

**Advocating for Children of Haitian Descent Born in the Dominican Republic to Undocumented Parents and Denied Dominican Birthright Nationality/Citizenship (Sonja Grover, PhD, Lakehead University): Presentation to the Facilitating Child Participation in International Child Protection Conference, Ryerson University, Toronto, October 5-6, 2015**

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**Part I: Backgrounder on the Situation in the Dominican Republic Relating to the Illustrative OP3-CRC fictional case (Case brought under the Third Optional Protocol to the *Convention on the Rights of the Child* on a communications procedure)**

(i) Part II presents a fictional OP3-CRC case intended only for educational illustrative purposes used to highlight: (i) aspects of the potential and limitations of the current articulation of OP3-CRC; (ii) the issue of birthright nationality and citizenship and its implications for preventing discrimination and statelessness including of particular identifiable populations of children defined, for instance, by ethnicity and colour such as children of Haitian descent born in the Dominican Republic and (iii) the child's right of participation under the OP3-CRC in promoting, among other things, their own protection rights and interests consistent with State international human rights legal obligations.

The Dominican Republic (DR) has neither signed nor ratified the *Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure* (OP3-CRC) nor, as part of that process, agreed to recognize the legal authority (competence) of the Committee on the Rights of the Child to consider a complaint/ communication against the DR transmitted to the Committee and advanced by means of : (i) an *individual communication* (from an identified individual or identified individuals who are part of a group of complainants with the complaint brought directly by the child or children or through an identified authorized representative of the

child or children (i.e. parent, legal guardian or identified authorized NGO, for instance, one with United Nations consultative status) or by means of (ii) *an inter-State communication* brought against the Dominican Republic by a State Party to the *Convention on the Rights of the Child* and/or by a State Party to one of its first two optional protocols and in each case the State bringing the complaint also being a State Party to the OP3-CRC. In short; an *individual communication/complaint* under OP-3-CRC (from an identified individual or identified individual members of a group) against the Dominican Republic, such as represented by this fictional OP3-CRC communication, will only be possible once the Dominican Republic ratifies OP3-CRC (the DR has already ratified the *Convention on the Rights of the Child* and its first two optional protocols). Inter-State OP3-CRC communications (a complaint brought by a State Party to the OP3-CRC against the DR) will, in part, also require not only that the DR is also a State party to the OP3-CRC but that the DR has *opted in* to the OP3-CRC inter-State communications mechanism as well by way of a declaration to that effect.

The DR is also not subject to the OP3-CRC procedure for inquiry into any alleged grave and *systemic* violations by that State of the *Convention on the Rights of the Child* and/or one or both of its first two optional protocols since: (i) The Dominican Republic is not a State Party to the OP3-CRC and (ii) even if a State Party; the DR would have the opportunity to opt out of the inquiry procedure while still remaining a State Party to the OP3-CRC which opt out option is a route the Dominican Republic might take. This since opting out of the OP3-CRC inquiry procedure (Article 13) allows the State to avoid investigation of State *systemic and/or large scale* human rights violations relating to the *Convention of the Rights of the Child* or its first two optional protocols which violations would involve numerous victims and perhaps also potential multitudes of additional victims if the violations are ongoing. The inquiry procedure is the only mechanism under OP3-CRC that allows the Committee on the Rights of the Child to address systemic and/or broad ranging violations under the OP3-CRC complaint mechanism since the third optional protocol to the *Convention on the Rights of the Child* does not permit collective communications/complaints that cover systemic and/or large scale human rights abuses.

While the case here presented is fictional in that the Dominican Republic has *not* yet ratified OP3-CRC and therefore is not subject to communications/complaints brought against it under the OP3-CRC international human rights law mechanism; other aspects of the scenario described are non-fictional. Actual (non-fictional) facts presented in the illustrative case include the discussion regarding *de-nationalization* (the stripping away of or denial in the first instance of Dominican nationality and citizenship) for persons (mostly of Haitian descent) *born in the Dominican Republic* to undocumented parents or to parents who have had their Dominican nationality documents revoked pursuant to a 2013 DR Constitutional Court ruling. The persons considered as illegal aliens in the Dominican Republic (as “non-resident foreigners”) currently then include not only, for instance, undocumented migrants but also, amongst others, first and second generation descendants of Haitian migrant workers *despite these descendants having been born in the Dominican Republic and having always resided in the Dominican Republic*. These first

and second generations are descendants of Haitian migrants who came to the Dominican Republic to work doing hard labour as sugar cane cutters and stayed in search of a better life in the more prosperous Dominican Republic.

Under the 2013 interpretation by the DR Constitutional Court of the Dominican constitution; first and second generation descendants of the undocumented Haitian and other migrants are *not* entitled to a Dominican birth certificate that identifies Dominican nationality, nor to a Dominican national ID card nor to Dominican citizenship papers despite their having been born in the Dominican Republic and their family having resided in the DR for generations back. This is because the 2013 law *retroactively abolished* birthright nationality which would have automatically accorded these first and second generations Dominican nationality.

As a result of the 2013 Dominican Constitutional Court ruling (which cannot be appealed since it is a High Court ruling); automatic (non-naturalized) DR nationality/citizenship for anyone born after 1929 in the Dominican Republic is possible only if that person was born to a parent who is a recognized (*documented*) Dominican national (a parent with Dominican permanent resident or Dominican citizen legal status and papers to prove it which would then mean they would also be on the civil registry listed as a Dominican national). The latter relates then to *jus sanguinis*; Dominican nationality by “blood”-the documented Dominican nationality/citizenship of the parent being automatically transmitted to the child rather than nationality being based on the Dominican birthplace of the child (birthright nationality is termed *jus soli*; soli meaning “soil”). Some countries that rely on *jus sanguinis* nevertheless give citizenship to parents and their children who entered the country as part of a Diaspora; refugees expelled en masse from the country in which they were residing but that is not the situation in this case). Here the DR is threatening mass deportation of undocumented persons, in the main who are Haitian or of Haitian descent, including those who were born in the DR and many such deportations have already taken place and had already been occurring for many years even prior to the 2013 Constitutional Court ruling. The 2013 Constitutional Court ruling is relied on by the Dominican government as the alleged legal basis for denial of DR nationality to, and for forcible deportations of first and second generation persons *born in the DR*, mostly of Haitian descent, whose parents are undocumented. This is the case though the 2013 law is inconsistent with international law on several accounts including insofar as it creates statelessness and results in en masse forcible deportation of persons who were at one point or are entitled to be considered Dominican nationals by birth or by law to avoid statelessness.

There are an estimated one million persons of Haitian descent in the Dominican Republic and 245,000 first generation DR born persons of mostly Haitian descent residing in the DR born after 1929. The parents of this first generation were most often migrant workers from Haiti who had no documents pertaining to their non-temporary status in the *Dominican Republic* (no legal documents as permanent DR residents or DR citizens). Often the only Dominican document these Haitian migrant workers had was a personal/worker identity document provided by the sugar cane company decades ago. As discussed, the first and second generation Dominican by

birth descendants of these Haitian migrants often are rendered stateless where completely undocumented given that the DR post the 2013 court ruling no longer accepts their birthright Dominican nationality/citizenship. These first and second generation offspring of the Haitian migrants of decades ago have been and are at continued risk for the most part of being forcibly deported to *Haiti*; a country foreign to them as most have not ever even visited Haiti and speak little if any Creole. The second generation children born in the DR and of Haitian ancestry do not have *Haitian* nationality through their parents since their parents were born in the Dominican Republic and have no Haitian nationality documents and are not registered in Haiti as Haitian nationals. The parents of the first generation offspring lived in abject poverty also back in Haiti and are unlikely to have been on any local Haitian civil registry as Haitian nationals or the paperwork is likely to have been lost over the decades.

There are another 460,000 non-Haitian migrants in the country. Where these persons are undocumented parents (without the paperwork establishing them to be Dominican citizens or permanent residents) their children *born in the DR* are also considered “non-resident foreigners” due to the 2013 DR court ruling. Any non-Dominican nationality of these children may not exist or be determinable where there are no relevant documents existing in any State to establish the non-Dominican nationality of the parents. These children also thus are rendered stateless due to the de-nationalization of the children by elimination of their birthright to Dominican nationality.

A small percentage of the second generation group of children of Haitian descent were born to *now* undocumented parents born in the DR to Haitian migrant parents. These child complainants’ parents at one time had DR birth certificates which were later revoked and confiscated when Dominican birthright citizenship was abolished in 2013. Sometimes birth certificates, national identity ID cards etc. had been illegally denied to parents by the local civil registries even before 2013. Often this occurred simply on the basis that the parents of the child complainant had a mother and father both with Haitian last names and the local civil registry, illegally at that time, on a discriminatory basis, considered the parent on that basis to be a non-resident foreigner not entitled to a Dominican birth certificate or national identity papers despite their having been born in the DR.

A 2010 Dominican court ruling had granted *birthright* nationality/citizenship to those born in the DR after 1929 and who resided permanently in the DR. The 2010 “regularization” of undocumented so-called “non-resident foreigners” (who were born and actually permanently resident in the DR and descendants of migrant workers) resulted in their being considered Dominican nationals. This grant of Dominican nationality by birthright was however ***retroactively nullified*** by the 2013 DR Constitutional Court ruling that removed birthright Dominican nationality for anyone (documented or not) born in the DR after 1929 and born to undocumented parents. After 2013; Dominican nationality could only be *automatically* conferred to the child through a documented parent who had Dominican permanent residency or Dominican citizenship status (as per *jus sanguinis*).

The first generation Haitian descendants who at one time had a Dominican birth certificate and were at some point registered on the civil registry as Dominicans (before they were denationalized) were given a limited time to become recognized as DR nationals/citizens once again. This due to a DR May 2014 law responding to international backlash against the DR's decision to abolish birthright nationality/citizenship retroactively and denationalize thousands of Dominicans. It was not certain whether the second generation group of children born to these parents would be allowed DR nationality/citizenship if their undocumented parents (who also were born in the DR and at one time had a Dominican birth certificate) regained their Dominican nationality/citizenship as this point was not explicitly addressed in the May 2014 law. That matter was handled most likely as a matter of discretion by local civil registry offices whose agents have a history often of hostility and discriminatory practice against persons of Haitian descent. The DR government saw fit to extend this offer of a naturalization process for this group *for a very limited time (now expired)* as a humanitarian gesture to remedy what it considers an bureaucratic error in issuing these child complainants' parents (who were born in the DR) birth certificates in the first instance. These parents of certain of the child complainants were born to Haitians parents who had come to the DR as migrant workers but settled in the Dominican Republic. The Dominican government maintains this first generation should have been considered as "non-resident foreigners", not as DR nationals; and should not have been issued birth certificates in the first instance despite their birth in the DR. This is the case according to the government since their parents were undocumented so-called "in transit" migrants (though these migrants had settled permanently in the DR). Therefore, according to the Dominican government, *the descendants* of these migrants are properly still to be considered also as "in transit migrants" notwithstanding their birthplace being the DR and their having lived their whole lives in the Dominican Republic.

Another group of children *born in the DR* are, due to the denial of DR birthright nationality and citizenship, also at risk of statelessness. This is the case since the latter group of children were born to undocumented Dominican parents of Dominican or Haitian ancestry who though themselves born in the DR never had obtained a DR birth certificate or there is no longer proof of or access to the proof of the parent ever having had a DR birth certificate or of their having been registered on the DR civil registry as a Dominican national. The parents have no paperwork regarding any nationality and are not registered as nationals in any State and are- since the 2013 DR Constitutional Court ruling- considered as "non-resident foreigners" illegally residing in the DR. These parents were given a limited time (now expired) to register as "non-resident foreigners" and were required under the May 2014 "regularization" law to wait two years before being able to even undergo a naturalization process to obtain their Dominican nationality. The status of their children in regards to access to Dominican nationality also remained unclear and most often likely was handled on a discretionary and arbitrary basis by the local civil registry.

Due to the complexity of the naturalization process, the tremendous paperwork requirements and poor implementation of the law only small numbers of these persons (including persons with

children born in the DR); that is the denationalized undocumented who were born in the DR post 1929 and resident in the DR, were able to regain Dominican nationality. Deprived of Dominican nationality to which they are entitled under international law; these parents and their children born and resident in the Dominican Republic are in almost all cases rendered stateless as it is virtually impossible generally for them to claim any other nationality.

(ii) Children Born in a Country to Foreign Persons “in Transit” versus to Persons Not in Transit: Many States consider that children born in that State to parents who were “in transit” in that country; that is present for a temporary stay (i.e. migrants with temporary work visas, foreign diplomats etc) are not entitled to that State nationality even where the State recognizes nationality by birth (i.e. Canada applies this rule to the children of accredited foreign diplomats unless the other parent is a Canadian citizen or documented permanent resident of Canada at the time of the child’s birth in Canada). In the Dominican Republic; the government, post a 2013 Dominican Constitutional Court ruling, held that undocumented parents-even those parents born in the Dominican Republic into families that span generations living in the Dominican Republic-were to be considered ‘in transit’ and therefore foreigners illegally in the country due to overstay (some of this group were later granted, for a very limited time, the opportunity to pursue a naturalization administrative process). This court ruling resulted in the children of the undocumented also being classified as undocumented foreigners and ineligible for Dominican nationality/citizenship notwithstanding the children’s birth in the Dominican Republic and the ruling rendering the children stateless.

## **Part II: OP3-CRC Communication to the United Nations Committee on the Rights of the Child (Illustrative Fictional Case):**

UNICEF DR (on Behalf of a Group of second generation children of Haitian Descent Denied Dominican Nationality and Born in the DR in La Romana District to undocumented Dominican parents and at risk of forced deportation) v the Dominican Republic

### **Decision on Admissibility and Judgment on Merit**

Individual Complaint September 1, 2015

**The Complainants:** UNICEF DR (Dominican Republic) brings this communication against the Dominican Republic on behalf of a group of fifty children who at the time of the complaint’s filing ranged in age from infancy to seven years old (birthdates ranging from 2008-2015). The children were all born in the Dominican Republic but have been denied their birthright to Dominican nationality and citizenship pursuant to a 2013 Constitutional Court ruling that is applied both retroactively and prospectively. Since these second generation descendants of Haitian ancestry were born to undocumented parents (also born in the Dominican Republic); the children are also considered as “non-resident foreigners” by the Dominican government which now relies on *jus sanguinis*. The child complainants’ parents are considered “non-resident foreigners” due to the 2013 ruling that rendered *all* undocumented as “non-resident foreigners.”

This has resulted in the children of these undocumented also being at risk of forced deportation and their being rendered stateless. The parents of these child complainants have not been able for various reasons to apply for temporary residency by the June, 2015 deadline the government had set for those who qualify.

This group of identified child complainants on whose behalf UNICEF Dominican Republic brings this communication is but a tiny fraction of the many thousands of children in the DR who fall into the aforementioned child population demographic of children, mostly of Haitian descent, who are not recognized as having birthright Dominican nationality/ citizenship due to the September 23, 2013 Dr Constitutional Court ruling. These children, having been born to undocumented persons of Haitian descent, have been classified as having been born to non-resident foreigners despite the parents' deep and long connections to the DR and birth in the DR and generations of the family residing and working only in the Dominican Republic.

The complainants have all been identified by name to the Committee on the Rights of the Child. Proof of each child's consent to this case being brought on his/her behalf by UNICEF Dominican Republic has been provided to the Committee but along with the child's identity is held confidential from the general public. Consent was obtained through the parent or legal guardian or where necessary through another close relative. There were three instances of orphaned street children born to undocumented parents who were identified child complainants who could not be located to obtain their consent or assent but their names have nevertheless been included and information gathered about them and consent obtained through relatives residing in the Dominican Republic.

### **The Communication:**

The child complainants and their parents have been stripped of their birthright Dominican nationality and citizenship though both groups were born in the Dominican Republic. Under a 2013 Dominican Constitutional Court ruling and the implementation measures that ensued; these children of Haitian ancestry are at risk of, and have been threatened with, forcible deportation by the DR to Haiti. This though their parents are not registered in Haiti as Haitian nationals and the children and their parents have longstanding ties to the DR and not to Haiti and in most instances they speak little if any Creole. For these child complainants Haiti is a foreign land.

The children are without Dominican birth certificates and other essential documents necessary to obtain many vital public services in the DR key to the children's good development. If the families are deported to Haiti; the parents without Haitian documents as well would be unlikely to be able to find work in Haiti which is struggling to provide for the population it has after the devastation of the 2010 earthquake and family survival would thus be in grave jeopardy. The parents of these children are unskilled labourers with little education; many of whom are currently living in abject poverty in the Dominican Republic. The latter situation has been caused in part due to longstanding systemic discriminatory practices in the DR by the government and

local employers and others such as education officials against persons of Haitian ancestry which block them from various educational and job opportunities.

The 2013 Dominican Republic Constitutional Court ruling at issue holds that children born in the DR to undocumented persons residing in the DR are to be considered children born to “non-resident foreigners” (illegals) and they themselves therefore are also “non-resident foreigners” regardless whether the children were born in the DR and their parents were born in the DR. The undocumented Dominican- born parents of these children are thus treated *as if* they were and are migrant workers “in transit”; namely only in the DR for a temporary stay; the latter group being a designated group traditionally excluded by DR constitutional law from Dominican nationality and citizenship. Here, however, these children’s parents were born in the Dominican Republic and were and are not “in transit” but rather have long continuous connection to the Dominican Republic where they have settled and their previous family generations have resided and worked over decades and raised families.

UNICEF DR complains of the following violations by the Dominican Republic of the rights guaranteed to these child complainants under the *Convention on the Rights of the Child* :

- Article 2 (1) *Respecting and ensuring the right to non-discrimination and Article 2(2) taking all appropriate measures to this end*: These child complainants of Haitian descent are discriminated against based on aspects of their ethnic heritage and based on their colour and the undocumented status of their parents (parents’ lack of Dominican birth certificate/DR national ID card/DR citizenship documents and/or DR permanent residency papers) and their parents’ Haitian ancestry and colour. The children are being discriminated against in terms of lack of access to educational and health and other vital services (respectively also violations of Article 28(1) and Article 24) due to failure to be recognized as Dominicans by birth. The denial of Dominican nationality to these children (through retroactive de-nationalization) or denial after 2013 has rendered them stateless and further marginalized them in Dominican society and put them at risk of forcible deportation.
- Article 3 (1) *Best interests of the child as a primary consideration*: There is a failure of the Constitutional Court in its 2013 ruling; and the government in implementing the 2013 ruling; to consider as a primary concern the best interests of these children of Haitian descent by recognizing their birthright nationality/citizenship. Instead the Constitutional Court in its 2013 ruling, and the government through its policies and practices, declared these child complainants, born of undocumented parents, as non-resident foreigners illegally in the DR thus rendering them stateless; engendering animosity towards them and subjecting them to the risk of forcible deportation all of which is in complete disregard of and contrary to the children’s best interests.



- Article 4: *Implementing all appropriate measures to ensure the child his/her Convention rights*: The denial of birthright nationality to the child complainants has resulted in a failure to protect their economic, social and cultural rights. The denial of these children's rightful claim of Dominican nationality has marginalized them as purported illegal non-resident foreigners barring them from integration into the Dominican society and putting them at risk of illegal forcible deportation to Haiti
- Article 7 (1) *Right to birth registration and nationality*: There has been a refusal to issue birth registration/birth certificates as a Dominican national based on *jus soli* to these child complainants who were all born in the DR rendering them stateless as their parents are undocumented. (2) Consequently; there has been a failure of the Dominican Republic to meet its international human rights obligation to ensure the children a nationality (Dominican)
- Article 8: *Right to identity which in part includes nationality*: There has been a denial of the right to identity of these child complainants through the government's refusal to acknowledge the child complainants as Dominican nationals by birth so as to prevent their statelessness. In addition there has been no attempt by the Dominican legislature to amend the constitution so as to *exclude* as "non-resident foreigners" (persons considered "in transit") first generation DR -born descendants of migrants and the second generation descendants of Haitian and other migrant workers (such as are these child complainants) who were born in the Dominican Republic and are members of families that have a longstanding connection to the Dominican Republic over many decades old.
- Article 12 (1): *Right to Express Views and Have Them Given Due Weight According to the Child's Age and Maturity*: The Dominican Republic has failed to solicit or consider children's views as to decision -making regarding their right or lack of right to Dominican nationality/citizenship; their perspectives regarding the connection they feel, if any, to the Dominican Republic and/or to Haiti and their views regarding the prospect of their deportation to Haiti.
- Article 12(2): *Right to be Heard in Proceedings Where Decisions Will be Made Concerning the Child*: The Dominican Republic has failed to allow the children to be heard directly or through an independent representative (one representing just the children in the family and someone other than the parent) at hearings to determine their status in the DR and the possibility of their deportation. Indeed case by case hearings are generally not being held to determine the merits of each individual case before forcible deportation is enforced
- Article 15: *The Right to Freedom of Association*: These child complainants of Haitian descent (second generation) born in the DR have in certain instances been placed in

detention centres in Santo Domingo DR with their parents with all the family members classed by the government as (illegals) non-resident foreigners. As a result the children have been deprived of free association with those considered to be Dominican nationals. Further, forcible deportation threatens to deprive the children of their right of ongoing close association with government -recognized Dominican nationals residing in the Dominican Republic.

- *Article 19: Protection Against Mental and Physical Violence* The parent and child being denationalized or denied Dominican nationality in the first instance and the consequences that ensue in itself does mental violence to the children as does forcible deportation
- *Article 27: The right of every child to a standard of living adequate for the child's development:* The child complainants have been living in extreme poverty due in part to the consequences of longstanding discrimination and marginalization against persons of Haitian descent in the DR. Their situation in this regard is exacerbated post the 2013 Constitutional Court ruling by their being now officially considered as non-resident foreigners. In addition; half of the child complainants now reside in DR detention camps in Santo Domingo with grossly substandard living conditions well below what would afford them a minimal decent quality of life in regards to just the basic necessities of life. Furthermore; deportation to Haiti further jeopardizes the living standard for these children who face the prospect of indefinite detention in substandard camps in Haiti given that they are undocumented in terms of Haitian nationality or any residency permit and the inability of the Haitian State to absorb the numbers of undocumented being deported from the Dominican Republic .
- *Article 37: The right to be protected against inhuman or degrading treatment:* The child complainants have been treated in an inhumane and degrading fashion as outsiders. Half are currently living in squalid conditions in detention camps in Santo Domingo DR. The other half expects to be brought imminently to the DR detention camps for the undocumented. It is not clear whether they will be deported to Haiti or continue to languish in the Dominican detention camps as they are technically now stateless.

## **Procedure**

### *Admissibility*

This complaint to the Committee on the Rights of the Child under the OP3-CRC communication procedure is made in direct response to the Dominican Republic's implementation of a 2013 Dominican Republic Constitutional Court ruling that denies the child complainants (who were all born in the DR to undocumented parents of Haitian ancestry) Dominican nationality and citizenship by place of birth thus rendering these children stateless. The Dominican Republic respectively signed and ratified the Convention on the Rights of the Child on the following dates 8 August, 1990 and 11 June, 1991 and ratified the OP3-CRC in September 1, 2015 and thus has

accepted the competence of the Committee on the Rights of the Child to consider individual communications brought against the State.

The Committee finds that the communication *UNICEF DR (on Behalf of a Group of second generation children of Haitian Descent Denied Dominican Nationality and Born in the DR in La Romana District to undocumented Dominican parents and at risk of forced deportation) v the Dominican Republic* meets all OP3-CRC procedural/admissibility requirements under OP3-CRC Article 3 and Article 7 in that:

- the communication is factually based and prima facie sufficiently substantiated and is therefore not ill-founded;
- the communication is not an abuse of process but rather addresses serious allegations of numerous human rights violations against the child complainants that implicate various of the fundamental rights covered in the *Convention on the Rights of the Child*;
- the individual identities of the child complainants and of their NGO representative have been revealed to the Committee such that the communication is not anonymous;
- the communication is in writing;
- the Inter-American Court of Human Rights (IACHR) in *Case of Expelled Dominicans and Haitian People vs Dominican Republic* addressed the issue of alleged human rights violations in the Dominican Republic's expulsion of certain Dominican and Haitian peoples with reference to the *American Convention on Human Rights* (receipt of the case by the IACHR from the Inter-American Commission on Human Rights was July 12, 2012, prior to entry into force of OP3-CRC, with judgment rendered by the Inter-American Court of Human Rights August 28, 2014). The IACHR judgment did not by any means end the alleged human rights violations through the risk of forcible deportation of undocumented parents and children, both born in the Dominican Republic, who claim they have a right under international law to Dominican nationality and not to be expelled from the Dominican Republic. The IACHR judgement did not involve these particular child complainants and does not bar the present OP3-CRC communication addressing the alleged continuing violations of the *Convention on the Rights of the Child*. The IACHR case dealt in part with forced deportation of both documented and undocumented Dominicans mostly of Haitian descent. The IACHR found that the DR violated international law by requiring certain Dominicans, mostly of Haitian descent, after 2013 to register as non-resident foreigners and undergo a lengthy and complex naturalization process despite having been born in the DR. The IACHR also held that the migrant status of parents does not transfer to the children nullifying their birthright to Dominican nationality leaving them stateless. Indeed the IACHR held in the case that children born in the Dominican Republic, and even those whose birthplace is uncertain or who otherwise have no nationality and reside in the DR, must per the *American Convention on Human Rights* (Article 20 right to nationality) and other international human rights law be granted Dominican nationality to avoid their

statelessness The matter as it affects *these* child complainants advancing their case under OP3-CRC and in reference specifically to violations of the *Convention on the Rights of the Child* has never before been addressed by the Committee on the Rights of the Child under OP3-CRC and is not being currently addressed by any other international body of investigation or settlement. Further these child complainants have been rendered stateless due to the DR's elimination of *jus soli* and are in need of an urgent remedy. For all of the above reasons the Committee on the Rights of the Child finds this communication is *not* barred by the IACHR ruling in *Case of Expelled Dominicans and Haitian People vs Dominican Republic* and has not previously been addressed;

- The facts that give rise to this OP3-CRC communication in part originated prior to the entry into force of the OP3-CRC in April, 2014 (i.e. the 2013 DR Constitutional Court ruling retroactively abolishing birthright to Dominican nationality/citizenship occurred prior to entry into force OP3-CRC). However since the alleged violation of the children's rights to nationality and to certain other *Convention on the Rights of the Child* are ongoing or continuous violations post entry into force of OP3-CRC for all of these child complainants; there is no bar to admissibility of the communication based on the time frame regarding the occurrence of the facts underlying the complaint;
- There is no right to appeal in this case domestically the 2013 Constitutional Court (High Court) ruling which the government is intent on implementing and that denies birthright Dominican nationality also to first and second generation children born of undocumented persons, mostly of Haitian ancestry, despite this rendering these persons stateless. All pleas/petitions made to the government by those affected and the advocacy efforts of international human rights organizations and activists have failed. The DR has steadfastly declined to amend the DR constitution so as to avoid statelessness for those in the position of the child complainants by considering first and second generation persons (who are mostly of Haitian descent) born in the Dominican Republic as Dominican nationals even if born to the undocumented. The DR also refuses to amend the Constitution to grant DR nationality to any child in the Dominican Republic, regardless of birthplace and the parents' status, who otherwise would be stateless. Therefore the Committee considers that all domestic remedies have been exhausted;
- As there never existed a domestic remedy through the Dominican Courts given that the High Court (DR Constitutional Court) ruled this rendering of persons born in the DR stateless as constitutional; there was no requirement to file this communication within one year of a date certain (the date of exhaustion of domestic remedies). Further the Committee considers that, in any case, the impoverished state of the parents and the barriers it creates, their general lack of literacy and the age of the child complainants would have been a reasonable basis to waive the one year requirement had there in fact been domestic remedies that in theory could have been exhausted such that the one year filing period for the OP3-CRC communication might technically have applied absent a waiver; and

- The Committee finds that the communication is *not* contrary to the best interests of the child complainants and is properly advanced on their behalf consistent with the requirements for admissibility under OP3-CRC Article 3(2)

*Respondent State's Position on Admissibility:* The Respondent State does not raise any objection in regards to the Committee's finding of the communication as admissible.

*Interim and Protection Measures:* Given the vulnerable position of the child complainants and their parents- both having been declared as "non-resident foreigners" illegally in the Dominican Republic-the Committee requested an urgent interim measure be employed (as per OP3-CRC Article 6) by the Dominican Republic; namely to ensure that any planned forced deportation of the child complainants and/or their parents be suspended pending the outcome of the admissibility decision and judgment regarding the merits of this OP3-CRC communication made on behalf of these child complainants. This request to the State for an interim measure blocking forced deportation while the OP3-CRC case was pending was made so as to avoid irreparable damage to the child complainants which would, in effect, render moot any decision in their favour as a result of this OP3-CRC communication. The Committee also impressed upon the State the urgent need in this case in particular that the State ensure, as per Article 4 of the OP3-CRC, that all measures have been taken that are feasible and required to provide these child complainants and their parents protection from any retaliation or intimidation and/or any form of ill-treatment consequent to these child complainants advancing an OP3-CRC communication. The State agreed to implement the urgent interim measure requested and to institute protection measures against retaliation or intimidation or other ill-treatment of the child complainants, their parents or of other family members which might otherwise occur due to the children's OP3-CRC communication.

*Inquiry into Alleged Grave and Systemic Violation of Various Fundamental Rights Guaranteed to the Child Complainants under the Convention on the Rights of the Child:* The Committee delegation which visited the Dominican Republic with the consent of the State to inquire into alleged grave and systemic violation of numerous of the Convention rights of undocumented children of Haitian ancestry found evidence that overwhelmingly substantiated the allegations advanced in this OP3-CRC communication.

### **Summary Assessment by the Committee on the Merits of the Communication:**

The Committee finds that due to the DR's denial of the child complainant's birthright to Dominican nationality they have been rendered stateless and are at risk of forcible deportation and exacerbation of their marginalization and persecution not only as purported "illegals" but as persons of Haitian ancestry. The Committee based on consideration of (i) the child complainants' submissions through UNICEF Dominican Republic; (ii) the respondent State's answers and (iii) the findings based on a visit by Committee delegates to the Dominican Republic to investigate under the inquiry procedure (OP3-CRC Article 13) the alleged grave and systemic *Convention*

rights violations concludes that there has been infringement of the following rights guaranteed to the child complainants under the *Convention on the Rights of the Child*: Article 2(1), Article 2(2), Article 3(1), Article 4, Article 7(1), Article 8, Article 12(1), Article 12(2), Article 15, Article 19, Article 24, Article 27, Article 28(1) and Article 37.

### **Recommendations of the Committee:**

The Committee recommends to the Dominican government:

- (i) urgent legislative drafting and passage of an amendment to the Dominican Constitution which would allow, consistent with international human rights law, and regardless of the documented or undocumented legal status of the parents regarding Dominican nationality, automatic birthright Dominican nationality for those born and residing in the DR and Dominican nationality by naturalization for those not born in the DR or whose birthplace is uncertain; where these persons from either group would otherwise be stateless and there is no other bar to Dominican nationality consistent with international law;
- (ii) immediate emergency grant of Dominican nationality under special legislative measures to those persons within the Dominican Republic who are eligible and would otherwise be stateless pending amendments to the DR Constitution which would provide them Dominican nationality;
- (iii) immediate release of those child complainants and their parents currently held in detention in the Dominican Republic as undocumented ‘illegals’ who are first and second generation born in the Dominican Republic to Haitian migrants and of others similarly situated who may or may not have a different ethnic ancestry;
- (iv) automatic grant of Dominican nationality to first and second generation Dominicans of migrant ancestry where there is no bar consistent with international human rights law;
- (v) an immediate end to the policy and practice of detention and forcible deportation of undocumented persons with long connection to the DR and/or Dominican Republic birthplace and of all others who have been declared stateless and have no possibility of obtaining or restoring non-Dominican nationality and where there is no basis for the detention and/or forcible deportation under international human rights law;
- (vi) an end to en masse forcible deportation of any identified group including the undocumented of Haitian ancestry to be replaced by thorough individualized assessments of eligibility for Dominican nationality and, where necessary, hearings with due process and outcomes consistent with international human rights law;
- (vii) providing children (a) access to independent legal representation (separate from the representation of or by parents) at all administrative proceedings and at hearings designed to determine the children’s legal status in the DR and (b) an opportunity for the children at hearings to give testimony directly or through their representative on the issues at hand or on any matter

relevant thereto with that testimony being given due weight consistent with the principles embodied at Articles 3 and 12 of the *Convention on the Rights of the Child*. The Committee also recommends that child-friendly measures be implemented to facilitate the children's meaningful participation in such hearings and in order to provide a level of confidence and security for the children in their participation at such hearings;

(viii) implementation measures to ensure non-discriminatory practices in access to and delivery of quality public service to the children and parents of Haitian and other foreign ancestry including but not limited to health and educational services.

### **Follow-Up**

The State is agreed to give due consideration to the views and recommendations of the Committee and has agreed to implement all of the Committee's recommendations including (i) immediate emergency grant of Dominican nationality under special legislative measures to those persons within the Dominican Republic who are eligible and would otherwise be stateless and (ii) immediately ending the risk of forced deportation of the child complainants and their parents and others similarly situated. The State has also agreed to release from detention those of the child complainants and their parents detained and all others similarly situated who are first generation and second undocumented descended from migrant workers and other eligible stateless persons not otherwise barred from release (i.e. barred due to demonstrable provable valid security risk etc). The State has agreed to make significant progress in implementing all of the recommendations within a six month period and to report to the Committee at the end of that six month period (as per OP3-CRC Article 14 follow-up to an inquiry procedure) on the progress that has been made in implementing all of the recommendations. The State has also agreed to provide further follow-up information on the implementation of the Committee's recommendations in its next periodic report to the Committee on the Rights of the Child that report submitted as per the requirements of the Convention.

### **Part III: An Advocacy Action Plan for Child Rights Defenders Regarding Children's International Protection Needs and Birthright Nationality/Citizenship**

- Advocate for ratification of OP3-CRC by the Dominican Republic and other United Nations member States who have not yet ratified;
- Advocate for changes to the OP3-CRC to strengthen the OP3-CRC communications /complaint procedure i.e. by allowing for *collective communications* such that not every individual in the large group has to be identified for the Committee but all in the group could potentially benefit from a favourable judgment by the Committee. At present it is not possible for an NGO to file an OP3-CRC collective complaint about systemic human rights violations affecting large numbers of persons where not everyone in the group is identified individually i.e. the fictional illustrative *individual* OP3-CRC complaint here could not be brought as a *collective complaint* on behalf of all children of Haitian descent

in the Dominican Republic left stateless due to the abolishment of birthright Dominican nationality in that not every child of the thousands so affected could be identified by name in the complaint;

- Advocate for making acceptance of the inquiry system under OP3-CRC (which allows for investigation by the committee of grave and systemic violations) compulsory. At present State Parties to the OP3-CRC procedure can *opt-out* of the inquiry procedure and thereby avoid making imperative institutionalized systemic changes that would improve the quality of life for child victims of violations of the CRC and /or its first two optional protocols (For a detailed analysis of OP3-CRC and recommendations for strengthening the procedure see Grover, S. *Children defending their human rights under the CRC communications procedure: On strengthening the Convention on the Rights of the Child complaints mechanism* (Berlin: Springer, 2015);
- Advocate for State adoption of birthright nationality and citizenship to help prevent statelessness in the least complex fashion;
- Advocate for grant of nationality by birth or efficient timely naturalization process where the child would otherwise be stateless;
- Advocate for ratification of and State compliance with the 1954 *Convention relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness* which are directed to protecting the rights and well-being of stateless persons and preventing and reducing statelessness (the 1961 Convention at Article 1 requires grant by State Parties to the Convention of nationality by birth in the State territory or by naturalization where the person would otherwise be stateless) (The Dominican Republic signed the *Convention on the Reduction of Statelessness* 5 December, 1961 but has not ratified it);
- Advocate for regarding children as autonomous human beings with their own independent inherent right to nationality separate and apart from the parent's right (as per Article 7 of the *Convention on the Rights of the Child*) such that nationality and citizenship cannot be denied to the child *rendering the child stateless* based on the status of the parents i.e. undocumented parents regarded as non-resident foreigners by the State in which they reside (whether or not that classification is consistent with international human rights law in the particular case); child denied naturalized citizenship (or asylum as a refugee) based on parent presenting false information; fraudulent document or other improper behaviour especially where the child is rendered stateless as a result or otherwise placed in peril etc.;
- Advocate for elimination of the principle that children born to persons "in transit" or allegedly "in transit" are not entitled to birthright nationality/citizenship as birthright nationality is conducive to the prevention of statelessness and reinforces the notion of the child's independent right to nationality;
- Advocate for elimination of the principle that children born to foreign diplomats, consular officials etc of a foreign government be denied birthright nationality/citizenship



by the host country (the political allegiance of the parent should be irrelevant to children's right to birthright nationality/citizenship and in some instances right to dual nationality). Further the children of certain foreign officials may have no immunity in the host country such that the children are fully subject to the jurisdiction of the State in which they reside while the parents are serving in the foreign service in that same State but yet these children are denied birthright nationality in that host State i.e. career consular officers of other countries serving in the U.S. have limited immunity and their children have none but yet the U.S. refuses these children birthright U.S. nationality though the U.S. has *jus soli*). The presumption that the child's political allegiances can be inferred from the parent's so as to deny the child birthright nationality/citizenship of the host country and/or an opportunity for naturalization in the host country for as long as the parents are in the diplomatic service of a foreign power and the child is under 18 violates the child right to consideration of the child's best interests in the circumstance as a primary factor in decision-making affecting the child (CRC Article 3(1) and respect for the child as a separate person with inherent right to freedom of thought and freedom of association *respectively Convention on the Rights of the Child*, Article 14 and Article 15 and an independent right to nationality (CRC Article 7(1));

- Advocate for non-discrimination in the grant to children of nationality and of citizenship as per Article 2 of the *Convention on the Rights of the Child* that guarantees the Convention rights irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;
- Advocate against the detention in detention camps of children and their parents declared as stateless. The families should be accommodated in humane housing conditions while their nationalization matter is addressed;
- Advocate for the end to incitement of hatred and violence against those children and their parents and all others who have been designated by the State to be foreigners with no legal status and /or undesirable foreigners with no legal status;
- Advocate for the notion that under international human rights law such as the *Convention on the Rights of the Child* (for instance Articles 3(1) and 8) denial of nationality to a child where the child is rendered stateless is not a proportional response regardless the circumstance (i.e. where the parent of that child is excluded for some reason from eligibility to the State's nationalization process and the State does not grant *jus soli* or the child was not born in the State in question etc.);
- Advocate for a domestic appeal mechanism applied on a case by case basis with due process to handle cases of individuals especially a parent and/or their child who are denationalized and rendered stateless or kept stateless by the denial of nationality.

**Part IV: North American update: Donald Trump proposal for retroactive de-nationalization and denial of U.S. nationality for U.S. child citizens, mostly of Mexican descent, who currently have recognized birthright U.S. citizenship having been born in the U.S. to *undocumented* parents**

*The 2015 race for U.S. President and the Trump plan for de-nationalization or denial of American nationality of children born in the U.S. to undocumented mostly Mexican migrants:* Donald Trump (one of the Republican candidates running to be the Republican Party representative competing for the position of U.S. President) has proposed, as part of his platform, (1) retroactive de-nationalization through repeal of the U.S. birthright citizenship of children born in the U.S. to undocumented migrants residing in the U.S. most of whom are of Mexican ancestry and (ii) forcible deportation of these children and their parents who number in the millions. This proposed Trump plan is akin to the plan officially implemented by the Dominican Republic after the 2013 DR Constitutional Court and would affect also families who have lived in the US for decades.

Note that the Supreme Court of the United States ruled in *United States v Wong Kim Ark* 169 US 649 (198) that children born in the U.S. to *undocumented* parents who reside on a non-temporary basis in the U.S. (parents not documented as American nationals/citizens/permanent residents and not employed in any official or diplomatic capacity by a foreign power) are entitled to U.S. birthright nationality/citizenship under the 14<sup>th</sup> Amendment to the U.S. Constitution which states “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” At the time of the *Wong Kim Ark* case persons of Chinese descent were excluded from the possibility of U.S. citizenship through naturalization.

The Trump supporters argue that children born to parents who are undocumented may owe allegiance to another country and that this presumed lack of allegiance to the U.S. somehow was transferred from parents to the child. In fact, however, children are autonomous persons and the perceived or actual political allegiances of the parents are not to be automatically considered also attributable/transferable to the child. The child is entitled to his/her own political beliefs/opinions (Article 14 of the *Convention on the Rights of the Child*) and cannot under international human rights law be rendered stateless by denial of birthright citizenship on account of the presumption that the alleged parent’s political allegiances to a foreign State are those also of the child. Where the child has not renounced his/her birthright U.S. nationality/citizenship through an informed voluntary act; the child cannot be considered to have surrendered his/her right to the nationality/citizenship concordant with the country of his/her birthplace (see *United States v Wong Kim Ark* 169 US 649 (198)).