

## MOBILISATION AGAINST INTERNATIONAL HUMAN RIGHTS: RE-DOMESTICATING THE DOMINICAN CITIZENSHIP REGIME

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### I. INTRODUCTION

On November 4, 2014, the Dominican Constitutional Tribunal declared that the country's adherence to the jurisdiction of the Inter-American Court of Human Rights (IACtHR) was unconstitutional (TC 2014). The Dominican exit of the IACtHR was the last step in a more than ten years long legal battle over control over the Dominican citizenship regime. Whereas the Inter-American System of Human Rights since 1998 have argued that the Dominican authorities should and must respect their *ius soli* right to citizenship, Dominican elites in political parties, congress, government and courts have attempted to curtail and restrict *ius soli* citizenship. This article studies the legal and institutional mobilization in the Dominican Republic against international human rights, and its attempts to redefine take back domestic control over the country's citizenship regime. Citizenship regime in this article refers narrowly to the rules, laws and regulations that provide the boundaries of inclusion and exclusion to membership of the state, or the right to nationality or citizenship within the state (for a broader definition, see Jensen and Papillon 2000).

The Dominican exit of the IACtHR is not the *explanandum* in this article, the goal is rather to focus on the various developments in the domestic mobilisation against human rights that eventually ended in this exit. I argue that the domestic mobilisation against human rights first and foremost had as a goal to regain domestic control over the citizenship regime. By focusing on the legal mobilisation against international human rights, and the groups that I call the pro-violation constituency (inspired by Cardenas 2010), I hope to shed some light on the causes of backlash against international human rights, and the conditions for compliance to decisions taken in international human rights tribunals.

The backdrop for the mobilisation against international human rights and for legal changes in the Dominican citizenship regime has been the continued attention to the rights situation of Haitian migrants and Dominican-Haitians living in the Dominican Republic in the Inter-American Commission of Human Rights (the Commission) and in particular, the Yean and Bosico case in the IACtHR (CIDH 2005, 2006).<sup>1</sup> The key contentious issue in the Yean and Bosico case has been the birthright (*ius soli*) to Dominican citizenship and whether the Dominican Republic under its 1966 Constitution and the American Convention had the right to exclude Dominican-born children of undocumented migrants and Haitian labour-migrants from the birthright to citizenship. The Dominican Republic argued that children of these groups were not entitled to citizenship despite being born on Dominican soil, whereas the IACtHR in the Yean and Bosico case, and repeated strongly in the case of Expelled Dominicans and Haitians (CIDH 2014), argued that this policy was discriminatory, against national laws and the constitution, and in breach of several articles of the American Convention. The IACtHR also stated as a principle that the children could not inherit the illegal status of their parents (Culliton-González 2012) and the Yean and Bosico case was the first in the IACtHR dealing with citizenship and considered by UNHCR as the most important legal case on citizenship and statelessness worldwide in 2005 (see Wooding 2008).

Despite the State's obligation to comply with the IACtHR sentence and IACtHR's understanding of the Dominican citizenship regime, large parts of the Dominican political elites mobilised domestically since the early 2000s to counter what was perceived as an attack on national sovereignty and the loss of control over the citizenship regime. Tracing the legal results of this mobilisation it is possible to point to two distinct tracks: First, new constitutional and regular laws and administrative orders increased the *violations* of human rights against in particular Dominican-Haitians by stripping people of this group of their citizenship; and second, the country's *commitment* to the IACtHR was weakened through several sentences in the high courts of the country, culminating in the country's withdrawal from the IACtHR. This mobilisation constitutes clear a backlash against international human rights and the IACtHR, but what concerns me in this article is rather the battle over the control over the citizenship regime. I argue that the domestic legal mobilisation against the IACtHR was primarily motivated by what I call a re-domestication of the citizenship regime. By re-domestication I mean the legal process to regain domestic power to define who has the right to become a Dominican citizen. Although the IACtHR in Yean and Bosico basically only asks the

Dominican State to uphold the *ius soli* principle in its own 1966 Constitution, the dominant political elites would argue that the court not only had misunderstood the Dominican citizenship regime, but also stripped the Dominican Nation-State of its prerogative to define who its citizens are.

As a case study in the mobilisation against an international human rights court, this article is coached in the literature on compliance to sentences in international human rights courts and studies of backlash to human rights. Whereas compliance refers to the degree to which a state complies to the demands in a sentence in an international human rights court, backlash are domestic reactions to international human rights courts that makes the human rights situation worse. I define a backlash against an international human rights regime as the weakening of the formal-legal status of the regime in the member-state and/or the deterioration of the rights situation of the person (-s) or groups that the human rights regime seeks to protect. The first part of the definition refers to an increase in actual human rights *violations*, whereas the second part indicates a debilitated *commitment* to the human rights regime.<sup>2</sup> The extreme form of a backlash is the exit of a member-state from the human rights regime. The literature on domestic reactions to judgements in international human rights tribunals gives few pointers on the causes of backlash. In fact, very little is written on the topic. With few exceptions, the focus is on factors that enhance compliance. Instead of focusing on a full causal analysis of the Dominican exit of the IACtHR, I use Cardenas's (2010) concept of *pro-violation constituencies* to look at domestic mobilisation against human rights. A *pro-violation constituency* is a group interested in maintaining the status quo of human rights violations or even increase violations. Cardenas writes about violations mainly in military regimes and points to national security as the main motivation to continue or increase violations, in addition to potential economic gains among both the coercive apparatus and business groups. Business groups and the military constitute in her work the main pro-violation actors. The context in the Dominican Republic is widely different, but the concept will be applied on the group of actors that try to influence state policy in a way that counters international demands for the protection of human rights. In democratic contexts, causes of backlash are linked to over-legalization in the IACtHR (Helfer 2002),<sup>3</sup> that the IACtHR passes judgements that go against vital political agendas of the State (Ginsburg 2013) or that international tribunals trample on national sovereignty and democracy (Alter 2003:73).

This article will proceed with a brief overview of the IASHR and its relation to the Dominican Republic and narrow in on the contentious cases

dealing with the rights situation of Haitian migrants and Dominican-Haitians in the IACtHR. Second, I will focus on the key case of Yean and Bosico and the crucial issue of its effect on the Dominican citizenship regime. Third, I will define the pro-violation constituency in the country. Finally, I will analyse the mobilisation to redefine the Dominican citizenship regime, which had as its ultimate consequence, the Dominican exit from the IACtHR.

## II. THE DOMINICAN REPUBLIC AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The IACtHR, created in 1979, is seated in San José, Costa Rica, and ruled its first case in 1988.<sup>4</sup> It functions under the umbrella of the Organization of American States (OAS) and together with the Commission it forms the Inter-American System of Human Rights (IASHR). The legal framework for litigation for the Court is based on the American Declaration of the Rights and Duties of Man (1948), and in particular, the American Convention on Human Rights (The San José Pact, 1969).<sup>5</sup> Today 19 nations recognise the jurisdiction of the IACtHR.<sup>6</sup> Its final judgements are binding for the member states and form part of international law. Regional human rights courts such as the IACtHR “face the challenge of advancing human rights in states that may resist supranational decisions and that suffer from large-scale, endemic human rights violation” (Cavallaro and Brewer 2008:769). The IACtHR covers regimes that both may be unwilling and lack the capacity to uphold human rights, and has therefore struggled with only low-to medium compliance to its judgements (Basch et al. 2010, Cavallaro and Brewer 2008, Hillebrecht 2013).

The Dominican Republic signed and ratified the American Convention during its period of transition to democracy in 1978, and in 1999 the country became the last Latin American nation to accept, without any conditions, the jurisdiction of the IACtHR. The cases treated in the IACtHR and the IASHR have mainly dealt with the issue of the rights of Haitian migrant workers and children of migrants born in the Dominican Republic. The Dominican state has been sentenced in four cases before the Court, three of which have dealt with the issue of Haitian-Dominican rights.<sup>7</sup> These cases have been part of strategic litigation by local and international NGO's that have worked together selecting and pushing relevant cases before the IASHR system in order to create jurisprudence that could improve the rights of Haitians and Dominican-Haitians in the Dominican Republic.<sup>8</sup> The fight for Dominican-Haitian rights is not new, however, but changed strategies in mid-late 1990s. Before this period local and international NGO's focused more on the slave-like working conditions

of sugar cane cutters of Haitian and Dominicans of Haitian descent. Spearheaded by MUDHA (*El movimiento de Mujeres Dominico-Haitiana*) and its leader Sonia Pierre, the litigation track became the dominant after the filing of the case of Yean and Bosico to the Commission in 1998.

The focus on the issue of Haitian migrants and Dominican-Haitians generated early a tense relationship between the Dominican Republic and the IACtHR. The reason is the politically sensitive nature of the matter, which plays hard on nationalistic strings in the Dominican Republic. On the other hand, the issue is the most critical human rights issue in the country and therefore it belongs in the IASHR, and the IASHR actions have supported the on-going local efforts by NGO's in defence of the human rights of Haitian migrants and Dominican-Haitians. The issue at stake, however, has been ideal for mobilisation against human rights in defence of national sovereignty and security because it touches upon the core of a Nation-State: the right to define who its citizens are. Therefore the case of Yean and Bosico goes to the heart of the struggle between national sovereignty and the supranational jurisdiction in the human rights area. As such, the case of Dominican-Haitian citizenship rights is reminiscent of other successful pro-violation coalitions that mobilise in defence of national security (see, Cardenas 2010). Consequently in the Dominican Republic much of the debate concerning the IACtHR and issue of citizenship rights for Dominican-Haitians has centred on the topic of national sovereignty of the Dominican Republic, and leaders of the major parties have united to state that the IACtHR has over-stepped its boundaries.<sup>9</sup>

### III. THE YEAN AND BOSICO CASE

The Yean and Bosico case was crucial to the mobilisation for – and against – human rights in the Dominican Republic, and has become a hallmark case in the Inter-American human rights jurisprudence with respect to the rights to citizenship and statelessness (Culliton-González 2012). For human rights defenders the case was important because it removed *de facto* restrictions on the constitutional *ius soli* principle for obtaining citizenship in the Dominican Republic, while for the *pro-violation constituency* the case became an awakening with respect to the reach of the IACtHR.

Yean and Bosico are children of Dominican-Haitians born in the *bateyes* who in 1997 were denied their birth certificates despite being born in the Dominican Republic.<sup>10</sup> Supported by human rights organizations, the children fought for their rights, and the case was sent to the Commission in 1998 and further to the IACtHR in 2003. The latter issued the sentence on

September 8, 2005 (CIDH 2005). The State was accused and convicted for having violated several articles of the American Convention when the State denied releasing birth certificates (*Acta de Nacimiento*) for the two children on March 5, 1997. The consequence of which is enormous for Dominican-Haitians since the *Acta de Nacimiento* is the document that confirms that the person is in the official registry and it is the basic document that demonstrates citizenship. The *Acta* also gives children a right to education and basic health services, and protection from deportation from the Dominican Republic. Furthermore it is the basic document upon which other rights depend such as the right to an identity card, passport, get married, take up a bank loan, get a job, etc. Another issue, which is important, is that the *Acta de Nacimiento* is not valid for more than three months in order to be used for official business. The consequence of which is that a citizen must present herself before the civil registry countless times to get a fresh copy of the birth certificate. This can be a draconic bureaucratic procedure, and expensive for people with little means, which opens up for anything from petty corruption of state officials to the *de facto* withdrawal of the citizenship if a re-issue of the *Acta* is denied.

In Yean and Bosico, the IACtHR ruled that the State had violated the *ius soli* principle in its own 1966 Constitution (art. 11) and its electoral law (Law 275/97), and with respect to the American Convention, the State, *inter alia*, failed its obligation to respect the children's rights and freedom (art. 1.1), violated the children's right to a juridical personality (art. 3), rights of a name (art. 18), and rights as children (art. 19) among others. The State was sentenced to a) publish the sentence in the official gazette and in a national newspaper; b) perform a public act recognising responsibility; c) change the rules for obtaining birth certificates so that no one risks a stateless situation; and d) pay US\$ 22.000 in indemnification to the families and organisations supporting the families in the Court. The sentence basically stated that any child born in the Dominican Republic of parents not in transit is entitled to Dominican nationality.<sup>11</sup> This would include all children of Haitian workers residing in the Dominican Republic, irrespective of their parents' legal status, a fact cited in the sentence. The Dominican State, however, had only reluctantly complied with its own Constitution of 1966, and argued that Haitian labourers were only in transit (no matter how long they remained in the Dominican Republic) or were illegal migrants, and therefore their children born on Dominican soil were not entitled to Dominican nationality. The IACtHR ruled that the Dominican authorities' understanding of its own citizenship regime was in clear violation of the American Convention. The pro-violation constituency, however, would focus its legal actions on codifying

constitutionally and legally the Dominican authorities' prior understanding of its citizenship regime, which hitherto had remained uncodified.

The sentence could, if complied with, have a vast impact since it creates jurisprudence for any Dominican-born child of foreign parents in terms of their rights to a birth certificate and a nationality. Today it is estimated that about 45 per cent (109.000) of Dominican born of Haitian descent lack *Acta de nacimiento* (ONE 2013:136). This is not a huge number, but with a relatively high, and probably increasing, yearly flow of migration from Haiti to the Dominican Republic,<sup>12</sup> accepting IACtHR's final interpretation of the Dominican citizenship rules, could hold future consequences for both the size of the migration flow as well as economic costs connected with citizenship rights for children of migrants. Adding to these concerns is the fact that the Dominican State has been unable or unwilling to implement an efficient control on the border.

#### IV. PRO-VIOLATION CONSTITUENCIES IN THE DOMINICAN REPUBLIC

This section focuses on what I call the pro-violation constituency in the Dominican Republic and also give some background on the links to earlier mobilisation against Haitians and Dominican-Haitians in the Dominican Republic. Despite its important historic links, the main focus however, will be on the domestic legal actions connected to the international litigation promoted by the pro-compliance constituency consisting of local and international NGOs.<sup>13</sup> Since my focus is on legal actions I focus on institutional actors rather than e.g. the military, the business sector or the media.<sup>14</sup>

I argue that the pro-violation constituency in the Dominican Republic is centred on key actors in the political parties FNP (*Fuerza Nacional Progresista*) and the PRSC (*Partido Reformista Social Cristiano*). Although minor parties since the mid-1990s, both of these conservative, and in the case of FNP xenophobic, parties have held pivotal position in the political system by entering into coalitions with the major parties, the PRD (*Partido Revolucionario Dominicano*) and the PLD (*Partido de la Liberación Dominicana*).<sup>15</sup> While in particular the FNP controlled by the Castillo family has dominated the pro-violation constituency,<sup>16</sup> the other major parties have equally formed part of the same constituency and agreed on the issue that the laws regulating the citizenship regime should be under domestic control.<sup>17</sup> A complete analysis of the Dominican party system is outside the scope of this article, some traits substantiate my claim. First of all, the Dominican party system and party elites is since 2005 the least polarised in all of Latin America (Morgan, Hartlyn and Espinal 2010, Singer 2012 and Forthcoming).

Second, the issue of citizenship for Dominican-Haitians is not a divisive issue between the political parties, according to the 2014 Americas Barometer survey.<sup>18</sup> The FNP have been part of the ruling coalition to the governing PLD (1996-2000, 2004-2015), and PRSC supported the PRD administration from 2000-2004 and later formed part of the PLD governments between 2004 and 2014. Finally, as we will see below, in every legal step in the re-domestication of the citizenship regime the political parties have voted as a block, and the legal initiatives that restrict Dominican-Haitians right to citizenship have come from both the PRD and the PLD. There has therefore been an inter-party agreement on the matter of re-gaining domestic control of the citizenship regime.

While the legal battle for control over the citizenship regime started with the Yean and Bosico case, the mobilisation against (or for) Dominican-Haitian rights is not new, and current actors have grown out of the older distrust or even hatred towards anything Haitian. Anti-Haitianism has long traditions among elites in the Dominican Republic. The uses of Haiti and Haitians as enemies to the Dominican Nation has often been based on racism and by highlighting racial, cultural, linguistic and historical differences between the two countries.<sup>19</sup> Often a point of departure of this narrative has been the Haitian occupation (1822-1844) of the Dominican Republic and the later Haitian military attacks against the Dominican Republic in the 19th century. Anti-Haitianism during the 20th century had its worst episode with the 1937 massacre of several thousand Haitians along the Haitian-Dominican border (Turits 2002), and in particular presidents such as Trujillo (1930-1961) and Balaguer (1966-1978, 1986-1996) used and nurtured racist ideas and anti-Haitian ideologies for political purposes.<sup>20</sup> Even though in the 20th century a Haitian invasion was highly unlikely, politicians such as Balaguer would coin the issue of Haiti in the language of national security. He, and others such as Manuel Nuñez (2001), would argue that the Dominican nation was in peril due to a silent invasion of Haitian migrants that could destroy Dominican culture and biological (sic!) composition (Balaguer 1983). Anti-Haitianism reached new heights again in the 1990s with the presidential candidacy of PRD leader Peña Gómez who was black and of Haitian ascent.<sup>21</sup> During this period the alleged threat to the nation was dominated by conspiracy theories about a UN plan to merge Haiti and Dominican Republic under the leadership of Peña Gómez flourished.<sup>22</sup> Due to the change in strategy towards strategic litigation to defend citizenship rights for Dominican-Haitians, today's efforts to curtail Dominican-Haitians' rights are more legalistic, but are still often coined as a national security issue (Báez Evertsz and Lozano 2008:259, Castillo 2011:17-32).<sup>23</sup> Even



though the threat by most criteria is more perceived than real, the pro-violation constituency nurtures and mobilises on the same factors as identified by Cardenas (2010).

Until the mid-1990s the xenophobia and racist attacks on Dominican-Haitians and Haitian migrants came predominantly from the conservative right represented by the FNP and the PRSC. In 1996, however, the PLD entered into a coalition with the FNP and an electoral alliance with the PRSC, called the Patriotic Front, to beat the PRD and Peña Gómez in the presidential election. The alliance united the old enemies Joaquín Balaguer (PRSC) and Juan Bosch (PLD) and reduced the ideological distance between these parties. Since the PLD was until the early 1990s a radical left-wing party, it was the PLD that became more conservative rather than the other way around. The PRD was therefore until 2000 victim rather than part of the pro-violation constituency, but in 2000 the PRD under President Mejía sought an alliance with the PRSC and Balaguer. Finally with the return of the PLD to the presidency in 2004, the FNP and the PRSC have formed part of the Fernández and Medina governments.<sup>24</sup> The role and importance in the matter of the citizenship regime of the minor parties PRSC and the FNP, was enhanced beyond their electoral strength under Fernández's rule since these parties got control, and some would say monopoly, over key institutions. PRSC through its leader Carlos Morales Troncoso held the realm of the Foreign Ministry from 2004 until 2014, which was a key ministry in the dealings with both Haiti and the IASHR. The FNP for several years controlled the Migration Directorate through José Ricardo Taveras, another key government institution for the citizenship regime. Thus, since the mid-1990s the party system has become less polarised and more conservative, and on the issue of the citizenship regime parties in Congress (as we will see) have voted as a block in agreement on restrictions of the *ius soli* right to citizenship and against international interference in the citizenship regime. Despite other disagreements such as on the issue of retroactivity in the restrictions of *ius soli* and the adherence to the IACtHR, there is a large least common denominator among the parties around an agreement that the citizenship regime is an issue sovereign to the nation-state, and on the restrictions of *ius soli*.

## V. BACKLASH TO HUMAN RIGHTS IN THE DOMINICAN REPUBLIC

In this section I track the institutional mobilisation of the pro-violation constituency linked to important decisions in the citizenship regime. My legal and institutional focus gives a natural starting point with the Migration law of 2004 (Law 285/04), which also is the first legal

development with respect to the citizenship regime since 1939.<sup>25</sup> I aim to do three things: I show the agreement on the legal development among all relevant parties to further substantiate that it is possible to talk of a pro-violation constituency; second, I point to the timing and the content of the major legal decisions to substantiate that the legal developments in the citizenship regime can be interpreted as a response to the IASHR pressure; and third, I give examples that substantiate the claim that it was important for the pro-violation constituency to re-domesticate the citizenship regime, i.e. reclaim national sovereignty over the rules of citizenship, which the pro-violation constituency felt was lost to the IACtHR with the Yean and Bosico sentence. I track and order the legal mobilisation along two lines: 1) redefining the citizenship regime in the Dominican Republic by restricting *ius soli*; 2) weakening the IASHR status in the Dominican Republic. The latter process ended with the exit from the IACtHR, but I am not arguing that there was a conscious strategy in place since the early 2000s to exit the IACtHR, or that this outcome was inevitable. In fact the exit of the IACtHR was very controversial in the Dominican Republic, and split the pro-violation group that otherwise would agree on the matter of restricting *ius soli*. I rather argue that over time, and building on historic anti-Haitian sentiment and discrimination, the legal-institutional conflict between the IACtHR and domestic institution was raised from lower-ranked institutions towards the highest national authorities (such as the Constituent Assembly and the Constitutional Tribunal), which led to a significant, but maybe also natural, final decision in the Constitutional Tribunal to exit the IACtHR.

### **Redefining and Re-domesticating the Dominican Citizenship Regime**

One of the lessons from the Dominican case and the backlash to the IACtHR is that a backlash may come in many subtle forms before it may materialise in an exit from the IACtHR. In fact, an exit from the international human rights regime has more or less defined the concept of backlash, but the Dominican case demonstrates that the range of options for pro-violations constituencies is more than exit, voice and loyalty (Ginsburg 2013). This section shows how Dominican elites through all major political parties mobilised to redefine and re-domesticate the Dominican citizenship regime by restricting *ius soli* in Dominican laws and the Constitution. By re-domestication I refer to the legal and administrative process to regain domestic control over the definition of who is a Dominican by countering the understanding and definition of the Dominican citizenship regime in the IACtHR. The goal was to exclude children of Haitian migrants born in the Dominican Republic from obtaining the citizenship that the 1966

Constitution and supporting laws had entitled them with. The challenge for the pro-violation constituency was that the Dominican Constitution and legislation had few exceptions in the *ius soli* clause, a fact that was confirmed in 2005 in the Yean and Bosico sentence. First of all, illegal or undocumented migrants did not exist as a legal category; second being in transit was legally limited to a stay of maximum ten days. By holding control over Congress and managing to elect key pro-violation members into Constitutional Tribunal and the JCE,<sup>26</sup> the major political parties managed to redesign and re-domesticate the citizenship regime through various steps.

The migration law of August 2004 was the first step in redefining the citizenship regime (Law 285/04, Congreso 2004). The crucial part of the law is that it closes the legal way to citizenship for children of undocumented migrants (see section IV of the law) by distinguishing between resident migrants and non-resident migrants,<sup>27</sup> and includes people in transit as part of the definition of non-resident migrants. Only children of resident migrants were entitled to citizenship. The law thus expanded the definition of 'transit' from a maximum ten days stay in the 1939 Migration Law to being a non-resident migrant, which again includes temporary workers and undocumented migrants. The timing of the law is interesting coming one year after Yean and Bosico arrived at the IACtHR.<sup>28</sup> The law can thus be considered a pre-emptive strike against the IACtHR and the expected sentencing in Yean and Bosico, and was clearly aimed at the Haitian migrant population (Baluarte 2006), and the *ius soli* right to citizenship.<sup>29</sup> The initiative of passing the law came from the PRD and Senator Tony Rutinel. The law was passed unanimously by the PRSC, PRD, PLD and FNP in Congress. There were no major disagreements on the issue.<sup>30</sup> The issue of re-domestication is apparent in the preamble to the law. The preamble states that the regulation of migration and citizen is an unalienable right that is sovereign to the nation, and does not mention any international human rights treaties. In fact, the promoter of the law, PRD senator Tony Rutinel took the initiative to leave out any mention of international treaties of human rights in the preamble that were included in a the original proposal discussed in the Senate.<sup>31</sup> The law demonstrates that the PRD had come closer to the PRSC and FNP on the citizenship issue and clearly formed part of the pro-violation constituency. In September 2004 the PRD majority in the Senate also passed a resolution calling on President Fernández to massively deport Haitian migrants.<sup>32</sup> Such populist measures were until then normally promoted by the FNP and PRSC, and the resolution demonstrates that the

PRD had moved closer to the conservative parties on the issue of citizenship and migration.

The second step to redefine the citizenship regime came in the Central Electoral Board, set to administer the Migration law, which through two administrative orders managed to make the Migration law retroactive. The 2006 election of the JCE judges had followed the party lines, and the JCE judges represented the then three major parties, PRD, PLD and PRSC.<sup>33</sup> In March 2007, the Administrative Chamber of the JCE, under the leadership of current President of the plenary of the JCE, Roberto Rosario (former member of the Central Committee of the PLD), issued an administrative note (Circular no. 17, 2007), which asked all civil registries in the country to revise all original birth certificates when issuing a fresh copy to citizens. The plenary of JCE, presided over by Judge Castaños Guzmán who in 2005 linked domestic control over the citizenship regime with the survival of the nation (Castaños Guzmán 2005) and had defended the State in the Yean and Bosico case in the IACtHR, followed up with resolution 12/07 in December 2007 that suspended reissuing fresh copies of the *Acta de Nacimiento* to any person whose documents demonstrated any sign of irregularities in the past, and ordered the purge of these persons from the civil registry. In effect, these orders made the clauses that restricted the *ius soli* in the 2004 Migration law retroactive, and sent many people into a stateless situation. Circular 17/2007 and Resolution 12/07 of the JCE directly contradicted IACtHR's definition of the citizenship regime in the Yean and Bosico case, and built explicitly on the new migration Law (285/04) rather than international jurisprudence. The plenary of the JCE was naturally fully aware of this fact, and discussed the Yean and Bosico sentence before emitting Resolution 12/07 (Olivares 2014). JCE president Castaños Guzmán had defended the State in the Yean and Bosico case, and whereas Castaños Guzmán's and the State's arguments lost in the IACtHR they won through in the JCE. In sum, Resolution 12/07 built on and further redefined the domestic understanding of Dominican citizenship.

The third step to redefine the Dominican citizenship was the new 2010 Constitution which constitutionalised the previous restrictions of the *ius soli* and strengthened the *ius sanguinis* rules for citizenship.<sup>34</sup> In this case the timing is not relevant to any sentence or development in the IACtHR, but rather linked to the more general ambitions of President Fernández of promoting a new Constitution for the country.<sup>35</sup> The 2010 Constitution (art. 18) excluded from the *ius soli* clause children of people residing illegally in the country, and specified that transit should be understood as defined by law (i.e. Law 285/04). As such the 2010 Constitution, building entirely on domestic legislation, settled the

citizenship matters from that date forward. Article 18 further added that anyone who was a Dominican national before the new Constitution entered into effect, were to be considered nationals also after 2010. The debates in the Constituent Assembly discussed and rejected international pressure on the topic of Dominican citizenship. Congress Member Pelegrín Castillo (FNP) called the international pressure for a treasonous, external manipulation, and asked the National Assembly to stand up against the murderous group that is conspiring against Dominican nationality (Nacional 2009:116-119). Further, there was an across the board agreement that the issue of citizenship was a fully domestic matter (Asamblea 2009a, b), and had to build on Migration Law 285/04,<sup>36</sup> while IACtHR's understanding of the citizenship regime was not mentioned in the debates. Although pro-compliance groups mobilised strongly against the new article, which was one of the most publicly discussed articles of the constitution project, they were not successful inside Congress. The article was passed with 126 votes in favour and 26 against, and the few representatives who voted against the new article did so because they were in favour of even stricter restrictions of the *ius soli*.<sup>37</sup> The almost unanimity of votes in this controversial article demonstrates the strength and unity of the pro-violation constituency among political elites in their effort to redefine the citizenship regime.

The fourth step again aimed at reducing the effect of the IACtHR definition of the Dominican citizenship regime until 2010, and came through sentence 168/13 in the Constitutional Tribunal (TC 2013). The sentence generated an international uproar and almost converted the Dominican Republic into a pariah state. The reason was that the sentence confirmed Resolution 12/07 of the JCE and gave the new citizenship regime of 2010 retroactive effect until 1929 (sic!). The case dealt with Juliana Deguis Pierre's challenge to Resolution 12/07 and her loss of Dominican citizenship as a result of the resolution. The Constitutional Tribunal under the presidency of long-time PRD member and former PRD senator Milton Ray Guevara,<sup>38</sup> argued that undocumented migrants who had obtained citizenship on account of *ius soli* before 2010 had in fact been in transit and therefore received their citizenship by mistake. That mistake should be corrected and the Constitutional Tribunal ordered the purge of the civil registry back to 1929 in order to remove the erroneously registered citizens. The sentence is the only official document that actually discusses the Yean and Bosico sentence, which it states is erroneous and that the IACtHR overstepped its legal mandate. The Tribunal went on to argue that the citizenship regime was a faculty sovereign to the nation, and that it fell under each state's margin of appreciation to decide who its citizens are. In

sum the TC168/13 again strengthens the new domestic definition of the citizenship regime against the IACtHR understanding as expressed in Yean and Bosico.

The TC168/13 was very controversial also among political elites and the pro-violation constituency. In May 2014, the Medina government passes the Naturalisation law (Congreso Nacional 2014) that aims to alleviate some of the severe human rights consequences of TC168/13 and restore citizenship to Dominican-Haitians affected by the Constitutional Tribunal sentence and JCE 12/07 (see Wooding this volume for a discussion of the law). Despite its positive intents, the law does not recognise the Yean and Bosico sentence (and implementation has been flawed), and in its preamble it cites and builds solely on domestic legislation and jurisprudence. Again, IACtHR's definition of the citizenship regime, which builds on the American Convention and international human rights, are ignored. Although lauded domestically and to some extent abroad, for the defenders of international human rights, the law is a far cry from the principles of automatic *ius soli* entailed by the Yean and Bosico sentence. The law passed unanimously in both chambers of Congress, which also attests to the unity of the pro-violation constituency in the political parties in its attempt to redefine the citizenship regime through domestic, rather than international, legislation.

### **From Weakening the IASHR to Exiting the IACtHR**

Under the leadership of Pelegrín Castillo, one of the leaders of the FNP, the pro-violation constituency managed through several steps to question the constitutionality of the acceptance of the IACtHR's jurisdiction in the country. Although Pelegrín Castillo and the FNP already in 2005 sought an exit from the IACtHR, I do not argue that the 2014 Dominican exit of the IACtHR was part of a preconceived ten year long plan that united the pro-violation constituency. In fact the exit of the IACtHR was controversial among the parties that otherwise were in agreement on the new, domestically defined citizenship regime. I rather argue that over time, domestic legal processes reached higher instances, which by each step raised the conflict with the IACtHR to a higher institutional level. Thus when the IACtHR in the Case of Expelled Dominicans and Haitians (CIDH 2014) annulled all of the legal and constitutional processes described above, an exit became the next natural step.

Already in 2002, in reaction to a 2001 provisional measure in the Case of Haitians and Dominicans of Haitian Origen in the Dominican Republic (CIDH 2001), a list of 41 distinguished lawyers, (retired) generals

and politicians signed a legal request to the Supreme Court to declare an agreement between the Dominican State and the Commission for unconstitutional (see, SCJ 2005a). The issue is not important, but the list of signatories reveals the strength of the pro-violation constituency. The strength of the pro-violation constituency is also seen in the list of defenders of the Migration law (285/04) against a demand of unconstitutionality of the law brought to the Supreme Court also in 2005 (see SCJ 2005b). Together these two Supreme Court sentences count around 50 names of people who constitute leading elites within law, politics and the press, all mobilising against the IASHR. The pro-violation coalition outside Congress was particularly strong in the PLD, in government since 2004 and the coalition partners PRSC and FNP. The list is impressive,<sup>39</sup> but even more so when considering the positions several of the signatories came to occupy after 2005. Among them are two members of the current Constitutional Tribunal (Victor Gómez Berges (PRSC) and Jottin Cury), a member of the current Supreme Court (Julio César Castaños Guzmán),<sup>40</sup> two members of the JCE (Luis Nelson Pantaleón González and Julio César Castaños Guzmán again, both elected 2006, the latter president of JCE 2006-2010), the future Director of Migration (José Ricardo Taveras Blanco, FNP), and the future Minister of Energy and Mines (Pelegrín Castillo, FNP, who was a member of the Chamber of Deputies until 2013). This meant that the pro-violation constituency managed to win control over important veto players for the citizenship regime, in particular the Constitutional Tribunal and the JCE.

Congress furthered the attacks on the IACtHR in a resolution that rejected the Yean and Bosico sentence. In the resolution the Lower Chamber, citing the Supreme Court sentence mentioned above (SCJ 2005a), questions the constitutionality of the Dominican adherence to the IACtHR (Resolution of Nov 8, 2005, see Castillo 2011:52-60).<sup>41</sup> Therefore, already in 2005 there was a manifest congressional majority questioning the Dominican adherence to the IACtHR. In 2009, the Supreme Court equally questioned the supremacy of the American Convention and the IACtHR in the Dominican Republic, arguing that a national law could contradict the American Convention as long as it did not contradict the Constitution, and that the Supreme Court was the only institution that could declare a law for unconstitutional. This principle, which contradicted earlier sentences of the Supreme Court, weakened tremendously the system of conventionality control (Sousa Duvergé 2011:121-125) and, hence, the IASHR. The new Constitutional Tribunal, which took over judicial review from the Supreme Court in 2011, did not accept the IACtHR jurisprudence in citizenship matters even though citing its jurisprudence in other matters.

First of all, the Constitutional Tribunal the now infamous 168/13 sentence did not only constitute a further violation of the Dominican-Haitians' rights to citizenship, it also contradicted the Yean and Bosico sentence, and decidedly set jurisprudence in the citizenship regime on domestic ground. Later similar sentences (TC275/13 and TC290/13) do not mention Yean and Bosico, the American Convention or the IACtHR. This process weakened considerably one of the key potential effects of the latter, namely its jurisprudence. Congress through its Naturalisation law also declares that decisions in the Constitutional Tribunal are irrevocable (Congreso Nacional 2014: 1), thereby ignoring the constitutional status of international treaties and the supremacy of the IACtHR and the American Convention, and confirming domestic supremacy over the citizenship regime.

The final blow against the IACtHR, however, was triggered by the Case of expelled Haitians and Dominicans issued August 28 and published October 28 (CIDH 2014). The case dealt with examples of the on and off Dominican policy of forced expulsion of Haitians and Dominican-Haitians without due process and had been submitted to the Commission in 1999 and 15 years later the Dominican State lost the case. Two issues stand out in the sentence. The first is that it overturned sentence TC168/13. The second is the demand that the Dominican State leave without effect any measure, administrative, legal, or constitutional, that declares or has the effect that the irregular status of the parents denies Dominican-born children their right to citizenship. In one sentence the IACtHR annulled JCE resolution 12/07, parts of the Migration law 285/04, Naturalisation law 169/14, TC 168/13, and article 18 of the 2010 Constitution (CIDH 2014:171-173). In effect, the sentence rejected all Dominican efforts of redefining and re-domesticating the Dominican citizenship regime since 2004.

On November 4, the Constitutional Tribunal declared that the Dominican Republic no longer formed part of the IACtHR's jurisdiction because the procedure, presidential decree, of accession was unconstitutional (TC 2014). It also argued that since the accession in 1999 was based on an error, or a "presumption of legality" (Trotz 2014), no sentence issued by the IACtHR against the Dominican State was valid, which in effect also gave this sentence retroactive effect. Although the timing points towards a clear and conscious reaction to the IACtHR judgement two weeks prior, the case is not that simple. The TC256/14 was the result of a petition that argued that the procedure by which the Dominican Republic accepted the IACtHR's jurisdiction, a presidential decree, was unconstitutional. The petition was sent to the Supreme Court on November 28, 2005, only 20 days after the publication of the Yean and



Bosico sentence. Signatories of the petition were many of the same names mentioned above, spearheaded by Pelegrín Castillo of the FNP. At that time I think few thought the petition would prosper, but nine years later after a long process of legal and constitutional development, it was expected and seemed almost inevitable. The exit ordered by the Constitutional Tribunal on November 4, 2014 (TC 2014), was not part of a master-plan perceived in 2005, but rather the natural next step after the IACtHR invalidated the highest Dominican authorities such as the Constituent Assembly and the Constitutional Tribunal.

Although the Medina administration clearly rejected the IACtHR sentence,<sup>42</sup> it was not in favour of leaving the IACtHR. In fact, it had opposed TC168/13 as well,<sup>43</sup> but been bound to accept it and follow the ground rules the Constitutional Tribunal laid out for the citizenship regime<sup>44</sup> The administration, however, had been considering several options to counter a possible TC decision ordering an exit of the IACtHR, but was outplayed by the timing and reach of the IACtHR's sentence in the Case of Expelled Haitians and Dominicans. In personal interviews with representatives of the Medina administration in June 2014, the administration expressed confidence in having sufficient support in Congress to pass a resolution to re-enter the IACtHR should the Constitutional Tribunal come to the conclusion of exiting the IACtHR. Had the exit come before the IACtHR ruling, there could have been a way back to the IACtHR if the very popular President Medina had used all his political skills to move Congress. Now such a move would be impossible. The Medina government thus considered that whereas before the Case of Expelled Dominicans and Haitians there would be a majority in favour of Dominican adherence to the IACtHR, this majority had now vanished. Even though all parties rejected international influence on the citizenship regime, in 2005 it was mainly the FNP and parts of the PRSC that favoured a Dominican exit of the IACtHR, in late 2014, however, it seems that the other major parties have joined the FNP and PRSC in this position.

## VI. CONCLUDING REMARKS

Being able to rally around the flag and mobilize against a foreign 'enemy' or international pressure is always an important mobilising and uniting factor domestically. On the issue of the citizenship regime, the 'rally around the flag' effect was even stronger since it could be argued that the foreign 'enemy' was attacking what it meant to be a Dominican as well as a threat to national security. On top of this, the pro-violation constituency was able to mobilise on anti-Haitian sentiments which have long traditions in the Dominican Republic; it was not any group that stood

to gain by the IACtHR's redefinition of the citizenship regime, it was the Haitian nation and people who had been considered by dominant voices as an ethnic, cultural, and demographic threat to the Dominican people. The pro-violation constituency in this issue was therefore strong from the start, but was probably strengthened over time by the same international pressure that attempted to weaken their cause. Even though the parties would disagree on whether the Dominican Republic should adhere to the IACtHR, domestic reactions to the Case of expelled Dominicans and Haitians in 2014 demonstrate that the leaders of the PRD and the PLD now had clearly joined the right-wing FNP in its nationalistic defence against international human rights in the area of citizenship. This defence took the form of a legal and constitutional redefinition of the citizenship regime built on domestic, rather than international ground, and ended, maybe inadvertently in the Dominican exit of the IACtHR. In a time when the Inter-American System of Human rights is under pressure from other countries (Ginsburg 2013, Karlsson Schaffer, Føllesdal and Ulfstein 2014, Sabatini 2015), the Dominican exit may strengthen the pressure against IASHR, and threaten its survival.

The case study of the Dominican backlash to the IACtHR demonstrates that backlashes come in many, often subtle, forms, and that the formal exit of the IASHR is only the last step of many. Cavallaro and Brewer (2008) argue that the IACtHR must make its sentences relevant in order to improve compliance and respect for human rights. In the cases of the human rights situation of Haitian migrants and Dominican Haitians, the IACtHR was indeed relevant for local NGO's, civil society and (some) politicians. However, without being able to successfully mobilise within institutions domestically, the power of the IASHR is undermined. In the Dominican case the battles may have been fought abroad, but the wars were won at home, and at the domestic battlefields the pro-violation constituency met little resistance. Finally, the Dominican case also highlights that when studying backlashes to international human rights courts, the pro-violation constituencies is a good place to start.

## NOTES

<sup>1</sup> Haitian migrants and Dominican Haitians are two vulnerable groups in the Dominican Republic that meet different formal and informal challenges. I define Dominican Haitians as Dominican-born of Haitian decent. This group can also be further divided into sub-groups with different set of rights depending on the legal status of their parents, whether they have official identity documents (Dominican or Haitian), and when they are born. There is a divide between

Dominican-Haitians and Haitian migrants in what rights they claim. While the children of Haitians born in the Dominican Republic claim their right to citizenship and statehood, Haitian migrant workers seek legal acceptance of their de facto permanent residence as workers in the Dominican Republic See Wooding (this volume) and Martínez (this volume, 2014).

<sup>2</sup> The definition mirrors Cardenas's (2010) definition of compliance in its focus on *violations* of human rights and *commitment* to international treaties.

<sup>3</sup> Over-legalization means that either the international tribunal has expanded its competency beyond what was accorded in the initial treaty or increased its monitoring and coercive capacity.

<sup>4</sup> This short overview of the IACtHR and the IASHR is based on the IACtHR's webpage (<http://www.corteidh.or.cr/>), Cavallaro and Brewer (2008) and Pasqualucci (2014).

<sup>5</sup> The IACtHR and Commission also make use of a series of other instruments such as different Inter-American treaties, conventions, and documents which together form the system for protection of Human Rights in the region, see the list here: <http://www.corteidh.or.cr/index.php/es/acerca-de/instrumentos>.

<sup>6</sup> I do not enter the discussion of whether the 2014 Dominican denunciation of the IACtHR's jurisdiction is legally valid. The Commission, Open Society Foundation and local constitutional experts argue the exit is not valid and should not be recognised since the country has not denounced the American Convention, which is not likely to happen. For.....these.....arguments, see:

<http://www.oas.org/es/cidh/prensa/comunicados/2014/130.asp>, <http://www.opensocietyfoundations.org/press-releases/flawed-ruling-dominican-republic-threatens-human-rights-protections>,

[http://www.7dias.com.do/destacada/2014/11/05/i175955\\_juristas-entienden-que-fallo-del-anulara-competencia-corte-interamericana-sobre.html](http://www.7dias.com.do/destacada/2014/11/05/i175955_juristas-entienden-que-fallo-del-anulara-competencia-corte-interamericana-sobre.html) - .VFtoHL6zt-J. The Constitutional Tribunal, however, argues that the Dominican Republic actually never was a member of the IACtHR since its acceptance of the IACtHR's jurisdiction is considered unconstitutional. See TC256/14 (TC 2014).

<sup>7</sup> Yean y Bosico, Nadege Dorzema and others, and Expelled Dominicans and Haitians, see CIDH (2005, 2006, 2012b and 2014). On Yean and Bosico, see also Judge Cañado Trindade's separate opinion (Cañado Trindade 2005). The fourth case is Caso González Medina (CIDH 2012a).

<sup>8</sup> The Yean and Bosico case was submitted originally with support of the Human Rights Law Clinic at UC Berkeley. CEJIL (<https://www.cejil.org/front>) has also been an important actor as well as other organisations such as Amnesty International and Human Rights Watch.

<sup>9</sup> See for instance ex-president Leonel Fernández (PLD) arguments on the matter here: <http://www.listindiario.com/la-republica/2014/11/23/346473/Respuesta-a-dos-profesores-de-EUU-sobre-la-nacionalidad-en-RD>: President of the PRD, Miguel Vargas Maldonado expressed similarly that the IACtHR could not treat the issue of nationality or the Dominican Constitution. (Listín Diario, December 3, 2014: <http://www.listindiario.com/la-republica/2014/12/3/347687/Vargas-cumplir-sentencia-de-la-CIDH-disolveria-a-RD>).

<sup>10</sup> A *batey* is a sugar company town where workers of sugar plantations live. The *batey* offers extremely poor living conditions and may be considered islands outside the state and often without basic services such as clean water, health services and education. For a study of Banana *bateyes*, see Wynne, this volume, see also Martínez (1995).

<sup>11</sup> The only legal definition of transit that existed prior to the Migration law of 2004 (Ley 285/04) was Ley de Migración 95 of 1939, which limited transit to a stay of maximum 10 days. See Díaz (2011).

<sup>12</sup> See Grullón (2014:65-66). The earthquake in Haiti in 2010 increased the migrant flow with three per cent% and it is estimated that 39 per cent of the Haitian migrants living in the

Dominican Republic came between 2010-2012 compared to around 45 per cent in the period 2000-2009. These survey figures are supported by an increase in registered border crossings as well for the same period. For causes of internal migration in Haiti, see Lundahl (this volume). It must be remembered that the socio-economic divide between the two countries is huge (see Ceara-Hatton, Marsteintredet and Sørliie Yri, this volume). Based on GDP/Capita the Dominican Republic is 7.5 times richer than Haiti (US\$ 9700 vs. US\$ 1300).

<sup>13</sup> For analyses of the pro-compliance constituency, their efforts and challenges, see Wooding (this volume and 2008), Martínez (2014), and Skeie (this volume).

<sup>14</sup> This is not to say that these groups do not have interests in this matter or support the institutional pro-violation constituency. Historically we know that both private owners of sugar plantations and the state 'imported' Haitian labourers for their sugar plantations, and today for instance the construction sector, which hires many Haitian migrants, may have an interest in maintaining these groups unregulated to maintain labour costs low (see e.g. Aristy Escuder 2010). The military may gain from illegal border crossings and human trafficking. Finally, the press, whose presentations of Dominican-Haitians and Haitian migration is understudied, seem often to take a unanimous position against international pressure on the issue, see e.g. de León (2015).

<sup>15</sup> It should be added that PRD has turned into a minor party the last two years with about 5% support in the population. This is due to a split in the party in which dominant leaders like Hipólito Mejía and Luis Abinader broke out of the PRD in protest against PRD president Vargas Maldonado's control of the party. The new group has founded PRM (*Partido Revolucionario Moderno*), which looks to become the main party in the opposition.

<sup>16</sup> See for instance Pelegrín Castillo's book *Haití y los intereses nacionales* (Castillo 2011).

<sup>17</sup> See statements by PLD and PRD leaders in note 9.

<sup>18</sup> See *World Politics Review* (2015).

<sup>19</sup> The topic of the relationship, real and perceived, between the two countries has been dealt with extensively (e.g. Martínez 2003, San Miguel 2005, Wucker 1999), so also the treatment of Haitians and Dominican-born people of Haitian descent in the Dominican Republic (e.g. Howard 2001, Sagás 2000), and the issue of racism (e.g. Franco Pichardo 2003, Marsteintredet and Yri 2008).

<sup>20</sup> See e.g. Balaguer (1983).

<sup>21</sup> See in particular Sagás (2000).

<sup>22</sup> This theory has never completely died out. For one recent reference, see e.g. *El Nacional*, November 28, 2014: <http://elnacional.com.do/ven-hay-acoso-para-fusionar-haiti-y-rd/>.

<sup>23</sup> Most analyses follows a narrative that focuses on what is defined as a massive migration caused by the constant crisis of the failed state of Haiti. The Haitian minority in the Dominican Republic, according to the same narrative, brings along with it increased levels of crime and potentially constitute a national security threat. For a view from the PLD, see Victor Manuel Peña's analysis here: <http://vanguardiadelpueblo.do/2015/03/09/la-seguridad-nacional-y-la-problematika-haitiana/>. For a similar analysis see Castaños Guzmán (2005) in which the then Supreme Court Judge links the national control over the citizenship regime with the survival of the nation.

<sup>24</sup> The FNP exited the government in Spring of 2015 in protest of Medina's constitutional reform to seek immediate reelection to the presidency.

<sup>25</sup> This analytical point of departure, which entailed a new strategy for the pro-violation constituency, is also pointed to by Báez Evertsz and Lozano who argues that in the 2000s the elites preoccupation over migration changed from a socio-economic one to a legal one (Báez

Evertsz and Lozano 2008: 238-239). The new strategy can be understood as a response to the change in strategy of the human rights defenders who sought international litigation with the Dominican Republic's acceptance of the IACtHR jurisdiction (Martínez 2014). For a related, but more sociological view and analysis, see Lozano (2014).

<sup>26</sup> Whereas the board of the JCE is nominated by the Senate, the Constitutional Tribunal is nominated and appointed by the *Consejo Nacional de la Magistratura* which is composed of executive and legislative members. Until 2010 the Supreme Court was the highest court in the country, but the new 2010 Constitution created a new constitutional tribunal that would be the final arbiter on constitutional matters and perform judicial review of laws and state actions. It is generally considered that the current high courts of the country were selected by then President Leonel Fernández and the PRD president Miguel Vargas Maldonado as part of the pact of the *corbatas azules*, which also landed the Constitutional reform in 2010. See Marsteintredet (2009, 2010, 2012).

<sup>27</sup> Non-resident migrants would include tourists, temporary workers, people living in the border-areas who did business on the Dominican side of the border, and students among others (art. 36).

<sup>28</sup> Another interesting issue of the timing was that it passed in secrecy on August 15, thirty minutes to midnight. The first record in the media of the Law being passed is from September 5, 2004. See, <http://hoy.com.do/ley-de-migracion-fue-promulgada-2/> The date is important because it was the last day of the Mejía administration.

<sup>29</sup> The law was challenged in the Supreme Court by the pro-compliance alliance consisting of local NGO's but the Supreme Court in December 2005 declared the law for being constitutional (see, SCJ 2005b).

<sup>30</sup> In the two votes on the law on August 15, 2004, no legislator in the Chamber of Deputies voted against the law. Records show 84 and 86 votes in favour, and 15 and 13 abstentions. See Cámara de Diputados (2004). I thank Eddy Tejeda, Wilfredo Lozano and Guadalupe Valdez for the help of retrieving the voting data.

<sup>31</sup> See El Caribe, April 24, 2004 (Corcino 2004). Rutinel also profoundly changed the original proposal which had partly been written by social scientists Wilfredo Lozano and Frank Báez Evertsz in close consultation with civil society. Rutinel brought the law closer to a proposal initiated by Leonel Fernández's first government (2000-2004).

<sup>32</sup> See <http://hoy.com.do/senado-pide-repatriacion-miles-haitianos-ilegales-2/>

<sup>33</sup> See e.g. <http://elnuevodiario.com.do/app/article.aspx?id=39791>.

<sup>34</sup> Although the *ius sanguinis* element of the new Constitution was not important with respect to the rights of the migrant population, it held important symbolic effect by stating that the bloodline was now equally if not more important than the birthplace to define a Dominican.

<sup>35</sup> But see Rosario Espinal who argues that the change in the citizenship regime was one key motivating factor for the constitutional reform. <http://www.noticiassin.com/2012/08/leonel-fernandez-y-su-cacareada-constitucion/>

<sup>36</sup> See e.g. statements by PRD congress member Rodríguez Hernández in the debates in the Constituent Assembly regarding article 18 of the Constitution (Nacional 2009: 115-116).

<sup>37</sup> The two FNP representatives, José Taveras and Pelegrín Castillo voted against the article together with 13 members of the PRSC.

<sup>38</sup> I deal with the composition of the Constitutional Tribunal below.

<sup>39</sup> Including historical members of the Supreme Court, several members of Congress, members of the administrations of Leonel Fernández and Joaquín Balaguer, members of the political

committees of PLD, PRSC, and FNP, several academics and representatives of the press, former Trujillistas, 13 generals, etc.

<sup>40</sup> Julio César Castaños Guzmán also represented the Dominican state in the hearings in the IACtHR during the Yean and Bosico case.

<sup>41</sup> Whereas this resolution received support across the board of all political parties, a congressional resolution in April 2013 to condemn and ask the JCE to reject its Resolution 12/07 did not pass (see *El Nuevo Diario*: <http://www.elnuevodiario.com.do/app/article.aspx?id=328986>). This demonstrates that the pro-violation constituency has been much stronger compared to the pro-compliance constituency in Congress. Interestingly the initiative for this resolution was taken by the legislators representing Dominicans abroad, not by locally elected representatives.

<sup>42</sup> See the declarations by the administration in *Hoy* October 24 (<http://hoy.com.do/gobierno-rechaza-sentencia-por-sesgada-inaceptable-inoportuna/>)

<sup>43</sup> The Medina-administration clearly disliked the TC168/13, but argued the government's hands were tied. Although not willing to comply with Yean and Bosico, the administration was working in 2013 to reverse the JCE policy of Resolution 12/07. Its response was law 169/14, which as mentioned above builds on domestic legislation, and TC 168/13, rather than international law.

<sup>44</sup> For an argument that the Medina government legally could have done more to contravene TC 168/13, see See Cantón and McMullen Jr. (2014).

## References

- Alter, Karen (2003), "Do International Courts Enhance Compliance with International Law." *Review of Asian and Pacific Studies* 25:51-78.
- Aristy Escuder, Jaime (2010), "Impacto de la inmigración haitiana sobre el mercado laboral y las finanzas públicas de la República Dominicana", in *IELAT - Documentos de trabajo*. Universidad de Alcalá: Instituto de Estudios Latinoamericanos.
- Asamblea Nacional (2009a), *Acta de las sesiones de la Asamblea Nacional de la República Dominicana* 18, May 26. Santo Domingo: Asamblea Nacional.
- \_\_\_\_\_ (2009b), *Acta de las sesiones de la Asamblea Nacional de la República Dominicana* 44. September 28. Santo Domingo: Asamblea Nacional.
- \_\_\_\_\_ (2009c), *Acta de las sesiones de la Asamblea Nacional Dominicana* 11 May 6. Santo Domingo: Asamblea Nacional.
- Báez Evertsz, Franc and Lozano, Wilfredo (2008), "La inmigración haitiana contemporánea a la República Dominicana", in Wilfredo Lozano and Bridget Wooding (eds) *Los retos del desarrollo insular: Desarrollo sostenible, migraciones y derechos humanos en las relaciones domínico-haitianas en el siglo XXI*, pp. 175-226. Santo Domingo: FLACSO/República Dominicana, CIES/UNIBE.
- Balaguer, Joaquín (1983), *La isla al revés: Haití y el destino dominicano*. 11. ed. Santo Domingo: Editora Corripio. Original edition, 1983.

- Baluarte, David C. (2006), "Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash", *American University Human Rights Brief* 13(2):25-28.
- Basch, Fernando; Filippini, Leonardo; Laya, Ana; Nino, Mariano; Rossi, Felicitas and Schreiber, Bárbara (2010), "The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With Its Decisions", *Sur International Journal of Human Rights* 7(12):9-36.
- Cámara de Diputados (2004). Acta no. 11. August 15. Santo Domingo: Cámara de Diputados.
- Cançado Trindade, A. A. (2005), "Caso de las niñas Yean y Bosico vs. República Dominicana: Voto Razonado del Juez A. A. Cançado Trindade", in *Serie C* 130. San José, Costa Rica: Corte Interamericana de Derechos Humanos.
- Cantón, Santiago A., and Wade H. McMullen Jr. (2014), "The Dominican Republic and Haiti: Shame", *Americas Quarterly* (Summer. Higher Education and Competitiveness).
- Cardenas, Sonia (2010), *Conflict and Compliance: State Responses to International Human Rights Pressure*. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press.
- Castaños Guzmán, Julio César (2005), "Separación de Haití y Constitución", *Hoy*, August 27.
- Castillo, Pelegrín (2011), *Haití y los intereses nacionales*. Santo Domingo: Editorial Santuario.
- Cavallaro, James and Brewer, Stephanie Erin (2008), "Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The case of the Inter-American Court", *The American Journal of International Law* 102:768-827.
- CIDH (2001), *Provisional Measures requested by the Inter-American Commission of Human Rights in the matter of the Dominican Republic*, Corte Interamericana de Derechos Humanos (ed.). San José: Corte Interamericana de Derechos Humanos.
- \_\_\_\_\_ (2005), "Caso de las niñas Yean y Bosico vs. República Dominicana", *Serie C* 130. San José Costa Rica: Corte Interamericana de Derechos Humanos.
- \_\_\_\_\_ (2006), "Caso de las niñas Yean y Bosico Vs. República Dominicana. Demanda de Interpretación de la Sentencia de Excepciones Preliminares, Fondo, Reparaciones y Costas", *Serie C* 156. San José, Costa Rica: Corte Interamericana de Derechos Humanos.
- \_\_\_\_\_ (2012<sup>a</sup>), "Caso González Medina y familiares Vs. República Dominicana", *Serie C* 240. San José, Costa Rica: Corte Interamericana de Derechos Humanos.
- \_\_\_\_\_ (2012<sup>b</sup>), "Caso Nadege Dorzema y otros vs. República Dominicana", *Serie C* 251. San José Costa Rica: Corte Interamericana de Derechos Humanos.
- \_\_\_\_\_ (2014), "Caso de personas dominicanas y haitianas expulsadas vs. República Dominicana", *Serie C* 282. San José, Costa Rica: Corte Interamericana de Derechos Humanos.

- Congreso Nacional (2004), Ley no. 285-04 (Ley de Migración). Santo Domingo: El Congreso Nacional de la República Dominicana.
- Congreso Nacional (2014), Ley no. 169/14. Santo Domingo: El Congreso Nacional de la República Dominicana.
- Corcino, Panky (2004), "Tolentino: es una 'burla' el proyecto de ley migratoria. Considera que tiene un enfoque exclusivo para los haitianos", *El Caribe*, April 24.
- Culliton-González, Katherine (2012), "Born in the Americas: Birthright Citizenship and Human Rights", *Harvard Human Rights Journal* 25(1):127-182.
- de León, Viviana (2015), "Diarios del país con posición análoga sobre Plan", *Listín Diario*, June 29.
- Díaz, Juan Bolívar (2011), "Genocidio Civil Inaceptable", *Hoy Digital*, 15/10-2011.
- Editors (2015), "Personalities, Not Policy, Drive Politics in the Dominican Republic", *World Politics Review*, <http://www.worldpoliticsreview.com/trend-lines/16130/personalities-not-policy-dominate-politics-in-dominican-republic>.
- Franco Pichardo, Franklin (2003), *Sobre rasismo y antihaitianismo (y otros ensayos)*. Santo Domingo: Sociedad Editorial Dominicana.
- Ginsburg, Tom (2013), "Political Constraints on International Courts", *Chicago Public Law and Legal Theory Working Paper* (453):483-502.
- Grullón, Altair Rodríguez (2014), "Estado del arte de las migraciones que atañen a la República Dominicana 2013". OBMICA (ed.). Santo Domingo: Centro para la Observación Migratoria y el Desarrollo en el Caribe.
- Helfer, Laurence R. (2002), "Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes", *Columbia Law Review* 102 (7):1832-1911.
- Hillebrecht, Courtney (2013), *Domestic Politics and International Human Rights Tribunals*. New York: Cambridge University Press.
- Howard, David (2001), *Coloring the Nation: Race and Ethnicity in the Dominican Republic*. Oxford: Signal Books.
- Jensen, Jane and Papillon, Martin (2000), "Challenging the Citizenship Regime: James Bay Cree and Transnational Action", *Politics and Society* 28(2): 245-264.
- Karlsson Schaffer, Johan; Føllesdal, Andreas and Ulfstein, Geir (2014), "International Human Rights and the Challenge of Legitimacy", in Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein (eds) *The legitimacy of international human rights regimes: Legal, philosophical and political perspectives*, pp. 1-31. Cambridge: Cambridge University Press.
- Lozano, Wilfredo (2014), "República Dominicana en la mira. Inmigración, exclusión social y despojo ciudadano", *Nueva Sociedad* 251:6-18.
- Marsteintredet, Leiv (2009), *Political Institutions and Democracy in the Dominican Republic: A comparative case-study*. Saarbrücken: VDM Verlag.



- \_\_\_\_\_ (2010), "Rendición de cuentas y preponderancia presidencial: Una combinación difícil: El caso de República Dominicana, 1967-2009", *América Latina Hoy* 56:85-109.
- \_\_\_\_\_ (2012), "Change and Continuity in Dominican Constitutions: The 2010 Reform Compared", in Detlef Nolte and Almut Schilling-Vacaflor (eds) *New Constitutionalism in Latin America: Promises and Practices*, pp. 223-242. Farnham and Burlington: Ashgate.
- Marsteintredet, Leiv and Yri, Jørgen (2008), "Når den døde taler: Om den dominikanske republikk og dyrkingen av Haiti som fiende", *Corriente del Golfo* 5:184-217.
- Martínez, Samuel (1995), *Peripheral Migrants: Haitians and Dominican Republic Sugar Plantations*. Knoxville: University of Tennessee Press.
- \_\_\_\_\_ (2003), "Not a Cockfight: Rethinking Haitian-Dominican Relations", *Latin American Perspectives* 30(3):80-101.
- \_\_\_\_\_ (2014), "The Price of Confrontation: International Redistributive Justice and the Struggle for Haitian-Dominican Rights", in George Andreopolous and Zehra Arat (eds), *The Uses and Misuses of Human Rights: A Critical Approach to Advocacy*. New York: Palgrave.
- Morgan, Jana; Hartlyn, Jonathan and Espinal, Rosario (2010), "Party System Continuity amid Regional Transformations: Economic Policy, Clientelist Benefits, and Migration Flows in the Dominican Republic", *Latin American Politics and Society* 53(1):1-32.
- Nuñez, Manuel (2001), *El ocaso de la nación dominicana*. 2 ed. Santo Domingo: Librería la Trinitaria.
- Olivares, Eddy (2014), Personal Interview. Santo Domingo.
- ONE (2013), *Primera encuesta nacional de inmigrantes en la República Dominicana 2012*. Informe General. Santo Domingo: Oficina Nacional de Estadística.
- Pasqualucci, Jo M. (2014), *The Practice and Procedure of the Inter-American Court of Human Rights*. Cambridge: Cambridge University Press.
- Sabatini, Christopher (2015), Ecuador, Argentina and the At-Risk Inter-American System. *Latin America Goes Global*.
- Sagás, Ernesto (2000), *Race and Politics in the Dominican Republic*. Gainesville, Fla.: University Press of Florida.
- San Miguel, Pedro L. (2005), *The Imagined Island: History, Identity, and Utopia in Hispaniola*. Chapel Hill: University of North Carolina Press. Original edition, *La Isla Imaginada: Historia, identidad y utopía en La Española*. Editorial Isla Negra y Ediciones Librería La Trinitaria, 1997.
- Singer, Matthew M. (2012), "Electoral Politics in the Dominican Republic: Low Levels of Programmatic Competition", in IDEA (ed.) *Research and Dialogue on Programmatic Parties and Party Systems - Case Study Reports*, pp. 55-80. Stockholm: International IDEA.

- Singer, Matthew M. (Forthcoming), "Elite Polarization and the Electoral Impact of Left-Right Placements: Evidence from Latin America, 1995-2009", *Latin American Research Review*.
- Sousa Duvergé, Luis Antonio (2011), *Control de Convencionalidad en República Dominicana, Ius Novum*. Santo Domingo: Amigos del Hogar.
- Suprema Corte de Justicia (SCJ) (2005a). "Acción de inconstitucionalidad. edited by Suprema Corte de Justicia", *Boletín Judicial* 1137.
- \_\_\_\_\_ (2005b), "Sentencia Impugnada", Suprema Corte de Justicia, *Boletín Judicial* 1141.
- Tribunal Constitucional (TC) (2013), *Sentencia TC/0168/13*, Santo Domingo: Tribunal Constitucional de la República Dominicana.
- \_\_\_\_\_ (2014), *Sentencia TC/0256/14*, Tribunal Constitucional. Santo Domingo: Tribunal Constitucional de la República Dominicana.
- Trotz, Alissa (2014), "The Dominican Republic's Possible Withdrawal from the Inter-American Human Rights Court: What is CARICOM's Position?", *StabroekNews.com*, November 10, 6.
- Turits, Richard Lee (2002), "A World Destroyed, A Nation Imposed: The 1937 Haitian Massacre in the Dominican Republic", *Hispanic American Historical Review* 82(3):589-635.
- Wooding, Bridget (2008), "Como cerdos en el lodo: Nuevos retos de la sociedad civil frente a la discriminación y la aptridia en la República Dominicana", in Wilfredo Lozano and Bridget Wooding (eds) *Los retos del desarrollo insular. Desarrollo sostenible, migraciones y derechos humanos en las relaciones dominico-haitianas en el siglo XXI*, pp. 277-300. Santo Domingo: Editora Búho.
- Wucker, Michele (1999), *Why the Cocks Fight: Dominicans, Haitians, and the Struggle for Hispaniola*. New York: Hill and Wang.