

Inter-American Court of Human Rights Affirms the Human Right to Nationality and Upholds the International Prohibition on Racial Discrimination in Access to Nationality

Compensation ordered for victims of arbitrary and discriminatory deprivation of nationality

New York, October 14, 2005 – The Inter-American Court of Human Rights issued a landmark decision on October 7, 2005, affirming the human right to nationality as the gateway to the equal enjoyment of all rights as civic members of a state. The Court's ruling in *Dilcia Yean and Violeta Bosico v. Dominican Republic* marks the first time that an international human rights tribunal has unequivocally upheld the international prohibition on racial discrimination in access to nationality.

This case was brought by two girls of Haitian descent who were born on Dominican territory and have resided there their whole lives but were denied Dominican nationality in contravention of the country's constitution. As a result, they could not obtain birth certificates or enroll in school, and they remained vulnerable to expulsion from their home country.

The Inter-American Court concluded that the Dominican Republic's discriminatory application of nationality and birth registration laws and regulations rendered children of Haitian descent stateless and unable to access other critical rights such as the right to education, the right to recognition of juridical personality, the right to a name, and the right to equal protection before the law (all enshrined in the American Convention and numerous other international human rights instruments).

The Court observed that:

- Nationality is the legal bond that guarantees individuals the full enjoyment of all human rights as a member of the political community.
- Although states maintain the sovereign right to regulate nationality, states' discretion must be limited by international human rights standards that protect individuals against arbitrary state actions. States are particularly limited in their discretion to grant nationality by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness.
- In granting nationality, states must abstain from producing and enforcing regulations that are discriminatory on their face or that have discriminatory effects on different groups within a population.
- States have an obligation to avoid adopting legislation or engaging in practices with respect to the granting of nationality whose application would lead to an increase in the number of stateless persons. Statelessness makes impossible the

recognition of a juridical personality and the enjoyment of civil and political rights, and produces a condition of extreme vulnerability.

- States cannot base the denial of nationality to children on the immigration status of their parents.
- The proof required by governments to establish that an individual was born on a state's territory must be reasonable and cannot present an obstacle to the right to nationality.

The Court ordered the Dominican Republic to reform its birth registration system and create an effective procedure to issue birth certificates to all children born on the territory regardless of their parents' migratory status; open its school doors to all children, including children of Haitian descent; publicly acknowledge its responsibility for the human rights violations within six months of the sentence date; widely disseminate the sentence; and pay monetary damages to the applicants and their families.

The Justice Initiative submitted an *amicus curiae* brief to the Inter-American Court in this case, arguing that racial discrimination in access to nationality is a violation of human rights and asking the Court to uphold the international prohibition on racial discrimination in access to nationality. The Court's binding decision comes after seven years of litigation by the Association of Women of Haitian Descent (MUDHA), the International Human Rights Clinic at the University of California, Berkeley, School of Law, and the Center for Justice and International Law (CEJIL).

Racial discrimination in access to nationality is a global problem. This ruling is an important contribution to international jurisprudence on non-discrimination and the right to nationality.

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