

# Inter-American Court Upholds Haitian Rights

By Roxanna Altholz



Photo by Tino Soriano.

**F**or generations, Haitian immigrants and their children living in the Dominican Republic have endured discrimination, abuse and exploitation. In 1937, Rafael Trujillo sought to “whiten” the country by massacring 30,000 Haitians along the border. Today, Dominicans of Haitian ancestry are marginalized by being deprived of the right to nationality and education. Although the constitution enshrines a *jus solis* principle of nationality, granting citizenship to all persons born in Dominican territory, children of Haitian ancestry are systematically denied their birth certificates. Without proof of birth, it is impossible for these children to obtain citizenship, and they are not permitted to attend school. Without citizenship and education, these children are non-people who live in danger of instant expulsion from their homes

and have little hope of improving their lot in life.

Today, an estimated 300,000 to 1 million Haitians and Dominico-Haitians live in the Dominican Republic. For generations, immigrants have crossed the border that cleaves the island of Hispaniola, often at the behest of Dominican contractors, to work in the sugar fields and construction sites. Haitian migration is as much the result of that country’s desperate political and economic situation as the Dominican economy’s need for a cheap labor source. Today, the children, grandchildren and great-grandchildren of low-wage Haitian labor make up permanent communities in agricultural zones and cities. In the Dominican Republic, however, whether or not one’s family has lived there for generations matters little: Haitians and Dominico-Haitians alike are

A Haitian-born father holds his daughter while her mother looks on.

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Photo by Tino Soriano

A Haitian girl in a Dominican *batey* or sugar plantation.

usually considered unwanted aliens. Although they perform work that is more or less vital to their host country's economy, they are viewed as culturally foreign; they are poor; and they are black.

In the face of historic and systematic human rights violations, Haitian communities have organized and sought recognition of their rights. The absence of progress in the domestic political and legal arena has compelled communities to explore international advocacy strategies. After a community-based effort failed to secure birth certificates, litigation was initiated in the Inter-American system.

On March 5, 1997, a lawyer from the Association of Women of Haitian Descent (MUDHA), a Dominican human rights organization, accompanied a group of parents to request birth certificates. The civil registrar quickly rejected the children's applications

stating that the children's parents were Haitian, the applicants' last names were strange and they had not fulfilled a host of requirements necessary to obtain a birth certificate. Most of these requirements were irrelevant to proving the children's place of birth and were instead designed to exclude the Dominico-Haitian population. One of the most burdensome was the demand that parents submit a national identity and electoral card, a document that is simply unattainable for the vast majority of immigrant parents.

When appeals before domestic authorities failed, the mothers of two little girls, age 11 months and 13 years at the time, took the courageous decision to bring their case to the attention of the international community. The two girls' case was paradigmatic of the historic violations affecting Haitian communities: lack of documentation, the absence of effective

remedies, exclusion from schools and the constant vulnerability to summary deportation.

In October 1998, the girls and their families acted upon what they believed to be their last hope for justice and filed a petition before the Inter-American Commission of Human Rights. The Inter-American Commission is one of two bodies tasked with monitoring and enforcing human rights in the Americas. Created by the Organization of American States, the Inter-American Commission and Inter-American Court of Human Rights provide recourse to individuals who have suffered violation of their human rights. The Commission can decide to refer individual cases to the Inter-American Court, and the Court's rulings are final and binding. The International Human Rights Law Clinic at Boalt Hall (IHRLC); the Center for Justice and International Law (CEJIL), a regional human rights organization; and MUDHA represented the girls and their families during the litigation before the Inter-American Commission and Court.

The litigation presented legal issues not often considered by international tribunals such as interpreting the scope of the right to nationality and education. It was also conducted in a novel manner. As co-counsel, over 30 law student interns from the IHRLC worked on different aspects of the case. Students spent their summers working with MUDHA to collect evidence for the case, presented oral arguments before the Inter-American Commission and researched and drafted legal pleadings. Last March, a group traveled to Costa Rica to attend the trial before the Inter-American Court. Each step of the litigation was conducted in coordination with CEJIL and MUDHA.

On October 7, 2005 when the Inter-American Court ruled in favor of the two girls, they had celebrated their 13th and 20th birthdays. Eight years in the making, the ruling represented a rebirth for the two girls and thousands of children like them. The Court concluded that the Dominican Republic had rendered them stateless by denying them birth certificates and violated the girls' right

to nationality and education as well as a host of other rights. The Court ordered the Dominican Republic to reform its birth registration system, eliminate burdensome birth registration requirements and open its schools to all children. It also directed the government to publicly acknowledge that it violated human rights and ask the victims' forgiveness. Although compliance with the international ruling is far from a certainty, failure to adopt the measures ordered by the Court will have an important

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Two children find a place to play in the batey.

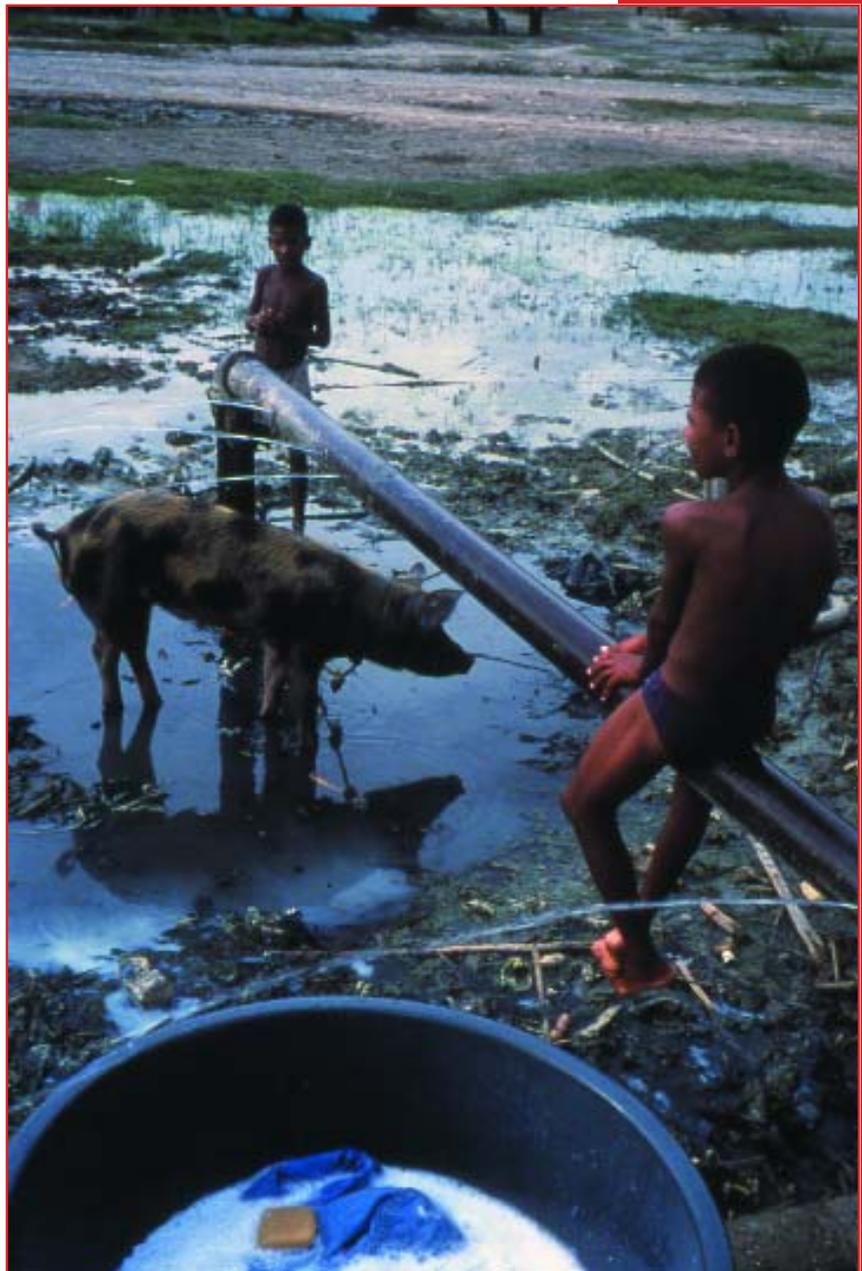


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political cost for the Dominican Republic.

The Court's decision also established an important precedent in international law. The Inter-American Court recognized the right to nationality as the gateway to the enjoyment of all rights as a civic member of a state. It held that, in countries that condition nationality on place of birth, children do not inherit the immigration status of their parents and birth registration requirements should seek only to prove the child's place of birth. The ruling was also the first to find that international law prohibits *jus solis* States from denying the right to nationality on the basis of race. The Court ruled that a birth registration system must be accessible, simple and reasonable.

While the ruling should be welcomed and celebrated as a victory for equality and a promise of a better future for the disenfranchised Dominico-Haitian population, official and non-official Dominican reactions to the ruling have been openly hostile. The Foreign Minister and the Senate have "categorically rejected" the Court's findings as baseless and unfounded. Headlines in the Dominican press portray the litigation as part of an international campaign to discredit the government.

Given the Dominican government's history of adverse reactions to international criticism, the response is not surprising. In 1992, after a U.S. investigative news program exposed the treatment of Haitians, the government expelled an estimated 50,000 from the country in the span of approximately 10 weeks. In November 1999, the state launched another massive deportation campaign in response to the Inter-American Commission's report on human rights violations against Haitians. Between 10,000 and 20,000 people were expelled.

The Inter-American ruling was released at a particularly tense and violent time. This past summer, a wave of violence targeted Haitian communities. Newspapers reported the beheadings of Haitians; and several charred bodies were also discovered, believed to be Haitians killed by extremist groups. The Secretary of State for Labor has said that the

government is preparing a plan to "de-Haitianize" the country. Thousands have already been expelled or left the country in fear of the escalating violence.

Clearly, advocates for children's rights and equality face a difficult road ahead, but the enforcement of international rulings is always challenging in the absence of a specific enforcement mechanism. However, there are several legal and political considerations which pressure the government towards compliance with this ruling.

The Dominican Republic has ratified almost every major international human rights instrument and accepted jurisdiction of several human rights bodies, including the Human Rights Committee and the Committee on the Rights of the Child, in addition to the Inter-American Commission and Court of Human Rights. Each of these bodies has criticized the government for discriminatorily denying Dominican-born children of Haitian ancestry their birth certificates. By refusing to comply with the Court's binding ruling, the Dominican Republic will tarnish its human rights image in a very public way. And in a country where tourism is a leading industry, image is particularly important.

As a member of the Organization of American States with aspirations of playing a leadership role in the Caribbean, refusal to comply will also isolate the Dominican Republic. The Inter-American Court has issued judgments against 17 of the 22 Latin American countries that have ratified the Court's jurisdiction. While Dominican officials have attempted to characterize the Court's decision as a violation of sovereign rights, its arguments do not resonate with a community where important actors, such as Colombia, Guatemala, Peru, Chile and Argentina among others, have paid millions in reparations, recognized and apologized for state responsibility for human rights violations or enacted legal reforms, all in compliance with Inter-American Court rulings.

Dominican immigrants in the United States, currently numbering more than 1 million, could



Photo by Tino Soriano

also play an important role in compliance. Having experienced racism and discrimination in the United States, many Dominican immigrants have a different perspective on Haitian migration than their family members on the island. In July of this year, the New York City Council passed a resolution condemning violence and discrimination against Haitians in the Dominican Republic. New York-based grassroots organizations played a key role in securing the Council's resolution. Additionally, recent legislative changes permit dual nationality and afford the Dominican population in the U.S. a vote and therefore a voice in domestic politics.

In March of 2006, the first compliance deadline expires under the Court's ruling. By that date, the government must publicly recognize responsibility for the violations and ask the victims' forgiveness. It is possible that the government will not comply. While legal victories can serve as a catalyst for change, they are not sufficient to secure reform.

However, the Court's ruling has provided an

important rallying point for international and local human rights organizations fighting for children's rights and equality in the Dominican Republic. As one activist explained, "the government can come at us with what they want, but now we know the truth; we have been proven right by the ruling." Human rights defenders and organizations will measure government arguments and actions against the Inter-American Court's reasoning and findings. The ruling has established a standard and identified a plan to bring Dominican laws and policies in conformity with international human rights norms.

Roxanna Altholz has worked for the International Human Rights Law Clinic at Boalt Hall as both a law student and, more recently, as a lecturer.

The Center for Latin American Studies provided travel grants for several law students working on the case.

A family gathers inside the hut they occupy during the working season.