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“Perpetuating Statelessness”

The Effects of Sentence 168/13 and Special Law 169-14 in respect to Child
Statelessness in the Dominican Republic

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Abbreviations

ACHR	American Convention of Human Rights
ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CARICOM	Caribbean Community
CEA	National Sugar Council, <i>Consejo Estatal del Azúcar</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CEJIL	Center for Justice and International Law
DGM	Ministry for Migration, <i>Dirección General de Migración</i>
ECHR	European Convention on Human Rights
ECN	European Convention on Nationality
ECtHR	European Court of Human Rights
ENI-2012	National Survey on Immigrant Population in the Dominican Republic 2012, <i>Primera Encuesta Nacional de Inmigrantes en la República Dominicana</i>
ERT	Equal Rights Trust
EU	European Union
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
JCE	Central Electoral Board, <i>Junta Central Electoral</i> ,
MUDHA	Dominican-Haitian Women's Movement , <i>Movimiento de Mujeres Dominico-Haitianas</i>
MWC	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

OAS	Organisation of American States
OBMICA	Caribbean Observatory on Migration, <i>Observatorio Migrantes del Caribe</i>
OSJI	Open Society Justice Initiative
ONE	National Statistics Office, <i>Oficina Nacional de Estadística</i>
PNRE	National Plan for Regularisation of Foreigners living illegally in the Dominican Republic, <i>Plan Nacional de Regularización de Extranjeros Ilegales</i>
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nation Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UN-HRC	United Nation Human Rights Council
UNICEF	United Nations Children´s Fund
UNTFHS	United Nations Trust Fund for Human Security
UPR	Universal Periodic Review

I. Introduction

*What am I? A foreign Dominican?*¹

Since 23 September 2013, thousands of Dominicans of Haitian descent have been asking themselves this question. On this day, the Constitutional Tribunal of the Dominican Republic, in its Sentence 168/13, established that all persons born in the Dominican Republic since 1929 would no longer be entitled to Dominican nationality if they could not prove that at the time of their birth at least one of their parents had a legal status in the Dominican Republic. Diverse media and NGOs maintained that over 200,000 persons would become stateless due to this sentence.² This sentence led to a split within the Dominican civil society, academia and even within the governmental institutions, as well as to strong condemnation by the international community which called upon the Dominican Republic to respect the right to nationality of Dominicans of Haitian descent.³ Because of national and international pressure, a special law aiming at mitigating the effects of said sentence was adopted in May 2014. In theory, this Special Law 169-14 orders the Dominican authorities to implement Sentence 168/13, but also to grant and rehabilitate Dominican documents to those who already appear in the Civil Registry. For those who had never been registered, i.e. never obtained a birth certificate, the Special Law created an exceptional regime to grant them temporal residence with

¹ Question was posed by a young woman during protest in Santo Domingo in September 2013. Cf. 'Protesta de feministas contra la sentencia del Tribunal Constitucional Dominicano' [online video], 2013, minute 2:50, https://www.youtube.com/watch?v=d4b0oEEY_E (accessed 12 April 2013).

² Cf. R. C. Archibold, 'Dominicans of Haitian Descent Cast into Legal Limbo by Court', *The New York Times*, 25 October 2013, available from http://www.nytimes.com/2013/10/24/world/americas/dominicans-of-haitian-descent-cast-into-legal-limbo-by-court.html?_r=0 (accessed 23 April 2015); L. Arroyo, 'R. Dominicana: la sentencia que abre la puerta a miles de apátridas', *BBC Mundo*, 4 October 2013, available from http://www.bbc.co.uk/mundo/noticias/2013/10/131002_republica_dominicana_haitianos_apatridas_polemica_lay (accessed 23 April 2015).

³ Martínez, M., Interview, Santo Domingo, 7 May 2015; Amnesty International, 'Risk of mass deprivation of nationality', 2013, available from http://ua.amnesty.ch/urgent-actions/2013/10/289-13?ua_language=en (accessed 2 April 2015); 'UN urges Dominican Republic to ensure citizens of Haitian origin do not lose nationality', *UN News Centre*, 1 October 2013, available from http://www.un.org/apps/news/story.asp?NewsID=46152#.VW0Gps9_Oko (accessed 2 April 2015).

the possibility of later acquiring the Dominican nationality. The application deadline for this special procedure expired on 1 February 2015.⁴ Crucial questions arose after this deadline in respect to the fate of those affected. Did they for the last time miss the chance to regain their Dominican nationality? Are they now stateless? Moreover, what about those who did apply? Are they stateless until they are naturalised?

If there is a word to describe the current situation of Dominicans of Haitian descent affected by Sentence 168/13 and subject to Special Law 169-14, it is uncertainty. Not only is the Dominican legal framework particularly muddled when it comes to the right to nationality, but when dealing with the issue of statelessness one must also resort to a complex and fragmented international framework. Statelessness is the farthest-reaching violation of the right to nationality, and it hinders individuals from accessing other human rights to which they are entitled. Hence, stateless persons are considered one of the most vulnerable populations in the world.⁵

Stateless children are even more vulnerable, as the lack of a nationality exacerbates the risk of child labour, child trafficking, and other societal ills. Particularly, stateless children have their ‘futures denied’⁶ since many stateless children cannot enrol in school and live in extreme poverty.⁷ The corollary is that not only a stateless person’s childhood compromised, but so are ‘their opportunities to live full, dignified lives as adults’⁸. Moreover, the consequences of child statelessness might transcend violations

⁴ Cf. Amnesty International, ‘Dominican Republic: No more hope for tens of thousands stateless and at risk of expulsion if residence deadline expires’, 30 January 2014, available from <http://www.amnestyusa.org/news/news-item/dominican-republic-no-more-hope-for-tens-of-thousands-stateless-and-at-risk-of-expulsion-if-residenc> (accessed 23 April 2015).

⁵ I. Goris, J. Harrington, S. Köhn, ‘Statelessness: what it is and why it matters’, *Forced Migration Review*, Iss 32, April 2009, pp. 4-6.

⁶ Refugees International titled its first report on child statelessness ‘Futures denied’, cf. Lynch, M., ‘Futures denied: Statelessness among infants, children and youth’, *Refugees International*, 2008.

⁷ S. Kohn, K. Thomasen, ‘Statelessness at the UN: Reaffirming the Right to Nationality’, 2012, available from <http://www.opensocietyfoundations.org/voices/statelessness-un-reaffirming-right-nationality> (accessed 23 April 2015).

⁸ Open Society Justice Initiative, ‘Children’s right to nationality’, 2011, available from <http://www.opensocietyfoundations.org/publications/fact-sheet-childrens-right-nationality> (accessed 23 April 2015).

of children's rights, but for instance, '[d]enying children a right to education can cripple entire communities for generations to come'⁹.

This thesis will therefore aim to identify in what way(s) Sentence 168/13 and Special Law 169-14 render children stateless in the Dominican Republic. It is hypothesised that Sentence 168/13 and Special Law 169-14 expose Dominican children of Haitian descent to statelessness in different ways, and they exacerbate intergenerational statelessness in the future.

1. Research question

This thesis will analyse the implications of Sentence 168/13 and Special Law 169-14 by considering a discussion on child statelessness. Specifically, the following question will be addressed:

What are the effects of Sentence 168/13 and Special Law 169-14 with respect to child statelessness in the Dominican Republic?

The following sub-questions will be investigated in order to reach a conclusion regarding the matter:

In what way do Sentence 168/13 and Special Law 169-14 engender overall statelessness?

What are there different situations of statelessness to which children affected by Sentence 168/13 and Special Law 169-14 are exposed?

What are the consequences of Sentence 168/13 and Special Law 169-14 in terms of prevention of new cases of statelessness in the Dominican Republic?

2. Statelessness: The need for an interdisciplinary approach

'[T]here is an awareness that the study of statelessness must evolve beyond study of statelessness law. There is a need to explore statelessness from an interdisciplinary perspective, to better understand why this extreme form of exclusion is allowed to

⁹ Kohn and Thomasen, 2012.

happen – and why it can so stubbornly persist – and what its true impact is on the lives of individuals, the fabric of communities and the integrity of the modern nation-state system.”¹⁰

For many years, research on statelessness has been of a legal nature, e.g. by identifying loopholes and conflict of nationality policies in order to prevent statelessness, or assessing these policies for determining an individuals’ status for granting special protection.¹¹ Nevertheless, a mere legal analysis might fall short when trying to understand the root causes and effects of statelessness. Where statelessness is a product of discriminatory or exclusionary nationality regulations, it is not sufficient to look into the specific legal framework, but it becomes crucial to understand its broader consequences and look into structural, social, political and even psychological constraints that go beyond the application of legal provisions.

Studying statelessness from an interdisciplinary perspective becomes even more important when legal certainty is more a theory than a reality, and where definitions and protection established by international human rights might reveal themselves entitlements especially difficult to translate to a specific context and population.

I offer that, if statelessness is considered as the absence of a legal link between an individual and a state, then the issue should transcend legal questions. Finally, finding solutions to the problem of statelessness is not only a matter of developing strategies for attributing a nationality to a person. It is a central question of recognition and inclusion, and even social justice. These forms of recognition and inclusion cannot be only legal when the goal is to eradicate statelessness in the end.

3. Methodology

The objective of this thesis is to study the effects of Sentence 168/13 and Special Law 169-14 by taking a closer look at concepts on statelessness, and examine how both

¹⁰ M. Manly/L. van Waas, ‘The State of Statelessness Research’, *Tilburg Law Review*, no. 9 , vol. 1-2, 2014, p. 6.

¹¹ *ibid.*, pp. 4-6.

policies exacerbate the problem. For this purpose, it will be necessary to discuss the different views on nationality and statelessness. Then it will be necessary to identify and discuss the relevant international human rights framework on children's right to nationality and on statelessness.

A subsequent introduction on the context of Haitian migration and discrimination against Haitians and their descendants in the Dominican Republic will require outlining historic developments and analysing the political situations existent at the time.

The evidence for an analysis of Sentence 168/13 and Special Law 169-14 on the basis of the Dominican legal framework governing nationality, international human rights obligations and general principles of law, will be drawn from domestic legal sources, academic literature, decisions by the IACtHR and observations by the IACHR, and finally from expert interviews¹².

Finally, a thorough reading and analysis of alternative approaches to statelessness in the light of legal and political realities in the Dominican Republic will be necessary to comprehend how Sentence 168/13 and Special Law 169-14 affect children of Haitian descent.

4. Significance of the research

Although there is extensive research on the right to nationality and statelessness in the Dominican Republic, further research and the exploration of new approaches to target this issue is more relevant than ever.

First, in 2014 UNHCR launched its 'Global Action Plan to End Statelessness 2014-2024' with the ambitious goal of eradicating statelessness worldwide within ten years.

¹² These expert interviews were conducted with the heads of the legal department of two NGOs working in the field of human rights and strategic litigation; Jenny Morón from the Dominican-Haitian Women's Movement (*Movimiento de Mujeres Dominico-Haitianas*, MUDHA), and María Martínez from the Socio-Cultural Haitian Worker's Movement (*Movimiento Socio-Cultural de Trabajadores Haitianos*, MOSCTHA). Both lawyers have represented several cases before domestic courts. Moreover, MUDHA represented the victims in the *Case of the Yean and Bosico Children*, as well as in the *Case of Expelled Dominicans and Haitians* before the IACtHR, while MOSCTHA participated in the special audience of the IACHR regarding the issue of nationality in the Dominican Republic in the light of Special Law 169-14.

The Global Action Plan's objective is to do so by solving existing situations of statelessness and preventing new cases of statelessness, but also by better identifying and protecting stateless populations.¹³ These international efforts are happening at a moment when the Dominican Republic figures among the top five countries with greatest population under UNHCR's statelessness mandate which seeks to redress problems of the stateless population or those at risk of becoming so.¹⁴ According to experts from the Center for Justice and International Law (CEJIL) and the Open Society Justice Initiative (OSJI), the Americas could become the first region to eradicate statelessness.¹⁵ The Dominican Republic is the primary obstacle for reaching this goal.

Second, after a broad on-desk research, I learnt that existing literature and research on statelessness in the Dominican Republic, including Sentence 168/13 and Special Law 169-14, has only grazed the concept of statelessness, and has referred to affected population generally as stateless, at risk of statelessness, or in situation of statelessness. The law offers no analysis on how these concepts are used. Therefore, this thesis hopefully will contribute to the conceptual debate on statelessness in the Dominican Republic.

Third, the issue of statelessness in the Dominican Republic has acquired even more urgency due to two factors: first, in a recent decision by the IACtHR, the Dominican Republic was ordered to abrogate Sentence 168/13 and certain articles of Special Law 169-14.¹⁶ And second, as of 17 June 2015 the deadline for application to the National Plan for Regularisation of Foreigners living illegally in the Dominican Republic (PNRE, *Plan Nacional de Regularización de Extranjeros Ilegales*) expired. Therefore, deportations targeting irregular Haitian migrants also are an imminent threat to

¹³ UNHCR, 'Global Action Plan to End Statelessness 2014-2024', 2014, available from: <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf> (accessed 25 April 2015).

¹⁴ Institute on Statelessness and Inclusion (ISI), 'The World's Stateless', Oisterwijk (The Netherlands), Wolf Legal Publishers, 2014, p. 56.

¹⁵ F. Quintana, L. Gamboa, 'Four reasons why the Americas could become the first region to prevent and eradicate statelessness', *European Network on Statelessness Blog*, 11 March 2015, available from <http://www.statelessness.eu/blog/four-reasons-why-americas-could-become-first-region-prevent-and-eradicate-statelessness> (accessed 20 April 2015).

¹⁶ Cf. *Case of Expelled Dominicans and Haitians v. the Dominican Republic, Preliminary Objections, Merits, Reparations and Costs*, Inter-American Court of Human Rights (IACtHR), 28 August 2014, para. 468.

Dominicans of Haitian descent, including children, whose right to Dominican nationality was revoked through Sentence 168/13.

5. Scope and limitations of the research

The purpose of this thesis is to examine in what ways Sentence 168/13 and Special Law 169-14 engender child statelessness in the Dominican Republic. Although this study purports to explain how children are and could be affected by these two policies, the examination is not limited to the situation of population under 18 years old at the time of writing, since also the situation of their parents has to be taken into account. A focus for the study are the legal effects in the light of practical considerations, such as social and political realities and challenges. The quantitative measurement of the impact of Sentence 168/13 and Special Law 169-14 falls out of the scope of this thesis.

While this thesis outlines the domestic legal framework with a view to describe the complexity of nationality regime in the Dominican Republic, it does not intend to cover all existing legal and administrative recourses that could be applicable.

There is a need to clarify some terms used in this thesis. The term of Dominicans of Haitian descent should be understood in a broad manner, and if not indicated otherwise, it refers to:

- Persons born on the Dominican Republic whose parents are irregular or regular Haitian migrants;
- who are of mixed parentage – be it Dominican mother and Haitian father or the other way around;
- whose parents were born in the Dominican Republic to Haitian migrants; or
- any person of Haitian ancestry born in the Dominican Republic who would be entitled to Dominican citizenship through place of birth or parentage.

A few reflections challenges during the research process are in order to understand the sensitivity of the issue and limitations of the research. A significant factor limiting the scope of this thesis is the fact that the implementation of Special Law 169-14 is

ongoing, and procedures initiated with Sentence 168/13 are not, as of this writing, concluded. In addition, there are no official standardised procedures on further implementation of the referred policies, and there is a margin open for the current legal and political conditions to change considerably over the coming months. To give an example, both of the lawyers interviewed confirmed that certain procedures are yet to be determined, and that they did not know what to expect and were waiting for new information. During my two-week research on site, I encountered challenges in collecting information. Secrecy of information was a significant problem. On the one side, only limited information has been release by governmental authorities. On the other side, due to the sensibility of the issue, several interviews had to be conducted in an unofficial (or non-attributable) manner. In practical terms, this means that I was not able to refer to this information, as it can be traced back to certain actors. Nevertheless, the insight, opinions and inputs I obtained during the interviews, have contributed significantly to my analysis.

II. Background theory on statelessness

Since this thesis also seeks to contribute to the conceptual discussion of statelessness in the Dominican Republic, the following chapter will serve as discussion of different concepts and approaches to statelessness and nationality, as well as contextualisation of the issue of child statelessness, in particular in the Americas.

1. Statelessness: An assorted introduction

‘[T]he term “stateless person” means a person who is not considered as a national by any State under the operation of its law.’¹⁷

When discussing statelessness, the first concept we are confronted with, is the definition of stateless persons provided by the Convention Relating the Status of Stateless Persons of 1954 (hereinafter Statelessness Convention 1954). Although it is a workable definition, to some extent it also skirts the complexity inherent to statelessness. In order to reveal this complexity, I will—without disregarding the legal implications and meanings—start by discussing statelessness and the right to nationality in the light of sociological and political perspectives.

1.1. Statelessness: Challenging the universality of human rights?

As noted earlier, statelessness is a violation of human rights per se, since it is the epitome of the severest violations of the right to nationality. Further, it also represents a significant hindrance for accessing other rights. This correlation might just demonstrate that human rights are indeed, interrelated, interdependent and indivisible. Yet, the entanglement between statelessness and any particular human right, but also the human rights regime in general, is transcendent. Laura van Waas persuasively suggests that, ‘Statelessness is a quintessential human rights issue, putting the human in “human rights” to the ultimate test’¹⁸. The “ultimate test” van Waas refers to, raises the question on who is the human actually enjoying human rights. This could be answered by

¹⁷ Convention Relating the Status of Stateless Persons of 1954 (adopted 28 September 1954, entered into force 6 June 1960) 370 UNTS 117 (Statelessness Convention 1954) article 1.

¹⁸ L. Van Waas, ‘Nationality Matters: Statelessness under International Law’, Antwerp/Oxford/Portland, *Intersentia*, 2008, p.436.

invoking the universality of human rights since the Universal Declaration of Human Rights (UDHR) claims that human rights are inalienable to *all* human beings, and further declares that ‘All human beings are born free and equal in dignity and rights’, and that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration’¹⁹.

Nonetheless, the existence of statelessness challenges this very universality. As van Waas further remarks:

[T]he very legitimacy of the human rights framework rests upon its capacity to either ensure that everyone does enjoy the right to a nationality (prevent statelessness) or to ensure that those who do not are not unreasonably disadvantaged by their plight (protect stateless persons).²⁰

Undoubtedly, the second option presented by van Waas is the one capturing the universality claimed by the UDHR and its proponents. However, states are still primarily responsible for enforcing human rights. Furthermore, international organisations either support states to live up to this responsibility or protect those who lack direct protection by a particular state, rest upon budgets allocated, or missions authorised by states.

In this sense, the existence of statelessness does not challenge the moral claim for the universality of human rights itself, but it exposes the problem of enforceability. This issue is reflected in Hannah Arendt’s criticism towards the human rights regime in the aftermath of atrocities committed during World War II. Bhabha argues that:

With characteristic foresight, Hanna Arendt recognized the fundamental human rights challenge of our age: supposedly “inalienable” rights are unenforceable for individuals who “lack... their own government”. To “lack one’s own government” is a status neither precise nor transparent. At a minimum, though, it

¹⁹ *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), art. 1 and 2.

²⁰ Van Waas, 2008, p.436.

includes the situation captured by the definition of statelessness in international law...²¹

Without introducing an in-depth analysis and reading of Arendt's work, it is necessary to refer to her well-known formula "right to have rights". This is crucial for the discussion on statelessness and the right to nationality, because the most common interpretation of this formula is that this "right to have rights" is the right to nationality.²² Ingram suggests that Arendt's formula exposes the political challenge of human rights, and that political approaches to human rights 'start with the problem of putting human rights into practice'²³ since they raise the question on who will guarantee these rights and what through which means this will be achieved.

1.2. Nationality as a legal link

As discussed above, statelessness poses a significant challenge to ensure human rights for those who do not have a nationality. Therefore it will be necessary to understand what nationality is and is not.

In general terms, nationality²⁴ represents the legal bond between an individual and a state.²⁵ At the same time, nationality also establishes a link between the individual and international law. For instance, it is through nationality that a state can invoke diplomatic protection on behalf of an individual, or apply extraterritorial jurisdiction.²⁶ Against the backdrop of diplomatic protection, the International Court of Justice (ICJ) established a broad definition of nationality in the *Nottebohm Case*:

²¹ J. Bhabha, 'Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?', *Human Rights Quarterly*, vol. 31, no. 2, 2009, p. 411, available from Jstor (accessed 2 December 2014).

²² J. D. Ingram, 'What Is a "Right to Have Rights"? Three Images of the Politics of Human Rights', *American Political Science Review*, vol. 102, no. 4, 2008, pp. 401-416.

²³ *ibid.*, p. 402.

²⁴ Unless indicated otherwise, the terms "nationality" and "citizenship" will be used interchangeably throughout this paper to refer to the indicated definition.

²⁵ Cf. e.g., *European Convention on Nationality* (adopted 6 November 1997, entered into force 1 March 2000) ETS 166 (ECN), art. 2 (a).

²⁶ R. D. Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality', *Harvard International Law Journal*, vol. 50, no. 1, 2009, pp. 1 ff., available from http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_50-1_Sloane.pdf (accessed 17 April 2015).

Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments.²⁷

It is important to bear in mind that the above definition of nationality originated in a context where the ICJ's objective was to establish limits to the exercise of diplomatic protection, by means of delimiting nationality and questioning a state's prerogative to attribute its nationality to someone with whom it does not share an actual link.²⁸ Therefore, this definition should be treated with caution, since the ICJ's definition of nationality in *Nottenbohm*, did not pretend to restrict states' discretion on depriving someone from a nationality in order to prevent on the ground of human rights obligation.

In the specific case of stateless children in the Dominican Republic and this thesis, however, diplomatic protection is rather a minor issue. As Sloane argues, the major importance and consequences of nationality are still internal in terms of rights of a national and his/her duties towards a state.²⁹ Hence, the importance of the legal link of nationality I am concerned with is the one establishing, who are the right holders to whom a specific state must respond internally.

1.2.1. Causes of statelessness: acquisition and loss of nationality

International customary law does not establish the basis on which nationality should be attributed. Therefore, state practice varies in respect to nationality policies.³⁰ Against the backdrop of child statelessness, the acquisition of nationality at the time of birth is crucial since it grants nationality from the very beginning, and thereby prevents that a child is born stateless. As van Waas expresses:

²⁷ International Court of Justice, '*Nottebohm Case*' (*Liechtenstein v. Guatemala*), 1953, in Van Waas, 2008, p. 32.

²⁸ Sloane, 2009, p. 2.

²⁹ *ibid.*

³⁰ M. A. Hannam, 'Soy Dominicano – The Status of Haitian Descendants Born in the Dominican Republic and Measures to Protect Their Right to a Nationality', *Vanderbilt Journal of Transnational Law*, vol. 47, 2014, p. 1136, available from <http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Hannam-Final.pdf> (accessed 23 April 2015).

The birth of a child is one of the pivotal events that nationality policy must deal with since it entails the arrival of a new human life which must be given its place in the global political system. If left “unclaimed” by any state as its national, the child will be stateless.³¹

Traditionally, birth right citizenship³² is attributed by *jus soli* or *jus sanguinis*, which means that the link between an individual and a state is respectively established by birthplace or descent.³³

Jus soli and *jus sanguinis* are considered *ex lege* or automatic modes of nationality acquisition, since ‘as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a State’³⁴ an individual acquires a State’s nationality. At least in theory, birth right citizenship leaves little space for state discretion since the terms and conditions of nationality acquisition is automatic and general, and not based on individual assessments. In spite that the acquisition of nationality in these cases is automatic, as we discussed before, birth registration is central since it records the place of birth, and the identity of the parents required to establish to which nationality a person is entitled.

Most countries have a mixed regime of *jus soli* and *jus sanguinis*. For instance, some countries supplemented the existing regime with a conditioned form of the other in order to maintain a link with national Diasporas or to prevent statelessness. A person can also obtain a nationality on the grounds of residence and links built to a specific state later in life via naturalisation.³⁵

Nationality can be lost by the operation of law, which includes cases where a person resides for a long time abroad, or—where double nationality is prohibited—upon the

³¹ Van Waas, 2008, p. 42.

³² In literature the term “birthright citizenship” is occasionally used as synonym of *jus soli*. For the purpose of this paper “birthright citizenship” is denoted as the right to citizenship by birth, i.e. that is based on the circumstance of birth and therefore comprises the circumstance of parentage (*jus sanguinis*) and of birthplace (*jus soli*).

³³ Van Waas, 2008, p. 42 ff.

³⁴ ³⁴ UNHCR, ‘Handbook on Protection of Stateless Persons’, 2014, para. 26.

³⁵ Cf. United States Office of Personnel Management Investigations Service, ‘Citizenship Laws of the World’, 2001, available from <http://www.multiplecitizenship.com/documents/IS-01.pdf> (accessed 15 June 2015).

acquisition of another nationality. Moreover, a person can lose her or his nationality after terminations of a marriage.³⁶

Van Waas suggest that there are technical causes for statelessness, where it ‘is the unintentional result of the acts of individuals or the operation of particular municipal laws or policies’³⁷. This is the case of conflicting nationality laws, when due to the different application of *jus soli* and *jus sanguinis* a child obtains neither the nationality of the country where it was born nor the nationality of the parents’ country of origin. In addition, gender can play an important role, in cases where the mother is not allowed to pass her nationality, but also when the father cannot pass his nationality to his child if it was born outside the wedlock.³⁸ Furthermore, statelessness can also be inherited. This is the case of countries that apply strict *jus sanguinis*, and the parents’ stateless is passed to the children. All these causes can be understood as original statelessness, since the individual is stateless from the moment of birth.³⁹

Concerning the present thesis, however, the most relevant form of nationality loss, is the arbitrary deprivation of nationality, which implies an arbitrary action by the state that had –whereas under operation of the law or not – granted nationality. Van Waas suggest that this is ‘by far the most complex and sensitive origin of statelessness’⁴⁰. This is the case when the nationality of an individual or an entire population group is withdrawn. In cases where a specific population is, most of the times on minorities, discriminatory practices are usually behind the revocation of nationality.⁴¹ Van Waas discusses how the concept of “denial of citizenship” defines the discriminatory deprivation of nationality, which amounts to arbitrary deprivation. Van Waas puts this in other simple words: ‘Denial of citizenship is about unequal access to nationality and the lack of justification for such bias.’⁴²

³⁶ Cf. Van Waas, 2008, pp. 71 ff.

³⁷ *ibid.*, p. 49.

³⁸ *ibid.*, pp. 49 ff.

³⁹ Institute on Statelessness and Inclusion (ISI), ‘Causes of Statelessness’, n.d., available from <http://www.institutesi.org/world/causes.php> (accessed 18 March 2015).

⁴⁰ Van Waas, 2008, p. 93.

⁴¹ ISI, ‘Causes of Statelessness’.

⁴² Van Waas, 2008, p. 97.

1.2.2. The importance of birth registration and birth certificates

‘Birth registration is the official record of a child’s birth by the state and a government’s first acknowledgement of a child’s existence.’⁴³ Such record has a legal and statistical objective, this means that birth registration allows the child to obtain a birth certificate and also serves for collecting necessary demographic data.⁴⁴ Mackenzie states that ‘The absence of birth registration effectively creates a barrier to meaningful involvement in society’⁴⁵. For an individual, birth registration is crucial because it will allow the person to obtain a birth certificate, which is the official document that generally is required for benefiting from public programmes or acquiring further documents in the future. A child’s identity and the possibility of determining her or his age is important for various reasons beyond the attribution of a nationality. A child who is not registered cannot obtain a birth certificate and prove her or his identity, and is more vulnerable to exploitation, such as child labour and prostitution. Moreover, by determining the age, birth registration protects a child from prosecution as an adult.⁴⁶

According to UNICEF, 230 million children under the age of five have never been registered.⁴⁷ Barriers to birth registration are diverse; these include remote access to governmental offices, the financial burden of the procedures, a lack of knowledge, and weak governmental institutions.⁴⁸ These reasons expound why under-registration is most predominant in developing countries. However, there are also cases where ‘it is apparent that the state deliberately seeks to exclude ethnic minorities’⁴⁹, as it is in the case of Dominicans of Haitian descent in the Dominican Republic. The consequence of this exclusion in respect to birth registration can have devastating consequences since

⁴³ M. Lynch, M. Teff, ‘Childhood Statelessness’, *Forced Migration Review*, iss. 32, 2009, pp. 31-33

⁴⁴ UNICEF, ‘Birth Registration: Right From the Start’, *Innocenti Digest*, no. 9, 2002, pp. 4 ff., available from http://www.childinfo.org/files/birthregistration_Digestenglish.pdf (accessed 14 March 2015).

⁴⁵ Y. Mackenzie, ‘The Campaign for Universal Birth Registration in Latin America: Ensuring All Latin American Children’s Inherent Right to Life and Survival by First Guaranteeing their Rights to a Legal Identity’, *Georgia Journal of International and Comparative Law*, vol. 37, no. 3, 2009, p. 526, available from <http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1102&context=gjicl> (accessed 14 March 2015).

⁴⁶ *ibid.*, p. 527.

⁴⁷ UNICEF, ‘The births of nearly one third of the global population of children under five have never been registered’, May 2015, available from <http://data.unicef.org/child-protection/birth-registration> (accessed 14 March 2015).

⁴⁸ Mackenzie, 2009, pp. 529 f.

⁴⁹ *ibid.*, p. 530.

the person who is not registered does simply not exist before the state and its institutions. The case of Berlina Celsa, a little Dominican girl of Haitian descent who was raped and killed at the age of nine, is a most tragic illustration of what it means not to exist in the Dominican Republic. Berlina's murderer was released from jail for a miniscule amount of money since—as stated by the judge—she actually did not exist because she was stateless.⁵⁰

Overall, birth registration is essential to the right to nationality since it specifies the place of birth and the parentage, in order to attribute nationality via *jus soli* or *jus sanguinis* correspondingly. Furthermore, only after a child has been registered can it obtain the birth certificate that proves a link to a specific state and attests one's identity and nationality, easing the enjoyment of further rights. In connection with the denial to citizenship, birth registration and the issuance of birth certificates plays a crucial role since it can be the first governmental instance in which the nationality is denied and a child is exposed to statelessness. In the case of the Dominican Republic, the link between denial of birth registration or certificates and child statelessness can be summarised in a comment by the Committee on the Rights of the Child in its concluding observations in 2008, where it expressed its concern on the large number of stateless children caused by discriminatory policies in birth registration procedures or in the issuance of birth certificates.⁵¹

1.2.3. Beyond the legal link of nationality

Although by discussing statelessness the concept of nationality as a legal link between a person and a state remains central, briefly exploring how different scholars and thinkers might approach the issue of nationality seems pertinent when analysing statelessness from an interdisciplinary perspective.

⁵⁰ S. Reynolds, 'Protecting the Persecuted: The Successes and Challenges of Safeguarding Refugees, Internally Displaced Persons and Stateless Persons', 2011, available from <https://www.refintl.org/policy/testimony/protecting-persecuted-successes-and-challenges-safeguarding-refugees-internally-dis> (accessed 14 March 2015).

⁵¹ Committee on the Rights of the Child, Concluding Observations: Dominican Republic, CRC/C/DOM/CO/2, 2008, para. 39.

Eisgruber offers a minimal definition of citizenship; ‘a resident of a polity is a citizen if and only if the resident is not subject to deportation and is entitled to vote after reaching adulthood’.⁵² This concept of citizenship evidences a legal link, but only entitles the individual to suffrage and to security of residence, considering other civil and social rights, as well as the sense of belonging, as negligible. Groenendijk supports Eisgruber’s definition by suggesting that in the context of right of minorities, the most salient aspect of nationality legislation is that it impedes the expulsion from a state. However, Groenendijk complements two other effects of nationality; nationality as a medium to access other rights, not only the right to vote, and:

The third important effect of nationality is the symbolic message conveyed by the government: nationality legislation draws the borderline for those who belong to the community, 'belong to us' and 'them', the others who are different and thus do not belong to us.⁵³

Groenendijk describes nationality as an exclusionary institution deciding who is in and who is not, in a literal and figurate meaning. However, the idea of nationality as a form of “belonging” to a community should be underlined as this point, because this sentiment of belonging also is determinant for the establishment of the link between the state and an individual. As I will argue later in Chapter IV that the sentiment of belonging is also decisive when tackling the statelessness, not only approaching the problem by granting a nationality but a nationality that makes sense to an individual and a state.

1.3. Concepts of statelessness

There are two central concepts of statelessness; *de jure* and *de facto* statelessness. The first concept was introduced with the 1954 Statelessness Convention that establishes

⁵² C. L. Eisgruber, ‘Birthright citizenship and the Constitution’, *NYU Law Review*, vol. 52, no. 1, 1997, p.58.

⁵³ K. Groenendijk, ‘Nationality, Minorities and Statelessness’, *Helsinki Monitor*, vol. 4, no. 3, 1993, pp. 13-25.

that a stateless person is ‘a person who is not considered as a national by any State under operation of its law’⁵⁴.

According to van Waas, three concerns arise when dealing with the issue of defining statelessness. First, the definition provided by international law fails to address the situation and needs of people who fall out of the narrow definition of *de jure* stateless but are experiencing the same lack of protection. Second, overcoming a situation of *de jure* statelessness by granting someone a nationality does not necessarily improve the situation of a persons, who could still be *de facto* stateless. Third, drawing the line between *de jure* and *de facto* stateless is problematic in practice, since a person’s nationality can sometimes be hardly defined.⁵⁵ Establishing if a person is *de jure* stateless is even more difficult when there are two or more nationalities to which a person could be entitled. This would require a comprehensive examination of domestic laws, including constitutional provisions, as well as the in-depth investigation of state officials’ practices. One could maintain that a factor adding to the difficulty of establishing if a person is *de jure* or *de facto* stateless are discrepancies between the law and the application of it; e.g. cases where the constitution attributes nationality *ex lege* via the application of *jus soli*, but a child born on the state’s territory is still not recognised as a national. Would this child be *de jure* stateless because his nationality is not being recognised by a state official or *de facto* stateless because he cannot effectively enjoy his right to nationality? UNHCR’s handbook on statelessness answers this question:

The reference to “law” in Article 1(1) [of the 1954 Statelessness Convention] should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.⁵⁶

⁵⁴ Convention Relating the Status of Stateless Persons of 1954 (adopted 28 September 1954, entered into force 6 June 1960) 370 UNTS 117 (Statelessness Convention 1954) article 1.

⁵⁵ Van Waas, 2009, pp. 22 ff.

⁵⁶ UNHCR, ‘Handbook on Protection of Stateless Persons’, Geneva, 2014, para. 22, available from <http://www.refworld.org/docid/53b676aa4.html> (accessed 12 February 2015).

Hence, if a state official acts according to official instructions or general state practice, even though these might be contrary to legislation, a person would fall under the category of *de jure* stateless.

Tucker criticises the expansion of the concept of statelessness, and warns against employing *de facto* statelessness where a person cannot effectively exercise her or his citizenship. He then uses the following definition of stateless person: ‘a person who does not possess a nationality, but does not possess the protection of his country of nationality and who resides outside the territory of that state, i.e. a person whose nationality is ineffective.’⁵⁷ Tucker further suggests that although a *de facto* stateless implies an ineffective citizenship, the bond on nationality still exists. Therefore, there is still room to challenge the ineffectiveness of citizenship. Tucker reasons that the ambiguous and wide application of the statelessness concept, and the call for protection of *de facto* stateless population, could weaken the international protection of the *de jure* stateless.⁵⁸

Following Tucker’s definition of *de facto* statelessness, it becomes clear that statelessness occurs in a context where the population has migrated and due to this situation and due to various reasons, cannot avail her- or himself of the protection of the country of origin, nor enjoy rights as a national in the country of residence. This makes it necessary to explore other concepts of *de facto* statelessness, since in the Dominican Republic many in the population affected by statelessness were born and reside there.

In its comprehensive research on statelessness “Unravelling Anomaly,” Equal Rights Trust (ERT) discusses different definitions and concepts of *de facto* statelessness, and finds one applicable to the situation of the Dominican Republic:

[T]here are persons who lack documentation and/or recognition as a citizen in their own country. This may result in situations of arrest and detention, restriction of movement including the inability to travel internationally, the inability to access services which are the legitimate entitlement of citizens, as

⁵⁷ J. Tucker, ‘Questioning de facto Statelessness: By Looking at de facto Citizenship’, *Tilburg Law Review*, no. 9, vol. 1-2, 2014, pp. 277.

⁵⁸ *ibid.*, pp. 283 f.

well as the systematic violation of human rights including in the context of internal displacement.⁵⁹

Weissbrodt and Collis also consider that *de facto* statelessness include situations where a person remains in the state of their nationality but are object to repression and discrimination, and thus do not enjoy the same rights as fellow citizens.⁶⁰ The Council of Europe's Group of Specialists on Nationality provides a useful interpretation upon which to base a definition of *de facto* statelessness. The Specialist Group sees a stateless persons as someone who possess a nationality, 'but where either the state involved refuses to give the rights related to it, or the persons involved cannot be reasonably asked to make use of that nationality'⁶¹. This concept of statelessness is applicable to stateless persons outside *and* inside the territory of the state of their nationality. Massey exhibits an additional understanding of *de facto* statelessness via reference to arguments by the IACtHR in the case of *Yean and Bosico v The Dominican Republic*⁶². In Massey's reasoning, the IACtHR establishes that 'statelessness comprises not only the lack of a nationality, but also the granting of a nationality which is ineffective'⁶³.

Although the concept of *de jure* statelessness presents difficulties in the application, the definition of a stateless persons provided by the 1954 Statelessness Convention gives certain framework in order to determine if a person is stateless. In contrast, there is no general applicable concept of *de facto* statelessness. An ineffective nationality, for instance, can also affect impoverished populations within their country of nationality who cannot access the rights to which they are entitled as citizens because of social exclusion or the absence or weakness of state institutions; because having a nationality

⁵⁹ Equal Rights Trust, 'Unravelling Anomaly: Detention, Discrimination and the Needs of Stateless Persons', London, 2010, p. 69.

⁶⁰ D. Weissbrodt, C. Collis, 'The Human Rights of Stateless Persons', *Human Rights Quarterly*, vol. 28, no. 1, 2006, p. 263, available from Jstor. (accessed 10 June 2015).

⁶¹ Council of Europe in: H. Massey, 'UNHCR and *De Facto* Statelessness', *UNHCR*, Geneva, 2010, p. 30, available from <http://www.refworld.org/pdfid/4bbf387d2.pdf> (accessed 16 June 2015)

⁶² 'States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective.' Cf. *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights (IACtHR), 8 September 2005, para. 142, available from http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf (accessed 12 October 2014).

⁶³ Massey, 2010, p. 30.

might convey entitlements only on paper and not in real life, and is thus ineffective. Applying the concept of *de facto* stateless to these populations would be illusory. As Tucker underlines, when talking about statelessness it is important to bear in mind the link of nationality. Henceforth, *de facto* statelessness could be referred to as an ineffective right to nationality, rather than an overall ineffective nationality. Henceforth, for the analysis of the thesis I suggest following the concept of *de facto* statelessness, which combines the different elements previously discussed: A *de facto* stateless person is a person who cannot access her or his nationality because either the access to official documents is restricted, be it through discretionary denial by individual state officials or due to unreasonable evidentiary requirements a person cannot be expected to fulfil, or the issued documents are not accepted as proof of nationality, although by law she or he would be entitled to the nationality that cannot be accessed.

1.4. Why child statelessness?

*'No child chooses statelessness. It is never her or his fault.'*⁶⁴

It is estimated that worldwide there are six million stateless children, amounting to around half of the estimated global stateless population. Their already extreme situation of vulnerability due to their lack of a nationality is exacerbated by their young age.⁶⁵

According to UNHCR, currently every ten minutes a child is born stateless. Many times children are rendered stateless because of humanitarian crises, as in the case of over 36,000 stateless Syrian new-borns living in Lebanon.⁶⁶ UNHCR estimates that around 10 million people are stateless all around the world. The best-known and severest situations of statelessness occur for instance in Myanmar, where there are anywhere between 800,000 and 1.33 million Rohingyas, a Muslim minority that was excluded from Burmese citizenship through a law in 1982. Additionally, there is the case of many Syrian Kurds, deprived of citizenship in 1962. In Nepal there are no reliable estimates, yet,

⁶⁴ UNHCR/Plan International, 'Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights', 2012, available from <http://www.refworld.org/docid/514acd3e2.html> (accessed 12 June 2015).

⁶⁵ *ibid.*

⁶⁶ Cf. D. Al Rifai, 'UN: 36, 000 newborn Syrian stateless in Lebanon', Al Jazeera, 11 May 2015, available from <http://www.aljazeera.com/news/2015/05/150506060248502.html> (accessed 12 June 2015).

statelessness is a serious problem because women are not allowed to pass their nationality to their children.⁶⁷

Most stateless children live in their home country; i.e. where they were born and raised by their parents.⁶⁸ This shows that stateless children often find themselves stateless in the country they might call home. They are denied or cannot access the nationality of the state where they have lived their entire lives, but moreover, the state to which they might have developed the strongest ties.

Child statelessness is an issue that calls for extra attention, not only because children require a special protection, but because most of new cases of statelessness affect children, who have inherited their parents' statelessness.⁶⁹ Therefore, in order to reduce statelessness cases, preventing child statelessness should be at the forefront of the efforts:

While the eradication of statelessness is an ambitious target, a straightforward and practicable first step is to stop the spread of statelessness, in particular by preventing statelessness among children. [...] Moreover, the often intergenerational cycle of statelessness will be broken, contributing significantly towards the ultimate eradication of statelessness.⁷⁰

Intergenerational statelessness arises from a long chain of violations of rights, particularly the right to nationality, and is therefore difficult to tackle. Approaches to resolve intergenerational statelessness include efforts in thoroughly targeting each generation of stateless persons. If one case of statelessness is solved, the hope is that in the same way statelessness that had been passed, later generations will be able to

⁶⁷ Cf. World Bulletin, 'A thirds of the world stateless are children', 4 November 2014, available from <http://www.worldbulletin.net/haber/147705/un-a-third-of-the-worlds-stateless-are-children> (accessed 12 June 2015).

⁶⁸ M. Lynch, 'Futures denied: Statelessness among infants, children and youth', *Refugees International*, 2008.

⁶⁹ Cf. ISI, 'Causes of Statelessness'.

⁷⁰ European Network on Statelessness, 'Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices', 2009, p. 2, available from <http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues,%20gaps%20and%20good%20practices.pdf> (accessed 12 June 2015).

acquire a nationality. However, this is a long process that many times proves impossible or very difficult to realize successfully. Therefore, by ensuring that no child is born stateless, even if the parents were stateless, the chain is broken. As can be seen, tackling child statelessness is crucial for eradicating stateless overall because it can prevent most of the new cases of statelessness.

2. International framework of protection against Statelessness

*'Will international law colonize the last bastion of sovereign discretion?'*⁷¹

The notion that states enjoy absolute sovereignty, especially when it comes to human rights violations, is an outdated paradigm of international law. Professor of International Law at the Yale Law School Michael Reisman argued fifteen years ago, that 'no serious scholar still supports the contention that internal human rights are "essentially within the domestic jurisdiction of any state" and hence insulated from international law'⁷².

Next, I will discuss the international framework in order to understand how broad the protection against statelessness and for the right to nationality has developed, especially in regards to special protection for children.

2.1. The relevance of the Statelessness Conventions

*'Stateless individuals are some of the world's most vulnerable people. They are also some of the least known.'*⁷³

Although the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws already dealt with questions around securing nationality for everyone back in 1930, its impact for addressing statelessness was rather limited.⁷⁴ This is also true for the 1954 Convention on the Status of Stateless Persons. Overall, the 1954 Convention does not seek to establish special rights for stateless persons, but rather to create a framework where stateless persons are not treated significantly different from

⁷¹ P. J. Spiro, 'A New International Law of Citizenship', *The American Journal of International Law*, vol. 105, no. 4, 2011, p. 694, available from Jstor (accessed 12 February 2015).

⁷² M. Reisman, 'Sovereignty and Human Rights in Contemporary International Law', *The American Journal of International Law*, vol. 84, no. 4, 1990, p. 869. Available from Jstor (accessed 21 May 2015).

⁷³ M. Lynch, 'Lives on Hold: The Human Cost of Statelessness', *Refugees International*, 2005, p. 35, available from <http://www.refworld.org/docid/47a6eba00.html> (accessed 23 April 2015).

⁷⁴ Van Waas, 2008, p. 40-41.

other aliens. This is evident in the language of the Convention, which reiterates in various provisions that stateless persons should enjoy a ‘treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances’⁷⁵. In regards to rights such as the right to practice a religion, access to courts, or the right to elementary school, the 1954 Convention even foresees the same treatment as for nationals.⁷⁶ Merely through Article 32, which comprises the facilitation of naturalisation procedures, the 1954 Convention contributes to the reduction of statelessness.

When it became evident that statelessness was not only an issue affecting stateless population, that it was also an issue of conflict prevention and resolution, a more urgent necessity to prevent and reduce it arose. The Convention on the Reduction of Statelessness of 1961 (hereinafter 1961 Convention), merely materialised the right to nationality contained in Article 15 of the UDHR insofar it served as a mean to prevent statelessness.⁷⁷ In her comprehensive research on statelessness under international law, van Waas discusses some of the shortcomings of the 1961 Convention in regards of the definition and determinations of statelessness. This issue is crucial for the further analysis on child statelessness in the Dominican Republic since it exposes the difficulty of identifying statelessness persons in a precise and unambiguous manner.

According to van Waas, since no statelessness definition can be found in the 1961 Convention, many assume that it picks up the definition of a stateless person from the 1954 Convention. Van was refers to the Final Act of the 1961 Convention, which ‘recommends that persons who are *de facto* stateless should as far as possible be treated as *de jure* stateless to enable them to acquire an effective nationality’.⁷⁸ However, more importantly is the question of operability she raises:

⁷⁵ Cf. Convention Relating the Status of Stateless Persons 1954, arts. 13, 15, 17, 18, 19, 21, and 22.

⁷⁶ Cf. Arts. 4, 16 and 22, respectively. Equal treatment is also set forth in regards to taxation (art. 28), access to public relief (art. 23)

⁷⁷ Van Waas, 2008, p. 41-45

⁷⁸ Resolution I of the Final Act of the 1961 Convention on the Reduction of Statelessness, in van Waas, 2008, p. 45.

[E]ven with this interference in mind and even if states were to take this non-binding recommendation to heart, it is not clear how it could be implemented in practice. For instance, where the Convention compels the states to offer nationality *ius soli* to a child who would “otherwise be stateless”, the recommendation would seem to call upon states to also confer citizenship *jus soli* to a child who would otherwise acquire an ineffective nationality. Quite how a state should go about making such a prediction is not explained.⁷⁹

The problem of identifying statelessness, as well as the risk of it, in terms of obligations contained in the 1961 Convention, has its origins in the absence of indications on how to assess whereas there is risk of statelessness, or whereas the denial of a specific nationality would lead to statelessness.⁸⁰ Van Waas further regrets that:

The Convention [...] fails to address such questions as where the burden of proof lies (with the individual concerned or with the state), what types of evidence may be accepted and what weight is to be given to different forms of proof.⁸¹

Finally, one should bear in mind that the number of ratification of both conventions is rather limited and although the definition of a stateless person, i.e. a *de jure* stateless person, is part of international customary law only, few states are bound to reduce or eradicate statelessness.⁸²

⁷⁹ Van Waas, 2008, p. 45.

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² As of July 2015, the Statelessness Convention of 1954 counts with 86 state parties, while the Convention of 1961 only counts with 63. Cf. UN Treaty Collection, Convention relating the Status of Stateless Persons, Ratification Status at 04-07-2015 06:46:17, available from https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en (accessed 5 July 2015); UN Treaty Collection, Convention on the Reduction of Statelessness, Ratification Status at 04-07-2015 06:46:17 EDT, available from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en (accessed 5 July 2015).

2.2. The right to nationality in international human rights instruments

Weissbrodt and Collins argue that the ‘right not to be stateless’ enjoys broad recognition.⁸³ Nevertheless, as this negative right is not codified, the right to nationality is understood as equivalent.

The most general provision regarding the right to nationality can be found in Article 15 of the UDHR⁸⁴, which has a positive and a negative right to nationality, the latter being the prohibition of arbitrary deprivation of nationality, and denial of nationality changes. As it happened with most of the human rights enshrined in the UDHR, the right to nationality has acquired binding force through its incorporation in binding treaties. These human rights instruments contain the right to nationality as general provisions or in reference to the rights of the child. This surely is connected to the fact that there is certain sense of obligation towards the protection of children; but moreover, as pointed out previously, the prevention of child statelessness is strategic to the eradication of statelessness.

The International Covenant on Civil and Political Rights (ICCPR), for instance, does not foresee a general right to nationality but incorporates this right to Article 24 regarding the rights of the child. It established that ‘[e]very child shall be registered immediately after birth and shall have a name’ and “[e]very child has the right to *acquire* a nationality”⁸⁵. The Convention on the Rights of the Child (CRC) keeps this language in its Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to *acquire* a nationality [...].
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international

⁸³ Weissbrodt/Collins, 2006, p. 246.

⁸⁴ Art. 15 UDHR

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

⁸⁵ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 24(1-2). emphasis added.

instruments in this field, in particular where the child would otherwise be stateless.⁸⁶

Unlike the UDHR, the ICCPR and the CRC contain the additional wording *acquire*. Doek explains that this wording was introduced because states would not have agreed to a general right granting the right to nationality to every child born on their territory. Nevertheless, this shortcoming has been taken up by the UN Human Rights Committee that has demanded that states implement measures to ensure that children acquire a nationality when they are born, including joint efforts between them in order to prevent statelessness. Doek further indicates that the ‘key to an effective implementation of the right to acquire a nationality is that the child is registered immediately after birth’⁸⁷. The addition of *acquire* into both, the ICCPR and the CRC, represent an important limitation to children’s right to nationality. To some extent, it means that the right to nationality is not inherent to the child but needs a further procedure of acquisition. One could argue that this is the reason why in the text of the ICCPR and the CRC the obligation to register a child precedes the right to acquire a nationality. At the same time, as we have discussed before, the acquisition of nationality happens generally in an automatic manner. Therefore, as indicated by UNHCR:

Most children without birth registration are not stateless. But where children are born in circumstances that might cause statelessness – such as born to mixed parentage, born in migratory setting, born to ethnic or other marginalized minorities denied citizenship, or born in border areas – lack of birth registration can result in statelessness.⁸⁸

Since child registration serves as record of birthplace and nationality of the parents, which determine the automatic acquisition of nationality by *jus soli* or *jus sanguinis*, it

⁸⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (Child Convention), emphasis added.

⁸⁷ J. E., Doek, ‘The CRC and the Right to Acquire and Preserve a Nationality’, *Refugee Survey Quarterly*, vol. 25, no. 3, 2006, p. 26 f., available from Oxfordjournals (accessed 12 June 2015).

⁸⁸ UNHCR, ‘Under the Radar and Under Protected: The Urgent Need to Address Stateless Children’s Rights’, 2012, available from <http://www.refworld.org/docid/514acd3e2.html> (accessed 12 June 2015).

is a crucial to prove that the child has this link either to a state territory or to a national of a state.

In this sense, Article 7 of the CRC can be described as a rather cautious attempt to protect children's right to nationality. This is also true for the protection against statelessness, since the text merely calls for special consideration when there is a risk of statelessness and does not contain a specific obligation.

The discussion on the extra wording of *acquire* is also addressed by van Waas when she refers to nationality rights of married women: 'the difference between having a *right to acquire* a nationality and acquiring a nationality can be great'⁸⁹. What she implies is that even though there might be an entitlement to opt for a nationality, the process of acquiring one does not ensure a nationality. In her paper "Statelessness and the Problem of Resolving Nationality Status", Batchelor makes an important clarification on what it means to have a nationality or having to opt for acquiring one:

Those who are granted citizenship automatically by the operation of these legal provisions are definitively nationals of that State. Those who have to apply for citizenship and those the law outlines as being eligible to apply, but whose application could be rejected, are not citizens of that State by operation of that State's law.⁹⁰

Due to few ratifications the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC), the scope of protection of the right to nationality is limited.⁹¹ Nevertheless, the MWC in particular is an important instrument considering that there is a higher risk of statelessness in a context of migration. The MWC established that '[e]ach child of a migrant worker shall have the

⁸⁹ Van Waas, 2008, p. 76.

⁹⁰ C. A. Batchelor, 'Statelessness and the Problem of Resolving Nationality Status', *International Journal of Refugee Law*, vol. 10, no. 1-2, 1998, p. 171, available from Oxford Journals (accessed 27 April 2015).

⁹¹ As of July 2015, 48 states have ratified the Convention. Cf. UN Treaty Collection, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Ratification Status at 16-07-2015 05:02:38, available from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en (accessed 16 July 2015).

right to a name, to registration of birth and to a nationality⁹². So we can see that here the right to nationality is not subject to the limitation of *acquiring*.

Other core international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and Convention on the Rights of Persons with Disabilities (CRPD), have provisions regarding the right to nationality in reference to non-discrimination. For instance, CEDAW aims at ensuring equal right with men in respect of their own nationality and of their children⁹³, while CERD seeks to eliminate discrimination particularly in a series of rights, including the right to nationality.⁹⁴ In a similar manner, CRPD includes overall provisions on non-discrimination an enjoyment of rights on an equal basis with others in regards of the right to acquire and change a nationality, and further foresees special protection of these rights for children with disabilities.⁹⁵

Interestingly, out of the three regional human rights instruments that have a complaint mechanism, only the American Convention on Human Rights (ACHR) has a provision on the right to nationality, while the European Convention on Human Rights (ECHR) and the African Charter on Human and People's Rights (ACHPR) remain silent on the matter.⁹⁶

⁹²*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (Convention on the Rights of Migrant Workers), art. 29.

⁹³ *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 3 (CEDAW), art. 9.

⁹⁴ *Convention on the Elimination of All Forms of Racial Discrimination* (adopted, entered into force 4 January 1969) 660 UNTS 195 (CERD), art. 5(d)(iii).

⁹⁵ *Convention on the Rights of Persons with Disabilities* (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD), art. 18.

⁹⁶ Cf. Van Waas, 2008. This does not imply that the African and the European systems do not have a framework of protection on the right to nationality. The African Charter on the Rights and Welfare of the Child (ACRWC), safeguards the child's right to a name, immediate registration of its birth, and the right to *acquire* a nationality. In addition the ACRWC requires that state parties apply *jus soli* into their constitutions in order to prevent child statelessness. The European Convention on Nationality (ECN) establishes that statelessness should be avoided and that arbitrary deprivation of nationality is prohibited. Cf. *African Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc. CAB/LEG/24.9/49 (ACRWC), art. 6(4); *European Convention on Nationality* (adopted 6 November 1997, entered into force 1 March 2000) ETS 166 (ECN), art. 6.

The ACHR, which is applicable to the Dominican Republic, contains a general protection of the right to nationality, but also foresees prevention of statelessness through the application of *jus soli*, as well as the prohibition of arbitrary deprivation of nationality:

Article 20. Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.⁹⁷

3. Inter-American System of Human Rights Protection

Since this thesis is concerned with child statelessness and human rights violations in the Dominican Republic, a discussion on the regional human rights protection mechanism is necessary. As discussed before, state sovereignty is clearly limited in cases of respect for human rights. In the case of the Inter-American human rights regime, an historic development seems particularly interesting. According Cabranes, although the American states were those who even prior to the UDHR proclaimed the first major human rights document, namely the American Declaration of Rights and Duties of Man, little importance was actually given to human rights by members of the Organisation of American States (OAS) until 1959. This apathy towards human rights issues changed due to gross human rights violations committed by the Trujillo regime in the Dominican Republic. It was then, when the OAS started to recognise ‘that violations of human rights and denials of democratic freedoms within the member states might affect the peace of the Americas and might thus become a proper concern of the Organization’⁹⁸. Moreover, it was the fact that Trujillo invoked the non-intervention doctrine as reaction to the pressure from other OAS member states that led the OAS to explore how to

⁹⁷ ACHR, art. 20.

⁹⁸ J. A. Cabranes, ‘Human Rights and Non-Intervention in the Inter-American System’, *Michigan Law Review*, vol. 65, no.6, 1967, p. 1164, available from Jstor (accessed 21 May 2015).

improve the protection of human rights in the region.⁹⁹ The fact that precisely the situation in the Dominican Republic served as a wakeup call to challenge the doctrine of non-intervention in the Americas, evidenced how problematic it is that a similar discourse has emerged in the Dominican Republic in regards to the right to nationality. In Chapter III, I will elaborate how the argument that citizenship laws and domestic jurisprudence on the matter stand above any international obligation is being used by various actors within the Dominican Republic to repel admonitions from neighbouring countries, human rights defenders, international organisations, and diverse UN bodies.

3.1. The right to nationality in the Americas: the tradition of *jus soli*

In the light of Sentence 168/13 and Special Law 169-14 it is of particular importance to know two particularities of the regional context of the Americas: its *jus soli* tradition and the status of the right to nationality in the Inter-American system of human rights protection. The need for such contextualisation primarily arises from the fact that the wide application of *jus soli* in the Americas stands in contrast to the practice in all other continents.

In her analysis on the human rights implications that the abolishment of *jus soli* would have in the United States of America, Culliton-González illustrates how *jus soli* is a special feature of the overall American continent, and argues that in the Americas ‘the general rule of granting of birth right citizenship rights to all, without discrimination, has been progressively developing, rather than retrogressing’¹⁰⁰. She continues by stating that *jus soli* is a regional customary international law.¹⁰¹ This opinion is shared by J. Blake in her article “Haiti, the Dominican Republic, and Race-based Statelessness in the Americas”. Blake suggests, that ‘the denial of *jus soli* is a *prima facie* violation of American regional customary international law’¹⁰². Blake and Culliton-González deliver

⁹⁹ J. A. Cabranes, ‘Human Rights and Non-Intervention in the Inter-American System’, *Michigan Law Review*, vol. 65, no.6, 1967, p. 1164, available from Jstor (accessed 21 May 2015).

¹⁰⁰ K. Culliton-González, ‘Born in the Americas: Birthright Citizenship and Human Rights’, *Harvard Human Rights Journal*, vol. 25, 2012, p. 144. It is important to clarify that in her article, Culliton-González by referring to “birthright citizenship” means exclusively birthright citizenship based on *jus soli*.

¹⁰¹ *ibid.*, pp.138-144.

¹⁰² J. Blake, ‘Haiti, the Dominican Republic, and Race-based Statelessness in the Americas’, *Georgetown Journal of Law and Modern Critical Race Perspectives*, vol. 6, no.2, 2014, p. 153.

evidence for state practice and the existence of *opinion juris* by demonstrating that the majority of American states—85 percent, according to Culliton-González—grant nationality based on *jus soli* even to children of irregular migrants. Both authors ascribe this practice to the fact that the population of the Americas historically has been predominantly composed of immigrants and their descendants.¹⁰³

The preliminary observations above shed light on the status that *jus soli* enjoys in the Americas. Yet, another issue highlights the importance of *jus soli*, namely its non-discriminatory potential. Culliton-González comments on the development of the 14th Amendment of the US constitution and illustrates how its objective was to overcome racial discrimination and equality in the access of citizenship.¹⁰⁴ In establishing this link between non-discrimination and *jus soli*, Blake follows an alternative line of argumentation and comments that ‘[a]ttempts to deny *jus soli* citizenship have been historically based on animus towards racial and ethnic minority groups’¹⁰⁵. Although both authors agree on the idea that the principle of *jus soli* has an egalitarian character, they follow different approaches that could be employed to assess whereas citizenship reforms are seeking a non-discriminatory or discriminatory agenda.

Van Waas not only considers that the Inter-American System has the farthest reaching protection of the right to nationality,¹⁰⁶ but also attributes this and the simple solution to statelessness established through Article 20(1) to the above outlined *jus soli* tradition.¹⁰⁷

The Dominican position during the *travaux préparatoires* of the ACHR also marks an interesting precedent. During the conference that led to the declaration of the ACHR, the Dominican Republic advocated for a separate article on nationality, instead of integrating it within the rights of the child. The Dominican representative argued that

¹⁰³ Cf. Blake, 2014; Culliton-González, 2012.

¹⁰⁴ Culliton-González, 2012, pp. 19-22.

¹⁰⁵ Blake, 2014, p. 159.

¹⁰⁶ Van Waas, 2008, p. 60.

¹⁰⁷ *ibid.*, pp. 60 f.

this way the protection to the right to nationality would be applicable to everyone. This strengthened article on nationality was embraced.¹⁰⁸

The Dominican Republic and Haiti are among the five countries in the American continent that do not automatically grant nationality to native-born children of undocumented migrants. The remaining thirty American countries provide citizenship based on the principle of *jus soli* to children born on their territory, disregarding the legal status of their parents.¹⁰⁹

As noted, in the Americas a special protection has been given to nationality; ultimately through the prevalence of *jus soli*. However, one should refrain from neither romanticising *jus soli* as a fairer principle, nor advocating for it on the ground that it has been an “American tradition”. Instead, it should be emphasised that restrictions in *jus soli* prompt that a smaller part of the population of a state is entitled to rights. This is even more so with regard to the rights of a population with a migratory background, who have established residence in the country and have built strong links to that country.

¹⁰⁸ Cf. Secretaria General de la Organización de los Estados Americanos (OEA), *Conferencia Especializada Inter-Americana Sobre Derechos Humanos*, 7-22 de Noviembre de 1969, OEA/Ser.K/XVI/1.2), p. 64.

¹⁰⁹ Culliton-González, 2012, p.131.

III. Statelessness in the Dominican Republic

After elaborating the main aspects of statelessness and the rights to nationality, with a focus on child statelessness, the following chapter aims to make an introduction and analysis of the Dominican context in order to understand how child statelessness has emerged in the Dominican Republic. The aim is to explore how historic events and legal reforms have shaped the right to Dominican nationality. For this purpose, first historic and political background will be offered, followed by the discussion of the relevant international and domestic legal framework decisive to Sentence 168/13 and Special Law 169-14. For a better understanding of the legal framework, I will make an Excursus into a determinant case before the IACtHR in the Case of *Yean and Bosico v Dominican Republic*.

1. Historical and political background

Dominican Republic and Haiti share the island of Hispaniola and an important part of their colonial history. The search for labour forces in the sugar cane plantations in the Dominican Republic fostered regular migration. Additionally, the extreme poverty, natural disasters and political instability in Haiti have led to irregular migration, which has been enhanced, by the lack of coherent migrations policies and a proper asylum system in the Dominican Republic. All this historical and political factors certainly have shaped the relations between both nations, but moreover have had a critical impact on how Haitian migrants, but also asylum seekers and refugees, and their descendants are perceived and integrated into Dominican society. An in-depth analysis on Dominican-Haitian relation falls out of the scope of the research. In the following part, however, I will outline central historical developments for better understanding discrimination against Haitians and their descendants born in the Dominican Republic.

1.1. Anti-Haitianism in the Dominican Republic

Going back as far as the beginning of the nineteenth century is necessary when trying to understand the origins of tensions between Haiti and the Dominican Republic, especially when refereeing to “Anti-Haitianism”. In Chapter II we learnt how nationality laws in the Americas were shaped by the independence from the colonial

powers, and the need to create an own national population and identity. In stark contrast to other American and Caribbean states, the Dominican Republic first gained its independence from the first “Black Republic,” Haiti.¹¹⁰ Paulino denominates the expulsion of Haitians as the ‘seed of Dominican nationhood’.¹¹¹ Haiti, which had gained its independence in 1804, occupied the Spanish dominated eastern part of the island from 1822 to 1844.¹¹² Although the temporary unification of Hispaniola meant the abolition of slavery and liberation from colonial power, it did not represent a genuine Dominican independence and was stained by acts of retaliation against the white population, including the systematic massacre of thousands of them.¹¹³ Paulino explains this situation by stating that ‘what Haitians called “unification” was designed to protect their country from re-enslavement. But the Spanish colonists (particularly the white and mulatto slave owners) on the eastern end of the island saw it as an invasion’¹¹⁴. Paulino reasons, however, that although Anti-Haitianism had its precedents in the resentment by the twenty-two years of occupation in the nineteenth century, it was during the Trujillo era (1930-1961) that a ‘historic but diffuse anti-Haitian sentiment’¹¹⁵ became institutionalised. Wooding and Moseley-Williams support this argument, and comment that although the armed conflicts between both countries ‘gave rise to a lasting Dominican belief in Hispanic nationalism and suspicion on Haitian intentions’¹¹⁶, racist and xenophobic elements of Anti-Haitianism emerged from Dominican politics later in history, notably under Trujillo’s regime.¹¹⁷ In 1937 Dominican soldiers and police officers on Trujillo’s instructions massacred thousands

¹¹⁰ After the Independence War in 1844 the first Dominican Republic was established. However, in 1861 on request from the Dominican government Spanish sovereignty was restored, until to be overthrown in 1865. This second Independence is referred to as *Restauración*.

¹¹¹ E. Paulino, ‘Anti-Haitianism, Historical Memory, and the Potential for Genocidal Violence in the Dominican Republic’, *Genocide Studies and Prevention*, vol.1 , no. 3, 2006, p. 269.

¹¹² B. Wooding, R. Moseley-Williams, ‘Needed but unwanted’, New York, Catholic Institute for International Relations, 2004.

¹¹³ B. Antonini, ‘NOREF Report: Relations between Haiti and the Dominican Republic’, *Norwegian Peacebuilding Resource Centre*, 2012, available from http://www.peacebuilding.no/var/ezflow_site/storage/original/application/26f1be85a4d2270c401bd6dce69afec3.pdf (accessed 28 May 2015).

¹¹⁴ Paulino, 2006, p. 269.

¹¹⁵ *ibid.*, p.266.

¹¹⁶ Wooding, Moseley-Williams, 2004, p. 19.

¹¹⁷ *ibid.*, 2004.

of persons considered being Haitians.¹¹⁸ Although Trujillo's "Domicanisation" project begun with these horrific and sanguinary event series, it then resorted to mass deportations and migration.¹¹⁹ Trujillo's project was based on an anti-Haitian ideology that revived, legitimised and fostered dichotomies, such as Hispanic versus African and Christian versus Voodoo, between the Dominican and the Haitian identity.

The discussion on Anti-Haitianism did not aim to answer whereas nationality policies in the Dominican Republic are based on a xenophobic and racist ideology, or on a socio-political response to migratory pressure. Blake for example suggests, that practices aiming at excluding Dominicans of Haitian descent from the enjoyment of Dominican nationality are 'rooted in racial prejudice, xenophobia, and intolerance.'¹²⁰ In either case, the discussion on Anti-Haitianism sheds light on how discrimination against Haitians has marked Dominican national identity. In the further analysis of the legal framework, it will become evident, that a racial component is undeniable.

1.2. Haitian migration to the Dominican Republic

In 2013 the National Statistics Office (*Oficina Nacional de Estadística*, ONE), with the technical and financial support of the United Nation Population Fund (UNFPA) and the European Union (EU), launched the results of the *first* survey on immigrant population in the Dominican Republic (*Encuesta Nacional de Inmigrantes*, ENI-2012). The survey revealed that 458,233 Haitian migrants lived in the Dominican Republic by 2012, and that the number of their *first generation* descendants amounted to 209,912,¹²¹ making up around two per cent of the Dominican population.¹²² However, there is neither certainty on the number of Haitians living in the Dominican Republic – certainly also due to the fact that most of them have no legal status in the country – nor on the size of

¹¹⁸ According to Wooding and Moseley-Williams, during the so called "Parsley Massacre", Dominican documents, skin colour and accent were the criteria for determining if a person was Haitian.

¹¹⁹ Cf. Wooding, Moseley-Williams, 2004.

¹²⁰ Blake, 2014, p. 180.

¹²¹ Oficina Nacional de Estadística, 'Primera Encuesta Nacional de Inmigrantes en la República Dominicana (ENI-2012): Informe General', 2013, p. 30.

¹²² According to ONE the Dominican population was estimated at 9,716,940 in 2012. Cf. ENI-2012, p. 40.

the first, second or third generation off-springs.¹²³ This gap in precise figures is paradoxical since it is accompanied by the existence of several empirical studies on migrant population, which have been conducted for very diverse purposes or on occasion of time-limited projects, and have collected information pertaining different aspects of this population's life.¹²⁴ For instance, an inter-agency project financed by the United Nations Trust Fund for Human Security (UNTFHS), and carried out by the United Nations Development Programme (UNDP), UNICEF and UNHCR, recently published a report on the situation in the Bateyes, which are impoverished, originally sugar cane workers settlements. This study comprised pregnancies, nutrition, family structure, the use of contraceptives, but also the documentation status of the population born in the Dominican Republic.¹²⁵ A study of particular importance for the present thesis was published by the Caribbean Observatory on Migration (OBMICA) in 2014.¹²⁶ It assessed different historical and legal factors affecting the access to documentation of the population living in the Bateyes, including Haitian migrants and their descendants.¹²⁷

It comes as no surprise that extreme poverty is the primary cause for Haitian migration to the Dominican Republic, but also to the rest of the Caribbean and other parts of the world. Haiti is one of the poorest countries in the Americas.¹²⁸ The political instability

¹²³ J. Ferguson, 'Migration in the Caribbean: Haiti, the Dominican Republic and Beyond', *Minority Rights Group International*, 2003, p. 8, available from <http://www.minorityrights.org/download.php?id=141> (accessed 28 May 2015).

¹²⁴ 'Acceso de Población Migrante y sus comunidades a Servicios de VIH/SIDA: Políticas Públicas, Marco Normativo y su Contexto Social' by the Pan Caribbean Partnership Against HIV/AIDS (PANCAP) and the Caribbean Community (CARICOM) published in 2014; N. Riveros, 'Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación', Observatorio Migrantes del Caribe (OBMICA), Santo Domingo, 2014, available from <http://www.obmica.org/images/Publicaciones/Libros/Riveros%202014%20Bateyes%20y%20documentacion.pdf> (accessed 28 May 2015).

¹²⁵ Cf. United Nations Trust Fund for Human Security, 'Seguridad Humana en los Bateyes de la República Dominicana: Reporte de Estudio de Línea Base', Santo Domingo, 2014.

¹²⁶ Riveros, N., 'Estado de la cuestión de la población de los bateyes dominicanos en relación a la documentación', *Observatorio Migrantes del Caribe* (OBMICA), Santo Domingo, 2014, available from <http://www.obmica.org/images/Publicaciones/Libros/Riveros%202014%20Bateyes%20y%20documentacion.pdf> (accessed 28 May 2015).

¹²⁷ I will resort to the results of this specific study in the latter analysis on child statelessness.

¹²⁸ World Bank, 'Investing in People to fight Poverty in Haiti: *Reflections for evidence-based policy making*', World Bank Group, Washington D.C., 2014, available from <http://documents.worldbank.org/curated/en/2014/01/24142063/investing-people-fight-poverty-haiti-reflections-evidence-based-policy-making> (accessed 28 May 2015).

is surely a determinant factor of poverty, and the other way around as they are mutually reinforcing.¹²⁹ In addition, natural catastrophes such as hurricanes and the earthquake of 2010 have been other push factors for Haitian emigration.

The following outline of different waves of Haitian migration to the Dominican Republic shall serve as a background on the documentation situation of these migrants and their descendants, ultimately also affecting their right to nationality and the risk of statelessness experienced by younger generations, including children.

1.2.1. Sugar cane plantations and the transformation of bateyes

The earlier and bigger waves of Haitian migration to the Dominican Republic were by no means irregular. Although a significant number of Haitian migrants arrived in the Dominican Republic in the early twentieth century to work on the US American owned sugar cane plantations,¹³⁰ bilateral agreements between Haiti and the Dominican Republic determined the import of sugar cane workers, called *braceros*, between 1952 and 1986. Based on these agreements, the Haitian state would recruit a certain quota of young men and send them to work to state owned sugar cane plantations in the Dominican Republic during the harvest. Wooding and Moseley-Williams describe these agreements as ‘officially sanctioned and highly corrupt bilateral system of exploitation.’¹³¹

Despite the fact that a significant number of *braceros* entered the Dominican Republic through the agreements with Haiti, their legal was and remains unclear. This has been a significant aspect in regards to the right to nationality since the right to Dominican nationality to the descendants of migrants has been put into question, and even denied, on the ground of the irregular status of the parents. In her recent research on the

¹²⁹ In 1986 the dictatorship of Jean-Claude Duvalier collapsed only to be followed by various unelected governments and coups. The brutal military regime led by Jean-Bertrand Aristide, even though he had been elected, was overthrown in 1991. As reaction to the coup, the UN established a peacekeeping operation in 1993, further peacekeeping operation followed. In 2004 a new armed conflict burst and the UN established the MINUSTAH, which after elections in 2010 still remains in the country. Ferguson 2003; M. Fernández Moreno, C. Chagas Vianna Braga, M. Siman Gomes, ‘Trapped Between Many Worlds: A Post-colonial Perspective on the UN Mission in Haiti (MINUSTAH)’, *International Peacekeeping*, 2012, vol. 19, no. 3, pp. 377-392, available from Routledge (accessed 16 July 2015).

¹³⁰ Cf. Riveros 2014, p. 17 ff.

¹³¹ Wooding, Moseley-Williams 2004, p. 38.

situation of documentation in *bateyes*, Riveros describes different documentation types and procedures. In theory, the process of documentation of *braceros* involved four institutions: National Sugar Council (*Consejo Estatal del Azúcar*, CEA),¹³² the Ministry for Migration (*Dirección General de Migración*, DGM), the Directorate General for Personal Identification (*Dirección General de Cédula de Identificación Personal*),¹³³ and the Haitian consulate. For administrative purposes the CEA would issue a *ficha*, which was a document assigning a number to the worker and indicating the name of the sugar cane plantation in order to keep track of the workers' productivity and their correspondent wage. Although further information such as name, date of birth and a picture were also included, praxes varied. The Directorate General for Personal Identification would have to provide identity documents for foreigners (*cédula de extranjero*) according to the list provided by the CEA, so the DGM would then issue a migration permit. Riveros, however, remarks that one cannot tell for sure how many *braceros* actually obtained their permits or identity documents for foreigners but that *braceros* seemed to only carry CEA's *ficha*.¹³⁴ A determinant fact when it comes to the right to nationality and statelessness is that *braceros*, and their wives who sometimes also had this document, were allowed to use the *ficha* to declare their children before the Civil Registry Offices in order to obtain Dominican birth certificates for their children.¹³⁵

Resulting from the fall of the Duvalier-Dictatorship in Haiti in 1986, the sugar cane plantations resorted to workers who were recruited privately and individually.¹³⁶ Although irregular migration had occurred before 1986, without the bilateral agreements clandestine recruitment rose. Ferguson carefully suggests that this led to forced labour, and that 'recruits were [...] taken to border towns [...], where they were arrested by Dominican military and forcibly transported to a CEA plantation'¹³⁷.

¹³² Until 1961 the state owned sugar cane plantations were under private control of Trujillo himself. After Trujillo's assassination the CEA took over the administration of the state owned plantations.

¹³³ This state institution was tasked with the issuance of identity documents for Dominicans and foreigners likewise. These tasks would later transferred to the Central Electoral Board (JCE).

¹³⁴ Riveros, 2014, pp. 41 ff.

¹³⁵ *ibid.*, p. 75.

¹³⁶ Wooding, Moseley-Williams 2004.

¹³⁷ Ferguson, 2003, p. 11.

With the massive import of Haitian sugar cane-cutters, the *braceros*, to the Dominican Republic, settlements called *batey* were established within the property of the sugar cane plantations. Although *bateys* were intended to be temporary quarters, they became permanent communities when the *braceros* brought their families from Haiti or established their own families with Dominican women.¹³⁸ Wooding and Moseley-Williams describe a two-fold characterisation of the *bateyes*. On the one side, these settlements were a prison for the *braceros* and their families, since they were not allowed to leave the sugar cane plantations. On the other hand, the *bateyes* were safe heaven where they, at least to some extent, were safe from deportations.¹³⁹

The dynamics of *bateys* have significantly changed, as a consequence of the fall of the sugar cane industry, Haitians and their Dominican born offspring have left *bateyes* in order to seek jobs in other branches.¹⁴⁰ Samuel Martínez, who chairs the human rights committee of the American Anthropology Association, delivers an extremely interesting, and compelling approach regarding reforms on the rights to nationality and the transformation of *bateyes*. During one of his lectures, he reflected on reforms regarding the right to Dominican nationality, including Sentence 168/13 and Special Law 169-14. He argues that with Dominicans of Haitian descent leaving the *bateyes* and moving from the sugar cane plantations to other jobs, or even aspiring to higher academic education, a new institution preventing social mobility became necessary. He reasons that the restriction on the right to nationality is the new system with this objective:

What is tacitly envisioned by the migration law, resolution 12/07 and the High Court Ruling of 2013 is not a territorial expulsion of Haitian ancestry people, but their incorporation in Dominican political economy as second class people. People, who do not possess the same rights as Dominican citizens.¹⁴¹

¹³⁸ *ibid.*, pp. 11 ff.

¹³⁹ Wooding, Moseley-Williams 2004

¹⁴⁰ Cf. Ferguson 2003; Riveros 2014; Wooding, Moseley-Williams 2004.

¹⁴¹ S. Martínez, 'Anti-Haitian Exclusionism in the Dominican Republic: A Biopolitical Turn' [online video], 2014, min. 14:49-15:21, <http://academics.holycross.edu/crec/events/2014/martinez> (accessed 28 May 2015).

1.2.2. Political refugees from Haiti in the Dominican Republic

During my research on child statelessness in the Dominican Republic, I came across little information and debate about the nationality of children born in the Dominican Republic whose parents came as refugees during the Duvalier-Dictatorship between 1957 and 1986, and in the aftermaths of the 1991 coup in Haiti, as well as in later years. Refugees and asylum seekers, and the faith of their descendants are mentioned only at the periphery of the overall Haitian migration.

The estimates on how many Haitian fled to the Dominican Republic in the early 1990 range from 2000¹⁴² to 20,000¹⁴³. Wooding and Moseley-Williams attribute the failure to consider asylum applications to the government's official indifference and reluctance to meet its obligation under international law.¹⁴⁴ It seems plausible to surmise, that persons fleeing violence, including those who actually applied for asylum but never obtained an answer by the Dominican authorities, that remained in the Dominican Republic live under equal or very similar conditions as irregular Haitian migrants, also referring to their documentation situation and that of their children.

Today the refugee and asylum-seeker population in the Dominican Republic is small, as it does not surpass 1800, and consist mainly of Haitians. Then again, between 2005 and 2012 no applications were considered at all.¹⁴⁵ The Dominican Republic acceded to the Convention Relating the Status of Refugees of 1951 in 1979¹⁴⁶, and had the obligation to grant special protection accordingly. Moreover, refugee status should have led to regular migratory status in the Dominican Republic. This arguably means that Dominican born offsprings of the refugee population, who missed a proper

¹⁴² N. Lippmann, P. Marcelino, 'Migratory Policy as an Exclusionary Too: The Case of Haitians in the Dominican Republic', *Laws*, vol. 3, no. 1, 2014, pp. 163-178, available from DOAJ (accessed 28 May 2015).

¹⁴³ Wooding, Moseley-Williams, 2004.

¹⁴⁴ *ibid.*

¹⁴⁵ Cf. J. Thomas, 'Reconocimiento de Refugiados ha fallado por años', *El Masacre*, 26 September 2012, available from <http://www.elmasacre.com/noticias/nacionales/15245/reconocimiento-de-refugiados-ha-fallado-por-anos.html> (accessed 28 May 2015).

¹⁴⁶ Cf. United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en (accessed 28 May 2015).

determination procedure, could have had proof of their parents' legal status and therefore would not be affected by Sentence 168/13.

2. Domestic legal framework

In order to study the effects of ruling 168/13 and Special Law 169-14 it is important to place them in the wider context of Dominican migrations and civil acts policies, as well as constitutional provisions. Domestically, the right to nationality is not exclusively determined by the constitution's article which establishes who is national of the Dominican Republic. The enjoyment of this right is affected significantly by administrative decisions and procedures, mainly produced by the JCE.

In his analysis of the situation arising from Sentence 168/13 in the Dominican Republic, associated Professor Leiv Marsteintredet at the University of Oslo speaks of the "re-domestication" of issues concerning nationality. What he tries to describe is a detachment of the Inter-American System of Human Rights Protection through the assertion of Dominican sovereignty.¹⁴⁷ This "re-domestication" rather than an "act of sovereignty" by Sentence 168/13 should be understood as a consolidation process.

The periodization on the evolution of Dominican civil registry in regards to the documentation of Haitian migrants by Riveros, delivers further observations supporting Marsteintredet's proposition. Based on historical and political developments, Riveros comes to the compelling conclusion that:

The documentation situation of Dominican population of Haitian descent has varied in time, following patterns that paradoxically have meant a recoil as the institution of civil registry has been strengthened in the country.¹⁴⁸

Martínez would not agree that there is a contradiction between the improvements of the civil registry system in general and the decline of access to documentation for Dominicans of Haitian descent. For him, technology and better regulation of the civil

¹⁴⁷ L. Marsteintredet, 'Backlashes to the Inter-American System of Human Rights and migrants' rights' [online video], 2014, <https://www.youtube.com/watch?v=4viY1ny4q-I>, (accessed 12 May 2015).

¹⁴⁸ Riveros, 2014, pp. 73 f. English translation by the author.

registry have led to the modernisation of prejudice and discrimination against Dominicans of Haitian descent.¹⁴⁹

The following discussion of the legal and administrative framework, not only shall illustrate the process that the authors describe above, but should primarily serve as foundation for the understanding and “logic” of Sentence 168/13 and Special Law 169-14, that will be closer analysed in Chapter IV. This will be crucial for finding more detailed answers to the question of child statelessness. Even though this section explores the domestic legal framework, it will be also necessary to outline Dominican Republic’s international human rights obligations and also make an excursus to the decision by the IACtHR in *Yean and Bosico* as it is closely linked to the analysis on Sentence 168/13.

2.1. Introduction to the documentation regime in the Dominican Republic

Before discussing the legal framework regulating the right to Dominican nationality it is of utmost importance to explain certain particularities of the civil registry process and requirements, particularly the type of documentation, I will refer to later. The civil registry is primarily regulated by the Law on Acts of the Civil State No. 659-44 (*Ley sobre Actos del Estado Civil*). However, several other laws, and legal and administrative regulations determine proceedings. In fact, studies have indicated that the complexity of proceedings and the numbers of different institutions involved in them is one of the causes of sub-record and the lack of documentation in the Dominican Republic.¹⁵⁰

The first document a child *should* have is a live-birth record (*certificado de nacido vivo*) given to her or his parents, usually the mother, at the health care centre where the child was born. This document only contains basic information on the child’s birth, such as place of birth, day and name of the parents. In cases where the childbirth occurred outside a health care centre, a record issued by the midwife or the village major or headman (*alcalde pedáneo*), which is certified by the mayoralty, serves as proof. These records serve as proof of the fact of birth and are required to make the inscription (*declaración*) of the birth before the corresponding Civil Registry Offices. Whereas in a

¹⁴⁹ Martínez, 2014, min. 42:00-44:00.

¹⁵⁰ Cf. Riveros, 2014, pp. 67 ff.

delegation of the Civil Registry Office in the health care centre – where there is one – or in ordinary civil registry offices, the parents’ will have to provide their personal identification and electoral document (*cédula de identidad y electoral*) in order to make the inscription of the child and thus obtain a birth certificate (*acta de nacimiento*), which is the first document attesting the Dominican nationality.¹⁵¹ Depending on the time of inscription and the child’s age and the parents’ documentation situation of the inscription on a later date require far more documents and can represent a lengthy and expensive process.¹⁵² Finally, for obtaining the identification and electoral document at age 18, first the original birth certificate has to be presented in order to obtain a duplicate birth certificate for the specific purpose of obtaining the personal ID, before being able to request the ID.¹⁵³

Riveros makes an important remark on the importance of the birth certificates in the Dominican Republic. Even though a person still has her or his first (the original) birth certificate, in order to e.g. register children to school or obtain a personal identity document, each time it is necessary to request an extract of the birth certificate – that will be valid only for three months – from the Civil Registry Office.¹⁵⁴

The lack of birth registration is not only faced by Dominican authorities, however a study carried out by UNICEF in 2013 showed that the sub-record and issuance of birth certificates was also a problem where there was the required infrastructure and personnel; Delegation of the Civil Registry in health care centres. The study showed that around six out of ten children that were born in 2012 left the hospital without being registered.¹⁵⁵ According to Eduardo Gallardo, child protection specialist for UNICEF in the Dominican Republic, this study was carried out because the Dominican Republic is one of the countries with most childbirth within health care centres and yet, the problem

¹⁵¹ SOMO, ‘Junta Central Electoral, República Dominicana, Automatización del Registro del Estado Civil: Entrevista a Empleados y Funcionarios del Registro Civil’, 2005, pp. 5 ff., available from <http://196.3.84.98:8081/somo/9%20-%20Otras%20Informaciones%20caso%20SOMO/MAS/Documentos%20de%20Vision%20y%20Alcance%202.1/4ANEXO1.PDF> (accessed 20 May 2015).

¹⁵² Riveros 2014.

¹⁵³ See Junta Central Electoral, FAQs, available from <http://cedula.jce.gob.do/FAQs#faq-481-4> (accessed 1 July 2015).

¹⁵⁴ Riveros, 2014, p. 68.

¹⁵⁵ Petrozziello, 2014, pp. 90 f.

of sub-record was significant.¹⁵⁶ In fact, 98 % of births take place in health care centres, and it is estimated that 20% of children under the age of five years remain unreported.¹⁵⁷ Gallardo also reasons that other factors contributing to the persistence of this problem might be the fact that mothers themselves are not registered, a significant numbers of parents are underage and thus do not have the identification and electoral document required to make an child inscription, sometimes mothers do not want to make the inscription until the father recognises the child as his.¹⁵⁸

2.2. Dominican legal framework and international human rights law

The Dominican Republic is not party to the 1954 Convention on the Status of Stateless Persons, and although signatory party to the 1961 Convention on the Reduction of Statelessness, it has not ratified the instrument.¹⁵⁹ This is the reason an examination of the violations of both Statelessness Convention by the Dominican Republic has not be undertaken in the present thesis. However, both the definition of *de jure* stateless, and the obligation to avoid statelessness are part of customary law¹⁶⁰, so they are applicable to the Dominican Republic.

As previously discussed in Chapter II 2.2., the international protection against statelessness relies mainly on the protection of the right to nationality, which is enshrined in various human rights treaties. The Dominican Republic is party to all core

¹⁵⁶ Interview with Eduardo Gallardo, Santo Domingo, 12 May 2015.

¹⁵⁷ NGO Coalition for Childhood Report, 'Third Alternative Report to the Committee on the Rights of the Child on the Implementation of the Convention on the Rights of the Child, Period 2008-2014: Dominican Republic', 2014, p. 11, available from http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DOM/INT_CRC_NGO_DOM_19125_E.pdf (accessed 20 May 2015).

¹⁵⁸ Gallardo 2015.

¹⁵⁹ Cf. UN Treaty Collection, Convention on the Reduction of Statelessness, Ratification Status at 04-07-2015 06:46:17 EDT, available from

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en (accessed 5 July 2015); UN Treaty Collection, Convention relating the Status of Stateless Persons, Ratification Status at 04-07-2015 06:46:17, available from https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en (accessed 5 July 2015).

¹⁶⁰ E. Ersbøll, 'Prevention of Statelessness', 2007, available from http://www.europarl.europa.eu/hearings/20070626/libe/elsboll_en.pdf (accessed 5 July 2015); UNHCR, 'Handbook on Protection of Stateless Persons', 2014, p. 9.

human rights treaties, with the exception of the MWC.¹⁶¹ Furthermore, the Dominican Republic ratified the ACHR in 1977 and accepted the jurisdiction of the IACtHR in 1999.¹⁶² This means that the Dominican Republic is bound to respect the right to nationality according to e.g. Article 20 ACHR and Article 7 CRC.

The Dominican Constitution not only protects an extensive list of human rights that can be found in international human rights treaties, but incorporates these treaties, which enjoy constitutional rank. Article 71 (3) clearly establishes that:

The treaties, pacts and conventions concerning human rights, subscribed and ratified by the Dominican State, have constitutional hierarchy and are of direct and immediate application by the tribunals and other organs of the State.¹⁶³

2.3. The Inter-American Court's decision in *Yean and Bosico*

In October 2005 the Inter-American Court of Human Rights (hereinafter the Court) issued a landmark decision on migrant's children's right to nationality. This decision dealt with questions regarding the prohibition of discrimination and the application of restrictions to *jus soli* in the Dominican Republic in the case of two Dominican girls of Haitian descent.

In July 2003 the Inter-American Commission submitted to the Court a petition it had received back in October 1998 concerning the case of two girls, Dilcia Oliven Yean and Violeta Bosico Cofi, whose mothers were hindered in making a late birth registration (*declaración tardía*) of their children in order to obtain a birth certificate. As consequence, one of the girls had been hindered in attending school for a long period of time.¹⁶⁴ The State followed precautionary measures ordered by the Commission and

¹⁶¹ Office of the High Commissioner for Human Rights, 'Ratification Status for the Dominican Republic', 2015, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=52&Lang=EN (accessed 29 July 2015).

¹⁶² Comisión Interamericana de Derechos Humanos, 'B-32: Convención Americana sobre Derechos Humanos "Pacto de San José"', available from <http://www.cidh.org/Basicos/Basicos3.htm> (accessed 29 July 2015).

¹⁶³ Dominican Constitution 2010, art. 71.

¹⁶⁴ Although it was not until March 1999 that the Dominican Republic accepted the jurisdiction of the Court, the Commission argued that the denial of the birth certificates had caused continued violations of rights after 1999, violations that still persisted at the moment the case was submitted to the Court. Cf.

issued temporary permits in order to avoid deportation of the children¹⁶⁵, but negotiations to reach a friendly settlement were unsuccessful. Although in September 2001, the State issued birth certificates for both girls, the representatives of the petitioners refused to accept this in terms of a friendly settlement, as the initially presented proposal included points such as modifications of the late declaration of birth procedures in order to make it more accessible, and a public apology to the girls and their families.¹⁶⁶

In regards to the right to nationality protected through Article 20 ACHR, the Commission argued that since the principle of *jus soli* was established by the Dominican Constitution, the nationality or legal status of the parents could not restrict the girls' rights. Moreover, the Commission indicated that it was 'unacceptable to describe the alleged victims in this case as "foreigners in transit", since those who live 10, 15 or more year in a country cannot be described as transients'¹⁶⁷. This argument was set against the background of the exemption made to the application of *jus soli* in the Dominican Constitution of 1994 in force at the moment, which did not grant automatic Dominican nationality to legitimate children of accredited foreign diplomats in the Dominican Republic and children of persons in transit even though they were born on Dominican territory.¹⁶⁸ Allegedly, the civil status registrar who refused to register Dilcia and Violeta at the Civil Registry Office had indicated that the reason for the denial was that the girls' fathers were foreigners in transit.¹⁶⁹ In connection to this, the Commission also alleged the violation of article 24 of the American Convention regarding the right to equal protection. The Commission assured that officials of the JCE and the Civil Registry Office had been demanding additional "requirements" in a discretionary manner, and that:

Case of the Yean and Bosico Children v. The Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Inter-American Court of Human Rights (IACtHR), 8 September 2005, para. 2, available from http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_20ing.pdf (accessed 12 October 2014).

¹⁶⁵ *ibid.*, p. 47.

¹⁶⁶ *ibid.*, para. 17-31.

¹⁶⁷ *ibid.*, para 111.

¹⁶⁸ Cf. *Constitution of the Dominican Republic*, promulgated on 14 August 1994, Article 11, available on <http://www.consultoria.gov.do/constituciones%201844-2008/Constitucion%201994.pdf> (accessed 13 January 2015).

¹⁶⁹ *Yean and Bosico Children v. The Dominican Republic*, 2005, para. 86.

The treatment that the alleged victims received was due to considerations relating to their origin, their name and the migratory status of their parents. Policies and practices that are deliberately discriminatory, as well as those that have a discriminatory impact on a specific category of individuals are prohibited, even if the discriminatory intention cannot be proved.¹⁷⁰

The Dominican State on its side, adhered to justification based on the mere application of the existing laws, indicating that there was no discriminatory practice because its officials only applied the law by demanding certain requirements for late birth registration and, that ‘there is an unavoidable public policy rule with regard to education that makes it necessary to enrol children with their birth certificates’¹⁷¹. What seems of particular relevance in regards to the current position of the Dominican State on the issue of the right to nationality is an argument brought by the State itself during the proceeding 10 years:

It is irrelevant whether the fathers of Yean and Bosico children were in transit in the country because, by being born on Dominican territory, the children had the right to opt for this nationality and never lost this privilege, however, this matter is of no interest, since, the children now have Dominican nationality.¹⁷²

Through this statement, the State explicitly uphold the principle of *jus soli*, and by doing so reinforced the argument by the petitioners that the legal status of the parents was of no relevance for granting the Dominican nationality to the girls. In fact, the Dominican State did not question at any point that Dilcia and Violeta did have the right to the Dominican nationality, but rather tried to dismiss its responsibilities for the arisen obstacles that hindered the girls to obtain the document that proves their Dominican nationality, namely the birth certificate.

¹⁷⁰ *ibid.*, para. 112.

¹⁷¹ *ibid.*, para. 120.

¹⁷² *ibid.*, para. 121 (b).

In its considerations, the Court recalled the position established in its advisory opinion 8/48 on the proposed amendments to the Constitution of Costa Rica in regards to naturalisation, which the Costa Rican government had requested in 1983, that:

It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights.¹⁷³

The Court found violations of the right to nationality arguing that ‘the State failed to grant nationality to the children, what constituted an arbitrary deprivation of their nationality, and left them stateless for more than four year and four months’.¹⁷⁴ Two arguments provided by the Court in the Yean and Bosico case create an important precedent in regards to the right to nationality. First, although not setting a specific time framework, the Court limited the scope of the concept ‘in transit’ by arguing that:

[T]o consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit.¹⁷⁵

Second, the Court underlined that the ‘migratory status of a person cannot be a condition for the State to grant nationality’¹⁷⁶ nor can it be a justification for the

¹⁷³ *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, Inter-American Court of Human Rights, 19 January 1984, para. 32, available on <http://www.refworld.org/docid/44e492b74.html>, (accessed 26 February 2015).

¹⁷⁴ *Yean and Bosico Children v. The Dominican Republic*, 2005, para. 174.

¹⁷⁵ *ibid.*, para. 158.

¹⁷⁶ *ibid.*, para. 156.

deprivation of this right. However, more important in the case of children's rights, the Court established, that '[t]he migratory status of a person is not transmitted to the children'¹⁷⁷.

While the State complied with the payment of the rather modest compensation to all victims, as of October 2011 it had refused to follow any of the other provisions of the judgment of 2005 which also included disseminating the Court's decision in the case and a public apology to the girls and their mothers.¹⁷⁸ The unwillingness of the Dominican State to comply with the judgment was also supported by the Dominican Senate, which rejected the Court's decision through an official resolution.¹⁷⁹ But the rejection of the Court's decision went beyond when the Dominican State challenged the Yean and Bosico girls' right to the Dominican nationality by invoking article 67 of the American Convention and asking for the Court's interpretation of its judgement in Yean and Bosico. Not only did the Dominican State try to appeal the Court's decision, but it practically threatened to retract the girls' birth certificates arguing that even though it had granted those documents, it had only been in the understanding that it was part of a friendly settlement which finally did not occur, and it actually had not recognised the girls' right to Dominican nationality since legal proceedings had not been completed.¹⁸⁰ Beyond the questionable attitude of the Dominican State, it is once again important to record that neither the principle of *jus soli* nor the migratory status of the girls' parents were contested by the State at this moment. In latter decisions by domestic courts, the amendments to the Dominican Constitutions of 2010, and finally in Sentence 168/13 the Dominican State's arguments for justifying the denial of Dominican nationality to

¹⁷⁷ *ibid.*, para. 156.

¹⁷⁸ Cf. Inter-American Court of Human Rights, Technical Data: Niñas Yean y Bosico Vs. República Dominicana, available on http://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=289&lang=en (accessed on 12 May 2015).

¹⁷⁹ Open Society Foundations, 'Litigation, Yean and Bosico v. Dominican Republic', 2009, available on <http://www.opensocietyfoundations.org/litigation/yeen-and-bosico-v-dominican-republic> (accessed 27 November 2014).

¹⁸⁰ *Case of the Girls Yean and Bosico v. Dominican Republic, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*, Inter-American Court of Human Rights, 23 November 2006, para. 17, available on <http://www.cidh.org/ninez/Dilcia%20Yean%20y%20Violeta%20Bosico%20%2864%29/Sentencia%20Interpretacion%20Fondo%20Nov.%202023,%202006eng.doc> (accessed 12 May 2015).

Dominicans of Haitian descent, adults and children, shifted to the issue of migratory status of Haitian parents and the broad concept of ‘in transit’.

2.4. Migration Law 285-04: regulating migration or redefining nationality?

Historically, Dominican Constitutions have granted nationality by birth right through a mixed regime of *jus soli* and *jus sanguinis*¹⁸¹. Beginning with early constitutions, the principle of *jus soli* has nevertheless been limited through its inapplicability to children born on Dominican territory whose parents are diplomats in the country.¹⁸² A further limitation was introduced in the Constitution of 1908, which excluded children of foreigners “in transit” from the application of the *jus soli* principle.¹⁸³

Although an updated migration law was needed to in the Dominican Republic in order to cope with new migratory challenges, the General Migration Law No. 285-04 (hereinafter “Migration Law” or “Law 285-04”) in 2004, included provisions with disastrous human rights consequences. For instance, it established the principle of reciprocity for the recognition of civil rights of foreign residents.¹⁸⁴ However, more important, this law introduced provisions changing the access to Dominican nationality.

2.4.1. Being in transit

With the new Migration Law the concept of “in transit” acquired a crucial role regarding the right to nationality. With this law a broad interpretation of “persons in transit” was introduced to Dominican legislation. The Migration Law established the category “non-resident”, which covers a rather broad range of persons, including tourists, business people, and passengers actually traveling across Dominican territory in order to get to another country, border communities, students, but also seasonal

¹⁸¹ From the first Constitution of the Dominican Republic 1844 until 1858, nationality was granted by *jus sanguinis*. Cf. Constitutions of the Dominican Republic 1844 (Art.7), February 1854 (Art. 5), December 1854 (Art. 5.2).

¹⁸² Cf. Constitutions of the Dominican Republic 1875, 1877, 1878, 1879, 1880, 1881, 1887 and 1896. Available on: <http://www.consultoria.gov.do/coleconstitucion.php>

¹⁸³ Cf. *Constitution of the Dominican Republic*, promulgated on 21 March 1908, art. 7. Although the year in which the limitation of “in transit” was introduced into the Dominican Constitution varies in literature, where generally the year 1929 is indicated, after comparing the text of prior Constitutions it was found that already in 1908 this wording can be found.

¹⁸⁴ Amnesty International, ‘Dominican Republic: Submission to the UN Universal Periodic Review’, 2009, available from [file:///C:/Users/Teresa/Downloads/amr270022009en%20\(1\).pdf](file:///C:/Users/Teresa/Downloads/amr270022009en%20(1).pdf) (accessed 22 April 2015).

workers with temporal contracts.¹⁸⁵ However, more important, in its Article 36(10) the Migration Law equals the category of “non-resident” to “persons in transit” for the specific application of article 11 of the Constitutions.¹⁸⁶ By indicating that this broad concept was to apply to a constitutional provision, the Migration Law changed the scope of the Dominican Constitution in regards of nationality.

Critics of this broad concept of “person in transit” have argued that before the Migration Law 2004 there was no such interpretation with legal effect, and that it was contrary to the Constitution.¹⁸⁷ Cristóbal Rodríguez, a renowned Dominican constitutional lawyer assures that according to the regulation of the former Migration Law of 1939¹⁸⁸, a “person in transit” was understood as a foreigner who was on national territory for a limited time of ten days at the most, while transiting to another country.¹⁸⁹ The Open Society Justice Initiative (OSJI) has stated that the Migrations Law ‘transformed the previously ad hoc discriminatory practices into national policy.’¹⁹⁰ NGOs soon claimed against the unconstitutionality of numerous Migration Law’s articles before the Supreme Court of Justice.¹⁹¹ Nonetheless, the decision by this Court in late 2005 not only established that the Migration Law was in accordance with the Constitution, but in its interpretation even expanded the concept of “in transit” by explicitly also applying it to foreigners with an irregular migratory status.¹⁹² González Díaz suggests that this

¹⁸⁵ In its art. 36, the Migration Law explicitly established that seasonal contracts of the sugar cane industry are understood to be temporary contracts.

¹⁸⁶ *General Migration Law No. 285-04* (Ley General de Migración No. 285-04), 2004.

¹⁸⁷ Cf. Open Society Justice Initiative, ‘Dominicans of Haitian Descent and the Compromised Right to Nationality Report presented to the Inter-American Commission on Human Rights on the Occasion of its 140th Session’, 2010, available from

<http://www.opensocietyfoundations.org/sites/default/files/Dominican-Republic-Nationality-Report-ENG-20110805.pdf> (accessed 24 November 2014); Youtube interviews prats + other

¹⁸⁸ Ley de Migración No. 95 y Reglamento no. 279 de 1939.

¹⁸⁹ ‘Entrevista Cristóbal Rodríguez – Sentencia TC 168-13. Por Amelia Deschamps y Huchi Lora’ [online video], 2013, <https://www.youtube.com/watch?v=fcufhY8n5c> (accessed 23 November 2014).

¹⁹⁰ Open Society Justice Initiative, ‘Dominicans of Haitian Descent and the Compromised Right to Nationality Report presented to the Inter-American Commission on Human Rights on the Occasion of its 140th Session’, 2010, p. 7, available from

<http://www.opensocietyfoundations.org/sites/default/files/Dominican-Republic-Nationality-Report-ENG-20110805.pdf> (accessed 24 November 2014).

¹⁹¹ Until the Constitution 2010 and the subsequent establishment of the Constitutional Tribunal, the Supreme Court of Justice was the highest court, and heard constitutional matters.

¹⁹² Riveros, 2014, p. 66.

decision could have been politically motivated, as repercussion of the decision by the IACtHR in *Yean and Bosico*.¹⁹³

2.4.2. *The new book for children of “illegal” mothers*

The Migration Law even went further in introducing a new and differentiated regime of birth registration for children whose mothers could not proof legal residence in the Dominican Republic. According to Article 28, the mother must register her child at her country’s consulate in the case the father is not Dominican. The Law further established procedures ensuring this. First, in case the woman cannot provide any document proving her legal residence, the health care centre assisting the birth has to issue a foreigner live-birth record (*certificado de nacido vivo extranjero*), instead of the normal live-birth record (*certificadode nacido vivo*). Second, the health care centre has to hand over live-birth records of any children born to a foreign woman to the JCE and the Secretary for Foreign Relations, so the latter informs the corresponding embassy or consulate. Third, the Ministry for Migration has to be informed about any birth when the mother has no documentation.¹⁹⁴

Even though the Executive had not issued any regulation for the application of the Law, in 2007 the JCE created a new registry book (*Libro Registro de Nacimiento de Niño (a) de Madre Extranjera No Residente*) for children born to “non-resident” foreign women; i.e. foreign women with no proof of their legal residence. By means of this administrative decision, the differentiated live-birth record foreseen in the Migration Law obtained the colour pink, but moreover, the JCE created a civil registry book to register theses births. Although the pink record allows for a certain registration of birth and the issuance of a birth certificate for foreigners, Petroziello, who carried out an in-depth research on gender and statelessness in the Dominican Republic, argues that this documents is not an official birth certificate.¹⁹⁵ This means that the birth certificate for

¹⁹³ J. C. González, ‘Tomando el pulso a la situación actual’, in A. J. Petroziello (ed) ‘Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes de la República Dominicana’, Santo Domingo, OBMICA, 2012, pp. 51-77.

¹⁹⁴ General Migration Law No. 285-04, art. 28.

¹⁹⁵ A. J. Petroziello, ‘Género y el riesgo de apatridia para la población de ascendencia haitiana en los bateyes de la República Dominicana’, Santo Domingo, OBMICA, 2014, pp. 84 f., available from

foreigners, although it registers the child and grants the child an identity, does not give the child any nationality, and certainly not that of the Dominican Republic.

The Migration Law together with the instructions of the JCE, gave health care personnel a competence that also included decisions on who is entitled to Dominican Nationality and who is not. To illustrate this significant problem: when a woman cannot provide any document, either proving her identity or her migratory status, it is the nurse's or doctor's decision if she or he issues a normal, white live-birth record or a pink one, for foreigners. In that way, there is a subjective attribution of nationality to the mother by non-specialised personnel in this respect. However, even more important when discussing child statelessness, a pink record is the first document stating that a child is not Dominican, since 'these alternate [pink] *constancias* are channelled through a separate birth registration system that denies them any legal connection to the Dominican state'.¹⁹⁶ This could affect any Dominican woman who has no documentation, however, based on information by NGOs, Petrozziello argues that health care personnel often assumes that a woman is an Haitian migrant based on racial criteria, and this generally affects Dominican women of Haitian descent. In addition, this procedure, to some extent, discriminate against Dominican men to transfer their nationality to their children, since in many cases only the mother's documentation situation is considered and it is ignored that the child's father is Dominican. Furthermore, a Dominican father cannot register his child as Dominican if the mother was issued a pink live-birth record.¹⁹⁷ Finally, Petrozziello argues that:

In practice, [the registry book for children born to "non-resident" foreign women] has become an all-purpose tool, to which the civil officials rely in case of doubt. That has resulted in the inscription of children corresponding Dominican nationality as foreigners, which clearly presents a risk of statelessness.¹⁹⁸

<http://obmica.ipower.com/images/Publicaciones/Libros/Petrozziello%202014%20Genero%20y%20el%20Riesgo%20de%20apatridia.pdf> (accessed 28 May 2015).

¹⁹⁶ OSJI 2010, pp. 7-8.

¹⁹⁷ Petrozziello 2014, pp. 90 f.

¹⁹⁸ *ibid.*, p. 95. Translation by the author.

When in 2011 a regulation on the implementation of the Migration Law was finally issued, administrative decisions by the JCE were confirmed and further strengthened. For instance, the JCE was to register those children in the special civil registry books into the book for foreigners at the Ministry for Migration. The Ministry for Migration together with the Public Ministry were tasked to control the health care centres to ensure they were issuing the pink and white live-birth records as established by the Migration Law and the instructions by the JCE.¹⁹⁹

Beyond regulating migratory issues, the Migration Law has become a law changing Dominican nationality, and at the same time, it has created new institutions to enforce these changes. The Migration Law foresees a National Plan for Regularisation of Foreigners living illegally in the Dominican Republic (PNRE, *Plan nacional de regularización de extranjeros ilegales*), which was only initiated in 2013. The fact, that the creation of separated registry books and pink records preceded the regularisation of foreigners, evidences a prioritisation of nationality matters in implementation of the Migration Law. This conclusion is further supported by Petrozziello, who highlights that the 2011 presidential decree on the implementation of the Migration Law is far more precise on nationality matters, than on migratory procedures.²⁰⁰ Finally, the fact that the requirement of parental residency for the application of *jus soli* was applied before the plan that would grant a regular status to foreigners, and therefore would allow their children to obtain Dominican nationality, raises further questions regarding the authorities' agenda.

This brings us to the conclusion that the Migration Law began to be implemented in a manner that primarily sought to limit access to Dominican nationality, disregarding the fact that this could engender statelessness, rather than to regulate and control migration itself.

¹⁹⁹ Cf. Reglamento de Aplicación de la Ley General de Migración 285-04, decreto no. 631-11, 19 October 2011, art. 35-41, available from <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8190.pdf?view=1> (accessed 28 May 2015).

²⁰⁰ Petrozziello, 2014, pp. 85 f.

2.5. The Central Electoral Board: suspending lives...

As previously discussed, nationality is determined by internal law. In the Dominican Republic, as it is the case of most countries, the right to nationality is set forth in the Constitution which establishes who is a Dominican national, and hence is determined by the legislative body of the Dominican Republic. The executive branch, however, and in particular the JC, as I will illustrate in this section, has played an even more important role regarding nationality and restrictions in the access to it.

Although the JCE is responsible for organising suffrage processes, deciding upon electoral disputes and regulating political parties, it also administrates the acts of the civil state. In this sense, the JCE has a broad administrative and jurisdictional mandate.²⁰¹ In 1992, all matters of civil registry, including the offices of the civil registry, were transferred to its jurisdiction.²⁰² This means that since then the JCE overlooks all acts of the civil state such as birth registration and the issuance of birth certificates, personal identification documents and passports. Furthermore, the current Dominican Constitution, as well as in previous ones, have granted extensive autonomy and regulatory faculty is granted to the JCE.²⁰³ This is determinant for access to Dominican nationality, as the JCE has the prerogative to establish regulations regarding birth registry and, for example, administrative procedures for the procurement of identity documents. As stated by the OSJI, while ‘the Dominican constitution defines who has the right to Dominican nationality, official recognition and proof of such nationality are granted by the state civil registry agency, today regulated by the Central Electoral Board’²⁰⁴. Therefore, the role of the JCE in regards to the access to nationality is central, as it is the entity actually delivering documents attesting Dominican nationality, and at the same time has the authority to decide on how these documents are administrated.

²⁰¹ J. A. Aquino, ‘Competencias administrativas de la Junta Central Electoral’, *Listin Diario*, 4 September 2009, available from <http://listindiario.com/puntos-de-vista/2009/9/3/113727/Competencias-administrativas-de-la-Junta-Central-Electoral> (accessed 29 July 2015).

²⁰² Secretaría de Estado de Salud Pública y Asistencia Social, ‘Informe del País Sobre el Estado Actual de los Sistemas de Registro Civil y Estadísticas Vitales’, República Dominicana, 2000, available from <http://unstats.un.org/unsd/vitalstatkb/Attachment279.aspx> (accessed 29 July 2015).

²⁰³ Dominican Constitution 2010, art. 212.

²⁰⁴ OSJI, 2010, p. 3.

In 2007, the JCE adopted two policies allowing for the provisory suspension and annulment of identity documents such as birth certificates, national identity cards (*cédula de identidad y electoral*) and passports, which are the documents attesting to Dominican nationality. First, through an internal memo (Circular 17-07) the JCE instructed the civil registry officers to detain documents suspected of having been issued irregularly in order to induce further investigations. Having foreign parents “in transit” was considered to imply irregularity in the inscription of a birth and issuance of documents. The OSJI stated that ‘Circular 017 restricts access to birth certificates on the basis of the presumed residency status of the bearers’ parents’²⁰⁵. This administrative decision was criticised for disproportionately affecting Dominicans of Haitian descent, and for giving the JCE excessive powers that included the annulment of civil documentation via administrative, and not through judicial channels.²⁰⁶ Furthermore, NGOs reported that civil registry officials also applied criteria such as French surnames and skin colour for justifying withholding documents or denying their issuance.²⁰⁷ Moreover, this procedure was applied retroactively, since the restriction to *jus soli* requiring legal residence in the country had only been introduced through the Migration Law in 2004, and people born before that date were affected.²⁰⁸

Through a further administrative procedure (Resolution 12-07) the civil registry officer could suspend any document right away by means of a stamp or any other remark on the “suspicious” document before forwarding a case to further investigation.²⁰⁹

The depuration of the civil registry that started with Circular 17-07 and Resolution 12-07 led to investigations not subject to a time limit, and has been dubbed a “denationalisation process.”²¹⁰ Riveros remarks that the JCE ignored decisions by

²⁰⁵ OSJI, 2010, p. 11.

²⁰⁶ N. Riveros, ‘Informe sobre la Cuestión de la Migración Internacional en la República Dominicana para el año 2011’, OBMICA, 2012, p. 57, available from <http://www.obmica.org/images/Publicaciones/Informes/Informe%20anual%20Obmica%202011.pdf> (accessed 28 May 2015).

²⁰⁷ Wooding 2008.

²⁰⁸ OSJI, 2010.

²⁰⁹ *ibid.*

²¹⁰ *ibid.*

ordinary courts ordering the release of documents.²¹¹ Until today, there is still no certainty on how many documents were retained, suspended or are still under investigation, but different sources indicate that thousands are affected.²¹²

Beyond inquiring on the right to Dominican nationality to Dominican of Haitian descent, and hindering the enjoyment of this right, which exposes the affected population to statelessness, Circular 17-07 and Resolution 12-07 exacerbated the risk of child statelessness. In effect, the JCE not only retained and suspended birth certificates and personal identity documents, but by doing so hindered and suspended new birth registration. In its report to the IACHR, the OSJI underlined that:

One devastating consequence of being rejected for a *cédula* is the inability of affected Dominicans of Haitian descent to register the births of their own children. Enforcing a 1994 law, civil registries now require all parents to present a valid *cédula* in order obtain a birth certificate for their children. Dominicans of Haitian descent whose *cédula* applications have been rejected are unable to fulfil this requirement, and thus their children have gone unregistered.²¹³

In other words, the Dominican nationality to which a newborn was entitled was also suspended as long as problems with their parents' documents remained unresolved. While the affected population was hindered in inscribing their children in the Civil Registry Offices, the erroneous registration of children as foreigners, is a serious problem. By referring to mothers, who never had been registered themselves or whose documents had been suspended, Riveros argues that:

[T]he problem is not only the refusal of registration of her children due to her undocumented status, but that the health care centres issue [pink] live-birth

²¹¹ Riveros, 2014, p. 87 f.

²¹² Cf. G. Olivo, 'El genocidio civil sacude a la Junta Central Electoral (JCE)', Acento, 19 May 2013, available from <http://acento.com.do/2013/politica/81200-el-genocidio-civil-sacude-a-la-junta-central-electoral-jce/> (accessed 27 April 2015).

²¹³ OSJI, 2010, p. 10.

records for foreigners to her children, which affects her children's expectative to their constitutional right to Dominican nationality.²¹⁴

Once again, there is no available data on how many mothers, whose documents were suspended under Circular 17-07 and Resolution 12-07, were given pink live-birth records, and how many Dominican children are now registered at the Ministry for Migration. However, Circular 17-07 and Resolution 12-07 definitely exacerbated the situation of lack of documentation in Dominican population of Haitian descent. For those parents, whose documents had been suspended and as consequence were issued pink records, ensuring that their children can obtain a Dominican birth certificate is an arduous process. Even if the parents' documents were rehabilitated, the child's only official documents and registration identifies her or him as not Dominican. This means that the child is stateless until her or his inscription is transferred from the registry books for foreigners – at the Ministry for Migration and the JCE – to ordinary civil registry books, and she or he obtains the Dominican birth certificate she or he was entitled to in the first place.

As shown above, the JCE with its autonomy and regulatory faculty, has advanced policies restricting the access to Dominican nationality, hence exposing mainly Dominicans of Haitian descents, including children, to de facto statelessness.

2.6. Constitution 2010: further restricting *jus soli*

Although in the practice access to Dominican nationality and the application of *jus soli* had been restricted, e.g. due to administrative regulations by the JCE, this restriction of the *jus soli* finally acquired constitutional validity in 2010. Opinions on when the right to Dominican nationality via *jus soli* was actually restricted to the concept of “in transit” introduced through the Migration Law vary. Some literature argues that nationality was granted on the grounds of *jus soli* until 2004, when the Migration Law came into force or even in 2007 when the JCE established the books for “foreigners born in the Dominican Republic”. Dominican expert on constitutional rights Cristóbal Rodríguez reasons that all persons born in the Dominican Republic – with the exception of

²¹⁴ Riveros, 2014, p. 73.

diplomats' children and persons in transit, i.e. travelling through the Dominican Republic to get to a third country, – are Dominicans until 2010, and not until the Migration Law came into force in 2004.²¹⁵ This is further supported by Lozano²¹⁶ who comments that the Migration law could not make an interpretation of the constitutional right to nationality, and that the interpretation of “in transit” had been a violation of the constitution.²¹⁷ Both author's arguments are based on the principle of constitutional supremacy, and resemble the reasoning of the recourse for unconstitutionality that had been filed against the Migration Law in 2005.

The Dominican Constitution that came into force in January 2010, finally integrated the concept of “in transit” established by the Migration Law of 2004 and the SCJ ruling in 2005. In its Article 18, the new Constitution established the following:

Dominicans [feminine] and Dominicans [masculine] are:

1. The sons and daughters of a Dominican mother or father;
2. Those who enjoy 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 [masculine] or foreigner [feminine] *defined as such in the Dominican laws is considered a person in transit;*²¹⁸

²¹⁵ ‘Entrevista Cristóbal Rodríguez – Sentencia TC 168-13. Por Amelia Deschamps y Huchi Lora’ [online video], 2013, <https://www.youtube.com/watch?v=fcufhY8n5c> (accessed 23 November 2014).

²¹⁶ Wilfredo Lozano is a Dominican sociologist and historian specialised in migration and political sociology, and director of the investigation centre for social sciences at UNIBE, one of the most renowned Dominican universities.

²¹⁷ W. Lozano, ‘La Paradoja De Las Migraciones: El Estado Dominicano Frete a La Inmigración Haitiana’, Santo Domingo, Editorial UNIBE, 2008, p. 88.

²¹⁸ Dominican Republic's Constitution, promulgated on 26 January 2010, English translation by Luis Francisco Valle Velasco for William S. Hein & Co., Inc, available from https://www.constituteproject.org/constitution/Dominican_Republic_2010.pdf (accessed 12 January 2015). Emphasis added.

This Constitution finally established clarity on who is entitled to Dominican nationality, and introduced the *jus sanguinis* doctrine as the primary regime, which is complemented by a very limited *jus soli*.

The OSJI argues that, what ‘the new constitution has done is to transform the previous policies from an impermissible, unlawful practice—retroactive application of the 2004 migration law—into a constitutional policy.’²¹⁹ Even though the new Constitution established clear rules on nationality, the impact for those affected by the prior application of Migration Law is rather negligible as it does not resituates their rights to Dominican nationality. Nonetheless, the OSJI makes an important remark that connects the sequels of the practices on nationality previous to the Constitutions of 2010 and the right to nationality to children born after it entered into force; if those who still do not have any formal recognition of their right to the Dominican nationality are ‘considered as illegal residents for the purpose of Article 18, the children have no constitutional right to Dominican nationality’.²²⁰ This factor is crucial when assessing the consequences of Sentence 168/13 and Special Law 169-14.

²¹⁹ OSJI, 2010, p. 17

²²⁰ *ibid.*, p. 18.

IV. Child Statelessness: The effects of Sentence 168/13 and Special Law 169-14

A major purpose of my research is to examine how Sentence 168/13 and Special Law 169-14 have engendered child statelessness and further examine this statelessness. For this reason, it will be necessary to first outline Sentence 168/13 and analyse its effects, in particular in respect to children. Then in a second step, it will assess how far Special Law 169-14 has restored the rights of Dominican children of Haitian descent who are affected by Sentence 168/13. In a third step we will discuss what role Haitian nationality could play in order to avoid child statelessness.

The two concepts of statelessness used in the further analysis are the following:

De jure statelessness: when a ‘person [...]is not considered as a national by any State under the operation of its law’²²¹.

De facto statelessness: when a person cannot access her or his nationality because either the access to official documents is restricted, be it through discretionary denial by individual state officials or due to unreasonable evidentiary requirements a person cannot be expected to fulfil, or the issued documents are not accepted as proof of nationality, although by law she or he would be entitled to the nationality that cannot be accessed.

1. Denationalisation by Sentence 168/13

*This is likely one of the most discriminatory decisions ever made by a superior tribunal.*²²²

It has been almost two year since the highest court in the Dominican Republic, namely the Constitutional Tribunal (hereinafter Tribunal), issued its highly contested Sentence 168/13 on the case of Juliana Deguis Pierre, a young Dominican of Haitian descent fighting for the recognition of her right to Dominican citizenship. The Tribunal not only

²²¹ Art. 1 Statelessness Convention 1954.

²²² Cf. RFK Center for Justice & Human Rights, ‘Discriminatory Ruling by Dominican Court Threatens Citizenship’, Press release, 3 October 2013, available from <http://rfkcenter.org/discriminatory-ruling-by-dominican-court-threatens-citizenship> (accessed 17 December 2014).

decided that Juliana had never been entitled to Dominican nationality, but moreover to enforce this decision to all children of “irregular” – essentially Haitian – immigrants born in the Dominican Republic since 1929. In its reading of previous Constitutions, and using the term of “in transit” as introduced by the Migration Law and reinforced by the Supreme Court of Justice in 2005, the Tribunal decided that all these persons were granted Dominican nationality by means of irregular inscriptions.

1.1. Who is Juliana?

Juliana Deguis Pierre was born in northern Dominican Republic in 1984 to Haitian *braceros*. Using his *ficha*, her father had obtained Juliana’s Dominican birth certificate. In 2008, Juliana requested her *cédula* and was denied it, allegedly because she had Haitian surnames. Juliana appealed to various judicial instances, all of which rejected her request. Juliana’s recourse of *amparo*²²³ was finally declined in 2012 on the grounds that Juliana had not provided sufficient proof since she only had submitted copies of her original birth certificates. Incongruously, the JCE itself had retained this document when she was first denied the issuance of her *cédula*.²²⁴

Juliana’s urgency to obtain her *cédula* had various reasons. For once, in the Dominican Republic when becoming of age one is obliged by law to have this identity document and Juliana needed the *cédula* to apply for better jobs. Nonetheless, being able to register her four kids, so they could obtain a birth certificate and attend to school normally, was Juliana’s principal concern.²²⁵

²²³ The *amparo* recourse is a form of lawsuit aiming at protecting fundamental rights. As defined in art. 72 of the Dominican Constitution 2010: ‘Every person has the right to an action of *amparo* to claim before the tribunals, [...] the immediate protection of their fundamental rights, that are not protected by *habeas corpus*, when they as a result are violated or threatened by the action or the omission of any public authority or by individuals, in order to make effective compliance with a law or administrative act, and to guarantee collective and diffuse rights and interests. In accordance with the law, the procedure is preferential, summary, oral, public, gratuitous, and not subject to formalities.’

²²⁴ Constitutional Tribunal of the Dominican Republic, Sentencia TC/0168/13, 23 September 2013, para. 3.1., 4.1., 5.1., available from <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf> (accessed 16 October 2014).

²²⁵ Cf. Y. Espinal, ‘Juliana Deguis Pierre: “No he ido ni una sola vez a Haití”’, *El Caribe*, 27 September 2013, available from <http://www.elcaribe.com.do/2013/09/27/juliana-deguis-pierre-ldquo-ido-una-sola-vez-haitirdquo> (accessed 13 March 2015).

1.2. Arguments by the parts in Sentence 168/13

The principal allegations filed on behalf of Juliana focused on the failure by the lower Courts to protect Juliana’s fundamental rights, and that this failure had allowed the persistent and continuous violation of her rights by the JCE, that had refused the issuance of her *cédula*.²²⁶ The JCE on its part invoked the application of Circular 17-07 and Resolution 12-07 in order to justify why it had not issued Juliana’s document. Moreover, the JCE employed the restrictive concept of “in transit”. Furthermore, the JCE suggested that Juliana’s parents are foreigners who ‘in an illicit and irregular manner had inscribed their children in the Civil Registry Books, in frank violation of the constitutional text in force in the moment the inscription was done’,²²⁷ and that an illicit act cannot produce legal effects in favour of the beneficiary of the violation. The JCE vehemently sustained that the principles granting Dominican nationality had never been altered, and that the JCE had been applying the criteria established since the Dominican Constitution 1929. Ultimately, the JCE concluded that the *amparo* recourse by Juliana had been inadmissible because it was based on an unconstitutional act.²²⁸

In the outset of the JCE’s arguments, nationality as a matter of state sovereignty is underscored, but what really is striking, is how the JCE sees its mandate and “mission”:

That the defendant reiterates its commitment to comply with, and enforce the mandate of the constitution and the laws, at the same time is gives assurance that the *national identity will be jealously guarded and preserved by this institution*, and that we are implementing a programme to rescue and clean the Registry of the Civil Status Registry in order to shield it from fraudulent and deliberate actions, falsification and impersonation that have for so much time affected the Dominican Civil Registry, so we can provide the public an efficient and save service for *vital acts that are the support and the foundation of national identity*.²²⁹

²²⁶ TC/0168/13, para. 4.1.

²²⁷ *ibid.*, para. 5.1. (b), p.6, translation by the author.

²²⁸ *ibid.*, para. 5.1. (aa), p. 13.

²²⁹ *ibid.*, para. 5.1. (l), p. 8, translation by the author, emphasis added.

An interesting exercise is to consider this statement by the JCE in the light of Martínez's analysis on how Dominican policies also have been shaped by a xenophobic narrative that suggests that Haitians want to literally steal Dominican identity. Martínez remarks, that the modernisation of the civil registry is seen as a protection to this "threat".²³⁰ Eventually, one should ask what the JCE means by "national identity", and what role the JCE has conceitedly attributed to itself as the supreme guard of a Dominican identity in which persons of Haitian descent have no place.

1.3. The Court's decision and its effect on child statelessness

The following section will be divided in two parts in order to first understand the "logic" of the Tribunal's deliberation, the second part which will examine its effects in respect of child statelessness.

1.3.1. Outlining the Sentence

In its deliberation, although in principle dealing with the issues concerning Juliana, the Tribunal outlined serious problem with irregular Haitian migration, stressing that for this reason the questions raised by the specific case, not only pertained Juliana, but to many others in a similar situation. Furthermore, the Tribunal stressed the Dominican Republic prerogative to regulate migratory issues.²³¹ In the setting of the discussion on migratory issues, the Tribunal introduced its own definition of nationality:

In general terms, nationality is considered a legal and political bond between a person and the State, [...] it is not only a legal, but also sociological and political bond, whose conditions are defined and established by the State itself. It is a legal bond, because from it derive multiple rights and obligations of civil nature; sociological, because it entails the existence of an ensemble of historic, *linguistic*, *racial* and geopolitical characteristics, among others, that shape and sustain a particular idiosyncrasy and collective aspiration; and political, basically, because it gives access to powers that are inherent to citizenship, i.e.

²³⁰ Martínez 2014.

²³¹ TC/0168/13, para. 1.1.1, pp. 22 ff.

the possibility to elect and being elected to public offices within the State Government.²³²

The reference to linguistic and racial characteristic as determinant for citizenship was doomed by the OSJI as ‘impermissibly discriminatory’.²³³

In its enumeration of international precedents “validating” the absolute state sovereignty for determining nationality, the Tribunal went as far as 1923, to the ICJ’s consultative opinion in *Tunis and Morocco Nationality Laws Decree Case*.²³⁴ Numerous arguments refuting unlimited state sovereignty over human rights, and specifically the right to nationality, were discussed in Chapter II 1.1. In the specific case of Sentence 168/13, this is further supported by the Dominican constitutional expert Nassef Perdomo, who in his analysis on the Sentence delivers one of the most compelling arguments in this regard:

In the case of nationality, the Court commits an important error: it draws upon cases that precede the entry into force of the American Convention on Human Rights and the Convention on the Reduction of Statelessness. That is, the courts issued the decisions that the Court used to support its reasoning could not possibly have applied the principles of international law that the Dominican State must abide by today.²³⁵

Once the Tribunal established that nationality was a matter reserved for the State, the Tribunal determined that Juliana’s inscription was irregular because both of her parents had used *fichas* instead of a personal identification for foreigners, which they should have obtained as *braceros*. Moreover, the Tribunal insisted that the suspension of Juliana’s birth certificate and the JCE’s reluctance to issue a *cédula* was justified

²³² *ibid.*, para. 1.1.4., p. 24, translation by the author, emphasis added.

²³³ Open Society Justice Initiative, ‘Dominican Republic Court Ruling Raises Mass Statelessness Threat’, 2013, available from <http://www.opensocietyfoundations.org/press-releases/dominican-republic-court-ruling-raises-mass-statelessness-threat> (accessed 2 November 2014).

²³⁴ TC/0168/13, pp. 25 f.

²³⁵ N. Perdomo, ‘Legal Analysis of the Sentencia’, We are all Dominican NYC Blog, 2013, available from <https://wearealldominicannyc.wordpress.com/resources/perdomo-analysis-of-the-sentencia/> (accessed 16 October 2015). (The Spanish original was originally published in other websites, which are not retrievable anymore).

because Juliana's documents were under investigation according to Circular 17-07 and Resolution 12-07.²³⁶

For determining if Juliana fulfils the requirements to obtain the Dominican nationality, the Tribunal made a comprehensive study on previous Dominican Constitutions in order to show that children of persons "in transit" as defined by the Migration Law and the SCJ in 2005 have historically been excluded from Dominican nationality. In its differentiation between person "in transit" (*en tránsito*) and a "passer-by" (*transeúnte*), the Tribunal argues that the first applies to foreigners with no legal residency in the Dominican Republic, while the second ones are "just passing" through Dominican territory.²³⁷ For Jorge Eduardo Prats, one of Dominican Republic's most respected constitutional lawyers:

The nationality is not just an attribution the State gives on its discretion, by the *jus soli* the nationality is acquired for the sole fact of the birth in a place. It cannot be subject to a conditionality that is irrational. (...) The Constitutional Tribunal tries to speak about a passer-by and foreigner in transit. I believe this is word game.²³⁸

Interestingly, after having determined that the State enjoyed a *carte blanche* regarding the determination of nationality, the Tribunal recognised that the prevention of statelessness implied an obligation to grant its nationality to someone who otherwise would become stateless.²³⁹ Nonetheless, the Tribunal found that the Dominican Republic had no such obligation in the case of Dominicans of Haitian descent, because they had a right to Haitian nationality. Throughout the argumentation line of the Sentence, the Tribunal is consistent with the already existing practices and arguments by the JCE, including the disclaimer that no person would become stateless if the

²³⁶ TC/0168/13, pp. 27 ff.

²³⁷ *ibid.*, pp. 60 ff.

²³⁸ J. E. Prats interviewed by Lora and Dechamps. 'Entrevista Eduardo Jorge Prats - Sentencia TC 168-13. Por Amelia Deschamps y Huchi Lora' [online video], 2013, <https://www.youtube.com/watch?v=EBT7SgS7k1E> (accessed 23 November 2014).

²³⁹ TC/0168/13, pp. 75 ff.

Dominican State would annul or revoke the Dominican nationality, since Dominican of Haitian descent, *all* had the right to Haitian nationality via *jus sanguinis*.

The Tribunal finally describes the lack of consistent migratory policies and deficiencies of the Civil Registry, and to some extent recognises certain responsibility, but more than anything underlines the need to repair these problems at any cost.²⁴⁰ The retroactive application of the restrictive concept of “in transit” can be understood as an attempt to “correct” what the Tribunal considers has been a mistaken application of the concept “in transit” in the past. However, the genuinely new precedent created in Sentence 168/13 is the extensive solutions it offered to the problem of “erroneous” attribution of nationality.

In regards to Juliana, the Tribunal decided to repeal her recourse for revision, since she was not entitled to Dominican nationality because her parents were foreigners “in transit”. Furthermore, by recalling that the Migration Law had foreseen the PNRE, the Tribunal instructed the Ministry for Migration to issue a temporary permit, so Juliana could apply to the PNRE and “regularise” her status as a foreigner in the Dominican Republic. However, at that moment the executive still had not launched the PNRE. For which end the Tribunal instructed the government to urgently instrument the PNRE.²⁴¹

Moreover, by aberrantly invoking the *inter comunia* principle, the Tribunal commissioned the JCE to carry out a comprehensive audit of the civil registry books from 2 June 1929 to 18 April 2007. The JCE was tasked to retroactively apply the restricted version of *jus soli* – as introduced with Migration Law in 2004, expanded through the SCJ decision in 2005 and finally set forth in Article 18 of the Constitution 2010 – and to produce a list of all foreigners that had been irregularly or mistakenly enrolled in the ordinary civil registry books; i.e. children of foreigners who did not have a legal residency in the Dominican Republic by the time of childbirth. Then the JCE would have to administratively transfer these persons to the new Birth Registration Books for foreigner, which were established in 2007. Finally, the Ministry for Foreign Affairs would have to inform the presumed respective embassies about the

²⁴⁰ *ibid.*, pp. 87 ff.

²⁴¹ *ibid.*, pp. 98 f.

transcription, while the Ministry for Interior and Police would have to implement the PNRE and take into consideration the JCE's list of "foreigners" that had been deprived of the Dominican nationality.²⁴²

Prats comments that the most dangerous thing about the Sentence was that the Tribunal had defiantly applied the Colombian doctrine, where a constitutional decision was automatically applied to similar cases in order to overcome systemic and structural human rights problems. While in the case of Colombia, the highest Court had made such a decision in order to protect internal displaced population or persons that had been hindered from accessing their right to social security, the Dominican Tribunal did not apply an equal protection to all similar cases, but did so with the detriments.²⁴³

Conveniently, the first accurate criticism widely challenging the Tribunal's decision is in the Sentence itself. Judges Bonilla and Jiménez had voted against the majority vote and prepared two outstanding dissenting opinions. Bonilla centred her opinion around the fact that the Dominican Republic was bound to international human rights treaties prohibiting the arbitrary deprivation of nationality, and that these treaties were part of the constitutional block in the Dominican Constitution. Moreover, she commented on the majority argumentation in regards to "in transit" and concluded that this was erroneous.²⁴⁴ Bonilla more importantly raised Juliana's original request for revision, which had been overshadowed. Instead of assessing the issue of access to their Dominican documents and the consequences Juliana had suffered due to this, the majority focused on the migratory status of Juliana's parents. Furthermore, Bonilla recalled the Dominican Republic's obligation in regards to the ACHR, and concluded:

Restrict the right to a name and to the registration of the person, is damaging human dignity, as in the case of the appellant, who after having been entered in the Civil Registry has been deprived of her identity documents by an administrative authority without a competent court having pronounced the validity or invalidity thereof. [...]

²⁴² *ibid.*, pp. 99 ff.

²⁴³ Prats 2013.

²⁴⁴ TC/0168/13, pp. 101 ff.

With this ruling, the court sought to close the possibilities for arbitrary exercise of public administration, which is incompatible in a state of law.²⁴⁵

Furthermore, she insists that the Tribunal deprived Juliana of Dominican nationality, because she had enjoyed this nationality since the moment she was born and this further had been confirmed when the civil registry official recorded her birth in the appropriate book. Jiménez further dismissed the majority argument by referring to *Yean and Bosico* that had established that the only fact that has to be proven for the application of *jus soli* is that the child was born on Dominican territory. In addition, Jiménez referred to the IACtHR's argument that the situation of illegality cannot be transferred from the parents to the child. Jiménez concluded that Sentence 168/13 disobeys the decision by the IACtHR in *Yean and Bosico*, which are binding for the Dominican Republic and all its institutions.²⁴⁶

However, the more compelling argument by Jiménez refers to denationalisation and statelessness, as well as the Sentence's wide impact:

[Juliana's] situation worsened, when she was stripped of Dominican nationality, leaving her stateless and constraining her to apply for Haitian nationality. [...] Hence, in attention to the effect *inter comunis* that was embraced by the consensus, thousands of persons born on Dominican soil to parents of Haitian origin, even if they have been declared at the registry office, as it was the case of Juliana Deguis, will be denationalized, especially when the measures contained herein are retroactive to 21 June 1929.²⁴⁷

Sentence 168/13 not only caused outrage because it exacerbated the vulnerable situation of Dominicans of Haitian descent that had been denied their Dominican nationality. Many also saw this decision as a legal aberration and a threat to the rule of law and respect of fundamental rights, for it disregarded the fact that it was a massive and systematic violation of the right to nationality. Dominican constitutionalist Cristóbal Rodríguez commented that, 'We have to think about rights in the first person. What

²⁴⁵ Judge Bonilla, TC/0168/13, p. 112, translation by the author.

²⁴⁶ TC/0168/13, pp. 126 ff.

²⁴⁷ Judge Jiménez, TC/0168/13, p. 147, translation by the author.

today is happening to another person could happen to me tomorrow. Every transgression is a transgression against the rights of everybody.’²⁴⁸

Sentence 168/13 violates the prohibition of retroactive application of the law. Although the Migration Law had created the limitation to *jus soli* along the requirement for parental legal residency, this limitation had no constitutional validity until it was introduced in the new Constitution in 2010. The Constitutional Tribunal applied its decision back to 1929, because in this year the first Constitution referring to a person “in transit” came into force.²⁴⁹ However, as Perdomo properly points out:

[H]ow is it possible that the Constitutional Court put in the mouths of those drafting the 1929 Constitution what was not written in it until 2010? How can one say that an interpretation based on a ruling from 2005 was effective on June 22, 1929? If that is not retroactive application of a legal criterion, nothing is.²⁵⁰

As Prats indicates, the fact that the Tribunal tasked with guaranteeing fundamental rights and guarding the Constitution, violates the prohibition of retroactive application of the law – which is actually enshrined in the Dominican Constitution – has ‘perverse effects’ and represents a threat to the rights of all Dominicans.²⁵¹

Furthermore, in regards to the Tribunal’s argument that Juliana’s parents – as well as all Haitian migrants who have registered their children with *fichas* or other documents while not having a legal resident permit – obtained her birth certificate in an irregular manner, there are several arguments that dismiss this assertion. First, Juliana’s parents did not commit any irregularity since the only thing they did was to go to the Civil Registry Office to register her and presented their *fichas*, and the official proceeded to issue a birth certificate, which is a reliable official document. Not only did Juliana’s parents believe that she was entitled to this document, but an official exercising his

²⁴⁸ C. Rodríguez, see ‘Entrevista Cristóbal Rodríguez – Sentencia TC 168-13. Por Amelia Deschamps y Huchi Lora’ [online video], 2013, min 13:29-14:04, <https://www.youtube.com/watch?v=fcufhY8n5c> (accessed 23 November 2014), own translation.

²⁴⁹ As we have seen before this assumption is not accurate, since the Dominican Constitution of 1908 already used the concept of “in transit”.

²⁵⁰ Perdomo 2013.

²⁵¹ Prats 2013.

duties *bona fide*, reaffirmed this. As discussed previously registering children with *fichas* was a usual practice.²⁵² Rodríguez makes an interesting exercise in connection with this. Assuming there was actually an irregularity in the birth registration in all cases of affected persons; the state cannot disavow a right that it already had recognised, even more if the State has been negligent in this matter.²⁵³ Associated with this hypothetical case, if we assume that there was an irregularity or a fraud when the registration happened, one must also consider a reasonable timeframe and the fact that this wrongdoing must prescribe at some point. Under Sentence 168/13 Dominicans of Haitian descent will have to deliver proof that their parents, even grandparents had a residence permit in the Dominican Republic. The impossibility of obtaining most of these documents denies the person her or his rights to defence.

Finally, Sentence 168/13 creates a dangerous precedent for the respect of human rights in the Dominican Republic, because it disregards the ACHR and the decision of the IACtHR. As Prats indicates, the IACtHR not only protects the rights of Dominican of Haitian descent, but the human rights of everybody under its jurisdiction.²⁵⁴ The detachment of the Inter-American System of Human Rights protection is in detriment of all Dominicans.

1.3.2. Sentence 168/13: setting statelessness in concrete

The first immediate effect of Sentence 168/13 in regards of child statelessness is that when Juliana was stripped of her Dominican nationality, her four children became *de jure* stateless.

As we have seen, since 2010 irregular migrant's children born in the Dominican Republic are not entitled to Dominican nationality.²⁵⁵ This has made it even more difficult to Dominicans of Haitian descent, that never had been registered and have remained undocumented, to register their own children born under the Constitution of 2010. With no birth certificate, they cannot obtain the personal identification and

²⁵² Riveros 2014.

²⁵³ Rordríguez 2013.

²⁵⁴ Prats 2013.

²⁵⁵ Dominican Republic's Constitution 2010.

electoral documented, namely the *cédula*, required since 1994 to make a childbirth registration.²⁵⁶ Sentence 168/13 initiated a massive process of denationalisation, since the Tribunal had reaffirmed what the JCE had been carrying out since 2004. The difference is that the JCE had not done this at this scale. Besides, JCE's decisions in stark contrast to the Tribunal were revocable and not necessary definite.

The effects of Sentence 168/13 in terms of statelessness can be divided in following:

First, due to its retroactive application of the Constitution of 2010 it expanded the temporal scope of applicability of the concept "in transit" to even before 2004. This means that the number of persons deprived of their nationality rose in comparison to those whose nationality had been merely "suspended" by the JCE through the arbitrary application of Circular 17-07 and Resolution 12-07.

Second, before Sentence 168/13, Dominicans of Haitian descent affected by Circular 17-07 and Resolution 12-07 could, in some cases, successfully challenge the arbitrary application of these policies. By means of administrative proceedings or judicial recourses such as *amparo*, documents, e.g. birth certificates, could be accessed again. This provision that allowed for certain hope was removed through Sentence 168/13. Moreover, Sentence 168/13 created a precedent that led to sentences by the Constitutional Tribunal that revoked decisions by lower Courts that had decided in favour of Dominicans of Haitian descent. For instance, in May 2014 the Tribunal decided to revoke an *amparo* in which a court of first instance had found violations of fundamental rights, and had consequently instructed the JCE to issue birth certificates to 28 Dominicans of Haitian descent.²⁵⁷

Finally, Sentence 168/13 turned those Dominicans of Haitian descent that were affected by Circular 17-02 and Resolution 12-02 from *de facto* stateless into *de jure* stateless.

²⁵⁶ OSJI, 2010, p. 10.

²⁵⁷ Constitutional Tribunal of the Dominican Republic, Sentencia TC/0028/14, 10 February 2014, available from http://acento.com.do/wp-content/uploads/Sentencia_TC_0028-14-SJRM-.pdf (accessed 16 June 2015); J. Arias, 'Reconoci.do rechaza la sentencia 28-14 por reiterar despojo de la nacionalidad a dominicanos', *7 días*, 10 March 2014, available from http://www.7dias.com.do/el-pais/2014/03/10/i159425_reconoci-rechaza-sentencia-por-reiterar-despojo-nacionalidad-dominicanos.html#.VZjBl_1_Oko (accessed 16 June 2015).

This also satisfies Tucker’s differentiation between *de facto* and *de jure* statelessness, where it is suggested that in cases of *de facto* statelessness the nationality bond exists.²⁵⁸ In other words, Sentence 168/13 definitely broke the link of nationality between the Dominican State and a significant portion of Dominicans of Haitian descent.

In terms of child statelessness, by denationalising first generation Dominicans of Haitian descent, Sentence 168/13 also rendered subsequent generation of Dominicans of Haitians descent *de jure* stateless, including children. Moreover, it is also plausible to surmise that *de facto* statelessness was exacerbated by Sentence 168/13, since even in the case of Haitian parents who had a legal status in Dominican Republic at the time of birth, it cannot be expected that Dominicans of Haitian descent are able to gain access to documents proving this, especially when a long period of time has passed and parents or grandparents have deceased.

A further analysis of the effects of Sentence 168/13 is presented in relation to the application of Special Law 169-14, discussed in the subsequent section.

2. Special Law 169-14: The failed attempt to restore rights

As a consequence of national and international pressures, on 25 May 2014 the Dominican government enacted a the Special Law 169-14 that established a special regime for persons who were born on national territory and were “irregularly” recorded in the Dominican Civil Registry, and on naturalisation (*Ley de Régimen Especial y Naturalización 169-14*). The Law’s main objective was arguably to mitigate the negative effects of Sentence 168/13. Special Law 169-14 established two well-defined groups of beneficiaries and defines following “solution” for their situation resulting from Sentence 168/13:

- **Group A:** Persons who were “irregularly” recorded as Dominicans in the Civil Registry between 1929 and 2007 would be accredited as Dominicans after the JCE had ratified the irregularity and had “regularised” and transcribed the birth certificates. The birth certificates would be “regularised” without further

²⁵⁸ Tucker 2014.

administrative procedure by the beneficiary. Furthermore, the JCE should issue the *cédulas* with same numbers to all beneficiaries that already had them, and to those who never had one. Persons that committed fraud or committed identity theft would be excluded.²⁵⁹

- **Group B:** This group consists of persons who were born in the Dominican Republic, and whose parents were in an irregular migratory situation, but never were recorded in the civil registry. In order to benefit from the Law, they first had to apply at the Ministry of Interior and Police until 1 February 2015. As soon as a preliminary assessment was carried out where the beneficiaries had to prove that they were born in the Dominican Republic, they were allowed to register in the Registry Book for Foreigners as established under Migration Law. Next was the registration for the National Programme for Regularisation of Foreigners (PNRE), in order to obtain a temporary residence permit. Finally, after two years as “resident”, they are entitled to apply to the ordinary naturalisation procedure.²⁶⁰

Only end of June 2015, Human Rights Watch produced a report about human rights violations during the implementation of Special Law 169-14, based on a field research between March and May 2015 and anecdotal evidence.²⁶¹ In the following, I will refer to this report, interviews I conducted, media coverage and further sources.

2.1. Group A: still *de facto* stateless?

In theory, the situation of those in Group A is resolved, since Special Law 169-14 is arguably a form of amnesty in the application of Sentence 168/13. However, Jenny Morón, Head of the Legal Department at MUDHA, reasons that Special Law 169-14 supplements Sentence 168/13. Special Law 169-14 did not recognise that these people

²⁵⁹ *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* (Dominican Republic), 21 May 2014, art. 3-5, available from <http://www.refworld.org/docid/53882dea4.html> (accessed 18 April 2015).

²⁶⁰ Law 169-14, art. 6-8.

²⁶¹ Cf. Human Rights Watch, ‘Somos dominicanos, somos dominicanas: Privación arbitraria de la nacionalidad en la República Dominicana’, July 2015, available from https://www.hrw.org/sites/default/files/report_pdf/dr0715sp_4up.pdf (accessed 2 July 2015).

were deprived from their Dominican nationality, because it still maintained that these persons never were entitled to it.²⁶² In this sense, Special Law 169-14 does not recognise that Sentence 168/13 was a violation of the right to nationality, but that the Dominican State committed the error of registering this population as Dominican, and therefore could not hold them accountable for it. Goldston from the OSJI suggest that:

Despite its partial corrections of some of the worst aspects of the judgment of the Constitutional Tribunal, the new law supplants citizenship on the basis of place of birth, with citizenship by state *fiat*. Such a system will create and enshrine statelessness and leave Dominican law in violation of the government's international human rights obligations.²⁶³

Even for the population that fell in Group A, the situation is still uncertain. During a special session on the implementation of Special Law 169-14 at the IACHR in October 2014, NGO representatives expressed great concern. Rosa Iris Diendomi, a young Dominican woman of Haitian decent representing the so-called "Movimiento Reconocido", argued that:

The implementation of this law, regarding people of group A, has remained in the hand of the discretion of the same organ that since 2007 started the process of denationalisation against this population.²⁶⁴

This is further supported by Blake, who reasons that 'there is a serious concern that even those entitled to the restoration of citizenship under the law will never actually be recognized as citizens'.²⁶⁵ According to HRW since the Special Law started to be implemented, the JCE has still not issued corresponding documents.²⁶⁶ This, as had

²⁶² Interview with Jenny Morón, Santo Domingo, 6 May 2015.

²⁶³ Open Society Justice Initiative, 'Dominican Republic's New Naturalization Law Falls Short', 2014, available from <http://www.opensocietyfoundations.org/press-releases/dominican-republics-new-naturalization-law-falls-short> (accessed 18 April 2015).

²⁶⁴ R. I. Diendomi in: 'República Dominicana: Ley 169/14' [online video], 2014, min. 5:14-5:22, <https://www.youtube.com/watch?v=yq0RJEITPrs> (accessed 18 April 2015), own translation.

²⁶⁵ J. Blake, 'Emerging Voices: New Citizenship Law Will Not End Race-based Statelessness in the Dominican Republic', *Opinio Juris*, 6 August 2014, available from <http://opiniojuris.org/2014/08/06/emerging-voices-new-citizenship-law-will-end-race-based-statelessness-dominican-republic/> (accessed 18 April 2015).

²⁶⁶ HRW, 2015, p. 21.

happened before, renders Dominicans of Haitians descent *de facto* stateless, since they can neither prove nor enjoy their Dominican nationality. Critically, their *de facto* statelessness, caused by the delay in the issuance of their documents, hinders them from registering their children, who will also remain in a situation of *de facto* statelessness. According to María Martínez from the NGO MOSCTHA, the risk that women of Group A, whose *cédula* has not been issued yet, obtain a pink live-birth certificate is high.²⁶⁷ This could lead to the registry of these children into the Book for Foreigners, which has actually has been happening according to the latest HRW report.²⁶⁸

The inscription of Dominican children of Haitian descent into the Book for Foreigners, will leave them undoubtedly stateless. The question is, whereas they are *de jure* or *de facto* stateless. There are two approaches to be considered. On one side, as children of Dominicans of Haitian descent who were re-nationalised by Special Law 169-14, they are entitled to Dominican nationality. Therefore, the link to nationality remains, even though it is being impaired by an erroneous inscription in the Book for Foreigners.

On the other side, the inscription in the Book for Foreigners, although erroneous, is an action of the civil state that established that a child is not Dominican. This would imply that while the child is registered in this book, he or she is *de jure* stateless, since she or he has no other nationality. I argue, however, that even though the link of nationality is formally broken by the erroneous inscription, it legally still exists and can be rescued, i.e. the child would fall in the category of *de facto* stateless.

According to Diendomi, the JCE established separate “transcription books”, which means that the names of people originally inscribed in ordinary Civil Registry books are being transferred to these new books. This leads to the issuance of birth certificates that have a different date and numbers than the original one. For Diendomi this is ‘an act of segregation, which identifies in special books a specific group of population, which is especially vulnerable and already stigmatised as victims of sentence 168’.²⁶⁹

²⁶⁷ Martínez 2015.

²⁶⁸ HRW, 2015, p. 28.

²⁶⁹ Martínez, 2015, min. 7:31-7:45.

Unfortunately, it appears that the JCE is not respecting Special Law 169-14, as the JCE has been interviewing beneficiaries and has demanded further information from them.²⁷⁰

María Martínez, head of the legal department at MOSCTHA, stated that the birth certificates that people of Group A are obtaining are different, as they are certificates of transcription (*actas de transcripción*). She reasons that this type of birth certificate could entitle fewer rights.²⁷¹ This is supported by the findings of HRW. At the end of the so-called transcription process, the person will have two records of registration and different birth certificates; the original one, and the new one generated for the application of Law 169-14. HRW calls this a ‘vulnerable citizenship’.²⁷²

The JCE, which had been reluctant to share any precise information on the “deputation” process of the Civil Registry carried out since 2007 and then mandated through Sentence 168/13, finally released the results at end of May 2015. According to the JCE only about 60, 000 children of foreigners had been entered in the Dominican Civil Registry between 1929 and 2007, of which around 70 per cent are of Haitian decent. Interestingly, the JCE had found that only 0.58 percent of the records had evidenced irregularities.²⁷³ This comes as a surprise, if one considers that the JCE had promoted the deputation of the Civil Registry suggesting that the number of irregularities and frauds were a serious concern.

Special Law 1689-14 legally re-nationalised a population and deprived it of Dominican nationality by Sentence 168/13 on the condition that they already had been registered. This meant a crucial step since it re-established the link of nationality between this population and the Dominican Republic, thus overcoming *de jure* statelessness engendered by Sentence 168/13. Unfortunately it appears, however, that situations of *de facto* statelessness persist. As long as beneficiaries of Special Law 169-14 are not able to corroborate their Dominican citizenship through an official and valid document, they

²⁷⁰ Interview with María Martínez, Santo Domingo, 7 May 2015.

²⁷¹ Martínez 2015.

²⁷² HRW, 2015, p.

²⁷³ Cf. J. Tavárez, ‘En el país sólo nacieron 60, 089 hijos de extranjeros desde 1929 hasta 2007’, 7 días, 26 May 2015, available from http://www.7dias.com.do/portada/2015/05/26/i189305_pais-solo-nacieron-089-hijos-extranjeros-desde-1929-hasta-2007.html#.VZXZTfl_Oko (accessed 20 June 2015).

risk being treated as non-Dominicans. Associated with this is another important issue, that of the still existing administrative policies Resolution 12-07 and Circular 17-07 that allow for suspension of documents. According to Diendomi during the session before the IACHR, with law 169/14 there was a certain expectation that the JCE would drop the petitions for annulments introduced against people of Haitian descent in previous years. In reality, however, the JCE has not desisted from advancing new petitions for annulments.

The effects of the re-established but vulnerable citizenship in terms of child statelessness are especially important in regards to birth inscription. As long as Dominican adults do not have their documents, we cannot rule out that practices of erroneous and *illegal* issuance of pink live-birth certificates or inscription of Dominican children into the Foreigners Book will continue to happen. In its concluding observations of 2008, the Committee on the Rights of the Child expressed its concern that the misuse of pink live-birth certificates ‘prevents the acquisition of any nationality by the child’ and that it was ‘seriously concerned at the large numbers of stateless children generated by this policy’.²⁷⁴ This leaves this population exposed to a similar risk of statelessness and the arbitrariness existing prior to Sentence 168/13 as outlined in Chapter III.

2.2. Group B: *de jure* stateless until further notice?

The situation of Group B is precarious, because in this process, the person does not obtain any nationality during two years, and according to Morón, since they do not have the Haitian nationality, they remain stateless in the meantime. Moreover, there was great confusion in how these persons should be handled, since many times they were not differentiated from foreigners and obtained the same application confirmation document as foreigners being regularised through the PNRE.²⁷⁵

²⁷⁴ Committee on the Rights of the Child, Concluding Observations: Dominican Republic, CRC/C/DOM/CO/2, 2008, para. 39.

²⁷⁵ Morón 2015.

As of 1 February 2015, only 8, 755 persons out of an estimate population of potential beneficiaries of 53, 000²⁷⁶ could register to benefit from the “fast-track nationalisation” under Law 169-14.²⁷⁷ According to HRW, the majority of persons in Group B are children.

In the same special audience before the IACHR referred to previously, it was presented that the central obstacle for potential beneficiaries of Group B was the burden to prove their birth on Dominican territory.²⁷⁸ To give an illustration, according to the Regulation 240-14 of the Special Law 169-14 there are various means of evidence to irrefutably prove the childbirth: live-birth record; act of notoriety by notary public of seven Dominican witnesses that are able to indicate date and place of birth, as well as the person’s name and that of her/his parents; midwife’s affidavit before a public notary indicating date and place of childbirth, as well as the mothers name, affidavit by Dominican relatives of first or second degree who have Dominican documents.²⁷⁹

According to information provided by NGOs closely accompanying the population through the process, the Ministry of Interior and Police officials had in various cases demanded documents that had not been established by Law 169-14, and sometimes even have referred solicitors born in the Dominican Republic to the PNRE. Moreover, on occasion, more witnesses than specified by the law and its regulation have been demanded. Finally, one of the most central issues for the present thesis is that children born after 19 April 2007 were denied the application for the programme.²⁸⁰ This corresponds to the date were the JCE established the Civil Registry for Children of foreign mothers, as it is also considered in the Special Law 169-14. This raises the question on the right to nationality of children born in the Dominican Republic during 2007 and 2010 who had been registered as foreigners disregarding the applicability of

²⁷⁶ This was an estimation by the Dominican government,

²⁷⁷ L. Jiménez, 'Libro de Extranjería 8, 755 que nacieron en el país', Hoy Digital, 3 February 2015, available from <http://hoy.com.do/libro-de-extranjeria-registro-8755-que-nacieron-en-el-pais/> (accessed 18 April 2015).

²⁷⁸ 'República Dominicana: Ley 169/14' [online video], 2014, min. 5:14-5:22, <https://www.youtube.com/watch?v=yq0RJEITPrs> (accessed 18 April 2015).

²⁷⁹ Presidential Decree 250-14: Reglamento de Aplicación de la Ley No. 169-14, 23 July 2014, available from <http://www.consultoria.gov.do/Actos/2013/Decreto%20250-14.pdf> (accessed 18 April 2015).

²⁸⁰ Cf. 'República Dominicana: Ley 169/14' [online video], 2014.

jus soli until 2010. These children are *de jure* stateless unless they obtained another citizenship.

The HRW report indicates that minors haven been disproportionately affected by having been unable to apply until 1 February 2015 since many times their mothers did not have any documentation and therefore could not register them in order to benefit from the special regime established by Special Law 16-14.²⁸¹

What cannot be overlooked is that this process does not give any guarantee to those who could apply in time. First, not every application will be necessary successful, after the proof assessment. Second, although the person will be able to apply for citizenship within two years, this application not necessarily will be positive. Third, the application for naturalisation will have to be filed according to the ordinary Naturalisation Law. This law dates back to 1948 and requires that the person has come of age, and that the foreign passport is presented.²⁸² This is, of course, an impossibility when the applicant has no passport to present. The foregoing will prolong the time children will remain *de jure* stateless, since they will not be able to apply in two years, as established by Special Law 169-14, but after when they turn 18. Another aspect to be considered is that the “gap” of two years also means that beneficiaries of Group B who become parents in that time will not be able to pass any nationality to their children, who will be born *de jure* stateless.

In the specific case of Group B, Martínez suggests that the process of naturalisation is also susceptible to shifts in the political control over the executive, and indicated that elections in 2016 could change the fate of this group.²⁸³

As shown above, Special Law 169-14 can be considered an effort to improve the situation, but it does not restore the right to Dominican nationality for of the population that was denationalised by Sentence 168/13. In the first place, thousands within Group B could not apply in time, and were forced to register for the ordinary PNRE with no entitlement to Dominican nationality, or to remain in complete legal-limbo. Second,

²⁸¹ HRW, 2015, p. 5.

²⁸² Martínez 2015.

²⁸³ *ibid.*

those of Group A did not regain the Dominican nationality to which they were entitled since birth, since they are now registered in separate Civil Registry Books and have even different birth certificates. Third, Special Law 169-14 has already been challenged before the Constitutional Tribunal. In case the Tribunal determines unconstitutionality, the entire process would be invalid. This means that both, Dominicans of Haitian descent considered in Group A or B could be denationalised, and thus become *de jure* stateless again.²⁸⁴

3. Case of Expelled Dominicans and Haitians v. the Dominican Republic

Against the backdrop of the implementation of Sentence 168/13 and Special Law 169-14, in its decision in respect to the *Case of Expelled Dominicans and Haitians v. the Dominican Republic* of 28 August 2014, the IACtHR Court took a concrete position on these policies, and sustained that:

The Court has established that judgment TC/0168/13 and articles 6, 8 and 11 of Law No. 169-14 violate the American Convention [...]. Consequently, the Dominican Republic must, within a reasonable time, take the necessary measures to avoid these laws continuing to produce legal effects.²⁸⁵

The Court has established that, in the Dominican Republic, considering the irregular migratory status of parents who are aliens as grounds for an exception to the acquisition of nationality based on *ius soli* is discriminatory and, therefore, violates Article 24 of the Convention, [...]. Therefore, [...] the State must adopt, within a reasonable time, the necessary measures to annul any type of norm, whether administrative, regulatory, legal or constitutional, as well as any practice, decision or interpretation that establishes or has the effect that the irregular status of parents who are aliens constitutes grounds for denying Dominican nationality to those born on the territory of the Dominican Republic,

²⁸⁴ HRW, 2015, p. 36.

²⁸⁵ *Case of Expelled Dominicans and Haitians v. the Dominican Republic, Preliminary Objections, Merits, Reparations and Costs*, Inter-American Court of Human Rights (IACtHR), 28 August 2014, para. 468.

because such norms, practices, decisions or interpretations are contrary to the American Convention.²⁸⁶

The case dealt with the expulsion of six Dominican-Haitian²⁸⁷ families, including 13 children, from Dominican territory between 1999 and 2000. Although the IACtHR decided upon different alleged violations²⁸⁸, the violation to the right to nationality was the most contested. Some of the families also shared profiles attributable to Group A and Group B, i.e. on the one side where the family members had been registered at the Civil Registry and thus had their Dominican birth certificates, and on the other side where family members, although being born in the Dominican Republic, had not been registered and thus had no Dominican identity documents. The link between the right to nationality and the expulsions where that authorities either simply had ignored that some of them had Dominican documents attesting their nationality, and in the second case, the expelled persons were Dominicans who did not have any document to prove their nationality. At least in the case of one family, the mother had been hindered in registering her children.²⁸⁹

The initial allegation presented by the Commission did not include Sentence 168/13 and Special Law 169-14 because the latter were new developments. However, the Commission then established the link between the rights of the alleged victims and Sentence 168/13 and Special Law 169-14, since these could hinder the restitutions of the right to nationality to the victims.²⁹⁰ The representatives went further and asked the Court to closely assess sentence 168/13 and Law 169/14 in regards of the right to

²⁸⁶ *ibid.*, para. 469.

²⁸⁷ I use this term because either the members of the families were Dominicans of Haitian descent or the families consisted of mixed couples.

²⁸⁸ The Commission asked the Court to declare that there had been violations of Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child), 20 (Right to Nationality), 21 (Right to Property), 22(1), 22(5) and 22(9) (Freedom of Movement and Residence), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights). The representatives additionally alleged violations of Articles 11 (Right to Privacy), 18 (Right to a Name) and 2 (Domestic Legal Effects) of the American Convention. Cf. *Case of Expelled Dominicans and Haitians*, 2014, para. 6 and 8.

²⁸⁹ This was the case of the Jean family, where the Haitian mother had approached the Civil Registry Office, but had been denied the registration of her children. Cf. *ibid.*, para. 222-224.

²⁹⁰ *ibid.*, para. 235.

nationality and non-discrimination, as well as regarding the State's obligation to prevent statelessness.²⁹¹ Due to the general and retroactive manner of Sentence 168/13, the Court established that there was an important link between Sentence 168/13 and Special Law 169-14 in the case since victims, who already had Dominican birth certificates, were prone to be object to proceedings before the Central Electoral Board.²⁹² This concern of the Court was confirmed by the investigations and request for cancellation of birth certificates of several members of one family.²⁹³

Two arguments by the Court are striking when it comes to statelessness. First, the Court considered that for those people born in the Dominican Republic to parents with no legal status in the country, Sentence 168/13 and Law 169/14 meant the retroactive deprivation of their Dominican nationality.²⁹⁴ Second, that the mere fact that Haiti grants nationality through *jus sanguinis* is not sufficient to prove that these persons would not become stateless.²⁹⁵

Finally, the argument delivered by the Court in regards to Law 169/14 clearly illustrated how it violates the right to nationality in relation to the State's obligation to respect rights and to adopt domestic legal measures in the case of natives born children to migrants with irregular status:

This could lead to a "naturalization" process that, by definition, is contrary to the automatic acquisition of nationality based on having been born on the State's territory. Even though the foregoing could result in the individuals in question "acquiring" Dominican nationality, this would be the result of treating them as aliens, which is contrary to full respect for the right to nationality to which they should have had access since birth. Consequently, submitting the said individuals, for a limited time only, to the possibility of acceding to a process

²⁹¹ *ibid.*, para. 243.

²⁹² *ibid.*, para. 314.

²⁹³ Additionally, criminal charges alleging identity theft had been pressed against the father Willian. The Court established that these proceedings by Dominican authorities were in violation of the prohibition of reprisals against the victim set forth in article 53 of the rule of procedures of the Court. *ibid.*, para. 454-457.

²⁹⁴ *ibid.*, para. 323.

²⁹⁵ *ibid.*, para. 297.

that could eventually result in the “acquisition” of a nationality that, in fact, they should already have, entailed establishing an impediment to the enjoyment of their right to nationality.²⁹⁶

As reaction to the IACtHR’s decision in *Expelled Dominicans and Haitians* the Constitutional Tribunal issued a decision in which the jurisdiction of the IACtHR was deemed as unconstitutional.²⁹⁷ However, the process of *Expelled Dominicans and Haitians* is ongoing. Although the chances that the Constitutional Tribunal reconsiders its position are to great extent limited, the IACtHR’s could represent a way out of the statelessness created through Sentence 168/13.

4. Haitian nationality as solution to child statelessness

In order to answer the question whereas Sentence 168/13 and Special Law 169-14 engender statelessness in general, it will be first necessary to study if there is any possibility that Dominicans of Haitian descent have acquired Haitian nationality *ex lege*. This approach follows the premise that *a right to acquire a nationality and actually having a nationality are two different things*²⁹⁸.

Since *Yean and Bosico*, the Dominican state has maintained that Dominicans of Haitian descent are entitled to Haitian nationality via an *unlimited jus sanguinis*.²⁹⁹ This argument has been employed to dismiss any denunciation that claims that the deprivation of Dominican nationality leads to statelessness. Moreover, this exempts the Dominican Republic from the obligation to grant nationality via *jus soli* according to Article 20(2) of the American Convention³⁰⁰.

²⁹⁶ *Case of Expelled Dominicans and Haitians v. the Dominican Republic*, 2014, para. 324.

²⁹⁷ Cf. S. Ayuso, ‘República Dominicana se desliga de la Corte Interamericana de DDHH, El Pais Internacional, 6 November 2014, available from http://internacional.elpais.com/internacional/2014/11/06/actualidad/1415230815_658290.html (accessed 12 May 2015).

²⁹⁸ As discussed earlier, van Waas underlines: ‘the difference between having a *right to acquire* a nationality and acquiring a nationality can be great’. Van Waas, 2008, p. 78.

²⁹⁹ In *Yean and Bosico*, the Dominican State had maintained that ‘the 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’, Cf. IACtHR, *Yean and Bosico*, 2005, para. 121.

³⁰⁰ ‘Every person has the right to nationality of the state in whose territory he was born if he does not have the right to any other nationality’, art. 20(2) ACHR.

The principal instrument governing Haitian nationality is article 11 of the Constitution of 1987, with its amendments of 2012, which goes as follows:

Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality at the time of birth.³⁰¹

The first argument that speaks against the application of this provision to Dominicans of Haitian descent is of a rather political manner. By drawing to the Haitian Constitution and ensuring that Dominicans of Haitian descent are entitled to Haitian nationality, the Dominican State is applying a foreign Constitution with no authority to do so. This also stands in contradiction to the Dominican Republic's assertion of national sovereignty. As Perdomo states, '[p]recisely because Dominican Republic is a sovereign state, it is astonishing that [the ruling] intends to favor the application of a foreign Constitution'.³⁰²

While it is true that at first it appears that the transmission of Haitian nationality by Haitian parents is not limited, other arguments and factors should be explored.

An argument speaking against the Dominican State's assumption of unlimited *jus sanguinis* is the delivered by the IACtHR in *Expelled Dominicans and Haitians*. The IACtHR takes note of Article 11 of the Haitian Constitution, but also refers to the Nationality Act 1984:

[T]he Decree-Law on nationality of [...] 1984, established that children born abroad of a Haitian mother and a foreign father [...] could not acquire Haitian nationality until they came of age, at which time, they could choose between the foreign nationality and the Haitian nationality, provided that they were going to settle, or were already settled in Haiti.³⁰³

³⁰¹ Haiti's Constitution of 1987 with Amendments through 2012, promulgated 10 March 1987, English translation by Maria del Carmen Gress and Jefri J. Ruchti for William S. Hein & Co., Inc, available from https://www.constituteproject.org/constitution/Haiti_2012.pdf (accessed 12 January 2015).

³⁰² Perdomo 2013.

³⁰³ *Expelled Dominicans and Haitians*, 2014, para. 297.

Even though the IACtHR did not make an in-depth examination of Haitian nationality laws, it concluded that the Dominican could not satisfactorily prove that the affected Dominicans of Haitian descent would not be rendered stateless through Sentence 168/13.³⁰⁴

Hannam comments that establishing Haitians nationality can be challenging. For once, in order to rely on Haitian nationality through parentage, the Haitian nationality of at least one parent has to be proven through official Haitian documents. The procurement of such documents can be very difficult if not impossible.³⁰⁵ Another factor to be considered is the fact that until the amendment to the Constitution in 2012, dual citizenship had been prohibited. This meant the automatic loss of Haitian nationality the moment another citizenship was obtained.³⁰⁶ This leads me to the conclusion that Dominicans born to Haitian migrants at least until 2004, if not until 2010 with the new Dominican Constitution, and who had acquired Dominican nationality *ex lege* via *jus soli* loss their entitlement to Haitian nationality. Of course, the issue is more complex, because after 2004 there was a policy and practice of denying Dominican citizenship to children of Haitian parents. Nonetheless, the IACtHR established that the retroactive application of the Constitution 2010 in Sentence 168/13 and Special Law 169-14 entailed a deprivation of nationality³⁰⁷, which confirms that all Dominicans of Haitian descent born in the Dominican Republic before 2010 are to be considered Dominican nationals. In the light of this, the OSJI remarks that ‘second- and third-generation descendants of Haitian migrants would have to first reside in Haiti for a continuous five-year period, and then apply to become naturalized Haitian citizens’³⁰⁸, because the Haitian Constitution establishes that only *native-born Haitians* can pass their nationality to their children via simple *jus sanguinis*.

Under those circumstances, it cannot be excluded that some Dominicans of Haitian descent *might* be entitled to Haitian nationality, or even under *very remote*

³⁰⁴ *Expelled Dominicans and Haitians*, 2014, para. 297.

³⁰⁵ Hannam, 2014, pp. 1131 f.

³⁰⁶ O. Vonk, ‘Nationality Laws in the Western Hemisphere: a Study on Grounds for acquisition and loss of citizenship in the Americas and the Caribbean’, *Brill I. Nijhoff*, Leiden/Boston, 2014, p.248.

³⁰⁷ *Expelled Dominicans and Haitians*, 2014, para. 323.

³⁰⁸ OSJI, 2010, p. 15.

circumstances have acquired Haitian citizenship *ex lege* via *jus sanguinis*. Nonetheless, and as stated by the IACtHR, there is no certainty about this. An individual and accurate assessment of each single case would be necessary, and this would not only be an extremely arduous and expensive process for the Dominican and Haitian governments as well as for the affected population, but moreover, it would be disproportional and unnecessary. Ultimately, this would mean that Dominican children of Haitian descent – meaning those who today are still minors – would remain stateless until their parents solve their documentation situation. Corollary, this would mean an unforeseeable period of child statelessness, and ‘this does not meet the obligation of the State in which the child lives to ensure the right to acquire a nationality’³⁰⁹. Furthermore, those minors of second or third generation Haitian ancestry would be definitely *de jure* stateless, unless their families decide to go back to Haiti in order for them to be able to opt for the Haitian nationality.

According to media coverage on the issue, the Haitian government is making effort do provide for Haitian documents to its nationals in the Dominican Republic, including through mobile consular units.³¹⁰ This is an important step towards the regularisation of Haitian migrants in the Dominican Republic, and was urgently needed for the Dominican Regularisation Plan (PNRE) being carried out until June 2015. However, this also raises the question whereas the Dominican government is relying on this in order to wash its hands. Dominicans of Haitian descent of first generation, i.e. whose both parents are irregular Haitian migrants, theoretically, obtain Haitian documents through Haitian regularisation efforts in the Dominican Republic.

The Dominican supposition of Haitian nationality for Dominicans of Haitian descent was harshly criticised in an article written by various authors, including the American-Dominican Pulitzer laureate Junot Díaz and the American-Haitian novelist Edwidge Danticat, published in the Los Angeles Times:

³⁰⁹ Doek, 2006, p. 28.

³¹⁰ Cf. J. Valdivia, ‘Haití anuncia un plan para regularizar haitianos en RD’, *Listín Diario*, 11 February 2014, available from <http://www.listindiario.com/la-republica/2014/2/11/310283/Haiti-traera-equipos-para-registrar-a-inmigrantes> (accessed 22 May 2015).

Even if this were automatic, which it is not, it would be like saying that there would be nothing wrong with stripping Jews of U.S. citizenship because they have the right to Israeli citizenship.³¹¹

The point raised by this statement should not be overlooked. Dominicans of Haitian descent, disregarding if they are children of first, second, or third generation to irregular Haitian migrants, are not migrants. I allow myself to borrow the ICJ's definition of nationality in the *Nottebohm Case*:

Nationality is a legal bond having as its basis a *social fact of attachment*, a *genuine connection of existence, interests and sentiments*.³¹²

This genuine link exists primarily between Dominicans of Haitian descent and the Dominican Republic, where they developed their identities as Dominicans and have spent their entire life. Efforts to provide Haitian documents to Dominicans of Haitian descent that might be in a way or another entitled to Haitian nationality, might solve the problem of statelessness. However, I ask, if this improves the situation of Dominican children of Haitian descent?

A compelling answer to this question can be found in the *travaux préparatoires* of the Statelessness Conventions by the ILC. The commissioned rapporteur for this task, Hudson suggested that:

Any attempt to eliminate statelessness can only be considered as fruitful if it results not only in the attribution of a nationality to individuals, but also in an improvement of their status. As a rule, such an improvement will be achieved *only if the nationality of the individual is the nationality of that State with which he is, in fact, most closely connected*,[...] Purely formal solutions which do not

³¹¹ J. Alvarez, E. Danticat, J. Díaz, M. Kurlansky, 'In the Dominican Republic, suddenly stateless: Dominicans of Haitian descent are losing their citizenship as their nation reinstates an old form of racism', *LA Times*, 10 November 2013, available from <http://articles.latimes.com/2013/nov/10/opinion/la-oe-kurlansky-haiti-dominican-republic-citizensh-20131110> (accessed 22 May 2015).

³¹² International Court of Justice, '*Nottebohm Case*' (*Liechtenstein v. Guatemala*), 1953, in Van Wass, 2008, p. 32, emphasis added.

take account of this desideratum might reduce the number of stateless persons but not the number of unprotected persons.³¹³

Although at the end these ideas were not integrated into the Statelessness Conventions, this argument illustrates why in the case of Dominicans of Haitians it is absurd and counterproductive to “solve” their statelessness by merely formally attributing Haitian nationality.

Reducing and eradicating statelessness cannot be an issue dealt with by merely solving *de jure* statelessness, as we ‘need to take seriously people’s sense of exclusion from the nationality to which they feel they belong’.³¹⁴ Solving a situation of *de jure* statelessness by attributing a nationality to which a person does not have any genuine link to, will most probably lead to *de facto* statelessness, even more when the person does not live in the country he or she was coerced to adopt as hers or his.

According to Spiro, there is a trend of ‘reconceptualization of citizenship status, shifting from an identity to a rights frame’.³¹⁵ Although this trend might be a positive development because it implies that citizenship is also the entitlement to rights, the importance of citizenship beyond being a “right to have rights” also is a “right to belong”. The most persuasive argument for this is Allerton’s comment:

[I]n considering statelessness, we must not neglect broader issues of justice and human rights, or the fact that children of migrants may not simply desire ‘documents’ but recognition of their right to be considered ‘people from here’.³¹⁶

In conclusion, although there are cases where Dominicans of Haitian descent might have a minimum possibility of acquiring Haitian nationality, this possibility should not obscure the far more important issue of how to overcome and prevent statelessness, especially

³¹³ M. Hudson, ‘Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur’, International Law Commission, A/CN.4/50, 1952, p. 20, available from http://legal.un.org/ilc/documentation/english/a_cn4_50.pdf (accessed 20 May 2015), emphasis added.

³¹⁴ C. Allerton, ‘Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia’, , *Tilburg Law Review*, no. 9 , vol. 1-2, 2014, p. 28.

³¹⁵ Spiro, 2011, p. 695.

³¹⁶ Allerton, 2014, p. 34.

child statelessness. Any solution relying on Haitian nationality as the “second-best option” to solve the situations of statelessness within Dominican population of Haitian descent, not only denies this population’s identity, but also is most likely to fail on the long run.

5. Résumé and possible solutions

Sentence 168/13 retroactively deprived thousands of native-born Dominicans of foreign – mainly Haitian – descent of the Dominican nationality they were entitled to through the *jus soli* principle laid down in Dominican Constitutions until 2010. Even though Special Law 169-13 could, in theory, restore the nationality of some of the affected population, the majority, namely those of Group B who had never been registered and are mainly children, remain in a legal limbo, if not *de jure* stateless.

HRW could substantiate that even for those of Group A, some civil registry authorities still are denying the issuance of documents attesting Dominican nationality, and thus hindered in registering their children.³¹⁷ The situation of Group B is even more precarious, since they are not recognised as Dominican citizens, and as long as they cannot deliver evidence on acquisition of nationality via *jus sanguinis*, are therefore *de jure stateless*. For those who did not apply to become a beneficiary of Special Law 169-14 until February 2015 the possibility of ever regaining their Dominican citizenship is remote.

5.1. *Jus sanguinis* as a way out

There are, however, approaches, especially targeting children, already being implemented by NGOs supporting this population. The “Project of Mixed Couples”, a joint initiative by OBMICA and MUDHA, seeks to tackle gender discrimination in the birth registration procedures in order to prevent child statelessness.³¹⁸ The primary focus of this project is to find a workable solution parting from the difficult existing

³¹⁷ HRW, 2015, p. 4.

³¹⁸ OBMICA/MUDHA, ‘Proyecto Parejas Mixtas’, 2015, available from <https://proyectoparejasmixtas.wordpress.com/sobre-proyectos-parejas-mixtas/> (accessed 12 July 2015).

legal framework, by resorting to ensure the right to nationality to children via *jus sanguinis*.

Mixed Couples are referred to as couples—married and unmarried—between a Dominican and a (normally Haitian) foreigner. Disregarding the migratory status of the Haitian parent, a Dominican has the constitutional right to pass nationality to her or his children.³¹⁹

Beyond the difficulties in the birth registration, the project found loopholes that could be potentially used to access Dominican nationality for children of mixed parentage. Although the main source of risk of child statelessness remains the lack of documentation of mothers, even if they are Dominicans, the project found that it was easier to obtain a Dominican birth certificate if the Dominican father could present his documents in the hospital and before the Civil Registry Office. In a way, the project’s approach is to advocate for the father’s right to pass his Dominican nationality, but also to ensure due process in the registration of births from the very beginning with the issuance of correct live-birth certificate. In the case of the father’s rights to pass his nationality, the biggest challenge probably will remain that the recognition of a child is voluntary, and that the fact that it comes with financial obligations has a deterrent effect.³²⁰

Even though initiatives seeking to employ a pragmatic approach by using the existing rather precarious legal framework, such as the “Project Mixed Couples”, might be able to protect the right to nationality of some Dominican children of Haitian descent, and thus prevent statelessness, they can only answer to *de facto* statelessness where there is a legal entitlement to Dominican nationality via *jus soli*. Moreover, the practicability of this tactic becomes problematic, since these kind of approaches require a close accompaniment of each case in order to ensure the right application of the laws and preventing arbitrary, and on the long run the right application of nationality laws cannot

³¹⁹ OBMICA/MUDHA 2015.

³²⁰ *ibid.*

rely on the work of NGOs without overcoming institutional deficiencies and tackling discrimination in health care centres and the civil registry system.

5.2. Preventing child statelessness by regularising migrants

If there is any positive consequence of Sentence 168/13, it is the fact that it finally initiated the implementation of the National Plan for Regularisation of Foreigners living illegally in the Dominican Republic (PNRE).³²¹ Although it is still uncertain how many of the over 280, 000 migrants illegally residing in the Dominican Republic who applied to the PNRE, will actually obtain a residence permit,³²² the regularisation of foreigners will most likely have a positive effect in the prevention of child statelessness. Children of migrants with a resident status in the Dominican Republic will have the right to Dominican citizenship through *jus soli* in line with Article 18 of the 2010 Dominican Republic. This raises the question, however, on what migratory status the individuals that applied to the PNRE will acquire. Recalling Article 36 (10) of the Migration Law 285-04, non-residents are to be understood as persons “in transit” for the application birthright citizenship via *jus soli*. This would exclude, for instance, Dominican-born children of sugar cane workers with temporary contracts from acquiring Dominican nationality.

A consistent and sustainable process of regularisation of foreigners also highlights the responsibility of the Haitian government to facilitate and to deliver documentation to their nationals.³²³ As found in the previous consideration in regards to Haitian nationality as a means to solve the problem of statelessness of Dominican children of Haitian descent, however, efforts in granting Haitian documents to persons living in the Dominican Republic should take into consideration the right to Dominican nationality to children of Haitian legal residents.

³²¹ TC/0168/13, pp. 98 f.

³²² Cf. L. Leclerc, ‘288,466 extranjeros pudieron inscribirse en el Plan de Regularización’, *Listín Diario*, 18 June 2015, available from <http://www.listindiario.com/la-republica/2015/06/18/376955/288466-extranjeros-pudieron-inscribirse-en-el-plan-de-regularizacin> (accessed 6 July 2015).

³²³ Cf. Petrozziello, 2014, p. 178.

5.3. Solving child statelessness by complying with human rights obligations

As long as the Dominican Republic does not meet its human rights obligations according to instruments such as the ACHR and the CRC, solutions to child statelessness are limited mechanisms coping with human rights violations. Although during the last Universal Periodic Review (UPR) many states recommended the ratification of both Statelessness Conventions³²⁴, considering that already ratified human rights conventions are neglected by the Dominican state, these instruments are unlikely to offer a solution to child statelessness.

In its latest concluding observations, the CRC addressed the serious consequences of Sentence 168/13 and how it puts Dominican children of Haitian descent at risk of being deprived of their Dominican nationality. What is more is that the CRC suggests that Special Law 169-14 lacks full compliance with the Convention, and that the Dominican State should restore the nationality to all persons born prior to the Constitutional provisions of 2010 that were affected by the Sentence, not to mention children.³²⁵

However, full compliance with human rights obligations contained also in CERD and CEDAW, would require amendments to the Migration Law 285-04 and the Dominican Constitution and revoking administrative policies, such as Resolution 12-07 or the issuance of differentiated live-birth certificates, hindering the access to nationality. The CERD-Committee unmistakably stated that the retroactive application of Migration Law 285-04 'lead to a situation of statelessness'³²⁶. The most compelling conclusions to which the CERD-Committee came was that article 18 of the Dominican Constitution of 2010 regulating nationality did not meet international standards, and recommended the Dominican Republic to comply with the judgement by the IACtHR in *Yean and Bosico*³²⁷. Also the CEDAW-Committee has noted that 'the definition of nationality in

³²⁴ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Dominican Republic, 4 April 2014, A/HRC/26/15, available from <http://www.refworld.org/docid/5399947c4.html> (accessed 12 May 2015).

³²⁵ Committee on the Rights of the Child, Concluding Observations: Dominican Republic, UN Doc CRC/C/DOM/CO/3-5, 2015.

³²⁶ Committee on the Elimination of all Forms of Racial Discrimination, Concluding Observations: Dominican Republic, UN Doc CERD/C/DOM/CO/13-14, 2013, para. 19.

³²⁷ CERD/C/DOM/CO/13-14, 2013, para. 23.

the Constitution (art. 18) and in Act No. 285-04 on migration and the practice according to Circular No. 17 and/or resolution 12 of the Central Electoral Board exclude women of Haitian descent and their children who cannot show proof of their Dominican nationality³²⁸.

Finally, the only real and comprehensive solution to child statelessness engendered by Sentence 168/13 and for the prevention of child statelessness in the future is the compliance with the IACtHR's decisions in *Yean and Bosico* and in *Expelled Dominicans and Haitians*, which would require the Dominican Republic at least to:

- Ensure that migrant children do not automatically inherit their parent's migratory status.
- Limit the scope of the concept "in transit" for the application of the *jus soli*.
- Leave Sentence 168/13 with no legal effects, which would make Special Law 168/13 obsolete.

Particularly for overcoming *de jure* child statelessness without engendering *de facto* statelessness, e.g. by merely formally attributing Haitian citizenship, these changes will be necessary on the long-term. This solution, nonetheless, might be illusory considering the current political setting. It would also require an extremely unlikely and radical change of mind by the Constitutional Tribunal's majority.

There is, however, certain hope that the international community, particularly the OAS, will exercise pressure on the Dominican Republic so Sentence 168/13 and Special Law 169-14 are revoked and nationality regulations and policies are brought in accordance with international human rights obligations.³²⁹ For those rendered *de jure* stateless this seems to be the only current solution for regaining the right to Dominican nationality. OAS In the case of *de facto* stateless, as previously discussed, efforts are focused on protecting the vulnerable right to nationality of Dominicans of Haitian descent, who in the current context are still somehow protected by domestic law.

³²⁸ Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations: Dominican Republic, UN Doc CEDAW/C/DOM/CO/6-7, 2013, para. 30.

³²⁹ Cf. Hamman, 2014, pp. 1154 ff.

V. General Conclusions

The objective of the present thesis was to analyse the impact of Sentence 168/13 and Special Law 169-14 in respect of child statelessness in the Dominican Republic through an overall assessment on how these policies engender statelessness and further exploring different situations of child statelessness, as well as the implication of Sentence 168/13 and Special Law 169-14 in terms of prevention of child statelessness.

Although statelessness, particularly *de facto* statelessness, in the Dominican Republic represented a serious problem prior to Sentence 168/13, this decision by the highest court finally broke the legal bound of nationality between Dominicans born to irregular migrants, thus making most of them *de jure* stateless. As Harrington argues, ‘birthright citizens [...] [became] undocumented migrants’³³⁰.

The hypothesis that Sentence 168/13 and Special Law 169-14 engender different situations of statelessness could, to a significant extent, be confirmed through an in-depth analysis of how said policies rendered children *de jure* or *de facto* stateless. This is crucial for the praxis, since a differentiation of the statelessness situation to which children affected by Sentence 168/13 and Special Law 169-14 become subject; it is relevant for the strategies to be followed to protect the rights of these children.

Debates over the number of Dominicans of Haitian descent deprived of their nationality and left stateless tend to dominate the discussion of the impact of Sentence 168/13, as well as the lack of impact of Special Law 169-14. However, what should not be overlooked is the question on how the current situation will generate more cases of child statelessness.

It is also important to recall why child statelessness represents such a grave violation of human rights:

³³⁰ J. Harrington, ‘Seven Easy Steps to Ethnic Cleansing in the Dominican Republic’, 16 June 2015, available from <http://www.opensocietyfoundations.org/voices/seven-easy-steps-ethnic-cleansing-dominican-republic> (accessed 20 June 2015).

Without a nationality, stateless children can be denied access to basic social protection programmes, cannot earn education certificates or graduate, or obtain an identity card or a passport. Without these basic protections and opportunities, these children are more vulnerable to exploitation and abuse.³³¹

The Dominican state has remained reluctant to accept the Inter-American Court's decision in *Expelled Dominicans and Haitians* of 2014 and also has failed to fully implement the prior decision in *Yean and Bosico*. While international condemnation has risen, it has not led to a significant improvement of the situation of Dominicans of Haitians descent, who are being deprived of their Dominican citizenship. During the end July 2015, a special mission of the OAS visited the Dominican Republic and Haiti. In the mission's report presented by the Secretary General of the OAS, statelessness was not explicitly addressed and it was only indicated that there are 'persons at risk of not counting with any recognised nationality'.³³² By depriving thousands of Dominican the right to nationality, and engendering new cases of child statelessness, the Dominican Republic is breaching its international human rights commitments. The question is, however, if pressure by the international community will make a difference, and considering the careful formulation of the OAS's recent report, how could this pressure become more effective?

Beyond the legal issues concerning human rights violations and the fulfilment of the IACtHR's decisions, solutions for child statelessness in the Dominican Republic should also focus on internal changes. As long as Dominicans of Haitian descent are not recognised as part of Dominican society, particularly on racial and xenophobic grounds, they will continue to be exposed to severe exclusion, including the access to citizenship. As Wooding persuasively suggests, it is necessary:

³³¹ United Nations Children's Fund (UNICEF), 'Statement attributable to UNICEF on the Constitutional Court decision on Dominican-born persons of Haitian descent', 9 October 2013, available from http://www.unicef.org/media/media_70619.html (accessed 15 July 2015).

³³² C. Batista, 'OEA recomienda diálogo; Haití acoge, RD se pronunciará sobre el informe', *Acento*, 29 July 2015, available from <http://acento.com.do/2015/actualidad/8270793-oea-recomienda-dialogo-entre-haiti-acoge-rd-se-pronunciara-sobre-el-informe/> (accessed 30 July 2015).

[T]o balance [the legal framework] [...] with other tools when trying to effect lasting social change to the benefit of the marginalized and excluded. This question of balance is not to deny the importance of an enabling legal framework in country but rather to suggest that this needs to be complemented by cultural change.³³³

Finally, I conclude that the long-term effects of Sentence 168/13 and moreover the failure of Special Law 169-14 to restore nationality rights to Dominicans of Haitian descent, will seriously compromise the prevention of new cases of statelessness, and future generations of children will be born stateless. Statelessness in the Dominican Republic will be hence perpetuated if the government does not comply with its international human rights obligations and finally recognises Dominicans of Haitian descent as equal members of Dominican society.

³³³ B. Wooding, 'Contesting Dominican Discrimination and Statelessness', *Peace Review: A Journal of Social Justice*, vol. 20, no. 3, 2008, p. 371.

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Abstract

The Dominican Republic is among the five countries with the largest population of persons affected by statelessness worldwide. This thesis examines child statelessness in the Dominican Republic in the light of Sentence 168/13 and Special Law 169-14. Sentence 168/13 by the Dominican Constitutional Tribunal in 2013 deprived thousands of Dominicans, mostly of Haitian origin, of their nationality by retroactively applying the requirement of parental residency for the application of *jus soli* back to 1929.

The subsequent Special Law intended to mitigate some of the effects of Sentence 168/13 has largely failed in preventing child statelessness. Sentence 168/13 and Special Law 169-14 have exacerbated already existing cases of child statelessness in the Dominican Republic. Further, they have engendered new cases of child statelessness, thereby obstructing efforts to tackle statelessness and, in so doing, perpetuating the problem for Dominicans of Haitian descent in the Dominican Republic.

Reaching this conclusion involved an in-depth analysis of the Dominican legal framework governing nationality, with a focus on the violation of the rights enshrined in various human rights instruments, by which Dominican Republic is bound.

Applying an inter-disciplinary approach, reveals that these strategies for tackling statelessness in the Dominican Republic will have to go beyond mere legal reforms. In the end, the prevention of child statelessness relies on the Dominican State's willingness to comply with its international human rights obligations, as well as to commit itself to a genuine inclusion of Dominicans of Haitian descent into the society.

Discrimination, Dominican Republic, Right to Nationality, Child Statelessness, Statelessness, Human Rights

Zusammenfassung

Die Dominikanische Republik gehört zu den fünf Ländern mit der weltweit größten Anzahl an Menschen, die von Staatenlosigkeit betroffen sind. Die vorliegende Arbeit untersucht Staatenlosigkeit von Kindern in der Dominikanischen Republik im Lichte des Urteils 168/13 und Sondergesetzes 169-14. Das Urteil des dominikanischen Verfassungsgerichts im Jahr 2013 beraubte Tausende von DominikanerInnen, meist haitianischer Herkunft, ihrer Staatsbürgerschaft durch die bis 1929 rückwirkende Bestimmung, dass für die Anwendung des *jus soli* ein Nachweis für einen elterlichen Wohnsitz erbracht werden muss.

Das nachfolgende Sondergesetz, das die Auswirkungen des Urteils mildern sollte, scheiterte weitgehend hinsichtlich der Prävention von Staatenlosigkeit von Kindern. Es wird darauf hingewiesen, dass das Urteil 168/13 und Sondergesetz 169-14 bereits bestehenden Fälle von Staatenlosigkeit von Kindern in der Dominikanischen Republik verschärft, beziehungsweise sogar neue Fälle erzeugt haben. Dadurch werden Bemühungen, Staatenlosigkeit zu bewältigen, behindert und somit Staatenlosigkeit für DominikanerInnen haitianischer Herkunft in der Dominikanischen Republik verewigt.

Diese Erkenntnis ist das Resultat einer umfassenden Analyse des Dominikanischen Rechtsrahmens bezüglich Staatsbürgerschaft, mit besonderem Augenmerk auf die Verletzungen des Rechts auf Staatsbürgerschaft, das in verschiedenen Menschenrechtsinstrumenten verankert ist, die auch für die Dominikanische Republik verbindlich sind.

Anhand eines interdisziplinären Ansatzes kann gezeigt werden, dass Strategien zur Bekämpfung der Staatenlosigkeit in der Dominikanischen Republik unbedingt über rechtliche Reformen hinausgehen müssen. Schließlich hängt die Vorbeugung von Staatenlosigkeit von Kindern von der Bereitschaft des dominikanischen Staates, seinen

internationalen Menschenrechtsverpflichtungen nachzukommen sowie sich auf eine tatsächliche Inklusion der DominikanerInnen haitianischer Herkunft in der Dominikanischen Gesellschaft einzulassen, ab.

Diskriminierung, Dominikanische Republik, Recht auf Staatsbürgerschaft, Staatenlosigkeit von Kindern, Staatenlosigkeit, Menschenrechte.

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