b), at 55.

17. See *id.* ¶¶ 120–21, at 54–55 (outlining the State’s arguments).

18. See *id.* ¶ 150, at 60; ¶ 158, at 62 (discussing the nationality regime under the Dominican Constitution prior to the 2010 amendment).

19. See *id.* ¶ 260, at 83–85 (finding that the Dominican Republic violated the rights to nationality and to equal protection of minors Dilcia Yean and Violeta Bosico and prescribing remedial steps).

20. See Randal C. Archibold, *Dominicans of Haitian Descent Cast into Legal Limbo by Court*, N.Y. TIMES, Oct. 24, 2013, at A1, A4 [hereinafter Archibold NY Times Article], available at [http://www.nytimes.com/2013/10/24/world/americas/dominicans-of-haitian-descent-cast-into-legal-limbo-by-court.html?\\_r=0](http://www.nytimes.com/2013/10/24/world/americas/dominicans-of-haitian-descent-cast-into-legal-limbo-by-court.html?_r=0) [<http://perma.cc/8FTD-DSCS>] (archived Sept. 8, 2014) (commenting on the reaction of the Haitian descendants in the Dominican Republic to the *Pierre* decision).

21. *Id.*

Dominicans are:

- (1) Sons and daughters of a Dominican mother or father;
- (2) Those who enjoyed the Dominican nationality before the entry into effect of this Constitution;
- (3) The persons born in [the] national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, [and] of foreigners . . . in transit or residing illegally in [the] Dominican territory. Any foreigner defined as such in the Dominican laws is considered a person in transit.<sup>22</sup>

On its face, the 2010 constitution abides by the principle of nonretroactivity since it does not retract Dominican nationality that a previous constitution conferred.<sup>23</sup> The new category for children born in Dominican territory to illegal residents suggests that illegal residents are not necessarily in transit; otherwise, this additional category would be superfluous.<sup>24</sup> Nevertheless, in *Pierre*, the Constitutional Tribunal retroactively interpreted the “in transit” exception so broadly that it potentially applies to all illegal residents and strips their descendants of any expectation of Dominican nationality under prior constitutions.<sup>25</sup>

Under the pre-2010 constitutional framework, one would have expected the Constitutional Tribunal to grant Juliana Dequis Pierre’s application. Ms. Pierre requested a Dominican identification card on the basis that she was born in Dominican territory.<sup>26</sup> The Tribunal noted that Ms. Pierre was born in the Dominican Republic but that both of her parents were Haitian nationals.<sup>27</sup> The Tribunal presumed Ms. Pierre’s parents worked without legal authorization based on their inability to produce identification at the time they registered Ms. Pierre’s birth.<sup>28</sup> The Tribunal reviewed the constitutions of the Dominican Republic and noted that from 1908 to 1929 the Dominican Constitution provided Dominican nationality to persons born in Dominican territory if they were born to Dominican or foreign persons domiciled in Dominican territory.<sup>29</sup> However, in 1929, the

22. CONST. OF THE DOM. REP. 2010, art. 18, *translated in* World Constitutions Illustrated (Luis Francisco Valle Velasco trans., Jefri Jay Ruchti ed. 2011) [hereinafter 2010 Dominican Constitution] (emphasis added).

23. *See id.* (including “those who enjoy the Dominican nationality before the entry into effect of this Constitution” in the definition of a Dominican citizen).

24. This conclusion is reached by applying the statutory construction canon of surplusage. *See, e.g.*, ANTONIN SCALIA AND BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 174 (2012).

25. *See Pierre*, *supra* note 2, § 1.1.10, at 60.

26. *See id.* § 2.1, at 3 (discussing the procedural history of the case).

27. *See id.* art. 40, at 35.

28. *See id.* § 1.1.4, at 54.

29. *See id.* § 2.1.3–2.1.7, at 50–52 (The tribunal commented that the 1844 constitution (on independence) granted nationality exclusively on the basis of *jus*



state revised the constitution by inserting an exception for persons born in the Dominican Republic to *extranjeros en tránsito*—foreigners in transit.<sup>30</sup> The state kept the in transit exception in all its subsequent constitutions, including the 2010 constitution.<sup>31</sup>

The Constitutional Tribunal proceeded to construe the in transit exception in the context of the 1939 Immigration Law of the Dominican Republic, which divides foreigners into two categories: immigrants and nonimmigrants.<sup>32</sup> It then divides nonimmigrants into four categories, including *jornaleros temporeros y sus familias*—that is, temporary laborers (journeymen) and their families.<sup>33</sup> The tribunal then held that the term *foreigners in transit* in the 1929 Constitution (and in the 1966 constitution in effect at the time of Ms. Pierre's birth) referred to and covers all four categories of nonimmigrants (including foreign workers) described in the immigration law.<sup>34</sup> It rejected the common understanding that foreigners in transit refers to passengers on their way to another place and not habitually residing in the locality in question.<sup>35</sup> Rather, it held that such persons are considered *extranejeros transeúntes* under Dominican law.<sup>36</sup>

The Constitutional Tribunal found that Ms. Pierre's Haitian parents were foreign workers and thus were foreigners in transit.<sup>37</sup> As such, Ms. Pierre did not receive Dominican nationality by virtue of her birth in Dominican territory.<sup>38</sup> The Tribunal denied Ms. Pierre's petition but instructed the authorities to give her a temporary stay permit.<sup>39</sup> It further instructed the electoral office to begin reviewing hundreds of thousands of registration documents with a view to classifying and processing the immigrant population in accordance with its ruling.<sup>40</sup>

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*sanguinis*, but that subsequent reforms led to a hybrid system of *jus sanguinis* and *jus soli*).

30. *Id.* § 2.1.6, at 51.

31. *Id.* § 2.1.7, at 52.

32. *Id.* § 1.1.6–1.1.10, at 55–60 (exploring the relationship between the Dominican constitutions from 1929 and Dominican immigration legislation to arrive at a definition for “in transit”).

33. *See id.* § 1.1.6, at 55–56.

34. *See id.* § 1.1.5, at 55; *id.* § 1.1.10, at 60.

35. *See id.*

36. *See id.* §§ 1.1.10–1.1.11, at 60–61.

37. *See id.* § 1.1.14.6, at 67.

38. *Id.*

39. *Id.* at 98–99.

40. *See id.*; *As Fallout Spreads, Dominican Republic Starts Tally of Haitians' Offspring*, DOMINICAN TODAY, Oct. 10, 2013, <http://www.dominicantoday.com/dr/local/2013/10/10/49237/As-fallout-spreads-Dominican-Republic-starts-tally-of-Haitians-offspring> [<http://perma.cc/8WVT-YP85>] (archived Sept. 8, 2014) (reporting that the Dominican authorities began processing undocumented Haitians with a view to regularizing their immigration status).

The Constitutional Tribunal's decision surprised Ms. Pierre, who had never been to Haiti, only knew a few words of Creole, and never thought of herself as anything but Dominican.<sup>41</sup> She also expressed concern for her four children, stating, "I feel terrible because I cannot work without my ID card and without that the school may not register my children either."<sup>42</sup>

### B. Haiti's *Jus Sanguinis* Nationality Framework

Haiti's constitution, the sole instrument providing the criteria for Haitian nationality, establishes a *jus sanguinis* nationality framework, which is one based on Haitian descent.<sup>43</sup> Individuals possess Haitian nationality at the time of birth if they are born to a Haitian father or a Haitian mother who were themselves born Haitian and have not renounced their nationality.<sup>44</sup> Haitian nationality is also available through naturalization provided that the alien has resided in Haiti for five years.<sup>45</sup> A Haitian may transmit his nationality to successive generations whether he acquired it by descent or nationalization.<sup>46</sup> However, Haiti's constitution prohibits dual nationality, and so a Haitian loses his Haitian nationality the moment he acquires the nationality of another state.<sup>47</sup> In the case of a naturalized Haitian, habitual residence out of the state may lead to denationalization.<sup>48</sup>

At first glance, the Haitian constitution seems to provide a clear and workable framework for determining questions on Haitian nationality.<sup>49</sup> However, there are several legal and practical

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41. See Archibold, *supra* note 20 (describing the reactions of some Haitians to the *Pierre* ruling and commenting on the difficult conditions that Haitians face in the Dominican Republic).

42. *Id.*

43. See 1987 Const. of Haiti, art. 11, translated at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html> [<http://perma.cc/M5TP-SH6X>] (archived Sept. 8, 2014). See generally U.N. High Comm'r for Refugees (UNHCR), *Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Haiti*, dated Mar. 2011 (Oct. 21, 2013), <http://www.refworld.org/pdfid/4d8869932.pdf> [<http://perma.cc/N93P-QTWU>] (archived Sept. 8, 2014) [hereinafter UNHCR Haiti Report] (describing, among other things, the difficulties that Haitian descendants face in proving Haitian nationality).

44. See Constitution of Haiti, art. 11 (prescribing the requirements for Haitian nationality).

45. See *id.* art. 12 (explaining naturalization requirements).

46. See *id.* arts. 11–12 (indicating that Haitian nationality can be acquired by birth or naturalization).

47. *Id.* art. 15.

48. See *id.* art. 13(c) (outlining means by which Haitian nationality is lost due to residence abroad).

49. See *id.* arts. 10–15 (discussing Haitian nationality framework).

challenges to establishing Haitian nationality.<sup>50</sup> Central to a claim for Haitian nationality by descent is the production of evidence proving the Haitian nationality of at least one parent.<sup>51</sup> Such documentation, in the form of government-issued identification or official birth records, is often difficult to source in the chaotic and economically depressed Haitian bureaucracy.<sup>52</sup> In addition, the lack of laws or regulations prescribing the generational span of nationality by descent creates uncertainty.<sup>53</sup> At present Haitian law does not specify how far back a person must trace his ancestry to rely on the constitutional provision. Haitian law also does not specify what sort of proof of ancestry is required.<sup>54</sup>

### III. HAITI AND THE DOMINICAN REPUBLIC: ECONOMIC CONDITIONS AND RELATIONS

The relationship between Haiti and the Dominican Republic is one of proximity and historical conflict. Haiti and the Dominican Republic share the island of Hispaniola. They also share a tense relationship traceable to the spillover of the Haitian revolution into Dominican territory that led to Haitian rule of the Dominican Republic in 1801.<sup>55</sup> Tensions grew from 1801 to 1937 when the Dominican dictator Raphael Trujillo ordered mass killings of Haitians, leading to the massacre of approximately 15,000 Haitians.<sup>56</sup> International human rights organizations report that this tense relationship remains and that Dominican society exhibits xenophobic tendencies with overtones of racism.<sup>57</sup> Competing with this image is

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50. See UNHCR Haiti Report, *supra* note 43, at 2 (identifying numerous obstacles to proving Haitian nationality and describing the adverse impact that this has on human rights).

51. See *id.* (discussing requirements for claiming nationality).

52. See *id.* at 2–3 (outlining systemic problems).

53. See *id.* at 3 (presenting generational issue discovered by 2008 survey).

54. See *id.* Based on its observations, the UNHCR recommended as follows:

[T]he Government of Haiti should work closely with UNHCR to jointly study and address institutional, legal, policy and regulatory gaps related to consular documentation for children of Haitian nationals who are born outside of Haiti, to ensure that children of Haitian descent born outside of Haiti, who qualify for acquisition of *jus sanguinis* nationality under Haitian law, are able to access documentary proof of nationality.

*Id.* at 6.

55. See Baluarte, *supra* note 11, at 25 (describing the historical conflict between Haiti and the Dominican Republic and their strained current relationship).

56. See *id.* (outlining historical tension).

57. See *id.* (describing the concern among international organizations as a result of efforts to “dehaitianize” the country). On the other hand, Haitian nationality law explicitly discriminates against persons not of black descent. The UNHCR has

the Dominican Republic's provision of aid and support to Haiti following the 2011 earthquake and its historical provision of work permits for Haitians.<sup>58</sup> Over the past seven or so decades, Haitians have crossed over into the Dominican Republic in large numbers to provide cheap labor on Dominican plantations.<sup>59</sup> This is not surprising given Haiti's status as the poorest country in the western hemisphere.<sup>60</sup> Haitians continuously migrate into the Dominican Republic because of a combination of depressed economic conditions, political instability and violence, environmental degradation, and natural disaster.<sup>61</sup> Because much of the migration is illegal and undocumented, international organizations are unable to reliably calculate the number of Haitian migrants in the Dominican Republic.<sup>62</sup>

In contrast to Haiti's economic failures, the Dominican Republic has a relatively robust economy. According to the U.S. State Department, the Dominican Republic has the largest economy in the Caribbean.<sup>63</sup> However, Haitians contributed to the Dominican Republic's economic success by supplying cheap labor in industries that characterize the three Ds: "dirty, dangerous, and demanding."<sup>64</sup> Haitians residing in the Dominican Republic tend to live in very

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criticized the Haitian government on the basis that Article 2(3) of Haitian nationality law prohibits persons not of black (Afro) descent from attaining Haitian citizenship on birth in Haitian territory. "Tout individu né en Haiti, de père étranger ou, s'il n'est pas reconnu par son père, de mère étrangère, pourvu qu'il descende de la race noir." See UNHCR Haiti Report, *supra* note 43, at 2 n.1 (explaining Haitian nationality rules).

58. *Dominican Republic Aid to Haiti Eases Historic Tensions*, CNN WORLD (Jan. 13, 2010, 10:01 PM), <http://www.cnn.com/2010/WORLD/americas/01/13/haiti.earthquake.dominican.republic/> [<http://perma.cc/64QP-9YYG>] (archived on Sept. 8, 2014) (commenting that the "Dominican Republic's outpouring of support to Haiti is a reminder of how the less-than-friendly legacy between the two nations has been buried even deeper").

59. See Stacie Kosinski, *State of Uncertainty: Citizenship, Statelessness, and Discrimination in the Dominican Republic*, 32 B.C. INT'L & COMP. L. REV. 377, 382–83 (2009) [hereinafter Kosinski] (discussing the historical migration of Haitians into the Dominican Republic to escape poverty).

60. See *Haiti Overview*, THE WORLD BANK, <http://www.worldbank.org/en/country/haiti/overview> (last visited Aug. 30, 2014, 5:14 PM) [<http://perma.cc/S6YH-6ZN6>] (archived Aug. 30, 2014) ("Haiti remains the poorest country in the Americas and one of the poorest in the world . . . Over half of its population of 10 million lives on less than US\$1 per day, and approximately 80% live on less than US\$2 per day.").

61. See Baluarte, *supra* note 11, at 25–26; Kosinski, *supra* note 59, at 382–83.

62. See Baluarte, *supra* note 11, at 25.

63. See *U.S. Relations with the Dominican Republic*, U.S. DEPT OF STATE, BUREAU OF WESTERN HEMISPHERE AFFAIRS (Nov. 18, 2013), <http://www.state.gov/r/pa/ei/bgn/35639.htm> [<http://perma.cc/7WM4-SHSC>] (archived Aug. 30, 2014) (describing the United States' economic relations with the Dominican Republic).

64. See Yean and Bosico, *Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 148* (2005) (quoting the 2005 UNDP Human Development Report on the Dominican Republic).

precarious conditions of extreme poverty and face a hostile social and political situation.<sup>65</sup>

Some civil rights advocates maintain that Haitian descendants in the Dominican Republic suffer under a regime of institutionalized discrimination.<sup>66</sup> In response, the Dominican Republic initially committed itself to “combat exclusion and social inequality” by seeking to “ensure that anti-Haitian practices are a thing of the past.”<sup>67</sup> Eventually, the rhetoric changed.<sup>68</sup> In 2005, the Dominican Secretary of Labor announced a plan to “dehaitianize” the country, and the authorities conducted mass forcible expulsions.<sup>69</sup> In response to chastisement from the Inter-American Court of Human Rights in *Yean & Bosico*, the Dominican Republic, by constitutional amendment, made children of the mostly Haitian illegal resident population ineligible for Dominican nationality.<sup>70</sup> The Constitutional Tribunal legitimized and fueled the movement by retroactively interpreting the constitution to exclude Haitians migrants from as early as 1929.

The recent events have put added strain on the already tense Haitian–Dominican Republic relations.<sup>71</sup> Haiti reportedly pulled its ambassador from the Dominican Republic in response to the *Pierre* ruling, stating, “[t]he Chancellery is very concerned about this decision.”<sup>72</sup> Border violence increased after the *Pierre* ruling,

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65. See Comm. on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, 72d Sess., Feb. 18–Mar. 7, 2008, ¶¶ 17–22, U.N. Doc. CERD/C/DOM/CO/12 (May 16, 2008) [hereinafter the OCHR report] (discussing numerous violations of the human rights of Haitians and persons of Haitian descent in the Dominican Republic).

66. See, e.g., Baluarte *supra* note 11, at 26 (arguing that the policies and practices of the government of the Dominican Republic promoted discrimination against Haitians and Dominicans of Haitian descent).

67. See Human Rights Comm., Comments by the Government of the Dominican Republic on the Concluding Observations of the Human Rights Committee, U.N. Doc. CCPR/CO/71/DOM/Add.1, ¶ 46 (May 28, 2008) (offering the committee’s comments on the concluding observations of the United Nations Human Rights Committee, as quoted in *Yean and Bosico*, ¶ 109(4)).

68. See Ezequiel Lopez & Danica Coto, *Experts Fear Dominican Ruling Could Cause Crisis*, ASSOCIATED PRESS, Oct. 9, 2013, <http://bigstory.ap.org/article/experts-fear-dominican-ruling-could-cause-crisis> [<http://perma.cc/VD9H-XWRL>] (archived Aug. 30, 2014) (reporting that Immigration Director Jose Ricardo Taveras, member of a nationalist party that has long complained about the “Haitianization” of the Dominican Republic).

69. See Baluarte, *supra* note 11, at 25–26.

70. See 2010 Dominican Constitution, *supra* note 22, art. 18 (defining the nationality of Dominicans).

71. See *Haiti Pulls Envoy over Dominican Court to Strip Citizenship for Migrants’ Children*, FOXNEWS.COM, Oct. 1, 2013, <http://www.foxnews.com/world/2013/10/01/haiti-pulls-envoy-over-dominican-court-ruling-to-strip-citizenship-for-migrants/> [<http://perma.cc/F3SM-FFKT>] (archived Aug. 30, 2014) (describing Haiti’s reaction to the *Pierre* ruling).

72. See *id.*

prompting some Haitians to flee the Dominican Republic.<sup>73</sup> Migrant advocates reported that over 250 Haitians were expelled following *Pierre*.<sup>74</sup> The Dominican Republic defended the *Pierre* decision and expressed annoyance at the foreign intrusion.<sup>75</sup> It contended that Haitians will benefit from the regularization of their status and that the state's actions are fully compatible with its international law obligations.<sup>76</sup>

#### IV. INTERNATIONAL LAW ON NATIONALITY

##### A. *Nationality Under International Law: Jus Sanguinis, Jus Soli, and Hybrid Criteria*

As one writer aptly said, the topic of nationality “bristles with difficulties.”<sup>77</sup> First, the definition of the term and its distinction from citizenship are unclear.<sup>78</sup> As a preliminary point, this paper will use the term *national* interchangeably with *citizen* and to imply that the person is the subject of a state.<sup>79</sup> Difficulties arise from the presumed ability of states, as sovereigns, to determine and enforce their nationality criteria as they please and in their best interests.<sup>80</sup> This is a necessary corollary of the fundamental principle of international law that one cannot presume restrictions upon the independence of

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73. See Trenton Daniel & Evens Sanon, *More Than 350 People Flee or Deported to Haiti After Border Killings*, ASSOCIATED PRESS, Nov. 25, 2013, <http://www.ctvnews.ca/world/more-than-350-people-flee-or-deported-to-haiti-after-border-killings-1.1559948> [<http://perma.cc/9MM4-KBKW>] (archived Aug. 30, 2014) (reporting on expulsion and voluntary departure of Haitians from the Dominican Republic following increased border violence).

74. See *id.*

75. See Archibold, *supra* note 20 (“The archbishop of Santo Domingo, Cardinal Nicolas de Jesus Lopez Rodriguez, called the ruling just and nodded to a sentiment among some Dominicans that international organizations were meddling in their affairs.”).

76. See *id.*

77. See James Brown Scott, *Nationality: Jus Soli or Jus Sanguinis*, 24 AM. H. INT’L J. 58, 58 (1930) (commenting on the benefits of application of *jus soli* and tracing the global historical approach to nationality).

78. See PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 6 (1956) (“The terms ‘national’ and ‘citizen’ overlap. Every citizen is a national, but not every national is necessarily a citizen of the State concerned; whether this is the case depends on municipal law; the question is not relevant for international law.”).

79. See *id.* at 6 (quoting with approval Oppenheim’s statement that “[n]ationality of an individual is his quality of being a subject of a certain State and therefore its citizen.”).

80. See, e.g., *id.* at 6–7 (“Once municipal law in defining the nationals of the State cuts across the definition of nationals under international law . . . , such municipal law is inconsistent with international law . . .”).

states.<sup>81</sup> Any restriction on the ability of states to determine nationality criteria must therefore emanate from binding international law in the form of treaties binding on the state in question or customary law evidenced by sufficient state practice and *opinion juris sive necessitatis*.<sup>82</sup>

The preliminary question in analyzing the Dominican Republic's actions is whether international law specifies binding criteria for granting nationality. There is no international custom that specifies the criteria by which states should grant nationality.<sup>83</sup> Indeed, the general rule under international law is that states have the right to determine the rules governing the attribution of their nationality.<sup>84</sup> Additionally, the Dominican Republic has not ratified any treaty limiting its sovereign right to determine nationality attribution rules.<sup>85</sup>

States have historically disagreed on the basis for granting nationality.<sup>86</sup> To date, there is no international consensus on the proper criteria for determining nationality.<sup>87</sup> Domestic nationality legislation varies between conferring nationality based on the *jus soli*

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81. See *S.S. Lotus (France v. Turkey)*, 1927 P.C.I.J. (ser. A) No. 10, ¶ 44 (Sept. 7, 1927) (“The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities . . .”).

82. See *North Sea Continental Shelf Cases (Ger./Den. and Ger./Neth.)*, Judgment, 1969 I.C.J. 3, ¶ 77, available at <http://www.icj-cij.org/docket/files/52/5561.pdf> [<http://perma.cc/FNM4-8CEX>] (archived Oct. 2, 2014) (“Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol, which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.”).

83. This section's analysis excludes considerations of statelessness.

84. See RUTH DONNER, *THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW* 17 (Transnational Publishing, Inc. 2d ed. 1994) (“[N]ationality falls within the reserved domain of State authority.”).

85. For a list of human rights treaties to which the Dominican Republic is a party, see *Ratification of International Human Rights Treaties - Dominican Republic*, University of Minnesota Human Rights Library, <http://www1.umn.edu/humanrts/research/ratification-dominican.html>, [<http://perma.cc/YM5F-UV65>] (archived Aug. 31, 2014) (noting that, while the Dominican Republic has not ratified any treaty prescribing the criteria for conferring nationality, its ratification of the International Covenant on Civil and Political Rights, Inter-American Convention on Human Rights, and other instruments may limit its freedom in determining how to treat persons subject to its jurisdiction).

86. See Scott, *supra* note 77, at 58.

87. See *id.*

(birth within a particular country), the *jus sanguinis* (blood relationship), and hybrid forms (combining elements of *jus soli* and *jus sanguinis* with varying emphasis on each element).<sup>88</sup>

A survey of the current nationality laws leads to the unavoidable conclusion that there is no binding customary international law prescribing one single basis for attributing nationality.<sup>89</sup> Approximately thirty of the world's 194 countries automatically grant nationality to those born within their territory (*jus soli*)—a phenomenon known as birthright citizenship.<sup>90</sup> Thus, *jus soli* is the minority position.<sup>91</sup> Further, *jus soli* is concentrated in the new world or Americas, and several countries are limiting or eliminating its use in order to curtail illegal immigration and unwelcome asylum seekers.<sup>92</sup> This state practice is insufficient to support the recognition of a rule of international law requiring the automatic conferral of nationality based on birth within a state's territory.

State practice is similarly insufficient to support an international custom requiring conferral of nationality based on *jus sanguinis*. A rule of customary international law cannot arise in the absence of virtually uniform, extensive, and representative state practice carried out in a way that shows that states believe that a legal obligation is involved.<sup>93</sup> Given that a significant minority of states do not embrace *jus sanguinis*, there is similarly no international custom requiring this approach.<sup>94</sup>

Some academics contend that there is an exceptional inter-American customary law requiring the application of *jus soli* in the Americas because the vast majority of countries in the Americas provide birthright citizenship.<sup>95</sup> Only five of the thirty-five countries

88. See *id.*

89. See JOHN FEERE, CTR. FOR IMMIGRATION STUDIES, BIRTHRIGHT CITIZENSHIP IN THE UNITED STATES, A GLOBAL COMPARISON 1 (2010), available at <http://cis.org/birthright-citizenship> [<http://perma.cc/G7J8-4RG3>] (archived Aug. 30, 2014) (surveying the domestic nationality laws of countries worldwide and arguing that the United States should rethink its practice of automatically granting United States citizenship to anyone born within its territory).

90. See *id.* at 15.

91. See *id.*

92. See *id.*; Maarten Peter Vink & Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe*, EUDO CITIZENSHIP OBSERVATORY, Nov. 2010, at 20–21, available at <http://ssrn.com/abstract=1714975> [<http://perma.cc/9VV-KZXT>] (archived Aug. 30, 2014) (reporting that traditional *jus soli* countries such as the UK and Ireland have recently amended their *jus soli* principles by imposing residency requirements on the parents).

93. See *North Sea Continental Shelf* (Ger. v. Den. and Ger. v. Neth.), Judgment, 1969 I.C.J. 3, ¶ 74 (discussing the delimitation of the continental shelf between Germany and Denmark as well as Germany and the Netherlands and the applicable rules of international law).

94. See Scott, *supra* note 77, at 59.

95. See Katherine Culliton-Gonzalez, *Born in the Americas: Birthright Citizenship and Human Rights*, 25 HARV. HUM. RTS. J. 127, 141–44 (2012) [hereinafter



in the Americas do not provide automatic birthright citizenship to children of undocumented immigrants, and these five countries include the Dominican Republic and Haiti.<sup>96</sup> Thus, the great majority, or over eighty-five percent, of the sovereign states in the Americas provide citizenship based on *jus soli* principles.<sup>97</sup> The proponents of the exceptional American custom argue that this percentage is adequate state practice to support a regional custom.<sup>98</sup>

However, the *opinio juris* requirement is difficult to establish. Do countries in the Americas grant nationality based on *jus soli* because of a perceived legal obligation as opposed to convenience or morality? Proponents of the regional custom claim that American states adopted *jus soli* principles because they placed great value on equality and freedoms after emerging from colonial domination.<sup>99</sup> One could argue that the American states believed that adopting a *jus soli* nationality framework was necessary to protect fundamental rights.<sup>100</sup> On the other hand, American states apparently believed that a liberal immigration policy was critical to nation-building.<sup>101</sup> This partly economic motive undermines the argument that American states adopted *jus soli* based on perceived legal obligation.<sup>102</sup>

Even if the argument in favor of a regional *jus soli* custom is unconvincing, there are other significant limitations on the Dominican Republic's sovereign right to promulgate nationality laws based on *jus sanguinis*.<sup>103</sup> International law places limitations and conditions on the adoption of nationality laws, especially in the contexts of retroactive application, probable de facto statelessness,

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Culliton-Gonzalez] (making the case that retracting birthright citizenship in the United States would contravene human rights law prohibiting discrimination and would violate exceptional inter-American customary law on nationality).

96. See *id.* at 130–42 (identifying the Bahamas, Columbia, Haiti, Suriname, and the Dominican Republic as the only five countries in the Americas that do not provide birthright citizenship); see also Feere, *supra* note 89 at 15 (listing the countries that provide automatic birthright citizenship, that is, citizenship based on pure *jus soli* principles).

97. See Feere, *supra* note 89, at 15.

98. See Culliton-Gonzalez, *supra* note 95, at 138.

99. See *id.* at 141 (describing the connection between birthright citizenship, independence from European colonial practices, and equality rights).

100. See *id.* at 161.

101. See *id.* at 138 (“[T]he granting of fundamental citizenship rights by virtue of being born in the territory of a sovereign nation developed precisely because the history of modern nation-building and independence in the Americas is a history of immigration.”)

102. See *id.*

103. For example, there are international laws relating to statelessness and the right to a nationality, nondiscrimination, and equality before the law. See, e.g., Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, [hereinafter Convention on the Reduction of Statelessness] available at <http://www.refworld.org/docid/3ae6b39620.html> [<http://perma.cc/ELN4-UQE6>] (archived Sept. 8, 2014).

disparate impact on one race or nationality, and deleterious effect on children.<sup>104</sup>

*B. The Individual's Right to a Nationality and the State's Obligation to Prevent Statelessness*

Individuals have the right to a nationality, and as a corollary, the international community has widely recognized an individual's right not to be stateless.<sup>105</sup> Statelessness, the condition of having no legal or effective citizenship, is a more pervasive problem than many would assume.<sup>106</sup> If citizenship is the "right to have rights," then arguably the stateless have no effective human rights.<sup>107</sup> Indeed, even with the concession that human rights flow from the condition of being human, as opposed to citizenship or nationality, all would agree that citizenship provides an avenue for the recognition and protection of those rights.<sup>108</sup>

Several international instruments directly or indirectly address the issue of statelessness.<sup>109</sup> Some treaties obligate state parties to recognize and protect the right of individuals to a nationality and therefore indirectly impose a duty on those states to avoid laws, policies, and practices that result in statelessness; others create more direct obligations and stipulate circumstances in which states should grant nationality to individuals who would otherwise be stateless.<sup>110</sup>

Perhaps the most fundamental international instrument bearing on the issue of statelessness is the Universal Declaration of Human Rights (UNDHR or the Declaration) that the UN General Assembly adopted in 1948.<sup>111</sup> Article 15 of the Declaration states that "[e]veryone has the right to a nationality" and that, as a result, "no one shall be arbitrarily deprived of his nationality."<sup>112</sup> Unfortunately,

104. See Culliton-Gonzalez, *supra* note 95, at 128.

105. See generally David Weissbrodt & Clay Collins, *The Human Rights of Stateless Persons*, 28 HUMAN RIGHTS Q. 245 (2006) (discussing the mechanisms giving rise to statelessness and the human rights issues that arise as a result of statelessness).

106. See *id.* at 246.

107. See *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, C.J., dissenting).

108. See Weissbrodt & Collins, *supra* note 105 at 248–49.

109. See generally Convention on the Reduction of Statelessness, *supra* note 103, (prescribing by multilateral treaty that the participating sovereign states agree to reduce the incidence of statelessness).

110. See *id.*; Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 (providing the final act of the United Nations Conference on the Status of Stateless Persons).

111. See Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter UDHR] (providing a global expression of the inherent rights of human beings).

112. See *id.*

the Declaration does not provide specific guidance on which state should confer nationality, nor does it specify applicable criteria.<sup>113</sup>

Subsequent United Nations instruments expounded on the right to a nationality and how it applies to some specific vulnerable groups. As it relates to children, Article 24 of the International Covenant on Civil and Political Rights (ICCPR) provides that every child has the right to acquire a nationality.<sup>114</sup> Similarly, Article 7 of the United Nations Convention on the Rights of the Child (CRC) provides that children have the right to acquire a nationality and requires state parties to implement this right particularly where a child would otherwise be stateless.<sup>115</sup> The Dominican Republic has ratified both the ICCPR and the CRC and as such has a definite obligation to recognize and protect the right to a nationality, especially for persons under the age of eighteen years.<sup>116</sup> The Dominican Republic is also a signatory to the 1961 UN Convention on the Reduction of Statelessness and consequently has a duty not to frustrate the treaty's purpose to "reduce statelessness."<sup>117</sup> This duty arises under customary international law and the Vienna Convention on the Law of Treaties to which the Dominican Republic acceded in 2010.<sup>118</sup> A state party to the Convention on the Reduction of Statelessness is obligated to grant its nationality to a person born in its territory who would otherwise be stateless.<sup>119</sup> The contracting state has the option to either grant nationality automatically "by operation of law" on

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113. See Kosinski, *supra* note 59, at 381 (discussing international instruments relevant to statelessness).

114. The Dominican Republic ratified the ICCPR on Jan. 4, 1978. UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en) [<http://perma.cc/8BK6-44ZP>] (archived Sept. 8, 2014). See International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR., 21st Sess., Supp. No. 16, U.N. Doc. A/6316, art. 24, (Dec. 19, 1966) [hereinafter ICCPR].

115. See Convention on the Rights of the Child, G.A. Res. 44/25, UN Doc. A/RES/44/25, art. 7 (Nov. 20, 1989).

116. See *id.* art. 1. (defining a "child" as persons under the age of eighteen years).

117. See United Nations Convention on the Reduction of Statelessness, *supra* note 103, preamble. The Dominican Republic signed the treaty on December 5, 1961, but has not ratified it. At the time of writing, the treaty had fifty-five parties and five signatories.

118. The Dominican Republic acceded to the Vienna Convention on the Law of Treaties on April 1, 2010. Pursuant to article 18 of the Convention, states have a duty to refrain from acts that would defeat the objects and purposes of treaties they have signed. See Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331, 8 I.L.M. 679, art. 18, available at [https://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en) [<http://perma.cc/FBE3-GBK2>] (archived Sept. 8, 2014).

119. See Convention on the Reduction of Statelessness, *supra* note 103, art. 1(1) (noting when the State shall grant nationality).

birth or through an application process, which complies with the Convention's requirements.<sup>120</sup>

Furthermore, the Convention on the Reduction of Statelessness limits a contracting state's power to deprive persons of its nationality.<sup>121</sup> Specifically, "[a] contracting state shall not deprive a person of its nationality if such deprivation would render him stateless."<sup>122</sup> The Convention also prohibits discriminatory deprivation of nationality since contracting states "may not deprive any person or group of persons of their nationality on racial, ethnic, religious, or political grounds."<sup>123</sup>

Applying the Convention on the Reduction of Statelessness is fraught with difficulties. Since the duty to grant nationality does not arise unless the person concerned "would otherwise be stateless," states may avoid this obligation by claiming that the person concerned is entitled to nationality of another state.<sup>124</sup> The Convention does not expressly address the contracting states' obligations where there is a "high risk" of statelessness or where the alternative potential claim is tenuous or weak.<sup>125</sup>

Difficulties also arise from the fact that limitations on deprivation of nationality necessarily do not apply unless the person was previously a national of the state.<sup>126</sup> This raises questions as to when and how nationality is conferred—questions that the Convention does not answer. The Dominican Republic owes no duty under the Convention on the Reduction of Statelessness unless the Haitian descendants would be stateless without Dominican nationality or the Dominican Republic's actions would amount to a discriminatory deprivation of previously conferred Dominican nationality.<sup>127</sup>

Another key instrument relevant to the Dominican Republic's grant and deprivation of nationality is the American Convention on Human Rights (hereafter "the American Convention").<sup>128</sup> The

120. *Id.* art. 1(2). If the state chooses to implement an application process, it may impose several conditions, including a requirement that the person concerned has always been stateless and has resided continuously in its territory for several years.

121. *See id.* arts. 8–9 (explaining that a state "shall not depriv[e] a person of its nationality if such deprivation would render him stateless").

122. *Id.* art. 8(1).

123. *Id.* art. 9.

124. *Id.* art. 1(1) (determining when a State must grant nationality).

125. *See id.*

126. *See id.* art. 8(2) ("[A] person may be deprived of the nationality of a Contracting State:(a) in the circumstances in which, under paragraphs 4 and 5 of Article 7, it is permissible that a person should lose his nationality; (b) where the nationality has been obtained by misrepresentation or fraud.").

127. *See id.* arts. 8–9 (explaining that a State "shall not depriv[e] a person of its nationality if such deprivation would render him stateless").

128. *See* American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143 [hereinafter American Convention], available at <http://www.refworld.org/>

American Convention recognizes everyone's right to a nationality, and, similar to the UN Convention on the Reduction of Statelessness, provides for nationality based on *jus soli* if a person would otherwise be stateless.<sup>129</sup> It provides that "[e]very 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."<sup>130</sup> The American Convention also limits state parties' right to deprive persons of their nationality by providing that "[n]o one shall be arbitrarily deprived of his nationality."<sup>131</sup> State parties must respect and ensure the right to a nationality of persons subject to their jurisdictions without any discrimination for reasons of race, color, national or social origin, economic status, birth, or "any other social condition."<sup>132</sup> If a state violates the Convention, another state or the Inter-American Commission on Human Rights (IACHR) may bring the non-compliant state before the Inter-American Court on Human Rights.<sup>133</sup> State parties have an express obligation to comply with the judgment of the Court.<sup>134</sup>

The American Convention on Human Rights is particularly relevant to the Haitian descendants' claim to Dominican nationality because of the Inter-American Court on Human Rights' ruling in *Yean & Bosico*. Yean and Bosico were two children of Haitian descent who were born in the Dominican Republic and had resided there for their entire lives.<sup>135</sup> In 1997, their representatives requested their birth certificates from the Dominican Republic's civil registry.<sup>136</sup> Despite receiving documentation showing that the girls and their mothers were born in the Dominican Republic, the state denied the girls' applications.<sup>137</sup> The Inter-American Court on Human Rights found that the Dominican authorities obstructed access to birth certificates for children of Haitian descent, making it difficult for these children to obtain the Dominican identification necessary for

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docid/3ae6b36510.html [http://perma.cc/9E3F-62G9] (archived Sept. 8, 2014). The Dominican Republic ratified the A.C.H.R. on January 21, 1978. For status of ratification, see [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm) [http://perma.cc/82XK-2HEX] (archived Sept. 8, 2014).

129. See American Convention, *supra* note 128, art. 20(1).

130. *Id.* art. 20(2) (detailing a person's right to nationality).

131. *Id.* art. 20(3) (detailing a person's right to nationality).

132. *Id.* art 1(1).

133. See *id.* arts. 33, 41 (describing the functions and powers of the Commission).

134. See *id.* art. 68. Unfortunately, the American Convention does not provide a mechanism for enforcement.

135. See Kosinski *supra* note 59 at 384.

136. See Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 109(14) (2005).

137. See *id.* ¶¶ 109(20)–(30) (noting that the state did not grant birth certificates to the children but merely granted them temporary permits after the Inter-American Commission on Human Rights ordered precautionary measures in favor of the children).

public education, healthcare, and social assistance services.<sup>138</sup> As Part I(A) notes, the Court took the view that the state acted contrary to the Dominican Constitution's *jus soli* nationality framework.<sup>139</sup>

In its submissions to the Court, the Dominican Republic argued that its decision was not based on the Haitian origin of the children but rather was the result of their failure to provide the documentation required to "opt for" Dominican nationality.<sup>140</sup> The state made two revealing remarks in support: (1) "[b]y being born on Dominican Territory, the children had the right to opt for [Dominican] nationality," and (2) "[t]he alleged victims were able to opt for Haitian nationality because of the *jus sanguinis* connection through their fathers; therefore, they were never in danger of being stateless."<sup>141</sup>

The Inter-American Commission on Human Rights and the girls' representatives contended that, in practice, the Dominican authorities took the position that children of Haitian origin born in the Dominican Republic were not Dominican nationals because their fathers were migrant workers and therefore "in transit."<sup>142</sup> In response, the Court stated that the migratory status of a person cannot be a condition for a state to grant nationality and that the migratory status of a person is not transmitted to his child.<sup>143</sup> The Court further observed that to consider a person in transit, 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."<sup>144</sup> The Inter-American Court on Human Rights then found that the Dominican Republic had in fact violated the Yean and Bosico children's right to a nationality.<sup>145</sup>

With regards to statelessness, the Court noted that the obligation not to adopt practices or laws that foster an increase in the number of stateless persons arises both where the individual does not

138. See *id.* ¶ 109(11) (highlighting that the state required an extensive list of documentary evidence for late registration/declaration of birth thereby making it extremely difficult to acquire a birth certificate to prove Dominican nationality; see also *id.* ¶¶ 109(18)–(28) (outlining the list of documentary evidence for declaration of birth).

139. See *id.* ¶ 109(12) (stating that the *jus soli* framework was adopted to grant Dominican nationality).

140. *Id.* ¶ 121(a) (outlining the State's arguments).

141. *Id.* ¶¶ 121(b)–(c) (outlining the State's arguments).

142. See *id.* ¶ 152. Apparently, the Dominican Republic attempted to codify this in its migration law by providing that only children of persons deemed to be Dominican "residents" were entitled to Dominican citizenship. On giving birth, persons who lacked Dominican citizenship or documentation were given a "pink certificate" listing the mothers' name and date to be recorded in a book of foreigners. For a discussion of this practice, see Kosinski, *supra* note 59 at 383.

143. See Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 156 (2005), (noting the factors the Court considered).

144. *Id.* ¶ 157 (noting the Court's observations).

145. See *id.* ¶ 174 (asserting the Court's findings).

qualify to receive nationality under another state's laws and where he would be entitled to a nationality that, "in actual fact, is not effective."<sup>146</sup> In other words, state parties to the American Convention have a duty to grant their nationality to persons born in their territory if failure to do so would cause de facto statelessness.

The Inter-American Court on Human Rights also reasoned that a state's obligation to avoid statelessness is particularly important and urgent in the case of children.<sup>147</sup> Children are entitled to special protection because of their vulnerability.<sup>148</sup> States should not interfere with the free development of their personalities by making unreasonable or arbitrary rules regarding nationality.<sup>149</sup> Because of the special vulnerabilities of children, Article 19 of the American Convention stipulates that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."<sup>150</sup> Thus, state parties to the American Convention may have greater obligations where the nationality of minor children is in question.<sup>151</sup>

The Inter-American Court found that states must abstain from regulations that are discriminatory or have a discriminatory impact on certain groups of the population.<sup>152</sup> The Court's reasoning suggests that facially nondiscriminatory nationality laws may nevertheless violate the American Convention if they have a disparate impact on persons of a specific race, color, or national origin.<sup>153</sup> Moreover, nationality legislation cannot discriminate based on "migratory status."<sup>154</sup>

In a unanimous decision, the Inter-American Court on Human Rights ordered the Dominican Republic to adopt a simple, accessible, and reasonable procedure for acquiring Dominican nationality based on late birth registration.<sup>155</sup> Implicit in this order was a requirement

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146. See *id.* ¶ 142 (explaining why states have the obligation to withhold from adopting practices or laws that foster "an increase in the number of stateless persons").

147. See *id.* ¶¶ 166–67 (noting the special circumstances surrounding the granting of nationality to children).

148. See *id.*

149. See *id.* ¶¶ 166–171 (stating the special considerations the Court gives to children and discriminatory treatment, when deciding whether or not to grant nationality).

150. See American Convention, *supra* note 128, art. 19.

151. See *id.*

152. See Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 141 (2005) (emphasizing that when "regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory").

153. See *id.* ¶ 141 ("States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of [the] population when exercising their rights.").

154. See *id.* ¶ 155 (mentioning that the Court has an obligation to ensure equal protection and nondiscrimination irrespective of migratory status).

155. See *id.* ¶ 260(8) (stating the Court's judgment).

for the state to recognize the Yean and Bosico children as Dominican nationals. The Dominican Republic expressed its dissatisfaction with the ruling in a later application for interpretation of the decision, but the Court rejected this as a disguised appeal.<sup>156</sup> Following this rejection, the Dominican Republic amended its constitution to prospectively prevent children of illegal residents from qualifying for Dominican nationality based on *jus soli*.<sup>157</sup> The state's judiciary then took the controversial step of retroactively interpreting the Constitution to deprive Dominican nationality to persons in the position of the children in *Yean & Bosico*.<sup>158</sup> The Dominican Republic is therefore in violation of its obligation to comply with decisions of the Inter-American Court on Human Rights.<sup>159</sup>

## V. ANALYZING THE HAITIAN DESCENDANTS' CLAIM TO DOMINICAN NATIONALITY

A preliminary step in resolving the predicament of Haitians in the Dominican Republic is determining which, if any, segment of the population is entitled to Dominican nationality under international law. Since the Dominican Republic has the right to determine nationality eligibility criteria in general, the Haitian descendants must base their claims on more than general notions of fairness, economic need, or even reasonable expectations. On the other hand, as a party to the Convention for the Reduction of Statelessness and the American Convention of Human Rights, the Dominican Republic cannot adopt nationality laws that increase the incidence of statelessness or deprive persons of Dominican nationality in an arbitrary or discriminatory manner.

### A. *Haitians Born in Dominican Territory Prior to the 2010 Constitutional Amendment Were Dominican Nationals*

The solutions proposed in this Note are limited to Haitian descendants born in Dominican territory. Persons of Haitian origin have a much weaker claim to Dominican nationality if they were not born in the Dominican Republic. Duration of residence in the

156. See *Yean and Bosico v. Dominican Republic*, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 156, ¶ 25 (Nov. 23, 2006), available at [http://www.worldcourts.com/iacthr/eng/decisions/2006.11.23\\_Yean\\_v\\_Dominican\\_Republic.pdf](http://www.worldcourts.com/iacthr/eng/decisions/2006.11.23_Yean_v_Dominican_Republic.pdf) [<http://perma.cc/AJM4-EE36>] (archived Sept. 8, 2014) (dismissing the appeal).

157. Constitution of the Dom. Rep. 2010, art. 18. (outlining persons who qualify as Dominican nationals).

158. See *Pierre*, *supra* note 2, at 60.

159. Compare *id.* to *Yean and Bosico*, Inter-Am. Ct. H.R. (ser. C) No. 130, (2005).



territory of a state does not give rise to a claim for nationality based on *jus soli* or *jus sanguinis* under international law.<sup>160</sup> Haitians in this category have contributed significantly to the Dominican economy over several decades and were at some point invited to work on the Dominican sugar plantations by the Dominican government.<sup>161</sup> However, even if these factors support a moral claim to work authorization, they do not give rise to an entitlement to Dominican nationality under either domestic or international law.<sup>162</sup>

The claim to Dominican nationality is strongest in the case of Haitian descendants who were born in Dominican territory prior to the 2010 constitutional amendment.<sup>163</sup> Prior to the 2010 amendment, the Constitution of the Dominican Republic automatically conferred nationality to persons born in its territory unless the person was born to foreign diplomats or persons in transit.<sup>164</sup> The Inter-American Court of Human Rights compellingly reasoned that a person who has resided in a country for a significant time and has established ties with that country is not in transit.<sup>165</sup> It is difficult to accept the Dominican Republic's argument that every irregular alien is in transit.<sup>166</sup>

Persons born in Dominican territory prior to the 2010 constitutional amendment also have a reasonable claim to Dominican nationality based on the state's official statements and practice.<sup>167</sup> Prior to the *Pierre* decision, the state admitted to the Inter-American

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160. See generally Scott, *supra* note 77, at 58–64 (expounding on the requirements for establishing nationality based on *jus sanguinis* and *jus soli*).

161. See, e.g., MARYSE FONTUS, HAITIAN SUGAR-CANE CUTTERS IN THE DOMINICAN REPUBLIC 9-16 (1989) (detailing historical incidences of agreements between the Haitian and Dominican governments for provision of plantation workers and even incidences of forced recruitment).

162. See, e.g., Archibold NY Times Article, *supra* note 20 (discussing the issues surrounding the Haitian court's decision to retroactively revoke the citizenship of children born from undocumented Haitian migrants).

163. See Archibold NY Times Article, *supra* note 20 (“Legal experts, as well as two dissenting judges on the constitutional court, called it a violation of legal principles to retroactively apply the standard of citizenship established in the 2010 Constitution. ‘As a consequence of this restrictive interpretation and its retroactive application, this ruling declares the plaintiff as a foreigner in the country where she was born,’ wrote one of the dissenting judges, Isabel Bonilla.”).

164. See Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 148 (2005) (discussing the nationality provisions of the 1994 Constitution of the Dominican Republic).

165. See *id.* ¶ 157 (delineating the classification of in transit).

166. See, e.g., Archibold NY Times Article, *supra* note 20 (“[I]n recent decades the country's civil registry officials often excluded the children of migrants whose papers were in question by considering their parent ‘in transit.’ The Inter-American Court of Human Rights in 2005 denounced the practice as a way of discriminating against people who had been in the country for a lifetime.”).

167. See *id.* Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 121 (2005) (outlining the State's arguments with respect to Article 20 of the American Convention).

Court on Human Rights that children born in its territory to irregular immigrants were entitled to Dominican nationality.<sup>168</sup> Despite reports that some civil registry offices refused to grant identification documents to persons of Haitian descent, the state provided some children born in its territory to irregular migrants with birth certificates that identified them as Dominican.<sup>169</sup> Thus, from all indications, prior to the *Pierre* decision, persons born in the Dominican Republic to Haitian parents or descendants residing in the Dominican Republic were entitled to Dominican nationality prior to the 2010 constitution.

### B. *The Pierre Decision Constituted Arbitrary and Discriminatory Deprivation of Nationality*

Since Haitian descendants born in Dominican territory prior to the 2010 constitutional amendment were Dominican nationals under Dominican law, the recent holding that they are not Dominicans amounts to deprivation of Dominican nationality.<sup>170</sup> While there is no general ban on deprivation of nationality, international law prohibits the Dominican government from depriving people of Dominican nationality in an arbitrary or discriminatory manner, whether or not there is a risk of resulting statelessness.<sup>171</sup>

The Inter-American Commission on Human Rights has asserted that the Dominican Republic arbitrarily deprived Haitian descendants of Dominican nationality in the *Pierre* decision and is therefore in breach of its international obligations.<sup>172</sup> According to the Commission, some affected persons were registered at birth as Dominican nationals by the appropriate authorities and “[t]hroughout their lives were provided other documents establishing their identity, such as national ID cards (*cédulas*), voter credentials, and passports.”<sup>173</sup> The Dominican Republic arbitrarily deprived these

168. *See id.*

169. *See generally id.*

170. *See supra* note 163 and accompanying text.

171. *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) art. 15(2) (“No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”).

172. Press Release, Inter-Am. Comm’n H.R., Preliminary Observations from the IACHR’s visit to the Dom. Rep. (Dec. 2-6, 2013) [hereinafter *IACHR Preliminary Observations*] available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/097A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp) [<http://perma.cc/4NV4-NMZC>] (archived on Sept. 8, 2014) (making the preliminary finding that the *Pierre* decision “has a discriminatory effect, given that it primarily impacts Dominicans of Haitian descent, who are Afro-descendant persons; strips nationality retroactively; and leads to statelessness when it comes to those individuals who are not considered by any State to be their own nationals, under their laws”).

173. *See id.* (“This new interpretation by the Constitutional Court retroactively strips the right to Dominican nationality from tens of thousands of people who had

Haitian descendants of Dominican nationality when its judiciary interpreted the constitutional eligibility requirements retroactively and unfairly to exclude the children of irregular migrants.<sup>174</sup>

Independent of the Haitian descendants' claim to Dominican nationality under pre-2010 Dominican constitutional law, the state has an obligation to avoid increasing the incidence of statelessness. Both the Convention on the Reduction of Statelessness and the American Convention require it to grant nationality based on *jus soli* to persons born in its territory who would otherwise be stateless.<sup>175</sup> The Dominican Republic contends that it has no duty to grant nationality to Haitian descendants because they have a claim to Haitian nationality based on Haiti's *jus sanguinis* nationality regime.<sup>176</sup>

This argument fails to consider the importance of an "effective nationality" and the duty to avoid de facto statelessness. The UN Refugee Agency identified numerous factors that probably make a claim to Haitian nationality less than effective.<sup>177</sup> Haiti is not a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, and so it may not have the same obligations as the Dominican Republic under international law.<sup>178</sup> The Refugee Agency found two manifestations of statelessness in Haiti: "(1) the risk of statelessness of Haitian children born in Haiti due to lack of birth registration and institutional deficiencies in civil registration in general and (2) the risk of statelessness of children of Haitian descent born outside of Haiti to first generation Haitian migrants (born in Haiti) or successive generations of Haitian immigrants (themselves also born outside of Haiti)."<sup>179</sup>

Technically speaking, "[b]oth 'Haitians of origin' and naturalized Haitians can transmit Haitian nationality to subsequent generations under the *jus sanguinis* nationality regime."<sup>180</sup> But, the UN Refugee Agency found that "*in practice*, the affirmative recognition of

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been considered Dominicans for their entire lives, many of whom were registered at birth as Dominican nationals by the appropriate authorities and throughout their lives were provided with other documents establishing their identity, such as national ID cards (*cédulas*), voter credentials, and passports.")

174. *See id.*

175. *See discussion supra* Part IV.B.

176. *See Pierre, supra* note 2, §§ 3.1.1.–3.1.2., at 75–77 (commenting on the Haitian descendants' right to Haitian nationality under the Haitian constitution and finding that they would not be stateless without Dominican nationality).

177. *See UNHCR Haiti Report, supra* note 43, at 2–3 (discussing constitutional and practical obstacles to effective claims of Haitian nationality).

178. *Compare id.* at 1 (stating Haiti's nonparty status to the conventions), with discussion *supra* Part IV.B. (discussing the Dominican Republic's convention obligations).

179. UNHCR Haiti Report, *supra* note 43, at 2.

180. *Id.*

nationality through issuance of appropriate civil documentation . . . is highly problematic.”<sup>181</sup> “Structural factors related to human and financial resources, weak institutions, lack of clear regulatory frameworks, and socioeconomic factors within Haitian communities” lead to a very low rate of civil documentation among persons born in Haiti.<sup>182</sup> This situation worsened with the January 12, 2010, earthquake that devastated Haiti’s capital and surrounding towns, causing loss of government staff, facilities, and documentation.<sup>183</sup> These deficiencies put Haitian descendants at home and abroad at significant risk of de facto statelessness.<sup>184</sup>

Haitian descendants abroad face additional hurdles due to weak and underresourced consular services in Haitian embassies and consulates abroad.<sup>185</sup> While the Haitian constitution bases nationality on descent, “complying with the documentary requirements to demonstrate descent from a Haitian national is very difficult and costly for those outside of Haiti.”<sup>186</sup> The proper interpretation of the nationality law is also unclear. For instance, in a 2008 UNHCR survey of the four Haitian consulates serving the highest number of Haitians abroad, “consular officials disagreed on how far, i.e. to which generation, lineage rights could extend to grant nationality.”<sup>187</sup> As a result of these difficulties, Haitian descendants born in the Dominican Republic may be unable to satisfactorily prove their Haitian lineage.<sup>188</sup> They therefore face a significant risk of statelessness.<sup>189</sup> The Haitian prohibition on dual nationality compounds this problem, as Haitian descendants may not have Haitian nationality if their ancestors acquired Dominican nationality under the prior Dominican constitutions.<sup>190</sup>

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181. *Id.*

182. *Id.* at 3.

183. *Id.* (“The 12 January 2010 earthquake that devastated Haiti’s capital and surrounding towns, exacerbated problems related to civil identity documentation, implying larger numbers of the population were rendered at risk of statelessness . . . . [T]he needs related to issuance of civil identity documents are enormous.”).

184. *See id.* (discussing the estimated hundreds of thousands of persons in need of new documents and the inability of Haiti’s highly weak infrastructure to accommodate those needs); *see also* Nicola Sharp, *Technical Consultation of Global Partners Forum on Children Affected by HIV and AIDS: Technical Paper on Birth Registration*, 2 (2007), [http://www.unicef.org/french/aids/files/GPF-Birth\\_Registration.pdf](http://www.unicef.org/french/aids/files/GPF-Birth_Registration.pdf) [<http://perma.cc/G8SJ-JWJD>] (archived Sept. 8, 2014) (showing greater than 25 percent of Haitian children are unregistered at birth).

185. UNHCR Haiti Report, *supra* note 43, at 3.

186. *Id.*

187. *Id.*

188. *See id.* at 2 (“[P]ersons of Haitian descent who are born with another nationality, or acquire one after birth, are not considered to be nationals.”).

189. *Id.* at 3.

190. *See id.* at 2 (“Haitian law does not allow for dual nationality.”).

The Inter-American Court on Human Rights' interpretation of the American Convention's provisions regarding statelessness is binding on the Dominican Republic.<sup>191</sup> Thus, the state must grant Dominican nationality to those born in its territory who are not entitled to another nationality or are entitled to a nationality that, "in actual fact, is not effective."<sup>192</sup> Haitian descendants born in the Dominican Republic are not entitled to another "effective" nationality and therefore face de facto statelessness.<sup>193</sup> The Dominican Republic is therefore obligated to take steps to recognize and restore their right to Dominican nationality.<sup>194</sup>

## VI. THE ROLE OF REGIONAL AND INTERNATIONAL ORGANIZATIONS AND THE INTERNATIONAL COMMUNITY

The international community has a crucial role to play in protecting the Haitian descendants' right to a nationality and reducing their risk of statelessness. Regional organizations such as the Organization of American States and the Caribbean Community, as well as international bodies such as the United Nations High Commissioner for Refugees, should urgently intervene. As the main provider of foreign aid to the Dominican Republic, the United States also has significant leverage in resolving the crisis.

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191. See American Convention, *supra* note 128, arts. 62, 64, 68. ("The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction . . . [M]ember states of the Organization may consult the Court regarding the interpretation of this Convention. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."); American Convention Ratification List, *supra* note 128 (showing the ratification of the American Convention by the Dominican Republic).

192. Yean and Bosico, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 142 (2005). See also American Convention, *supra* note 128, art. 20 ("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.").

193. See, e.g., Allyn Gaestel *Stateless in the Dominican Republic: Residents Stripped of Citizenship*, AL JAZEERA AMERICA, May 4, 2014, <http://america.aljazeera.com/articles/2014/5/4/stateless-in-the-dominican-republic-residents-stripped-of-citizenship.html> [<http://perma.cc/4H8S-LLE3>] (archived Sept. 8, 2014) ("September's court ruling made that policy [of denying citizenship to children born to parents without legal permanent residence] retroactive, rendering stateless people born and raised in the country.").

194. See American Convention, *supra* note 128, art. 20 (describing the right to citizenship as a birthright).

A. *Despite Recent Legislation, the State Continues to Violate International Law*

In response to the global criticism of the *Pierre* ruling and its repercussions, in May of 2014, the Dominican government adopted *Ley de Regimen Especial y Naturalization* 169-14 (Law 169-14).<sup>195</sup> Law 169-14 mitigates some of the harmful effects of the *Pierre* decision by recognizing those individuals who received Dominican birth registration between 1929 and 2007 as Dominican citizens.<sup>196</sup> Individuals without Dominican birth registration may receive permission to reside and work in the Dominican Republic and pursue Dominican citizenship after two years.<sup>197</sup> Law 169-14 reduces the number of Haitian descendants at risk of losing Dominican citizenship.<sup>198</sup> In addition, it ostensibly establishes a route to citizenship for the thousands of Haitian descendants who were born in the Republic from 1929 to 2007 but lack Dominican birth registration.<sup>199</sup>

Law 169-14, however, fails to bring the Dominican government into compliance with international law for several reasons.<sup>200</sup> The law

195. Ley No. 169-14 de 2014 que establece un régimen especial para personas nacidas en el territorio nacional inscritas irregularmente en el Registro Civil dominicano y sobre naturalización (2014) (Dom. Rep.) available at <http://www.refworld.org/docid/53882dea4.html>; see Allyn Gaestel, *Dominican Republic Citizenship Law Ends Limbo for Haitian Descendants*, THE GUARDIAN, May 23, 2014, <http://www.theguardian.com/global-development/2014/may/23/dominican-republic-citizenship-haiti-descendants>, [<http://perma.cc/9A5K-JQTZ>] (archived on Sept. 8, 2014) (reporting that, after intense pressure, Congress passed a law that will regularize children of irregular migrants who have birth certificates and allowing descendants of irregular migrants who never had papers to naturalize).

196. See Press Release, Open Soc'y Found., Dom. Rep.'s New Naturalization Law Falls Short (June 3, 2014), <http://www.opensocietyfoundations.org/press-releases/dominican-republics-new-naturalization-law-falls-short> [<http://perma.cc/98FA-2QB6>] (archived on Sept. 8, 2014) [hereinafter Open Soc'y Found.] (reporting that the Law 169-14 "mitigates some of the most egregious consequences of the Constitutional Tribunal's ruling by recognizing as citizens those who possess registration of their births between 1929 and 2007"); *No Place Like Home; Migrants in the Dominican Republic*, THE ECONOMIST, May 31, 2014, at 30-31, available at <http://www.economist.com/news/americas/21603017-travails-children-haitian-migrants-dominican-republic-no-place-home> [<http://perma.cc/WGV6-SCB4>] (archived on Sept. 8, 2014) [hereinafter THE ECONOMIST] (reporting that due to the naturalization law "[a] nightmare is about to end for some 24,000 people in the Dominican Republic (DR)").

197. Open Soc'y Found., *supra* note 196; THE ECONOMIST, *supra* note 196.

198. See Open Soc'y Found., *supra* note 196 (noting the law recognizes citizenship of those whose birth was registered between 1929 and 2007).

199. See *id.* (describing the process for obtaining citizenship for those who did register their birth between 1929 and 2007); THE ECONOMIST, *supra* note 198 ("After a two-year waiting period they will be eligible to apply for naturalised citizenship, which carries all the rights of the native-born except the ability to hold high office.").

200. See, e.g., Press Release, Robert F. Kennedy Ctr. for Justice and Human Rights, New Dominican Republic Naturalization Law Continues Discrimination

creates legal uncertainty by determining Dominican citizenship based on whether a birth was officially registered as opposed to whether the individual was born in Dominican territory.<sup>201</sup> It ignores the fundamental problem with the *Pierre* decision—its retroactive interpretation of the Dominican Constitution to deny citizenship based on *jus soli* where the individual was born in Dominican territory from 1929 to 2013 to migrant parents without formal status.<sup>202</sup> Law 169-14 does nothing to undo the underlying doctrine of the *Pierre* decision.<sup>203</sup> This creates uncertainty as to the strength and longevity of the new naturalization regime, especially in light of the continued divisiveness of the issue in the Dominican legislature.<sup>204</sup>

Human rights organizations also point to the lack of an independent and clear judicial process for determining whether the birth certificates are invalid as a result of fraud or misrepresentation.<sup>205</sup> As written, Law 169-14 allows the Dominican Republic to deny citizenship on these grounds.<sup>206</sup> In light of the evidence of past discrimination in the bureaucratic process, the Dominican Republic should provide clear parameters and an independent adjudicatory process.<sup>207</sup>

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against Thousands of Dominicans of Haitian Descent (May 22, 2014), <http://rfkcenter.org/new-dominican-republic-naturalization-law-continues-discrimination-against-thousands-of-dominicans-of-haitian-descent> [hereinafter Robert F. Kennedy Ctr.] (commenting that “[i]n its current form, the ‘Naturalization’ Law is an illusory title because it does not recognize the right to nationality for the vast majority of Dominicans of Haitian descent”).

201. Open Soc’y Founds., *supra* note 196 (“However, the new Law’s recognition of citizenship is based not on the fact of birth itself on Dominican territory, but rather on whether a birth was officially registered at the time.”).

202. *See id.* (“[M]any Dominicans of Haitian descent, particularly those living in poverty, were either unable or actively prevented from registering births during the 1929-2007 period. As a result, they will still lose Dominican citizenship, and may be rendered stateless.”).

203. *Id.*

204. *See id.* (indicating that Law 169-14 will create numerous legal uncertainties and fails to bring the Dominican Republic’s naturalization regime within the country’s international law obligations).

205. *Id.*

206. *Id.*

207. *See id.* (noting that some Dominicans of Haitian descent were actively prevented from registering births); *see also* DOMINICANOSXDERECHO, *Amnistía Internacional: La ley de naturalización es un paso en la dirección correcta, pero aún muy lejos de la justicia en RD*, June 3, 2014, <https://dominicanosxderecho.wordpress.com/2014/06/03/amnistia-internacional-la-ley-sobre-naturalizacion-es-un-paso-en-la-direccion-correcta-pero-aun-muy-lejos-de-la-justicia-en-rd/>, [http://perma.cc/M4NV-Y6CY] (archived on Sept. 8, 2014) (reporting on Amnesty International’s position that “[t]he Dominican authorities must ensure due process and the right to judicial review in all cases of deprivation of nationality. [The authorities] [m]ust also create an oversight committee with representatives from civil society, to ensure the full and fair enforcement of the law. If the Dominican authorities seriously seeking a solution must ensure that the arbitrariness and discrimination will no longer be the norm when Dominicans of Haitian descent seeking access to their rights.”).

There is evidence that many Haitian descendants were unable to register births with the Dominican authorities due to their socioeconomic circumstances or active obstruction by the authorities.<sup>208</sup> As discussed in Part II(A), *infra*, Haitian births are underreported in the Dominican Republic due to factors such as poverty, isolation, xenophobia, and racial discrimination.<sup>209</sup> For such unregistered persons, Law 169-14 establishes a questionable route to citizenship entailing registration as a foreigner, receipt of a migratory permit, and residency for an additional two years before eligibility for naturalization.<sup>210</sup>

This “route to citizenship,” though practical, arguably runs afoul of international law.<sup>211</sup> The startling implication is that thousands of Haitian descendants will be forced to declare themselves to be foreigners in the hope of eventually obtaining Dominican citizenship after two or more years.<sup>212</sup> In the interim, they face serious risk of *de facto*, if not *de jure*, statelessness since it is extremely difficult for them to prove nationality of another state.<sup>213</sup> Furthermore, they will be unable to vote or enjoy other benefits of citizenship.<sup>214</sup> The “route to citizenship” runs counter to the Inter-American Commission’s position that international law requires corrective measures that are general and automatic and should not require Haitian descendants to register as foreigners in order to secure recognition of their citizenship.<sup>215</sup> Even those Haitian descendants who eventually obtain

208. See THE ECONOMIST, *supra* note 198 (reporting that “the law offers no solution for the biggest group involved: those who were born in the DR to parents without legal residence, but cannot demonstrate it” and that based on UN surveys “around 200,000 may be in this predicament”).

209. See discussion, *supra* Part II.A.

210. See THE ECONOMIST, *supra* note 198 (noting that foreigner registration opens individuals up to statelessness and deportation); Robert F. Kennedy Ctr., *supra* note 200 (explaining that foreigner registration will deny access to basic services that are normally provided to Dominicans); Open Soc’y Funds., *supra* note 196 (highlighting that the process does not guarantee naturalization).

211. See Open Soc’y Funds., *supra* note 196 (explaining that “people who were denationalized cannot be required to register as foreigners in order to secure recognition of their citizenship” according to the Inter-American Commission).

212. See THE ECONOMIST, *supra* note 196 (describing the two-year waiting period for naturalization of persons with unregistered births); Robert F. Kennedy Ctr., *supra* note 202 (noting that registering officially makes individuals stateless until naturalized); Open Soc’y Funds., *supra* note 196 (explaining that naturalization is not always guaranteed with registration as a foreigner and opens up the possibility of deportation).

213. See Open Soc’y Funds., *supra* note 196 (noting that many Haitian immigrants did not have formal migrant status); discussion *supra* Part IV.B.

214. See Robert F. Kennedy Ctr., *supra* note 200.

215. See IAHR Preliminary Observations, *supra* note 172 (“Measures to guarantee the right to nationality . . . should be general and automatic.”); Robert F. Kennedy Ctr., *supra* note 200 (describing the requirement to register as foreigners before naturalization as discriminatory).



citizenship will not enjoy the same rights as those who are Dominicans by birth.<sup>216</sup>

Hoping to address some of these criticisms, on July 23, 2014, President Medina promulgated Decree 250-14 (the Decree), which establishes several acceptable methods by which individuals may prove birth in Dominican territory.<sup>217</sup> By virtue of the Decree, a person may prove Dominican birth by producing a statement from a public hospital or private medical center indicating the mother's name, baby's gender, and its date of birth.<sup>218</sup> However, this provision is unlikely to benefit the isolated and poor Haitian descendants, whose deliveries are often conducted by local midwives who do not work for public hospitals or private medical centers.<sup>219</sup>

For those Haitian descendants who were not born in a public hospital or private medical center, the Decree requires a notarized statement from seven Dominican witnesses indicating the baby's date of birth, baby's name, and the names of the parents in addition to a sworn and notarized statement from the midwife indicating the date and place of birth and the mother's name.<sup>220</sup> Given that the Law and Decree apply to Haitian descendants born as early as 1929, it may be extremely difficult for individuals to locate their midwives and

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216. Robert F. Kennedy Ctr., *supra* note 200.

217. See Decreto 250-14: Reglamento de aplicación de la Ley 169-14 (May 23, 2014), available at <http://www.cpalsocial.org/documentos/40.pdf> [<http://perma.cc/6E8C-ECF3>] (archived on Sept. 9, 2014); *Medina Signs Enforcement for Controversial Naturalization Law*, DOMINICAN TODAY, [http://www.dominicantoday.com/dr/local/2014/7/24/52225/print.\[http://perma.cc/C37Q-Q6S6](http://www.dominicantoday.com/dr/local/2014/7/24/52225/print.[http://perma.cc/C37Q-Q6S6)] (archived Sept. 9, 2014) ("Medina issued the regulation to enact Law 169-14 which provides a fast track to naturalization for people born in the national territory but enrolled irregularly in the Dominican Republic's Civil Registry.")

218. See Decreto 250-14: Reglamento de aplicación de la Ley 169-14, art. 10 (May 23, 2014).

219. See, e.g., Stephanie Leventhal, Note, *A Gap Between Ideals And Reality: The Right To Health And The Inaccessibility Of Healthcare For Haitian Migrant Workers In The Dominican Republic*, 27 EMORY INT'L L. REV. 1249, 1271 (2013) ("A trend among Haitian migrants is to delay seeking care until they are faced with a life-and-death matter." "Similarly, it is not uncommon for pregnant Haitian women to have their babies at home with the help of other women who live in their communities. If there are complications, the woman will be taken to the hospital; otherwise, having the baby at home avoids associated costs." (footnote omitted)); Yewah Jung, *Health As A Right: Haitian Immigrants in the Dominican Republic 11* (May 9, 2006) (unpublished paper, Rutgers School of Public Health), available at [http://sph.rutgers.edu/service/dr\\_outreach/health\\_rights.pdf](http://sph.rutgers.edu/service/dr_outreach/health_rights.pdf) [<http://perma.cc/Q2HZ-2DF7>] (archived Oct. 2, 2014) (noting that in relation to Haitian descendants who live in the bateyes, "[t]he far proximity of hospitals and clinics . . . pose problems for access to care. Furthermore, medical care within the bateyes hardly exist, and bateyes often rely on the medical assistance of non-governmental organizations.").

220. See Decreto 250-14: Reglamento de aplicación de la Ley 169-14, art. 11 (May 23, 2014).

acquire the requisite sworn statement.<sup>221</sup> It will be difficult for many Haitian descendants, especially the older generation, to find seven Dominican witnesses willing and able to testify as to the circumstances of their birth. Lapsed memories, lack of recorded documents, and ingrained xenophobia will likely hinder the Haitian descendants in their efforts to prove Dominican birth.<sup>222</sup>

Law 169-14 and the Decree, though practical and helpful, have failed to undo the injustice and illegality resulting from the *Pierre* decision. Law 169-14 formalizes the *Pierre* decision's denial of birthright citizenship to Dominicans of Haitian descent.<sup>223</sup> The Dominican government continues to violate international law in denying citizenship to thousands of Haitian descendants born in its territory during the period when its constitution provided Dominican nationality based on *jus soli*. Law 169-14 is a "single rope" when "an armada of lifeboats" is necessary.<sup>224</sup>

### B. *The OAS Challenge*

In May 2013, prior to the *Pierre* decision, the OAS agreed to support a joint initiative of the Dominican and Haitian government to grant civil identity documentation to migrant workers from Haiti.<sup>225</sup> The OAS agreed to provide technical assistance for the modernization and integration of Haiti's civil registration system after the Dominican Republic's President, Medina, offered to help improve the facilities and infrastructure.<sup>226</sup> The Dominican Republic apparently hoped that its assistance would help to regularize "over [200,000] Haitian workers living in the Dominican Republic through a temporary work visa program."<sup>227</sup>

After the *Pierre* decision, the Inter-American Commission on Human Rights expressed concern with the implications of the ruling

221. This difficulty is reasonably foreseeable when one considers that some persons affected by the *Pierre* decision were born some eighty-five years prior and that the midwives delivering them were probably adults at the time of delivery. Due to this significant lapse of time, midwives may have died or simply forgotten the details of the delivery.

222. See discussion *supra* Part II.A.

223. See Robert F. Kennedy Ctr., *supra* note 200 (stating that Law 169-14 maintains all persons with unregistered births are foreigners).

224. See *id.* (criticizing the Dominican government for choosing to "to continue with its discriminatory policies" and commenting "[w]e needed an armada of lifeboats; instead the Dominican government threw down a single rope").

225. Press Release, Org. of American States (OAS), OAS to Support Process of Registration of Haitian Citizens in the Dominican Republic (May 1, 2013), [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-170/13](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-170/13) [<http://perma.cc/9SS6-PDBQ>] (archived Sept. 28, 2014).

226. *Id.*

227. *Id.*

and voiced its interest in visiting the Dominican Republic.<sup>228</sup> On the government's invitation, the Commission conducted on-site investigations in the Dominican Republic from December 5, 2013, to December 7, 2013. In its preliminary observations, the Commission reported that "[t]he violations of the right to nationality that it observed during the [preceding] on-site visit, in 1997, continue[d], and the situation exacerbated as a result of" the *Pierre* decision.<sup>229</sup>

The Inter-American Commission reported that a very significant number of Dominicans, "estimated by various sources at more than [two hundred thousand] people, [had] been arbitrarily deprived of their nationality as a result of" *Pierre*.<sup>230</sup> It concluded that "these individuals have seen their right to legal personhood violated, and they live in a state of extreme vulnerability."<sup>231</sup> The Commission also observed that the denationalization "disproportionately affect[ed] persons of Haitian descent," thus "constituting a violation of the right to equal protection without discrimination."<sup>232</sup>

The Commission concluded that the Dominican government should "take urgent steps" to restore Dominican nationality to those "individuals who already had this right under the domestic legal system in effect from 1929 to 2010."<sup>233</sup> It noted that the state should not require persons affected by its judgment to register as foreigners or apply for naturalization.<sup>234</sup> Rather, measures to guarantee the right to nationality of those harmed by the *Pierre* decision should be "general and automatic" as well as "clear, fast, . . . fair," financially accessible, and nondiscriminatory.<sup>235</sup> The Commission indicated its "willingness to work with the State to find solutions that protect fundamental rights and meet international human rights standards."<sup>236</sup>

The Commission is a principal organ of the OAS, "whose mission is to promote and protect human rights in the American hemisphere."<sup>237</sup> The Commission's recommendations are nonbinding, but in the event that the Dominican Republic fails to implement its

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228. See IACHR Preliminary Observations, *supra* note 173 ("The IACHR held meetings with State authorities, civil society organizations, victims of human rights violations, and representatives of international agencies. During its visit, the IACHR received testimony, petitions, and communications from 3,994 individuals.").

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 5.

233. *Id.* at 20.

234. *Id.*

235. *Id.*

236. *Id.* at 19.

237. See Organization of American States (OAS), *What is the IACHR?*, <https://www.oas.org/en/iachr/mandate/what.asp> [<http://perma.cc/S7BW-CPW9>] (archived Aug. 31, 2014) (outlining the Commission's mandate and work).

recommendations, it may bring the state before the Inter-American Court on Human Rights.<sup>238</sup> If this were to occur, the Court would probably rule as it did in the *Yean & Bosico* case and find that the Dominican Republic is in breach of its international obligations.<sup>239</sup>

Unfortunately, the American Convention does not provide a mechanism to enforce the Court's decision and so compliance depends largely on state parties' interest in protecting their reputations. Since the Dominican Republic is already noncompliant with the Court's decision in *Yean & Bosico*, it probably would need additional motivation to comply with the Commission's recommendations or a later Court decision.

The Commission should be prepared to bring the matter before the General Assembly of the Organization of American States and make the case for diplomatic pressure and economic sanctions including reduction or termination of financial aid.<sup>240</sup> Further, the Commission should not be placated by the recent Dominican legislation since the measures adopted are not general or automatic and require thousands of Haitians to register as foreigners and apply for nationalization.<sup>241</sup>

### C. *Diplomatic and Economic Pressure from CARICOM*

The Caribbean Community and Common Market, a regional body established by the Treaty of Chaguaramas on August 1, 1973, has the ability to influence the Dominican Republic's treatment of Haitian descendants within Dominican territory.<sup>242</sup> Since Haiti is a member of CARICOM, the international community expected the Community to rise in defense of the Haitian descendants in the Dominican Republic.<sup>243</sup> The Dominican Republic is not a CARICOM member and as such is not subject to the rigorous duties of the Treaty

238. See American Convention, *supra* note 128, arts. 51, 57 (explaining how the Commission can bring a state before the Inter-American Court on Human Rights).

239. See *Yean and Bosico*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 260, at 83–85 (2005) (holding that the Dominican Republic violated the rights of nationality).

240. While there is no explicit provision for the Commission to act in this manner, its mandate includes annual human rights reports to the OAS General Assembly. See American Convention, *supra* note 128, art. 41(g) (listing the powers of the Commission).

241. See IAHCR Preliminary Observations, *supra* note 172, at 20 (outlining the Commission's recommendations for new legislation).

242. See Caribbean Community Secretariat, *History of the Caribbean Community (CARICOM)*, <http://www.caricom.org/jsp/community/history.jsp?menu=community> [<http://perma.cc/4VK9-N67N>] (archived Aug. 31, 2014) (recounting the history CARICOM and its goal of promoting regional integration).

243. Haiti became a member of CARICOM in 2002 after years of provisional membership. See *id.*

of Chaguaramas.<sup>244</sup> However, the Dominican government has applied for CARICOM membership, which puts the Community in an advantageous negotiating position.<sup>245</sup>

CARICOM should maximize this leverage in negotiating on behalf of the Haitian descendants as a show of solidarity to its member state and, more importantly, to make a clear statement that the regional body is committed to human rights. CARICOM was primarily formed to create a single market and economy by breaking down barriers to the freedom of movement, investment, and trade.<sup>246</sup> However, it has broader humanitarian goals including the development of “a healthy human environment in the Community.”<sup>247</sup> Thus, defending human rights falls within its mandate.

Indeed, CARICOM’s response to the *Pierre* ruling was swift and furious. The Community condemned the *Pierre* court’s “jaundiced decision” as an “abhorrent and discriminatory ruling.”<sup>248</sup> It considered the decision especially repugnant based on the *Yean & Bosico* ruling.<sup>249</sup> The Community expressed concern that “arbitrariness [may] flourish [based on] recent media reports of the forced deportation to Haiti of persons claiming to be Dominican and with no linguistic or familial ties to that country.”<sup>250</sup>

True to its rhetoric, CARICOM adopted measures to pressure the Dominican Republic to urgently redress the “grave humanitarian situation created by the ruling.”<sup>251</sup> The Community decided to review its “relationship with the Dominican Republic in other fora including

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244. See Caribbean Community Secretariat, *CARICOM Member States*, [http://www.caricom.org/jsp/community/member\\_states.jsp?menu=community](http://www.caricom.org/jsp/community/member_states.jsp?menu=community) [<http://perma.cc/6CTQ-6JKC>] (archived Aug. 31, 2014) (listing CARICOM’s fifteen members and five associate members).

245. See Press Release 265/2013, *Caribbean Community Secretariat, CARICOM Statement On Developments In The Aftermath Of The Ruling Of The Constitutional Court Of The Dominican Republic On Nationality* (Nov. 26, 2013) [http://www.caricom.org/jsp/pressreleases/press\\_releases\\_2013/pres265\\_13.jsp?null&prnf=1](http://www.caricom.org/jsp/pressreleases/press_releases_2013/pres265_13.jsp?null&prnf=1) [<http://perma.cc/MR4G-37EM>] (archived Aug. 31, 2010) [hereinafter *CARICOM Statement*] (calling on the “[g]overnment of the Dominican Republic to take the necessary political, legislative, judicial and administrative steps urgently to redress the grave humanitarian situation created by the [*Pierre*] ruling”).

246. See Caribbean Community Secretariat, *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including The CARICOM Single Market And Economy*, pmb., July 4, 1973, available at [http://www.wipo.int/wipolex/en/other\\_treaties/text.jsp?file\\_id=204027](http://www.wipo.int/wipolex/en/other_treaties/text.jsp?file_id=204027) [<http://perma.cc/5TMQ-NDMS>] (archived Sept. 9, 2014).

247. See *id.* art. 17(2).

248. See *CARICOM Statement*, *supra* note 245 (outlining several measures aimed at persuading the Dominican Republic to restore Dominican nationality to those affected by the *Pierre* decision).

249. *Id.*

250. *Id.*

251. *Id.*

that of CARIFORUM, CELAC[,] and the OAS.”<sup>252</sup> It decided to “suspend consideration of the request by the Dominican Republic for membership of the Caribbean Community.”<sup>253</sup> CARICOM also indicated that it would request an advisory opinion from the Inter-American Court of Human Rights and consider introducing a resolution to condemn the *Pierre* ruling at the United Nations General Assembly.<sup>254</sup>

Unfortunately, CARICOM stopped short of unequivocally conditioning the Dominican Republic’s membership on the country restoring Dominican nationality to the Haitian descendants born in Dominican territory prior to the 2010 constitution—a step it arguably should have taken. CARICOM also stopped short of imposing trade or travel sanctions on the Dominican Republic. Perhaps CARICOM adopted a “softer” approach in the interest of facilitating negotiations between Haiti and the Dominican Republic.

Nevertheless, the Dominican Republic perceived CARICOM’s response as heavy-handed. CARICOM’s response apparently drew the ire of Dominican President Danilo Medina, who declared that he rejected the idea that “anyone, either big nor small, could threaten the sovereignty of the Dominican Republic.”<sup>255</sup> Medina promised that the Dominican government would not undertake discriminatory practices but cautioned those who spoke on the controversial issue to do so “within the limits of [the Dominican Republic’s] sovereignty.”<sup>256</sup> Medina also indicated that the economic burdens imposed by unlawful Haitian migration made it necessary for the Dominican government to reform its nationality and immigration law.<sup>257</sup>

This dialogue between the Dominican Republic and CARICOM demonstrates the need for a cautious yet urgent approach. CARICOM and the international community must indeed act with respect for the Dominican Republic’s sovereign right to determine its nationality law and to reject a pure *jus soli* framework prospectively. On the other hand, CARICOM and the broader international community should not condone the arbitrary withdrawal of Dominican citizenship from

252. *Id.*

253. *Id.*

254. *Id.*

255. See Caribbean Journal, *Medina: “We Do Not Accept” Threats to Dominican Republic’s Sovereignty*, Jan. 30, 2014, (internal quotation marks omitted) <http://www.caribjournal.com/2014/01/30/medina-we-do-not-accept-threats-to-dominican-republics-sovereignty/> [<http://perma.cc/ZP8V-GJ9N>] (archived Aug. 31, 2014) (reporting on President Medina’s comment on the international community’s response to the *Pierre* decision).

256. *Id.* (internal quotation marks omitted).

257. See *id.* (estimating that about 13 percent of births in Dominican public hospitals involved mothers who were Haitian nationals, leading to a costs of around \$115 million USD).

Haitian descendants. An act contrary to international law can hardly be described as one within a state's zone of sovereignty.

To maximize its leverage, CARICOM should go beyond facilitating discussions between the Dominican Republic and Haiti by imposing a timetable for the passage of legislation to identify and automatically restore Dominican citizenship to Haitian descendants affected by the *Pierre* ruling with the threat of economic and other sanctions for nonconformity.

#### D. *The Need for Urgent and Decisive UNHCR Intervention*

To the extent that Haitian descendants in the Dominican Republic are at risk of statelessness, their predicament falls within the mandate of the UNHCR.<sup>258</sup> Haitian descendants in the Dominican Republic are still at risk of de facto, if not *de jure*, statelessness.<sup>259</sup> The UNHCR opined that the *Pierre* ruling renders many persons of Haitian descent stateless and has therefore urged the Dominican government to restore Dominican nationality to those affected.<sup>260</sup> The organization also expressed its readiness to assist the Dominican government in preventing a situation of statelessness and violations of human rights.<sup>261</sup>

The Dominican Republic stands to benefit from UNHCR's significant expertise in the administration and processing of undocumented persons, including the provision of identification crucial to full enjoyment of human rights.<sup>262</sup> It will likely receive

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258. See, e.g., G.A. Res. 50/152, ¶ 15, U.N. Doc. A/RES/50/152 (Dec. 21, 1995) (requesting that "the Office of the High Commissioner, in view of the limited number of States party to these instruments, actively . . . promote accession to the 1954 Convention relating to the Status of Stateless Persons 6(6) and the 1961 Convention on the reduction of statelessness, 7(7) as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States"). See also The U.N. Refugee Agency, *How UNHCR Helps the Stateless*, <http://www.unhcr.org/pages/49c3646c16a.html> [<http://perma.cc/ZX2V-UA9B>] (archived Aug. 31, 2014).

259. See *supra* Part IV (discussing the different risks of statelessness that Haitian defendants face).

260. See Press Release, U.N. High Comm'r for Refugees (UNHCR), UNHCR Urges the Dominican Republic to Restore Nationality (Dec. 5, 2013) *available at* <http://www.unhcr.org/print/52a0a59b9.html> [<http://perma.cc/X2BX-DK29>] (archived Aug. 31, 2014) [hereinafter UNHCR Press Release 2] (commenting on the effect of the *Pierre* decision on Human Rights in the Dominican Republic).

261. See UNHCR Press Release 1, *supra* note 10 (expressing deep concern that the *Pierre* decision will have adverse impacts on thousands of persons of Haitian descent residing in the Dominican Republic).

262. See U.N. High Comm'r for Refugees (UNHCR), Stateless Actions-Reduction, <http://www.unhcr.org/pages/49c3646c176.html> [<http://perma.cc/DA7Y-L5SC>] (archived Aug. 31, 2014) ("UNHCR thus strives to help the stateless acquire a nationality or obtain confirmation of their nationality. The refugee agency supports the revision of legislation and the conduct of large-scale citizenship campaigns that include

funding necessary to carry out its wide scale documentation project. The UNHCR should avoid compromising on the crucial issue of Dominican citizenship. The UNHCR should go beyond facilitating discussions and providing funding by imposing a timetable for the passage of legislation to automatically restore Dominican citizenship to Haitian descendants affected by the *Pierre* ruling. In the event that the Dominican Republic refuses to comply, the agency should be prepared to bring the issue before the UN General Assembly with the threat of global condemnation and possible sanctions.<sup>263</sup>

The Dominican Republic's recent legislation has not removed the situation from the UNHCR's mandate. Haitians who do not possess Dominican birth registration face *de facto* if not *de jure* statelessness for a minimum of two years.<sup>264</sup> While the Dominican government has expressed its intention to provide them with access to basic educational and social services, they are subject to the political winds of change and bureaucratic discrimination. As long as these Haitian descendants remain stateless, they cannot demand the protection of any state and remain subject to abuse and discrimination.

#### E. United States' Diplomatic and Economic Sanctions

The United States is in a unique position to influence immigration law and policy in the Dominican Republic because of the excellent relationship between the countries and the Dominican Republic's reliance on U.S. aid.<sup>265</sup> The United States is the Dominican Republic's main trading partner.<sup>266</sup> Both countries are parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)<sup>267</sup> and members of the Organization of American States and the United Nations.<sup>268</sup> The United States provides significant financial assistance to the Dominican Republic

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reaching out to stateless people through mobile registration teams and raising public awareness.”).

263. See U.N. Structure and Organization, <https://www.un.org/en/aboutun/structure/> [<http://perma.cc/H9YL-VHQN>] (archived Aug. 31, 2014) (noting that the Office of the UN High Commissioner for Refugees Reports Directly to the UN General Assembly).

264. See, e.g., THE ECONOMIST, *supra* note 196 (“[T]hose who were born in the Dominican Republic to parents without legal residence, but cannot demonstrate it . . . will in effect remain stateless and officially eligible for deportation, though they have nowhere else to go.”); Robert F. Kennedy Ctr., *supra* note 200.

265. See *US Relations with the Dominican Republic*, US DEPT OF STATE, BUREAU OF W. HEMISPHERE AFFAIRS (Nov. 18, 2013), <http://www.state.gov/r/pa/ei/bgn/35639.htm> [<http://perma.cc/AXP2-WFBM>] (archived Aug. 31, 2014) (describing the relationship between the United States and the Dominican Republic).

266. *Id.*

267. *Id.* This treaty facilitates trade, investment, and integration between the United States and seven Central American countries.

268. *Id.*



based on its recognition that a democratic, stable, and economically healthy Dominican Republic is in its best interest.<sup>269</sup>

Similar to the UNHCR, the United States expressed concern over the *Pierre* ruling and had “dialogue” with the Dominican authorities regarding the adverse impact on persons of Haitian descent.<sup>270</sup> The U.S. State Department later confirmed that “while it ha[d] seen a Dominican plan to restore legal status to those affected by a controversial citizenship ruling it still ha[d] ‘deep concern’ about decision’s impact on the status of persons of Haitian descent born on Dominican soil.”<sup>271</sup>

The U.S. response was delayed, weak, and indecisive. Perhaps the U.S. government treaded softly to preserve its valuable economic relationship with the Dominican Republic and the United States. The United States may also have been sympathetic based on its own struggle to craft an effective-yet-lawful response to unlawful immigration. In the final analysis, it is doubtful whether the United States has sufficient motivation to impose trade and aid sanctions in order to influence Dominican nationality law and policy. Nevertheless, this Note strongly suggests it should.

#### F. *The Role of the United Nations in Facilitating International Consensus on the Nationality Attribution*

The *Pierre* decision highlights the need for international consensus on *how* nationality is determined. Since states disagree on whether nationality should be granted based on *jus soli*, *jus sanguinis*, or hybrid criteria and also disagree on the mechanics for claiming such nationality, consensus is unlikely to develop without concerted effort on the part of the United Nations and other influential international organizations.<sup>272</sup>

Ideally, the UN could spearhead an effort to fill the gaps in nationality law by bringing states to the negotiating table, highlighting the plight of those who fall between the gaps, and suggesting workable and reasonable principles for determining when

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269. *Id.*

270. See Press Release, Embassy of the U.S., Port au Prince, Haiti, U.S. State Dep’t Spokesperson Statement On Recent Dominican Republic Citizenship Ruling (Dec. 19, 2013) <http://haiti.usembassy.gov/pr-state-spox-dr-ruling-dec-19-2013.html> [<http://perma.cc/GZ9J-H3GU>] (archived Aug. 31, 2014) [hereinafter U.S. Press Release] (relaying the U.S. State Department Spokesperson’s response to a question about the *Pierre* decision).

271. See *id.*; see also Jacqueline Charles, *U.S. Expresses ‘Deep Concern’ over Dominican Court Citizenship Ruling*, MIAMI HERALD, Dec. 18, 2013, <http://www.miamiherald.com/2013/12/18/3826489/us-expresses-deep-concern-over.html> [<http://perma.cc/GF8E-SJ94>] (archived Aug. 31, 2014) (describing the United States’ delayed reaction to the *Pierre* ruling).

272. See discussion *supra* Part IV.A.

and how an individual acquires the nationality of a state. The United Nations is charged with “encouraging the progressive development of international law and its codification”<sup>273</sup> and has established the International Law Commission (ILC) to aid in the fulfillment of this mandate.<sup>274</sup> Despite past difficulties in getting states to accede to treaties concerning the reduction of statelessness and nationality attribution, the ILC should attempt negotiations and draft articles on principles of nationality attribution with the hope that the international community may avert similar crises in the future.

## VII. CONCLUSION

The *Pierre* decision’s retroactive denial of Dominican nationality to persons born to irregular immigrants in Dominican territory is indefensible under international law. Since the laws recently adopted in the Dominican Republic have failed to remedy this indefensible wrong, the international community should increase pressure on the Dominican government to adopt more robust legislative reform.<sup>275</sup>

However, the international community should also respect the Dominican Republic’s right to prospectively dictate a nationality criteria that rejects a pure *jus soli* framework since neither international nor regional custom mandates that states grant nationality to everyone born in their territory. The Dominican Republic is likely to resist, and has resisted, efforts to influence its nationality law in general. Negotiations are more likely to bear fruit if they are focused on persons who possess a clear right to Dominican nationality under international law.

The Dominican situation continues to evolve. Haiti and the Dominican Republic “began closed-door discussions [in 2014] in an effort to stem tension over the ruling.”<sup>276</sup> Consistent with their

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273. See U.N. Charter art. 13, para. 1 (“The General Assembly shall initiate studies and make recommendations for the purpose of: a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.”).

274. See U.N. Statute of the International Law Commission, art. 1, para. 1, adopted by G.A. Res. 174 (II) of Nov. 21, 1947, as amended by G.A. Res. 485 (V) of Dec. 12, 1950, 984 (X) of Dec. 3, 1955, 985 (X) of Dec. 3, 1955 and 36/39 of Nov. 18, 1981; available at <http://www.un.org/law/ilc/> [<http://perma.cc/AD44-AFN6>] (archived Aug. 31, 2014) (“The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.”).

275. See Robert F. Kennedy Center for Justice and Human Rights, *supra* note 202 (“The government has chosen to continue with its discriminatory policies, making it imperative to look to *supranational* bodies to defend the thousands of Dominicans who continue to face severe discrimination.”).

276. Trenton Daniel, *Haiti to Register Its Migrants Abroad After Dominican Republic Ruling That Strips Citizenship*, ASSOCIATED PRESS (Feb. 11, 2014), <http://bigstory.ap.org/article/haiti-register-haitian-migrants-abroad> [<http://perma.cc/>

expressions of “concern,” representatives from the UN, Caribbean Community, European Union, and Venezuela served as observers.<sup>277</sup> Haiti embarked a program to register its diaspora who live without documentation in several foreign countries, including in the Dominican Republic.<sup>278</sup> The Dominican Republic maintains that the Haitian descendants born in Dominican territory never had the right to Dominican nationality.<sup>279</sup> Observers expected Dominican President Danilo Medina to present a bill that would allow for the naturalization of people born in Dominican territory and affected by the *Pierre* ruling.<sup>280</sup> Medina indeed spearheaded the moderate Law 169-14 and promulgated Decree 250-14.<sup>281</sup>

While these developments are promising, there is a risk that the international community will mistakenly view the crisis to be averted and release the Dominican Republic from further scrutiny.<sup>282</sup> President Medina’s insistence that the Dominican-born Haitian descendants never had the right to Dominican nationality is problematic.<sup>283</sup> Legislation allowing persons to apply for naturalization, as opposed to automatically recognizing them as Dominican citizens, does not cure the government’s arbitrary and discriminatory deprivation of nationality.<sup>284</sup> Additionally, while

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EY4N-45PX] (archived Sept. 9, 2014) [hereinafter Daniel]. See also Ezra Fieser, *Can Haiti and the Dominican Republic Repair Relations after Citizenship Ruling?*, CHRISTIAN SCIENCE MONITOR (Jan. 8, 2014) <http://www.csmonitor.com/World/Americas/2014/0108/Can-Haiti-and-the-Dominican-Republic-repair-relations-after-citizenship-ruling> [<http://perma.cc/SD6D-QZ6S>] (archived Aug. 31, 2014) (reporting that “Haitian and Dominican officials emerged from talks Tuesday with a broad-stroke agreement on how a controversial Dominican court ruling on citizenship would be carried out, marking the first sign of progress on an issue that has been central to a deteriorating relationship between the countries.”).

277. Daniel, *supra* note 276.

278. See *id.* (reporting that, as part of a \$2.5 million project, “[g]overnment workers will travel to remote corners of the Dominican Republic . . . to register Haitian citizens residing there without legal papers”).

279. *Id.*

280. See *id.* (reporting that “Dominican President Danilo Medina is supposed to submit a bill to his congress February 27 that would allow for the naturalization of people born in the country who could be affected by the court ruling.”).

281. See, e.g., DIARIO LIBRE, *Reactions For and Against the Regulations; An Appeal Will Be Filed in TC Alleging Unconstitutionality*, [http://www.diariolibre.com/dlenglish/2014/07/25/i717421\\_reactions-for-and-against-the-regulations-appeal-will-filed-alleging-unconstitutionality.html](http://www.diariolibre.com/dlenglish/2014/07/25/i717421_reactions-for-and-against-the-regulations-appeal-will-filed-alleging-unconstitutionality.html) [<http://perma.cc/Y646-37KR>] (archived Sept. 9, 2014); Decreto 250-14, *supra* note 218.

282. See THE ECONOMIST, *supra* note 198 (discussing how recent developments will likely “relieve much of the political pressure”).

283. See Fieser, *supra* note 276 (“While the meeting was considered a success because it marked a fresh start for bilateral talks, the Dominican delegation did not change its position on the court ruling or how it would carry it out. Going into the meeting, the Dominican government said it would not negotiate the decision itself or how the government plans to implement it.”).

284. See THE ECONOMIST, *supra* note 196 (discussing how many people stripped of their nationality will now be able to apply to citizenship recognition). See also Open

providing “identification” to allow everyone to enjoy human rights<sup>285</sup> may stem some of the concerns regarding de facto statelessness, it also does not cure the state’s arbitrary and discriminatory deprivation of nationality.<sup>286</sup>

As a first step, this Note proposes that the government of the Dominican Republic make a legal distinction between Haitian descendants born in its territory and Haitians who were born elsewhere. This legal distinction should ignore the migratory status of the individual’s parents. The state should then pass legislation to *automatically* recognize persons born in Dominican territory prior to the 2010 constitution as nationals of the Dominican Republic. The recognition must be automatic, even if additional steps are required to receive identification documents from the government. The state should create an easy and accessible procedure for these persons to acquire national identification that denotes them as citizens.

In light of the special vulnerability of children, the Dominican Republic should also distinguish between minors and adults who were born in its territory and provide expedited processing for the former. Both uncertain nationality and statelessness prevent children from receiving education, health care, and other public benefits. The Dominican Republic should also provide special assistance to parents in the form of transportation, application support, and public education services since many persons of Haitian descent live in remote and poor communities.

The policies and procedures for proving Dominican birth must be simple, accessible, reasonable, and fair. Law 169-14 and the Decree impose unreasonably difficult procedures for proving birth in Dominican territory. The Note recommends the Dominican Republic amend the procedures to allow non-Dominican witnesses and create alternatives to the sworn statement of a midwife who may be deceased or impossible to locate.

The international community has a role in ensuring that the Dominican Republic does not simply pay lip service to the victims of the *Pierre* decision. International law already dictates that the Dominican Republic should automatically restore its nationality to those born in its territory prior to the 2010 constitution. The international community should demand nothing less.

*Monique A. Hannam\**

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Soc’y Founds., *supra* note 196 (outlining how the new registration laws fail to correct many problems).

285. See Open Soc’y Founds., *supra* note 196 (discussing the ability of some Haitian descendants to gain identification under the new laws).

286. See *id.* (arguing that the new laws do not do enough to correct for the problems caused by the *Pierre* discussion).

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## VIII. APPENDIX

## Timeline

Year	Event
1801	Haiti rules over the Dominican Republic as a spill-over of its revolutionary efforts.
1804	Haiti gains independence from the French.
1837	Dominican Dictator Raphael Trujillo ordered mass killings of Haitians due to growing tensions between the countries.
1908	The Dominican Republic amends its constitution to provide Dominican nationality in general to persons born in Dominican territory.
1929	The Dominican Republic amends its constitution's nationality provision to exclude those born in Dominican territory to diplomats and "extranjeros en transito" (those who are in transit).
1939	The Dominican Republic passes immigration law which divides foreigners into two categories: immigrants and non-immigrants.
1948	The Organization of American States (OAS) is established.
1950	United Nations by mandate establishes the UN High Commissioner for Refugees (UNHCR).
1961	UN Convention on the Reduction of Statelessness enters into force.
1966	The Dominican Republic passes a new constitution but retains the exception for those born in Dominican territory to diplomats and "extranjeros en transito" (those who are in transit).
1969	The American Convention on Human Rights entered into force.
1973	The Caribbean Community and Common Market (CARICOM) is established.
1978	The Dominican Republic ratifies American Convention on Human Rights.
1987	Haiti's Constitution (still in effect) provides Haitian nationality based on descent ( <i>jus sanguinis</i> ).
2004	The United States and the Dominican Republic enter into the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).
2005	Inter-American Court on Human Rights issues <i>Yean &amp; Bosico</i> decision.
2010	Haiti suffers devastating earthquake.
2010	The Dominican Republic amends its constitution to deny nationality to children born in its territory illegal residents, non-retroactively.
May 2013	Dominican Republic's President Medina offers to help improve the facilities and infrastructure in Haiti.
Oct. 2013	Dominican Constitutional Tribunal issues <i>Pierre</i> decision.
Nov. 2013	The media reports cross-border violence and expulsions.
Dec. 2013	The Inter-American Commission on Human Rights conducts on-site investigations in the Dominican Republic.
May 2014	Medina passes Ley de Regimen Especial y Naturalization 169-14.

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