

PRELIMINARY OBSERVATIONS FROM THE IACHR'S VISIT TO THE DOMINICAN REPUBLIC

December 2 to 6, 2013



MAP OF THE *ON SITE* VISIT OF THE IACHR TO THE DOMINICAN REPUBLIC



PLACES VISITED BY THE IACHR

- **Santo Domingo** Santo Domingo (National District)
- **South Route** Jimaní (Province of Independecia)
Boca de Cachón (Province of Independecia)
Batey 6 (Province of Bahoruco)
- **North Route** Dajabón (Province of Dajabón)
Batey Libertad (Province of Valverde)
- **East Route** Consuelo (Province of San Pedro de Macorís)
Batey Monte Coca (Province of San Pedro de Macorís)
Batey Construcción (Province of San Pedro de Macorís)
Batey 62 (Province of La Romana)
Batey Como Quieras (Province of La Romana)
Batey Hoyo Puerco (Province of La Romana)
Guaymate (Province of La Romana)
- **Haina** Immigration Detention Center of Haina
(Province of San Cristóbal)

PRELIMINARY OBSERVATIONS FROM THE IACHR'S VISIT TO THE DOMINICAN REPUBLIC

The Inter-American Commission on Human Rights (IACHR) conducted an on-site visit to the Dominican Republic on December 2-6, 2013.

The purpose was to observe the situation related to the rights to nationality, identity, and equal protection without discrimination, along with other related rights and issues.

The Commission carried out this visit to oversee compliance with the international commitments made freely by the State of the Dominican Republic.



Photography at the left: Commissioner Rose-Marie Belle Antoine and Commissioner Dinah Shelton in Batey Monte Coca. In the middle: Commissioner María Rosa Ortíz and Commissioner José de Jesús Orozco Henríquez in Batey Libertad. On the right: Commissioner Felipe González and Commissioner Tracy Robinson in Batey 6.

The delegation was composed of IACHR Chairman José de Jesús Orozco Henríquez; First Vice-Chair Tracy Robinson; Second Vice-Chair Rosa María Ortíz; Commissioners Felipe González, Dinah Shelton, and Rose-Marie Belle Antoine; Executive Secretary Emilio Álvarez Icaza L.; Assistant Executive Secretary Elizabeth Abi-Mershed; Special Rapporteur for Freedom of Expression Catalina Botero; and other staff members of the Executive Secretariat.



IACHR's meeting with the President of Dominican Republic, Danilo Medina Sánchez; Minister of the Presidency, Gustavo Adolfo Montalvo; and Minister of Foreign Affairs, José Manuel Trullols

The IACHR held meetings with State authorities, civil society organizations, victims of human rights violations, and representatives of international agencies. During the visit, various IACHR delegations visited the provinces of Bahoruco, Dajabón, Independencia, La Romana, San Cristobal, San Pedro de Macorís, Santo Domingo, and Valverde.

The IACHR met with the President of the Dominican Republic, Danilo Medina Sánchez; the Minister of the Presidency, Gustavo Adolfo Montalvo Franco; the Minister of Foreign Affairs, José Manuel Trullols; the Legal Adviser of the executive branch, César Pina Toribio; the Deputy Minister of the Presidency, Henry Molina Peña; the Minister of Education, Carlos Amarante Baret; the Minister of Public Health and Social Assistance, Lorenzo Wilfredo Hidalgo Núñez; the Minister of Labor, Rosa Maritza Hernández; the Minister of the Interior and Police, José Ramón Fadul; the Attorney General of the Republic, Francisco Domínguez Brito, along with the Offices of Special Prosecutors for Human Rights, Children and Adolescents, and Domestic Violence and Gender; the Director General for Migration, José Ricardo Taveras Blanco; the Deputy Director General for Migration, Santo Miguel Román; and the representative of the Dominican Republic to the Organization of American States (OAS), Ambassador Pedro Vergés. It also met with the Commissions on Human Rights, International Affairs, and Human Development of the Chamber of Deputies; with officials from the Central Electoral Board; the Specialized Land Border Security Corps (CESFRONT) in Jimaní and Dabajón; and staff of the migrant detention center in Haina.

The IACHR held meetings with civil society, with the following organizations present: Dominicanos por Derecho, Participación Ciudadana, Centro de Formación y Acción Social y Agraria (CEFASA), Solidaridad Fronteriza, Comisión Nacional de Derechos Humanos (CNDH), Centro Bonó, Movimiento Socio Cultural para los Trabajadores Haitianos (MOSCHTA), Observatorio Migrantes del Caribe (OBMICA), Asociación Afrodominicana, Diversidad Dominicana, Fundación FUNCESI, Reconocido, Árbol Maravilloso, Grupo Saragua, GIZ (German cooperation organization), Centro Cultural Dominicano Haitiano (CCDH),

Consejo Nacional de Unidad Sindical (CNUS), Afro Alianza Dominicana, Conamuca, Alas de Igualdad, Soy Dominicano Como Tú, Articulación Campesina, Red Afro, Coalición de ONGs por la Infancia, and Open Society Justice Initiative. Organizations devoted exclusively to gender-related issues also participated; these included Movimiento de Mujeres Dominico-Haitianas (MUDHA), Colectivo de Mujeres y Salud, Foro Feminista, and Núcleo de Apoyo a la Mujer. The Commission also held meetings with civil society organizations and with victims in Dabajón, in San Pedro de Macorís, La Romana, and Jimaní.

During its visit, the IACHR received testimony, petitions, and communications from 3,994 individuals.

In addition, meetings were held with international organizations, including the Office of the United Nations High Commissioner for Refugees (UNHCR), UN Women, UNAIDS, the World Bank, the International Labour Organization (ILO), the Food and Agricultural Organization (FAO), and the Pan American Health Organization (PAHO). In addition, the Commission met with various journalists, legal experts, university personnel, and victims of human rights violations.



Children in Batey 62, San Pedro de Macorís

The Dominican Republic belongs to the Inter-American Human Rights System because of sovereign decisions made by the State dating back to 1948, when it participated in the adoption of the American Declaration of the Rights and Duties of Man. In 1959, the Dominican Republic participated in the creation of the Inter-American Commission on Human Rights, and it ratified the American Convention on Human Rights on April 19, 1978. The Inter-American Commission has carried out seven on-site visits to the Dominican Republic: in 1961,

1963, 1965, 1965-1966, 1991, 1997, and 2013. In addition, the IACHR has processed petitions and requests for precautionary measures from the Dominican Republic. The Inter-American Court of Human Rights has handed down rulings in the *case of Nadege Dorzema et al. (Guayubín Massacre)* and in the *case of Dilcia Yean and Violeta Bosico*. The Commission has also filed an application with the Court in the *case of Benito Tide Méndez et al.*, which is pending a decision.

The Commission appreciates the State of the Dominican Republic's invitation to conduct the visit, which was conveyed after the IACHR expressed its interest in doing so. The IACHR also thanks President Danilo Medina and his government for everything it did to facilitate this visit. In addition, the IACHR thanks the Dominican government and people for the hospitality they showed to the delegation.

The Commission appreciates the efficient, professional collaboration of the security team provided by the State, which made it possible for it to carry out its activities of receiving information, testimony, and complaints at various sites in the country, including the Club de Profesores at the Universidad Autónoma de Santo Domingo. In addition, the Commission appreciates the devoted and generous assistance of volunteers who helped attend to those who came to the places set up to receive information and complaints. The Inter-American Commission would like to thank those who offered their testimony and presented complaints, many of whom traveled from far away and had to wait for several hours due the large numbers of people who were received.

The Commission is well aware that the on-site visit is being carried out in the context of a major historical challenge that goes beyond the current circumstances. This is an issue that has deep roots and is extremely complex.

The Commission would like to draw attention to the solidarity and generous nature of the people of the Dominican Republic. Faced with the devastation, desolation, and death caused by the earthquake



that hit Haiti in January 2010, the Dominican government and people responded—and continue to respond to this day—with solidarity and fraternity. Moreover, Haitians who have immigrated to the Dominican Republic have contributed and continue to contribute in extraordinary ways to this country's economic development.





Photograph on top: person presenting testimony before the IACHR in Santo Domingo. Photograph on top left: the IACHR's meeting with the Attorney General of the Republic, Francisco Domínguez Brito, and Vice Chancellor, Alejandra Liriano. Photograph to the middle left: meeting with the President of the House of Representatives, Abel Martínez Durán, and other Members of Congress. Photograph to the bottom left: members of the IACHR in a meeting with civil society organizations.

Through this visit, the IACHR has been able to appreciate various advances in the development of democratic institutions and the protection of human rights. The Commission particularly values and welcomes as a very positive step forward the fact that, through the 2010 reform of the Constitution, international human rights law and all international human rights commitments adopted by the State are incorporated directly into domestic law, with constitutional ranking.

On the other hand, during the visit the Inter-American Commission received troubling information concerning grave violations of the right to nationality, to identity, and to equal protection without discrimination. The violations of the right to nationality that the Commission observed during its last on-site visit, in 1997, continue, and the situation has been exacerbated as a result of Judgment TC 168/2013 of the Constitutional Court. An indeterminate but very significant number of Dominicans, estimated by various sources at more than 200,000 people, have been arbitrarily deprived of their nationality as a result of the ruling. Consequently, these individuals have seen their right to legal personhood violated, and they live in a state of extreme vulnerability. This situation disproportionately affects persons of Haitian descent, constituting a violation of the right to equal protection without discrimination.

The Inter-American Commission values and appreciates the support of the government authorities and civil society organizations that provided valuable assistance and cooperation in coordinating and implementing the logistics of the visit.

RIGHT TO NATIONALITY

During the visit, the IACHR focused its attention on the exercise and enjoyment of the right to nationality in the Dominican Republic. Government officials and civil society representatives agree in recognizing that the enjoyment of this right is a challenge that must be addressed from a human rights perspective.



This right is protected in a fundamental way in international human rights law, in order to protect people from possible arbitrary acts by States. Article 20 of the American Convention on Human Rights establishes that every person has the right to a nationality, that 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, and that no one shall be arbitrarily deprived of his nationality or of the right to change it.

In general, the determination of who are nationals continues to fall under States' domestic jurisdiction; however, this authority is limited by States' obligation to provide individuals with equal and effective protection of the law without discrimination, and by their obligation to prevent, avoid, and reduce statelessness.

On September 23, 2013, the Constitutional Court of the Dominican Republic handed down Judgment 168/13, whereby it gave a new interpretation as regards the acquisition of nationality by individuals born in the country to foreign parents in transit. Based on this interpretation, individuals who previously had been recognized as having Dominican nationality were denationalized.

With respect to a particular case, the Constitutional Court determined that even though the petitioner was born in Dominican territory and had been registered as such by the appropriate authorities at a time in which the Constitution recognized *jus soli*





People at the Commission's center for receiving complaints in Santo Domingo, the Faculty Club of the Universidad Autónoma de Santo Domingo (UASD)

as a means to recognize nationality, the new interpretation of “foreigners in transit”—which pairs this concept with that of a foreigner with irregular status—stripped her of the right to Dominican nationality. Through this ruling, the Constitutional Court retroactively changed the interpretation of “foreigners in transit” in the constitutions in effect from 1929 to 2010, which established that category as a restriction to the acquisition of the right to nationality by *jus soli*. The court stated that “foreigners in transit” refers to those individuals who do not have legal domicile in the Dominican Republic because they lack a residency permit.

Based on the foregoing, the Constitutional Court ordered the General Office of Migration to issue a temporary immigration permit until such time as the National Plan for the Regularization of Foreigners with Irregular Migration Status—provided for in Article 151 of the 2004 Migration Law—determines the conditions under which these types of cases can be put on a regular footing. This new interpretation by the Constitutional Court retroactively strips the right to Dominican nationality from tens of thousands of people who had been considered Dominicans for their entire lives, many of whom were registered at birth as Dominican nationals by the appropriate authorities and throughout their lives were provided with other documents establishing their identity, such as national ID cards (*cédulas*), voter credentials, and passports.

Thus, Judgment TC 0168/13 of the Constitutional Court denationalized a broad group of people born in the Dominican Republic between 1929 and 2010. Various sources, including government sources, have estimated that at least 200,000 people would be affected by the ruling, although the number has not been determined.

The recent National Immigrant Survey carried out by the State in 2012, with the support of the United Nations Population Fund (UNFPA), estimated the total number of individuals born to Haitian immigrants to be 209,912. This entire population could potentially be affected by the court's decision. This figure, however, does not include other generations of people of Haitian descent born in Dominican territory since 1929 whose parents were themselves born in the Dominican Republic.

For its part, the Central Electoral Board identified 24,392 individuals born in the Dominican Republic to foreign parents whose births were registered in the national Dominican civil registry using documents other than national ID cards—that is, using a card called a *ficha*, a foreign passport, or no document whatsoever. Of this number, 13,672 individuals are of Haitian origin. However, this figure does not include individuals whose births were not registered. This list also does not include the second, third, or later generations of individuals of Haitian origin whose births were recorded using a valid Dominican ID card. These individuals will also be affected by the Constitutional Court’s decision, which will have a “ripple effect” that will have an impact on all generations born in the country.

“I am now living a civil death—I walk down the street but I don’t exist,” one such person said. In Batey Libertad, in the province of Valverde, the IACHR heard testimony from a woman who presented a birth certificate that shows she was born in 1981 at the Hospital de Mao, in the Dominican Republic. According to her testimony, she has not been allowed to register any of her six children: “I went to the hospital to register the kids, but they told me that if I don’t have a *cédula* I can’t register them. And I go to get my *cédula* at the [Central Electoral] Board and they tell me I don’t have the right to a *cédula* because I’m a foreigner. And I tell them, ‘How can I be a foreigner if I was born here and I’ve always lived here.’” Another woman who presented testimony in Santo Domingo indicated that her daughter who was born in 2013 is not



registered: “They don’t want to register my youngest daughter; they are refusing to register her because they say her grandmother is Haitian. It’s as if she doesn’t exist. She’s stateless. She is not from here or from there.”

This situation affects people from families who have been in the Dominican Republic for several generations. The IACHR heard testimony from a woman who arrived in the country from Haiti 47 years ago: “The government of the Dominican Republic went to get me to cut sugar cane because the harvest had started and they needed people. And so I started to work there and I had my first child, a son. When Johnny was born, the government of the Dominican Republic gave me 20 pesos because he was a male child who could cut sugar cane.” As she explained it, she registered her six children, all born in the Dominican Republic, using a card (*ficha*) that the Dominican authorities issued to her as a foreigner with authorization to work. However, the Central Electoral Board has refused to issue or renew *cédulas* for them in recent years, arguing that this type of *ficha* is no longer valid for this transaction, and their grandchildren have also been refused an ID card or birth certificate.



ARBITRARY DEPRIVATION OF NATIONALITY

The Commission considers that the Constitutional Court's ruling implies an arbitrary deprivation of nationality. The ruling has a discriminatory effect, given that it primarily impacts Dominicans of Haitian descent, who are Afro-descendant persons; strips nationality retroactively; and leads to statelessness when it comes to those individuals who are not considered by any State to be their own nationals, under their laws.



The Commission believes it is pertinent to state once again that nationality constitutes the legal connection between an individual and a particular State, one that ensures that the individual will have a minimal measure of protection in international relations and that has an impact on the exercise of other political and civil rights, as well as economic, social, and cultural rights. In addition, international recognition of every person's right to nationality imposes on States the obligation to prevent and eradicate statelessness.



Along these lines, the obligations rooted in international human rights law require that States refrain from applying policies, laws, judgments, or practices that result in people being unable to have access to any nationality, as the Inter-American Court established in the Case of the Girls Yean and Bosico, in its judgment of September 8, 2005. That judgment also establishes that when there is a risk of statelessness, the person who might be affected need prove only that he or she was born in the territory of the State in question to obtain the respective nationality.



Affected persons who gave their testimony before the IACHR in San Pedro de Macorís and Santo Domingo

Many of those affected by Judgment 168/13 of the Constitutional Court are individuals who were born in the Dominican Republic and were previously recognized by the State as being Dominican, by means of a document issued by State institutions certifying them as such. These individuals have close ties in the Dominican Republic: they have paid taxes, created wealth, and contributed to social security; they were raised and educated in the country and have established their families there. In testimonials before the IACHR, they expressed a strong sense of Dominican identity. As one young man in Santo Domingo put it, "I was born under the Dominican flag and do not know any other flag."

These individuals have been affected by arbitrary decisions adopted by the Central Electoral Board over the course of the last few years. The Commission received information indicating that many officials from that agency deny documentation to individuals born in the Dominican Republic. In fact,

in some cases, after courts ordered such documents to be issued, the Central Electoral Board refused to follow the court order. Some people who work in that agency deprive individuals of their nationality, arbitrarily and at their discretion.

The Central Electoral Board's denial of documents creates obstacles for individuals in the exercise of their right to move about freely in the country, since they end up without proof of their Dominican nationality. According to testimony received by the IACHR, one woman of Haitian descent was asked by the driver of a public bus to show documents to prove her Dominican nationality. Another woman said that out of fear of being deported to Haiti, "where I don't have anyone," she does not travel to see her grandchildren, who live in a city less than an hour away from where she lives.

The denial of documents to a large number of people born in the Dominican Republic is a practice



that has been carried out in recent years, a time in which there have also been arbitrary deportations and expulsions. Among those deported were individuals born in the Dominican Republic whose Dominican nationality the Dominican State had recognized through the issuance of birth certificates and ID cards. The Inter-American Commission views the order by the President of the Republic to suspend deportations as a positive step. Nonetheless, the Commission received information on the ground indicating that the deportations continue, though at a slower pace than in previous years.

The Inter-American Commission was also able to observe that denationalization primarily affects persons of Haitian descent born in the Dominican Republic. Judgment TC/0168/13 of the Constitutional Court has a disproportionate impact on these individuals, because their parents or ancestors constitute the majority of the country's migrant population. The Inter-American Court has established that there is an inextricable link between the obligation to respect and guarantee human rights and the principle of equal protection of the law without discrimination, and that this should permeate every action taken by the State. In this sense, the State may not act against any specific group of people for reasons such as race, ethnicity, or national origin, among others.

The lack of recognition of these individuals' legal personhood as a result of their not being registered, or because of difficulties in access to a identification documents creates a situation of extreme vulnerability that leads to violations of other human rights, in a vicious circle that can be broken only through recognition of their nationality.



MULTIPLE LEVELS OF DISCRIMINATION

Besides affecting individuals born in the Dominican Republic in numerical terms, the Commission observes that Judgment 168/13 disproportionately affects individuals who are already subject to many forms of discrimination, particularly discrimination based on race and poverty.



On this point, in its analysis of the situation in the Dominican Republic in April of this year, the Committee for the Elimination of Racial Discrimination referred to three particularly relevant aspects: the persistence of structural racism and discrimination based on color and national origin; the link between poverty and racism in general; and the “firm denial” by the State of the existence of racial discrimination, which constitutes a critical obstacle in terms of compliance with its international obligations.

The Commission heard many testimonials on the impossibility of finding a job without having an ID card, and the difficulties and obstacles -often impossible to overcome- in gaining access to basic services.

The IACHR visited several bateyes in (communities of sugar workers) in different parts of the country and took note of the conditions of poverty, exclusion, and discrimination in which its inhabitants live. Poverty disproportionately affects Dominicans of Haitian descent, and this is related to the obstacles they face in access to their identity documents.

The IACHR received multiple testimonials from individuals who studied through the eighth grade but who could not go on to high school because they did not have a national ID card. One mother with three of her four children in school told the IACHR that she had been asked to present the children’s cédulas: “The teacher told me, ‘I’m going to have to kick out the kids until the documents appear,’ and I told her, ‘Oh gosh, teacher, can you just hang on a little bit longer because the documents are being processed and they’re going to arrive any day.’ But that isn’t true. I don’t have anything in process because they’re not going to accept them. I’ve seen people from my community who go to give statements and they don’t accept them, so what can I do.”

The Commission also received testimony from people who were able to go to high school even without a cédula but who have not been able to have access to a university education. One woman born in August 1994 in La Romana, in the Dominican Republic, said she had applied for her cédula two years ago and since then has been told that it is being processed: “I already finished high school and I haven’t been able to get into the university because of this problem. I would like



to be the example for my siblings, but they are denying me a cédula and I can't continue. Sometimes I ask myself, is it because of the color of my skin? Because if it's about nationality, my parents came here when they were little, and I was born here. I always wanted to study; that's my passion. When they told me that I passed with good grades, I cried—not out of joy but out of sadness, because I can't go to the university. Sometimes I wake up at 4 in the morning and can't sleep. I just lie there thinking about how much this affects me, and my tears start to come, and it breaks me up just to think that if I end up having children, they're going to go through the same thing I went through, and that just breaks me up inside. I've wanted to be the example for my family, and I don't know how to find a way out."

The Commission received many testimonials that pointed to the persistence of racial discrimination not only in society in general, but also in terms of access to public services specifically. Given the central importance of equal protection without discrimination, the Commission underscores the need for the government to adopt any measures that may be necessary to guarantee its effective enjoyment, particularly to ensure the accountability of those acting on its own behalf.



ACCESS TO JUSTICE

One of the safeguards for any human right is judicial protection, applied in a way that is accessible and effective. During its visit, the Commission identified several concerns with respect to access to justice in the area of the rights to nationality, identity, and equal protection without discrimination, particularly for people affected by Judgment 168/13.

The Commission spoke with many people who stated that without a cédula they are unable to file a claim or follow through with a judicial proceeding. One mother informed the delegation that, since neither she nor her son have documents certifying that they were born in the country, she cannot sue her son's father for child support. In the bateyes, members of the communities referred not only to the problem of documentation, but also to issues of geographical accessibility as well as the costs associated with seeking justice. The Commission

received consistent information with respect to the Central Electoral Board's practice of indefinitely holding onto documents or suspending their delivery to Dominicans who are of Haitian descent or are perceived as such. On another matter, the Commission received information on several cases in which courts have issued writs for protection of constitutional guarantees (*recursos de amparo*) in favor of plaintiffs—for example, ordering the issuance of documents—but the Central Electoral Board has failed to comply.

Person waiting to give testimony before the IACHR delegation in the municipality of Consuelo



INTOLERANCE AND INCITEMENT TO VIOLENCE

The publication of Judgment 168/13 of the Constitutional Court of the Dominican Republic on September 23, 2013, produced reactions of both support and rejection in the country. In particular, an atmosphere of hostility was created against those who have criticized the ruling and defended the right to Dominican nationality of those affected by it.

According to information received by the Inter-American Commission, statements directed against journalists, intellectuals, lawyers, politicians, legislators, human rights defenders, and public figures who have criticized the ruling have become alarmingly aggressive. These individuals have been described as “traitors to the homeland” and have received serious threats through social media, comments in online newspapers, and slogans at protests and demonstrations calling for “death to the traitors.” The Inter-American Commission expresses its concern over the threats and disparaging remarks targeting individuals who have spoken up to criticize the court decision.

For example, on November 4, during a demonstra-

tion convened by the Red Nacional por la Defensa de la Soberanía (National Network for the Defense of Sovereignty) in support of the Constitutional Court’s decision, which was reportedly attended by some public officials, organizations of human rights defenders and journalists were apparently accused of being “traitors to the homeland” for criticizing the decision. The demonstration proclaimed the slogan “death to the traitors,” and a pamphlet was circulated, titled “The Treason Album,” which included names and photos of journalists, human rights defenders, and politicians who had criticized the ruling. In addition, Constitutional Court Justices Isabel Bonilla Hernández and Katia Miguelina Jiménez Martínez, who cast dissenting votes, were accused of being “traitors to the work of Duarte.”



The Commission’s meeting with journalists from various media outlets, both from within the Dominican Republic and abroad

In another demonstration on November 13, a group of community organizations in the Santiago area reportedly held a symbolic ceremony in which they burned Mario Vargas Llosa's book *The Feast of the Goat* and declared his son, Gonzalo Vargas Llosa—representative of the Office of the UN High Commissioner for Refugees (UNHCR) in Santo Domingo—to be *persona non grata*, along with former Haitian consul Edwin Paraison and the NGO Red Fronteriza Jano Siksé (RFJS).

Congresswoman Guadalupe Valdez, who apparently had criticized the court's ruling, reportedly was accused of being a "traitor" and called before the Disciplinary Council of the Chamber of Deputies for supposedly having participated in a demonstration against the ruling, as part of a public event in which the president was participating.

Journalists Luis Eduardo (Huchi) Lora and Juan Bolívar Díaz filed a complaint with the Federal District Prosecutor's Office in which they asked for an investigation to be opened into those responsible for threats made against them because of their criticism of the court's decision. In the complaint, they reported the existence of a new pamphlet in which they appear caricatured as the devil and identified as traitors. "The combination of the slogans in the public protests, along with the

content of the "Treason Album" and the pamphlet...- contain sufficient elements that would suggest that the purpose of the pamphlet is to draw a connection with the aforementioned slogans in identifying, by full name and image, the supposed 'traitors' who allegedly must be killed," they indicate.

In this context, other cases have been reported in which human rights defenders and members of the media have been stigmatized and have received threats. Among those are the journalists Marino Zapete, Fausto Rosario Adames, Ramón Emilio Colombo, and Javier Cabreja.

On November 4, Ana María Belique, a leader and activist with Movimiento Reconocido, reportedly received threats from individuals via the social media network Twitter: "We're going to have to move Belique to the same barrio where Sonia Pierre lives" (a reference to a human rights activist and defender who died in 2011), and "we're ready for anything; if it's blood they want, blood they shall have."



Dominican Republic journalists



Affected person, in San Pedro de Macorís



Moreover, the IACHR received information indicating that some rights defenders were being stigmatized for carrying out their work. For example, one rights defender told the Commission: “We [human rights] defenders are accused of being traitors and anti-patriotic, of making money off Haitians.... It’s a constant harassment.” Another rights defender told the IACHR that those who went to the Inter-American Court in the Case of Benito Tide et al. v. Dominican Republic were labeled traitors to the homeland.

The lawyer for Juliana Deguis Pierre, the person whose case was decided by the Constitutional Court, reportedly received insults and threats that may be connected to his activity as Deguis’s defense counsel. According to the information received, the lawyer had been a victim of insults such as “damned black man – run along to Haiti.” The assailants reportedly threatened to “split his head open” for being “a defender of Haitians.” The lawyer has also attested that his office is under surveillance, so he keeps it closed and has had to take security precautions.

In addition, a repudiation campaign is reportedly being carried out against countries and regional and international organizations that apparently expressed their disagreement with the constitutional ruling. Along those lines, high-level government officials reportedly have issued statements questioning the role of agencies such as the UNHCR or the OAS.



Special Rapporteur for Freedom of Expression, Catalina Botero, and the President of the IACHR, José de Jesús Orozco Henríquez



Affected persons in the Liberty Batey, Valverde province

The Inter-American Commission notes that in a context of deep societal polarization, the album and the slogan “death to the traitors” would seem to constitute a direct call, collectively and without euphemisms, for the killing of clearly identified or identifiable individuals. In this regard, the Inter-American Commission calls to mind that these types of statements could constitute incitements to violence, given the context in which they were disseminated.

With regard to these episodes, the Inter-American Commission observes that, in principle, all forms of speech are protected by the right to freedom of expression, regardless of their content and regardless of whether they enjoy a greater or lesser degree of acceptance by society or the State. Nevertheless, there are certain types of speech that—based on prohibitions specifically laid out in international human rights law—are excluded from the sphere of protection of this right, such as the “advocacy of national, racial, or religious hatred” and speech that constitutes “incitements to lawless violence,” understood as the clear incitement to commit crimes, under the terms of international human rights law.

The Inter-American Commission recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions in any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. In addition, in cases involving special risk, the authorities have the duty to protect those exposed to that risk and to take measures to ensure, among other things, their right to life, to personal integrity, and to freedom of expression. Moreover, public officials should refrain from in any way sponsoring speech that gives rise to discrimination, intolerance, or incitement to violence. It is essential that the authorities forcefully condemn attacks and threats directed against individuals who contribute to the public discourse through the expression and dissemination of their thoughts, and encourage the relevant authorities to act with due diligence and speed in clearing up the incidents and punishing the culprits.

CONCLUSIONS AND RECOMMENDATIONS

The Inter-American Commission carried out the visit that ends today in order to analyze firsthand the situation of those affected by judgment TC/0168/13, in light of the standards of the Inter-American Human Rights System.

The interviews with representatives of the different branches of government, members of civil society, and many individuals affected by the ruling, as well as the visits to different parts of the country to understand the multiple aspects in which these individuals' rights have been affected, have all provided critical information. The Commission will analyze that information in detail in the coming months for the purpose of preparing a report with its conclusions and recommendations.

The Commission today shares its preliminary observations on the situation based on its visit, and expresses its willingness to work with the State to find solutions that protect fundamental rights and meet international human rights standards.



From left to right: Emilio Álvarez Icaza L., Executive Secretary; Rose-Marie Belle Antoine, Commissioner; Dinah Shelton, Commissioner; Tracy Robinson, Commissioner; José de Jesus Orozco Henríquez, Commissioner; Felipe González, Commissioner; Elizabeth Abi-Mershed, Deputy Executive Secretary; during the closing press conference of the visit.



Members of the Inter-American Commission on Human Rights meeting with civil society organizations in Santo Domingo

Authorities from the executive and legislative branches stated to the Inter-American Commission that they recognize that a problem exists with respect to the exercise of the right to nationality by Dominicans of Haitian descent and are aware of the need to find a solution. In this regard, in the spirit of working in collaboration to find a solution that is

respectful of human rights, the Commission underscores that any measures adopted to respond to the challenges identified in terms of the right to nationality, in particular those made evident by judgment TC/0168/13 of the Constitutional Court, should have the following characteristics:

- 1) They should guarantee the right to nationality of those individuals who already had this right under the domestic legal system in effect from 1929 to 2010.
- 2) People with a right to nationality, such as those who were denationalized under judgment TC/0168/13, cannot be required to register as foreigners as a prerequisite for their rights to be recognized.
- 3) Measures to guarantee the right to nationality of those harmed by judgment TC/0168/13 should be general and automatic. These mechanisms must be simple, clear, fast, and fair. They must not be discretionary or implemented in a discriminatory fashion.
- 4) The mechanisms must be financially accessible.

In order to achieve a result that is effective, it is important to create an opening for consultation and the participation of civil society and representatives of the populations affected by the court decision.

Given the seriousness of the rights violations that arise as a result of the lack of identity documents, the Commission underscores that it is essential to take urgent steps to guarantee the full enjoyment of the human rights of individuals who have been deprived of nationality until such time as a long-term solution is implemented to put an end to

these situations. These urgent measures should guarantee access for everyone to basic services such as health and education, and should avoid, in an effective manner, any expulsion or deportation.

Finally, the Commission underscores that everyone has the right to count on judicial protection and due process, in a way that is accessible and effective, to safeguard the rights to nationality, identity, and equal protection without discrimination that constitute the primary focus of this visit.

Inter-American Commission on Human Rights (IACHR), Preliminary Observations from the IACHR's On-Site Visit to the Dominican Republic. Santo Domingo, December 6, 2013.

MEMBERS OF THE IACHR (THROUGH DECEMBER 31, 2013)

José de Jesús Orozco Henríquez

Tracy Robinson

Felipe González

Dinah Shelton

Rodrigo Escobar Gil

Rosa María Ortiz

Rose-Marie Belle Antoine

DELEGATION OF THE EXECUTIVE SECRETARIAT OF THE IACHR DURING THE VISIT

Executive Secretary: Emilio Álvarez-Icaza Longoria

Deputy Executive Secretary: Elizabeth Abi-Mershed

Special Rapporteur for Freedom of Expression: Catalina Botero

Álvaro Botero, Victoria Fernández, Sofía Galván, Imelda González, Gloria Gordon, Catalina Martínez, María Isabel Rivero, Yuri Romaña, Hilaire Sobers, Ronald Soltes and Marta Tavares

Pictures provided to the IACHR by: Daniel Cima, Sanaa Boutayeb, Fran Afonso y Álvaro Botero

Graphic design: Eva Fontana

The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights.

Inter-American
Commission of
Human Rights

IACHR

www.cidh.org

