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No Child is an Island: The Predicament of Statelessness for Children in the Caribbean

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No Child is an Island: The Predicament of Statelessness for Children in the Caribbean

Cover Page Footnote

This article reflects the views of the author, and does not represent the views of the United Nations or the UN Refugee Agency.

I. Introduction

It may be difficult for one to imagine that small tropical islands in the Caribbean harbor some of the worst laws and policies on nationality in the Western Hemisphere, causing a significant statelessness problem in the region. With nearly a quarter million persons affected in the region,¹ the Caribbean is indeed the cradle of statelessness in the Americas. Statelessness in the Caribbean arises in large part from poor policies and practices with regard to birth registration and transmission of nationality and is most often triggered by migration.

In a region characterized by human mobility, many children in the Caribbean are born in a different country than their parents. In fact, the Caribbean is considered one of the regions with the highest percentage of people migrating.² This article will analyze the root causes of statelessness for children in the Caribbean, focusing primarily on the dangerous interplay between ineffective birth registration systems and lack of safeguards for children who would be otherwise stateless. The article will also address recent shifts in migration and nationality policies in countries such as The Bahamas and the Dominican Republic that have exacerbated existing situations of statelessness and created new ones.

II. Background

Statelessness refers to the legal condition of an individual who is not considered as a national by any State under the operation of its law.³ The experience of being stateless is often described as being “invisible,” or without “a place to belong.”⁴ In the context of the Caribbean, the metaphor of an island is also fitting to capture what it means to be stateless. In the words of poet John Donne, “no man is meant to be an island entire to itself.”

As in many parts of the world, nationality is a contentious subject in the Caribbean. The interests of States to control migration and national identity often inhibit meaningful consideration of the fundamental right of children to acquire a nationality. This right to nationality is not only promoted in the 1961 Convention on the Reduction of

¹ See U.N. High Commissioner for Refugees, *UNHCR Mid-Year Trends 2014*, 17, Table 1 (January 7, 2015). The figure for stateless persons provided is based on an official survey released in May 2013 by the National Bureau for Statistics and refers to the estimated number of individuals resident in the country who belong to the first generation born on Dominican territory to Haitian migrant parents. *Id.* at fn. 16. It is estimated that there are tens of thousands of persons who are stateless or at risk of statelessness found in other parts of the northern Caribbean, especially in The Bahamas and the Turks and Caicos Islands.

² UNICEF, *The Impact of Migration on Children in the Caribbean* (August 2009).

³ See 1954 Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 5158. The definition has also been recognized as part of customary international law. See U.N. High Commissioner for Refugees, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, ¶ 16, U.N. Doc. HCR/GS/12/04 (21 December 2012).

⁴ UNHCR, Open Letter to End Statelessness (November 2014).

Statelessness (hereinafter “1961 Convention”), but is also enshrined in the Convention on the Rights of the Child (hereinafter “CRC”) and the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), to which almost all Caribbean countries are State Parties.⁵ Furthermore, the right to nationality is recognized in regional human rights instruments, including Article XIX of the American Declaration of the Rights and Duties of Man and in Article 20 of the American Convention on Human Rights. Under international law, children are viewed as a special category of persons, and States are called upon to take all necessary measures under the *best interest of the child* standard to ensure that children in their territories are not rendered stateless.⁶

As compared to other regions, statelessness is considered rare in the Americas, thanks to the generous and combined application of the principles of *jus soli* (birth-right citizenship) and *jus sanguinis* (citizenship by descent) for the acquisition of nationality.⁷ However, the statelessness record in the Caribbean is not as favorable. In fact, three out of the five countries in the Western Hemisphere that do not provide for unrestricted *jus soli* acquisition of nationality can be found in the North Caribbean; namely The Bahamas, the Dominican Republic and Haiti.⁸

Resolving statelessness is ultimately the responsibility of individual Governments.⁹ However, there are various international and regional organizations that play an influential role in identifying the problem and assisting Governments in finding solutions. The United Nations Office of the High Commissioner for Refugees (UNHCR) is the United Nations agency mandated to provide international protection to stateless persons, particularly by supporting their identification, the provision of assistance, as well as to promote efforts to prevent and reduce statelessness.¹⁰ In November 2014, UNHCR launched a global campaign with the goal of eradicating statelessness in ten years. It is worth noting that the Americas was the first region to formally endorse UNHCR’s global campaign. On 3 December 2014, 28 Latin American and Caribbean States adopted the Brazil Declaration and Plan of Action at a ministerial meeting in Brasilia, Brazil in which

⁵ The right to nationality is also named in Article 15 of the Universal Declaration of Human Rights.

⁶ Convention on the Rights of the Child art. 3(1), Nov. 20, 1989, 1577 U.N.T.S. 3 (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”).

⁷ UNHCR, *Statelessness and Human Rights in the Americas*, Public hearing before the Inter-American Commission on Human Rights, 147^o period of sessions (15 Mar. 2013).

⁸ It is rather unique, when looking from a global comparative perspective, that thirty out of the thirty-five countries in the Western Hemisphere have automatic *jus soli* acquisition at birth. The five countries that do not provide for automatic acquisition this way is are The Bahamas, Colombia, the Dominican Republic, Haiti and Suriname. See Olivier W. Vonk, *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and Caribbean* (22 Sep. 2014).

⁹ See 1961 Convention on the Reduction of Statelessness; see also A/RES/49/169, ¶ 20 (February 24, 1995).

¹⁰ UNHCR’s responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6(A)(II) of the UNHCR State and Article 1(A)(2) of the 1951 Convention [Relating to the Status of Refugees]. The Office was entrusted with responsibilities for stateless persons generally by General Assembly Resolution 50/152 of 1995. UNHCR, *Handbook on Protection of Stateless Persons*, ¶ 4 (June 30, 2014).

they committed to eradicating statelessness by 2024.¹¹

Within the Caribbean, UNHCR has been particularly focused on addressing statelessness for persons of Haitian origin in countries such as the Dominican Republic and The Bahamas. In recent years, UNHCR has established legal aid and civil registration programs in these countries and has complemented these efforts with advocacy to reform nationality legislation and improve civil registration in Haiti.¹²

Several regional organizations also play an important role in addressing statelessness issues in the Caribbean, including the Organization of American States (OAS),¹³ the Caribbean Community (CARICOM), and the Organization of Eastern Caribbean States (OESCS). In 2008, the Inter-American Program for Universal Civil Registry and “Right of Identity”¹⁴ entrusted the General Secretariat of the OAS to assist member States in their efforts to achieve universality and accessibility of the civil registry and comply with the goal of universal birth registration by 2015. In June 2014, the General Assembly of the OAS adopted a new resolution on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons in the Americas.¹⁵ Notably, the General Assembly urged its member States to consider amending or adopting, as applicable, domestic laws to include appropriate safeguards to prevent new cases of statelessness and to eliminate those that already exist.¹⁶

The OAS’ human rights bodies (i.e. the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights) have addressed a remarkable number of statelessness cases from the Caribbean and wider Americas.¹⁷

In recent years, the Caribbean Community and Common Market (CARICOM) has also elevated the issues of nationality and statelessness, especially with regard to children. In 2010, CARICOM convened a working group to consider the specific rights of migrant children in the Caribbean. The working group, in conjunction with the United Nations

¹¹ See UNHCR, *Campaign Update*, January 2015, January 2015; see also Brazil Declaration and Plan of Action (3 December 2014).

¹² UNHCR, *Note on Statelessness*, EC/64/SC/CRP.11, ¶ 18 (4 June 2013).

¹³ UNHCR signed a Memorandum of Understanding with both the Inter-American Commission for Human Rights (IACHR) in June 2001 and with the OAS in November 2008, focusing among other things on information sharing, promotion of accession to the international instruments on refugees and statelessness, joint training and the understating of research, legal analysis and comparative law studies.

¹⁴ See Organization of American States, G.A. Res. 2362, 38th Sess. (3 June 2008).

¹⁵ See Organization of American States, G.A. Res. 2826, 44th Sess. (4 June 2014). Presented by the delegations of Colombia and Uruguay and cosponsored by Brazil, Costa Rica, Haiti, and Paraguay. See also Organization of American States, G.A. Res. 2599, 40th Sess. (8 June 2010).

¹⁶ Organization of American States, G.A. Res. 2826, 44th Sess., ¶ 85 (4 June 2014).

¹⁷ See, e.g., *Case of Dominican and Haitian People Expelled v. the Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 282 (Aug. 28, 2014); Benito Tide Méndez et al., *Case 12.271*, Inter-Am. Comm’n H.R., Report No. 64/12, Dominican Republic (March 29, 2012); public hearing on the judicial response in denationalization cases in the Dominican Republic, 143rd period of sessions (24 Oct. 2011); public hearing on statelessness and human rights in the Americas, 147th period of sessions (15 Mar. 2013); public hearing on Human Rights Situation of Migrant Persons in the Bahamas, 154th period of sessions (20 Mar. 2015).

Children's Fund (UNICEF) and International Organization on Migration (IOM), proposed a comprehensive framework and a set of recommendations to member States to enhance protection of migrant children. Among the top recommendations was to promote "the rights of all children to national identity and support families in legalizing status, in accordance with Articles 2, 7 and 8 of the CRC."¹⁸

In addition, both CARICOM¹⁹ and the OESC²⁰ have been notably vocal in response to the Dominican Republic's Constitutional Court ruling TC 168/13.²¹ CARICOM and the OESC's public statements regarding the Dominican Republic have implications beyond Hispaniola, as they have drawn attention to the humanitarian consequences of the problem of statelessness within the Caribbean region; this may provoke other Caribbean States to evaluate and amend their own nationality laws to include adequate prevention safeguards.²²

III. Factors leading to statelessness for children caught in migration

Perhaps the most widely recognized and condemned situation of statelessness in the Caribbean is the arbitrary deprivation of nationality of persons of foreign descent born in the Dominican Republic.²³ This is a situation affecting countless children, primarily of Haitian descent. While this article will reference the situation in the Dominican Republic, it will focus instead on the region as a whole. Below is a discussion of two key factors leading to children to be stateless throughout the Caribbean: (1) ineffective civil registration and documentation systems; and (2) lack of adequate safeguards for children who would otherwise be stateless. It is almost always the interplay of these two factors that render children stateless.

¹⁸ See CARICOM, *Framework and Recommendations for Action on Children Affected by Migration in the Caribbean* (2010).

¹⁹ See, e.g., Dominican Daily, *CARICOM again warns the Dominican Republic on 'stateless' Haitians*, (13 Mar. 2014) available at <http://www.dominicantoday.com/dr/local/2014/3/12/50831/CARICOM-again-warns-Dominican-Republic-on-stateless-Haitians>.

²⁰ OESC issued a press release, voicing its "collective abhorrence" at the ruling that it described as "effectively rendering stateless thousands of men, women and children." The OESC further stated that would find it "extremely difficult" to engage with the Dominican Republic until the issue of statelessness was resolved. See Press Release, OESC, *Statement by the OESC Authority at the 58th Meeting on the Ruling by the Constitutional Court of the Dominican Republic on Nationality* (25 Nov. 2013).

²¹ Similarly, the Community of Latin America and Caribbean States (CELAC) has become more engaged on issues of migration and human rights in the region since 2013. See CELAC, *Havana Declaration*, II CELAC Summit, ¶26, 65 (Jan. 28-29, 2014).

²² See, e.g. Statement of the Suriname representative before the OAS Permanent Council (29 Oct. 2013), "My government is of the view that as a responsible members of the international community, respect for international law and more in particular respect for the right of nationality as a human right that has been reaffirmed by the Inter-American Court in 2004, should be at the forefront of our obligations towards humanity at large. The right to nationality guarantees human beings to enjoy freedom of movement and to, among others, access to education, health care, employment, political participation, and family life... [T]he government of Suriname has decide to provide a general pardon to all people living in Suriname in 2013 in an undocumented situation to become registered and regularized their situation via naturalization."

²³ TC 168/13 gave a new interpretation regarding the acquisition of nationality by individuals born in the country to foreign parents in transit. Based on this interpretation, individuals who had previously been recognized as having Dominican nationality were denaturalized. See Preliminary Observations from the IACHR's Visit to the Dominican Republic, Inter-Am. Comm'n H.R., Report No. 97A/13, 5 (6 Dec. 2013).

1. Ineffective Civil Registration and Documentation Systems

The failure of national civil registration and documentation systems, most notably in Haiti, has prevented many children in the Caribbean from establishing a nationality. Birth registration is widely-recognized as a critical measure for preventing statelessness.²⁴ A birth certificate establishes a legal record of where the child was born and who his or her parents are and thus whether the child can acquire citizenship on the basis of place of birth (*jus soli*) or descent (*jus sanguinis*).²⁵

Articles 7 and 8 of the CRC establish that every child has the right to be immediately registered at birth by the State within whose jurisdiction the child was born, the right to a name and nationality and to the preservation of his or her identity.²⁶ It is essentially the “first right” on which access to other rights are dependent.²⁷

Common problems with birth registration that persist in the Caribbean include strict time limits and high costs, prohibitive documentary requirements for parents, poor infrastructure and transportation, lack of understanding on how to ensure the application of dual nationality regulations, and lack of awareness and education of parents on the need to register their children.²⁸ The Caribbean country that faces the greatest challenges with respect to birth registration is Haiti.

With many Haitians living abroad, problems with Haiti’s civil registry have had ripping affects throughout the region. Based on a 2012 survey conducted by the United Nations Population Fund (UNFPA), it was estimated that there were over 450,000 Haitian nationals living in the Dominican Republic and an additional 200,000 first generation Dominicans of Haitian descent.²⁹ In The Bahamas, exploratory research conducted by the IOM in 2013 estimated that there are between 20,000 and 50,000 persons of Haitian descent living in country, the majority of which are children.³⁰ The Bahamian Department of Statistics reported that 18 percent of all births in The Bahamas from 2005-2010 were from mothers whose country of birth was listed as Haiti.³¹ Similar numbers

²⁴ See UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, ¶ 55, HCR/GS/12/04 (Dec. 21, 2012).

²⁵ UNICEF, *A Passport to Protection: A Guide to Birth Registration Programming* (Dec. 2013).

²⁶ Similarly, Article 24(2) of the ICCPR states, “Every child shall be registered immediately after birth and shall have a name;” See also, Universal Declaration of Human Rights art. 15, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights art. 24, 999 U.N.T.S. 171, (16 Dec.1966); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families art. 29, 2220 U.N.T.S. 3 (18 Dec. 1990).

²⁷ *Supra* note 4.

²⁸ UNHCR, *public hearing on Statelessness and Human Rights in the Americas*, 147^o, Inter-Am. Comm’n H.R., (March 15, 2013).

²⁹ See UNFPA-EU, *Systemization of the methodological process of the first national survey of migrants in the Dominican Republic* (2012).

³⁰ Rupert Missick, Jr., *Haitians: Up to 50,000 Living in Bahamas Without Documents*, Tribune 242, July 29, 2013, <http://www.tribune242.com/news/2013/jul/29/haitians-50000-living-bahamas-without-documents/>.

³¹ Royston Jones, Jr., *Haitian Births in Bahamas Nearly Double*, The Nassau Guardian, “Haitian births in Bahamas nearly double, Feb. 17, 2012.

are not readily available for many other Caribbean countries with large Haitian diasporas such as the Turks and Caicos Islands.

Haiti's civil registry system does not function properly due to a combination of factors, including weak human and financial resources, a lack of clear regulatory frameworks and socio-economic reasons.³² These problems have existed for decades, meaning that there are generations of Haitians whose births were never recorded.

Recent initiatives by the Haitian Government to document its nationals abroad have proven to be unsuccessful. For instance, in July 2014, the Haitian Government launched a documentation project in the Dominican Republic called the Program of Identification and Documentation of Haitian Immigrants (PIDIH). This initiative aimed to document the Haitian nationality of approximately 300,000 irregular migrants living in the Dominican Republic. However, the implementation of this program highlighted the ongoing disorganization of the Haitian civil registration system.³³

While the civil registration problems in Haiti are significant and far-reaching, it is not the only Caribbean country with poor civil registration practices. In several other Caribbean States, civil registries function well, but administrative barriers and discriminatory practices nevertheless prevent parents from registering the births of their children. For example, according to the Surinamese nationality law, all persons born in the country are eligible to be registered, irrespective of the nationality and legal status of the child's parents in the country. However, in practice, foreign parents are often asked to produce proof of their stay-permit in the country before being able to register their child. Fear of being identified and punished by migration authorities prevents many from proceeding with the registration process.³⁴

In Belize, parents may be summoned within one year and charged a fee for late registration if a child is not registered within 42 days of birth,³⁵ which is believed to serve as a deterrent for undocumented or economically poor parents to register their children. This is supported by a 2013 UNICEF survey that found that over 90 percent of mothers of unregistered children in Belize knew how to register them.³⁶

The Caribbean is not entirely unique with regard to its civil registration problems. Worldwide, it is estimated that only half of the children under five years old are

http://www.thenassauguardian.com/index.php?option=com_content&view=article&id=24361:haitian-births-in-bahamas-nearly-double&catid=3:news&Itemid=27.

³² See UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Haiti (Mar. 2011). The problems of civil registration have only been exacerbated since the 2010 earthquake that destroyed a great deal of the country's infrastructure.

³³ Haiti Libre, *Haiti-Dominican Republic: Toward failure of PNRE?* (2 May 2015)

<http://www.haitilibre.com/en/news-13739-haiti-dominican-republic-towards-a-failure-of-pnre.html>.

³⁴ See UN CRC, UN Committee on the Rights of the Child: Concluding Observations, Suriname, ¶ 33, CRC/C/SUR/CO/2 (June 18, 2007) (recommending that Suriname "continue and strengthen its efforts to register all children, with a special focus on children in the remote areas of the interior, including the opportunity for late registration free of charge.").

³⁵ UNICEF, *Every Child's Birth Right: Inequities and Trends in Birth Registration* (Dec. 2013).

³⁶ *Id.*

registered.³⁷ As such, civil registration has been a priority issue for UNHCR in the execution of its statelessness mandate. This is reflected in a number of UNHCR global initiatives in recent years. Most notably, achieving universal birth registration is Action 7 in UNHCR’s Global Action Plan to End Statelessness: 2014-2024. Furthermore, legal documentation is named one of the six goals for girls and boys in UNHCR’s 2012 Framework for the Protection of Children.³⁸ Similarly, UNHCR Global Strategic Priorities for both 2012-2013 and 2014-2015 list “birth registration” as a key operational goal.

In 2013, UNHCR’s Executive Committee issued a Conclusion on Civil Registration, encouraging States to undertake any necessary legal and practical measures to overcome difficulties in civil registration, through establishing or strengthening existing institutions responsible for civil registration, building their capacity, and ensuring the safety and confidentiality of their records.³⁹ Also, in 2013, the Human Rights Council adopted a resolution on birth registration and the right of everyone to recognition everywhere as a person before the law, calling upon “States to ensure free birth registration, including free or low-fee late birth registration, by means of universal, accessible, simple, expeditious and effective registration procedures without discrimination of any kind.”⁴⁰

Similarly, the OAS’ General Assembly urged member States in 2014 to enforce the legal and practical measures necessary to overcome difficulties in making entries in the civil registry, in consultation with UNHCR.⁴¹ CARICOM has also made civil registration a priority. CARICOM’s Council for Human and Social Development listed “reforms related to strengthening birth registration systems” as one of the four legislative reforms recommended to member states with regard to children.⁴²

With respect to good practices, Jamaica has established a compulsory Free First Birth Certificate Initiative.⁴³ This initiative aims at having all children named and fully registered by providing birth registration and an initial copy of the birth certificate free of cost to parents. In addition, a bedside registration procedure has eliminated delays in birth registration which is now conducted at the “bedside” right after birth. These efforts have resulted in more than 98 percent of Jamaica’s births registered.⁴⁴

It must be emphasized that documentation projects and improvements to civil registration systems will not alone resolve the situation of statelessness for countless children in the Caribbean. These initiatives must be pursued in concert with legislative and Constitutional reforms to include safeguards to prevent statelessness.

³⁷ *Id.*

³⁸ UNHCR, *A Framework for the Protection of Children*, (26 June 2012).

³⁹ UNHCR Executive Committee, Conclusion on Civil Registration, No. 111 (LXIV) – 2013 (17 Oct. 2013), introduced by Mexico in representation of the countries of GRULAC.

⁴⁰ Human Rights Council, Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law, U.N. Doc. A/HRC/Res/22/7 (9 Apr. 2013).

⁴¹ G.A. Res. 2826, 44th Sess., (4 June 2014).

⁴² CARICOM, Communique from the Twelfth Special Meeting of the Council for Human and Social Development (COHSOD) (March 2008).

⁴³ UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: Jamaica (Sept. 2014).

⁴⁴ *Id.*

2. Inadequate Safeguards to Grant Nationality to Otherwise Stateless Children

Another contributing cause of statelessness for children in the Caribbean is inadequate safeguards for children who would otherwise be stateless. In the context of migration, both the country of descent and country of birth have an obligation to ensure that all children have a nationality. This is discussed in great detail in UNHCR's Guidelines on Statelessness No. 4 on preventing statelessness of children.⁴⁵

Under Article 1 of the 1961 Convention on the Reduction of Statelessness, the State "shall grant its nationality to a person born in the territory who would otherwise be stateless." Article 1 does not oblige States to grant nationality to all the children born on their territory, but simply requires States to do so if the child would otherwise be stateless.

The 1961 Convention gives a choice to the State on how to fulfill this obligation. The State can grant its nationality automatically at birth by operation of law or upon application; States may, pursuant to Article 1 and 2 of the Convention, make the granting of nationality upon application conditional with respect to one or more of four conditions set out in Article 1 and 2.

The rules for preventing statelessness contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality. Specifically, when read with Article 1 of the 1961 Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. Thus, if the State imposes conditions for an application as allowed for under Article 1(2) of the 1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.⁴⁶

At the regional level, the American Convention on Human Rights requires States to grant nationality at birth to children born in its territory who are not entitled to any other nationality. According to Article 20 of the American Convention on Human Rights, "[e]very person has the right to a nationality. Every person has the right to the nationality of the State in whose territory he was born [in] if he does not have the right to any other nationality."⁴⁷

⁴⁵ See UNHCR, Guidelines on Statelessness No. 4 at ¶ 31, HCR/GS/12/04 (Dec. 21, 2012).

⁴⁶ See UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, ¶ 34, HCR/GS/12/04 (Dec. 21, 2012).

⁴⁷ Further, Article XIX of the American Declaration of Human Rights and Duties of Man provides that "[e]very person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him."

CARICOM's Women's Affairs and Legal Division developed a model citizenship law in 1997 that includes safeguards for persons who would otherwise be stateless. The Secretariat continues to encourage its member States to make the Constitutional changes necessary to implement the model provisions.⁴⁸ Nevertheless, the nationality laws of many Caribbean States still do not contain provisions to grant nationality to children who would be otherwise stateless. Where such safeguards exist, administrative barriers often prevent children from accessing the mechanism. These situations will be explored in greater detail below through a few specific country examples.

a. The Commonwealth of the Bahamas

Under the current laws of the Bahamas, a child born in the territory after July 9, 1973 to a Bahamian father or mother automatically acquires the citizenship at birth.⁴⁹ However, children born in The Bahamas to non-citizen parents must make an application at their eighteenth birthday or within twelve months thereafter to register as a citizen of The Bahamas.⁵⁰ Citizenship applications are dealt with by the Department of Immigration, but final decisions are discretionary and taken by the Cabinet.⁵¹

This 18-year waiting period under Bahamian law is in conflict with Article 1(2) of the 1961 Convention, as it leaves the child stateless for a "considerable amount of time." Additionally, the lack of procedural safeguards, such as time limitations in which applications must be adjudicated, together with numerous administrative barriers, prevent some children from acquiring Bahamian citizenship when they acquire the age of maturity.⁵²

In 2012, the Government convened a Constitutional Commission to review among other things, the nationality provisions of the Bahamian Constitution. The Constitutional Commission adopted several recommendations made by UNHCR and other actors with regard to preventing statelessness. In fact, the Commission went as far as to state in its July 2013 report that, "[s]everal provisions in the Constitution [of The Bahamas] might have the effect of creating a class of persons who are stateless."⁵³

The Commission's report further stated that a "situation of effective statelessness" exists for the children of foreign descent born in the Bahamas,⁵⁴ noting that "the right to claim Haitian citizenship by descent is limited to the first generation and even when persons fall

⁴⁸See CARICOM, Explanatory Memorandum on Model Legislation on Citizenship, available at http://www.caricom.org/jsp/secretariat/legal_instruments/model_legislation_women_issues.jsp?menu=secretariat

⁴⁹ See The Bahamas Constitution, June 20, 1973, art. 6.

⁵⁰ *Id.* at art. 7.

⁵¹ *Id.* at art. 7(2). Any application for registration under this Article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

⁵² An example, children born to foreign parents are required to provide the birth certificate of their parents to apply for citizenship when they turn eighteen. This is a significant barrier for children of Haitian descent, when many of their parents were never issued proof of their birth.

⁵³ Commonwealth of The Bahamas, Report of the Constitutional Commission into a Review of The Bahamas Constitution, ¶ 14.30 (July 2013).

⁵⁴ *Id.* at 14.32.

into this category, most choose not to acquire Haitian passports, as they would be required to renounce that citizenship at eighteen to acquire Bahamian citizenship.”⁵⁵ The Commission further acknowledged the enormous “psychological, socio-economic and other ill-effects that result from leaving large groups of persons in limbo in relation to their aspirations for Bahamian citizenship.”⁵⁶

As a solution, the Commission recommended changing the age when a person born to non-Bahamian parents can be eligible for citizenship, stating that “the 18-year period...is too long” and “[i]t was never the intention of the framers of the Bahamian Constitution that persons in those circumstances would be rendered stateless.”⁵⁷ The Constitutional Commission indicated the urgent need for a highly specialized commission to be convened, primarily to study the status of children born in The Bahamas to non-citizen parents. While the Prime Minister of The Bahamas subsequently confirmed his intention to appoint the commission members, however, the Government has since gone in a different direction. On 1 November 2014, the Government enacted a new migration policy that imposed new administrative requirements to access Bahamian citizenship, stipulating that applicants need to provide evidence of the legal status of their (non-citizen) parents. The new policy also requires all non-citizens to hold a passport of their nationality, or face deportation. These requirements disproportionately affect persons of Haitian descent, most of whom do not hold a passport of either The Bahamas or Haiti.

b. *The Turks and Caicos Islands*

Children of Haitian descent face a similar limbo in the neighboring country of Turks and Caicos Islands (TCI), where Haitians and persons of Haitian descent comprise a significant proportion of the population.⁵⁸ TCI citizenship is not an automatic right of birth and it is not easily acquired as an adult. Obtaining “Belonger” status in TCI requires more than simply being born in the territory; it is also contingent on parentage and residency. As a result, many persons living in TCI, including a great majority of Haitians, do not have legal status. According to a 2011 report on Haitian migration to TCI conducted by the IOM, these policies render at least 2,000 children of Haitian descent stateless in TCI.⁵⁹ It should be noted that the Governor of TCI approved an Immigration Ordinance in 2012 that would amend the current Immigration Law to make it harder for children of immigrants to obtain residency.⁶⁰

c. *Haiti*

The Haitian Constitution provides for *jus sanguinis* nationality, meaning that a child born abroad can in theory establish Haitian nationality if he or she was born to a Haitian father

⁵⁵ *Id.*

⁵⁶ *Id.* at 14.34.

⁵⁷ *Id.* at 14.38.

⁵⁸ IOM, *The Characteristics and Impact of Haitian Migration in the Turks and Caicos Islands* (2011).

⁵⁹ *Id.*

⁶⁰ Frances Robles, *Immigration Rules in Bahamas Sweep up Haitians*, New York Times (30 Jan. 2015) http://www.nytimes.com/2015/01/31/world/haitians-are-swept-up-as-bahamas-tightens-immigration-rules.html?_r=0.

or a Haitian mother who were themselves born Haitian (in other words, first generation born abroad) and have not renounced their nationality.⁶¹ The Haitian Constitution is silent with regard to second and third generations born abroad.

In practice, even the first generation of children born abroad face barriers in establishing Haitian nationality. A principle obstacle is weak and under-resourced consular services in Haitian Embassies and Consulates. Furthermore, it is difficult and costly to comply with the documentary requirements to establish Haitian nationality. An additional problem is the lack of clear, concise written consular regulations on interpretation of the law. For example, in a 2008 survey conducted by UNHCR of four Haitian consulates in locations with the highest numbers of Haitians and their descendants living abroad, consular officials disagreed on how far, i.e. to which generation, lineage rights could extend to grant nationality.⁶²

IV. The impact of new migration policies sweeping the region

While ineffective birth registration and lack of safeguards in nationality laws have been problems in the Caribbean for decades, new national policies in the region are further intensifying the risk of statelessness for children. A February 2015 New York Times article highlights this regional trend and notes that these new citizenship policies and anti-immigration measures have “overwhelmingly affected Haitians.”⁶³

In The Bahamas, within the first few months of its new migration policy, it was reported that the Government expelled hundreds of Bahamian-born persons to Haiti without confirming whether these persons in fact have access to Haitian nationality. The majority of deportees from The Bahamas to Haiti are reportedly children.⁶⁴ For the most part, these children have never before set foot in the country and may not be eligible for Haitian citizenship.

Deportations from the Turks and Caicos Islands to Haiti have also increased in recent years. In 2013, a top immigration official vowed to “hunt down and capture Haitians illegally in the country, promising to make their lives unbearable.”⁶⁵

In February 2015, Dominican President Danilo Medina defended his government’s changes to citizenship and immigration law and resolved to proceed with mass expulsions later in the year.⁶⁶ It is expected that these expulsions will include persons rendered stateless by the 2013 Constitutional ruling. The Haitian Government has repeatedly stated that these individuals are not recognized as Haitian nationals.

⁶¹ See Constitution of Haiti, art. 11 (March 29, 1987).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Roque Planas, *No Foreign Country Can Change Dominican Republic’s Immigration Law, President Says*, The Huffington Post (27 Feb. 2015) http://www.huffingtonpost.com/2015/02/27/danilo-medina-deportations_n_6772602.html.

The current deportation policies being employed by many States in the region fail to acknowledge their international obligations towards children born in their territory. In its interpretation of the 1954 Convention, UNHCR recognizes the right enshrined in Article 12(4) of the ICCPR to enter and thus remain in one's "own country of nationality." This right is extended not only to nationals, but to stateless persons and individuals with special ties to a State.⁶⁷ Currently, it does not appear that the proper safeguards have been put into place in these countries to prevent nationals, stateless persons or persons who otherwise have a right to remain from being expelled alongside migrants. This inevitably affects hundreds of thousands of children in the region.

V. Conclusion

As evidenced above, it is rarely the failed policies of *one* State that creates a situation of statelessness for children of migrants; rather, it is the dangerous combination of poor policies in the countries of descent and countries of birth that interact to the detriment of the child. In the same way that it takes more than one State to cause the problem, it also requires multiple States to resolve the situation of statelessness for children in the Caribbean.

The year 2015 provides a prime opportunity to address statelessness in the Caribbean. With the recent launch of UNHCR's global campaign to eradicate statelessness and the Brazil Plan of Action, adopted by 28 countries in the Americas and Caribbean, there is unprecedented momentum and political surrounding the issue.

Moving forward, the *best interest of the child* must be the guiding principle. All children have a fundamental right to a nationality and it is the responsibility of States, working in close cooperation with the international community, to ensure that this right is realized. No child is an island, entirely by itself.⁶⁸ When the future generations of the Caribbean are born without an identity and the basic rights associated with citizenship, it is not only the individual child, but also the entire region, that is "the less."⁶⁹

⁶⁷ UNHCR, Handbook on Protection of Stateless Persons, ¶ 142 (30 June 2014).

⁶⁸ John Donne, "No Man is an Island," (paraphrased).

⁶⁹ *Id.*