

| Glossary | |
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| documented migrant workers (migrant worker in a regular situation) | Migrant workers or members of their family authorized to enter, stay and engage in paid work. |
| batey | In the context of the sugar cane plantations, bateyes are workers' settlements which in the past were made up of barracks (barracones). Today, in some bateyes, the barracks have been replaced by small concrete houses. |
| cédula | Dominican identity card |
| expulsion | An expulsion order will be given if the individual either entered a state illegally or is no longer authorized to remain in a state. The expulsion is carried out through deportation. Deportation may occur without lawful grounds and be carried out by forcibly displacing people across a national border. |
| finca | an agricultural estate |
| General Directorate for Migration | Dirección General de Migración |
| irregular migrant | Someone who does not have legal permission to remain in a country. |
| migrant | A generic term that covers both emigrants and immigrants. |
| migrant worker | "A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (Art. 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) |
| Migrant Workers Convention | Convention on the Rights of All Migrant Workers and Members of their Family (1990) |
| stateless person | A person who is not considered as a national by any state under the operation of its law. |
| undocumented migrant worker (migrant worker in an irregular situation) | Someone who does not have the documentation required to enter or stay in a country lawfully. |

1. Introduction

"We came here as migrants because we couldn't make a living in Haiti. We came looking for a better life but we didn't find it. Here we are suffering a lot; we are having a hard time in this area, in this country, particularly in the finca [agricultural estate] where we work."

RS, a Haitian migrant working in a banana plantation in the north-west of the country

In the Dominican Republic, as in many other countries, the presence of migrants is the subject of much public and political debate. This has at times been sensationalized by the distorted and misleading portrayal of migrants, and in particular Haitian migrant workers, given in the Dominican media.

For decades, Haitians have left their country, fleeing political persecution and economic hardship. Many migrated or sought refuge in North America and Europe, but the vast majority crossed the border into the Dominican Republic seeking better opportunities. Since the 1920s, Haitian migrant workers, mostly men, have been drawn into the Dominican Republic as seasonal workers in the sugar cane industry. Private and nationalized sugar plantations depend on the large pool of Haitian workers who are paid derisory wages and are subjected to the kind of appalling working conditions that most Dominicans are not prepared to accept.

The number of Haitians currently living in the Dominican Republic is estimated at somewhere between 500,000 and 1,000,000; accurate official figures are not available.⁽¹⁾ Most arrived several years ago when the sugar industry required thousands of labourers on a yearly basis. Despite the contraction of the sugar cane sector in the 1980s, the flow of Haitian migrants into the Dominican Republic has continued unabated as other sectors of the Dominican economy gradually opened up to them. Large numbers of Haitian migrant workers continue to be employed in the agricultural sector. However, today they also work on construction sites, in the tourist industry, in hotels and restaurants, in manufacturing plants established in Free-Trade Zones located near the border with Haiti, and as domestic workers. Many Haitian migrants also make their living selling on the streets of the capital, Santo Domingo, and other major cities.

Discrimination on grounds of ethnic origin, language and nationality, are a reality for many Haitian migrant workers and Dominicans of Haitian descent living in the Dominican Republic. Victims whose cases have come to the attention of Amnesty International are predominantly irregular and undocumented migrant workers, but also include Dominican nationals of Haitian descent, including children.

Amnesty International's research indicates that the way in which immigration laws and policies are being implemented is inconsistent with international human rights standards (see section 2.3). It also reveals that while those most at risk are irregular Haitian migrant workers, Dominicans of Haitian descent and regular migrant workers also face persistent and widespread human rights violations. Legislation governing immigration and regulations on the registration of births are often applied in a discriminatory manner by state officials. In some cases, Haitian migrants are targeted disproportionately by immigration officers for checks of their identity documents, often leading to arbitrary detention, ill-treatment and mass and collective expulsions towards Haiti. Dominicans of Haitian descent are also at risk of detention and expulsion because immigration officers refuse to recognize their documentation and claim that it is forged or false. Amnesty International also found that current legislation and its discriminatory application are effectively denying thousands of Dominican children of Haitian descent their right to a range of economic, civil and political rights, including their right to acquire a nationality, to education, to security of the person and to freedom from discrimination.

This report details Amnesty International's current human rights concerns regarding discrimination, racism and xenophobia against Haitian migrant workers in the Dominican Republic. It looks at the current practices of collective deportations and the lack of due process in relation to such cases. Chapter 4 reviews Dominican legislation in relation to the right to acquire a nationality. It highlights the administrative barriers and discriminatory practices faced by thousands of Dominicans of Haitian descent in trying to get a birth certificate, an essential document for establishing Dominican nationality. The report ends with Amnesty International's conclusions and recommendations to the Dominican authorities on the steps that the government should take to improve respect, protection and fulfilment of the rights of Haitian migrant workers and Dominicans of Haitian descent in the Dominican Republic.

2. Background

The dire economic conditions that prevail in Haiti and the political turmoil that has characterized the country have contributed to continued emigration to the Dominican Republic.

Until the mid-1980s, most Haitian migrant workers were contracted as *braceros* (cane cutters) for the sugar cane harvest. The Dominican state, which at the time operated 12 *ingenios* (estates comprising the sugar cane plantations and mills), was the major employer of Haitian migrant workers. Haitian workers were contracted in their own country through a bilateral agreement between the two governments. The agreements regulated the remuneration for the *braceros* and their repatriation once the harvest was completed. It also established the amount of money the Haitian government received for each Haitian worker delivered. In 1986, when the last bilateral agreement was in force, the Haitian government received a payment of US\$2 million for 19,000 *braceros*.⁽²⁾

On the plantations, the *braceros* and any members of their families who came with them were lodged in barracks in settlements called *bateyes*. In time, the *bateyes* changed in nature and became permanent communities as a number of *braceros* were permanently employed by the sugar cane companies to carry out year-round tasks -- such as clearing, weeding and planting -- and other workers, including Dominican men and women, moved in. The *bateyes* became home to families of first, second and even third generations of Dominicans of Haitian descent.

There are around 400 *bateyes* scattered across the Dominican Republic. Living conditions in most of them are among the worst in the country. In general, those living in *bateyes* and other poor and marginalized communities in the Dominican Republic do not have access to the most basic public services such as health care, education, running water and a sewage system.

In 2005 the UN Development Programme (UNDP) report on human development in the Dominican Republic reported that 16 per cent of the *bateyes* under the State Sugar Council, (Consejo Estatal del Azúcar) do not receive medical assistance and only seven per cent have a dispensary or rural clinic. Two-thirds of those living in *bateyes* do not have access to any sanitation infrastructure and half get their water directly from the rivers.⁽³⁾ The UNDP report also notes that in nearly one-third of *bateyes* there is no formal educational provision for the children living there. It is estimated that a third of those living in these communities cannot read or write.

From the mid-1980s onwards, the Dominican economy underwent rapid changes that had a major impact on migration. The economy ceased to be based primarily on agriculture and began to diversify with the development of the tourist and the service sectors. There was also an increase in remittances from the Dominicans living abroad. At the same time, the Dominican sugar cane industry was affected by a fall in sugar prices on the international market. Haitian migrant workers adapted to the new opportunities that arose from these changes and their presence increased gradually in the developing sectors, although they continued to maintain a strong presence in agriculture.

Over the past 20 years an increasingly large number of migrants have moved away from agricultural work and have sought work in cities and towns. This move from rural to urban areas has increased the overall visibility of Haitian migrant workers and has been used by some to create fear of a "peaceful invasion" of Haitians.⁽⁴⁾ One consequence of such arguments has been that public debate and the political discourse around Haitian immigration have been dominated by calls for stronger state action to limit the number of Haitian migrants. This has created an atmosphere in which reports by national and international non-governmental organizations (NGOs) and by other international human rights bodies of violations of the human rights of Haitian migrants are all too often ignored.

2.1 The principle of non-discrimination

At the heart of Amnesty International's agenda for campaigning for migrants' rights is a call for all migrants to be treated in a way that fully respects their human rights and human dignity. The right of every person to be free from discrimination is a fundamental human right in itself. Non-discrimination can also be an effective protective mechanism against a range of human rights violations, such as for example in the right to equality before the law.

The importance of the principle of non-discrimination to the enjoyment of other human rights is underlined by the fact that it is enshrined in Article 2 of both the UN International Covenant on Civil and Political Rights (ICCPR) and the UN International Covenant on Economic, Social and Cultural Rights. Article 2 of the ICCPR states that:

"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The principle of non-discrimination is also set out in the American Convention on Human Rights which states:

"States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." (Article 1)

Article 1 of the UN International Convention on the Elimination of All Forms of Racial Discrimination develops the non-discrimination principle:

"'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." [Article 1]

The principle of non-discrimination is further developed by the UN Human Rights Committee which has stated in General Comment 18 that: "non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights."⁽⁵⁾

The General Comment also points out that non-discrimination does not only mean equal treatment, but may also involve affirmative action. Paragraph 10 states that:

"the Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination... For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population."

This last principle means that the state is required to go beyond equal treatment and may apply preferential treatment to correct inequalities in society, particularly with regard to vulnerable and marginalized sectors of society.

2.2 Methodology

This report focuses on discrimination faced by Haitian migrant workers and Dominicans of Haitian descent and the barriers to their full and effective enjoyment of civil, political, economic, social and cultural rights in the Dominican Republic.

During 2006, Amnesty International representatives visited the cities of Santo Domingo and Dajabón and several communities of migrant workers in the regions of Dajabón, Mao, Barahona and Los Llanos. Delegates spoke to representatives of NGOs, as well as members of the public, Haitian migrant workers and Dominicans of Haitian descent. They also visited the border town of Ouanaminthe.

in Haiti. Delegates discussed migration and nationality issues with Dominican and international academics. On several occasions Amnesty International representatives requested meetings to discuss migration and discrimination issues with Dominican government authorities and immigration officers, but to no avail.

Amnesty International conducted several interviews with Haitian migrant workers and Dominicans of Haitian descent who had experienced discrimination on grounds of ethnic origin, nationality and language. Some of their stories have been included in this report as illustrative cases. Some of those who spoke to Amnesty International asked that their identity not be revealed. In such cases, real names have been withheld in this report in order to respect their wishes.

The report is divided into four sections. This first section provides an introduction to the issues of concern and outlines the purpose and scope of the report. It includes a brief historical background to migration in the Dominican Republic and outlines the methodology used in preparing the report.

3. The plight of Haitian migrant workers

"I've been living in the Dominican Republic for 35 years and I've lost many job opportunities because the authorities wouldn't give identity cards... they abuse people, always saying they are going to give identity cards (cédulas). Since I arrived here, I have worked on the plantations cutting sugar cane. The government should help people to obtain a cédula. My five children were not able to study because they don't have birth certificates. The document the authorities gave me when I arrived here is no longer valid under the current government. A Colonel from the armed forces used to give an identity document to Haitian cane cutters but it is no longer accepted."

Jaime Jean, a 44-year-old migrant worker living in Santo Domingo

The majority of Haitian migrant workers in the Dominican Republic are believed to be in an irregular situation; that is, they do not have legal permission to remain in the country. Some may have entered the country legally, but have become irregular migrants because their status has changed over time.

There are a number of ways in which a migrant's status can change. For example, Amnesty International delegates interviewed several people working in the agricultural sector who were given valid work permits by the General Directorate for Migration (*Dirección General de Migración*) when they first entered the Dominican Republic years ago. Over the years, these permits expired and were not renewed or extended and as a result these individuals became irregular migrants even though they continue to live and work in the same place. Other cases show that migrant workers have had valid work permits confiscated or destroyed by government officials. Without documents these workers are no longer able to prove their regular status and so are at risk of being deported.

According to a survey conducted among Haitian migrant workers in the Dominican Republic by the International Organization for Migration (IOM) and the Latin American Faculty of Social Sciences (FLACSO), a large percentage of migrant workers enter the country legally with a Haitian passport and a Dominican tourist visa.⁽⁶⁾ However, as they integrate into the labour market and overstay their visa, their status becomes irregular.

Migrant workers who entered the country without legal authorization and those that did enter legally but became irregular over time face similar risks. These are compounded by the fact that they belong to an ethnic, national, and linguistic minority that has frequently been targeted during migration round-ups. Haitian migrants have also been vilified by nationalist political groups which have sought to exploit popular fears and use migrants as scapegoats for social, economic or security problems. Measures and practices implemented by the Dominican authorities – such as mass expulsion without access to any judicial review – have trampled on some of the most basic human rights of Haitian migrant workers, including the right to liberty and security of the person. Such measures have also contributed to the rising tide of discrimination, racism and xenophobia which they face.

Derogatory terminology pervades the public debate about the presence of Haitian migrant workers in the Dominican Republic. The official discourse on the application of migration policies is couched in terms of national sovereignty and sometimes in terms of survival of the Dominican nation and culture. In public debates this is often referred to as the threat of "Haitianization".

The Dominican Republic, like any other state, has the sovereign right to exercise authority over its borders and to establish its policies on migration. However, the way in which sovereignty is exercised and the migration policies pursued must be compatible with international human rights law and standards. Sovereignty is conditioned by the obligations that the Dominican state has assumed by ratifying international human rights treaties.⁽⁷⁾ These treaties guarantee the protection of the human rights of everyone in the Dominican Republic, irrespective of their nationality and status. The Inter-American Court of Human Rights has reaffirmed that "the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights including those related to employment."⁽⁸⁾ Although the Dominican Republic has not yet ratified the Migrant Workers Convention, most of its provisions are already included in treaties to which the Dominican Republic is a state party. These international and regional treaties confirm the government's obligation to recognize and protect the human rights of every migrant worker present on Dominican soil, irrespective of his or her migratory status.

3.1 Risks facing Haitian migrant workers

The risks facing migrant workers stem principally from the fact that they are not nationals of the country in which they live. In the case of Haitian migrant workers in the Dominican Republic, the risks are intensified by the fact that the vast majority find themselves in an irregular situation as a result of the particular dynamics of the migration process and the lack of effective and consistent measures by the Dominican government to protect the rights of migrant workers.

Irregular migrant workers are at heightened risk of exploitation and human rights abuses by employers or other non-state agents as well as by state officials. Their lack of legal status makes it extremely difficult for them to assert their rights or to seek redress for abuses.

Haitian migrant workers in an irregular situation face enormous difficulties in regularizing their migratory status even when they have been living and working in the country for several years. Those migrant workers who are in a regular situation also remain at risk because of widespread discrimination against Haitians and Dominicans of Haitian descent on grounds of ethnic origin, nationality, language, and economic status. Amnesty International received numerous reports of officials confiscating or tearing up the documents of migrant workers or Dominicans of Haitian descent which gave them permission to work or live in the Dominican Republic. The officials usually claimed that the documents were forged.

"We, Haitian migrants, have a problem at the border because we want to travel legally but we cannot afford it... We want to have legal documents to travel but we don't have enough money to obtain them. The salary in this finca is 150 pesos a day (US\$4.40) and we are deducted social insurance. The problem is that, let's say for a family of five or six people, that means 25 pesos a day for each person and they need to have breakfast, lunch and dinner. That's not enough..."

"We used to receive migration cards [for seasonal workers] from the Migration office. The card system was not very good because we had to pay R\$1,000 (US\$30) and then we had them confiscated or torn up by army officers. When the

*President gives the order to the military to deport us, they did not respect our migration cards.
"We don't have migration cards now. They are no longer issuing them. They don't have any value now."*

RS, a Haitian migrant working in a banana plantation in the Mao region in the north-west, 14 June 2006

The Dominican agricultural sector relies heavily on Haitian migrant workers, most of whom are in an irregular situation even if at the time of contracting them they had a seasonal work permit. In the sugar cane industry, for example, Haitian migrant workers make up 90 per cent of the labour force. The vast majority are employed cutting cane which is the most arduous job in the industry.(9)

Migrants employed in this "shadow" economy are at constant risk of abuse and exploitation by unscrupulous employers or *finca* administrators, owing to their lack of legal status or protection. Employers and *finca* administrators committing human rights abuses know that they are unlikely to be held accountable. Most irregular migrant workers are reluctant to turn to the authorities to enforce respect for their rights, and are generally fearful of drawing official attention to themselves and so risking deportation to Haiti. Rights in the workplace are virtually non-existent for most of them. For example, Haitian migrant workers are denied the right to organize legal trade unions and some work in hazardous conditions which pose a serious health risk. Haitian migrant workers and Dominicans from a *batey* near Mao told Amnesty International about their situation at the banana plantation where they work:

"The planes fumigate the [banana] fields while we are working. The plantation guards raid our homes accusing us of stealing from the company. But the company does not want us to complain to them. We don't have the right to complain to them about anything and the administrators don't speak with us anymore. We came here looking for a better life not for death. We can no longer accept to be mistreated like this at the work place. The administrators of the company treat us worse than dogs."

"Here in the finca they don't allow us to organize ourselves because if we do, that's a problem for them. We don't have any choice but to work there because there aren't other possibilities for women or men. We have no other choice."

"That's why they mistreat us, Haitians and Dominicans. All the workers here are mistreated because there is no other option than working for the banana plantation."

"If one of us opens his eyes and wants to complain, they [the finca administrators] don't mind sacking us because they say we are causing damage to the other workers. B. was working hard to have us organized but the company sacked him after 11 years working at the plantation and he did not receive any compensation."

Dominican and Haitian workers, Mao region, June 2006

Given this ever-present risk of dismissal and deportation, migrant workers often consider they have no choice but to accept poor working conditions and are less likely to seek to exercise their rights fully including their rights at the work place.

Haitian migrant workers live in precarious conditions, marginalized and in extreme poverty. Moreover, outside the *bateyes* they have to confront political and social attitudes that are generally hostile to them without the possibility of redress for the abuses suffered. Haitian migrant workers are subjected to different forms of discrimination and frequently face multiple discriminations. The most blatant of these are racism and xenophobia which sometimes explode into violence.

3.2 Discrimination, racism and xenophobia

"If you are black, with an identity card or without it, with a birth certificate or without, it is the same, it has no value... In the streets, with immigration officials, you don't have any rights."

A Dominican man of Haitian descent, June 2006

Racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights because of their colour, race, ethnicity, descent or national origin.(10) Racial discrimination persists in virtually every society, despite all the efforts around the world dedicated to combating racism and states' obligations under international treaties. The right to be free from racial discrimination is a fundamental principle of human rights law. Under international human rights law, governments are obliged to combat discrimination in all its forms. They have a responsibility to ensure that laws and institutions of the state address the root causes and consequences of discrimination, and this includes laws on nationality and migration.

"States have the obligation to respect and to ensure respect for the human rights of all persons under their respective jurisdictions, in the light of the principle of equality and non-discrimination, irrespective of whether such persons are nationals or foreigners."(11)

The International Convention on the Elimination of All Forms of Racial Discrimination commits states parties to change national laws and policies that create or perpetuate racial discrimination and to promote racial equality which allows the various ethnic groups to enjoy the same social development.

In the Dominican Republic, where racism persists even against black Dominicans, Haitian migrant workers face additional risks because they belong to an ethnic, national and linguistic minority. Following a visit to the Dominican Republic, the Independent Expert on the question of human rights and extreme poverty of the UN Commission on Human Rights highlighted the link between poverty and racism towards Haitian migrant workers and Dominicans of Haitian descent:

"Racism is a major ingredient of poverty in the Dominican Republic, sometimes among Dominicans themselves, but especially towards Haitians, persons of Haitian descent whose families have in some cases lived in the Dominican Republic for generations and Haitians who continue to arrive in the country. This situation serves the interests of Dominican entrepreneurs, who happily receive cheap Haitian labour in the knowledge that Haiti's stubborn poverty guarantees a steady flow of newcomers who drive down wages."(12)

The Dominican Republic, by ratifying the International Convention on the Elimination of all Forms of Racial Discrimination, has undertaken to protect people from discrimination by both private individuals and state officials. This protection extends to Haitian migrant workers irrespective of their migratory status. However, the Dominican authorities continue to deny that there is persistent discrimination in Dominican society and have failed to take positive action to prevent it. In 1999, the Committee on the Elimination of Racial Discrimination, which monitors states compliance with the International Convention on the Elimination of all Forms of Racial Discrimination, made the following comment on the Dominican Republic's submission:

"Concern is expressed at statements contained in the periodic report that no racial prejudice exists in the Dominican Republic and that the State party never perceived any need to condemn racial discrimination within the meaning of article 2 of the Convention, as no country can claim the total absence of racial discrimination in its territory or be confident that it will not appear in the future." (13)

On a similar note, in 2001, the Committee on the Rights of the Child expressed its concern "at the discrimination against children of Haitian origin born in the State party's territory or belonging to Haitian migrant families, especially their limited access to housing, education and health services, and notes in particular the lack of specifically targeted measures to address this problem. Furthermore, concern is expressed at the existing patterns of economic and social disparities, and at gender and racial discrimination."(14)

In the past few years, racist and xenophobic attacks against Haitian migrant workers and Dominicans of Haitian descent have been reported with worrying frequency. Acts of violence have taken place in border communities, from Montecristi in the north-west, to Elías Piña in the centre and Pedernales in the south-west, and have spread to other regions such as Santiago, Moca and to Higüey in the

far east of the country. According to reports, these random attacks have taken place in apparent reprisal for attacks against and killings of Dominican citizens which have been attributed to Haitians. Amnesty International has received reports in recent years of Dominican citizens armed with firearms, sharp instruments, baseball bats and rocks attacking the homes and property of people believed to be Haitian, often solely on the basis of the colour of their skin, and causing serious injuries and even death.

The following press reports give a sense of the nature and scale of these attacks. The response of the authorities in many cases to such outbursts of indiscriminate violence has been to hastily arrange mass collective expulsions of Haitian migrant workers, ostensibly to "protect" them from further mob violence. These expulsions in turn have given rise to further abuses and violations of the human rights of Haitian migrant workers and Dominican of Haitian descent.

"Dozens of Haitians are deported from Constanza after the murder of a minor attributed to a Haitian" (*Espacinsular*, 29 November 2006).

"Vigilante groups are created to keep Haitians at bay" (*El Caribe*, 1 February 2006).

"Haitians flee persecution in Moca" (*El Nacional*, 31 January 2006). The article read: "dwellers from Monte de la Jagua threatened to kill with clubs, stones or knives any Haitian they find in the area."

"In Monte de La Jagua, Haitians are not welcome" (*Hoy*, 30 January 2006)

"Seven Haitians injured and 27 homes destroyed", "Seven Haitians injured in revenge" (*Hoy*, 23 January 2006, *El Caribe*, 23 January 2006).

"Survivor narrates how Haitians were burned alive" (*El Nacional*, 25 August 2005)

"Haitians are deported to 'prevent lynchings' " (*El Caribe*, 8 June 2005)

"Two Haitians are killed and 40 injured" (*Listín Diario*, 7 June 2005)

"Jesusit condemns massive deportation of Haitians by the military" (*Listín Diario*, 14 May 2005)

"Homes destroyed and thousands of Haitians threatened with lynching in Monte Cristi" (*El Caribe*, 11 May 2005)

Many smaller scale racist or xenophobic attacks are not reported to the police because the victims fear expulsion or further abuses by the police. Although the authorities intervene in some cases to try to contain infuriated mobs and prevent further acts of violence, racist and xenophobic attacks are seldom investigated in a thorough and impartial manner and those responsible are rarely held accountable.

Victims of discrimination do not normally have access to formal procedures to report abuses. Many rely on the Non Governmental Organizations and individuals working for the promotion and protection of migrant workers' rights who themselves face intolerance and intimidation because of their work. In 2004, a survey on citizenship and democracy in the Dominican Republic found that more than 55 per cent of respondents did not support individuals and organizations defending the rights of Haitian migrants.(15) In rural areas the level of disapproval of this work reached 60.9 per cent.

3.3 Collective and mass expulsions and deportations

Every migrant worker is entitled to protection against arbitrary or collective expulsion. This right is guaranteed in Article 13 of the International Covenant on Civil and Political Rights and Article 22 of the American Convention on Human Rights to which the Dominican Republic is a state party. Any expulsion decision must be assessed on an individual basis and be subject to due process. Collective (or mass) expulsions are different from the deportation of a number of individuals at once. The latter is permissible provided each individual has gone through an individual procedure; the former is never permissible. In any case of mass expulsion there is a presumption that the expulsion is tainted with discrimination, arbitrariness, and therefore is inherently unlawful. It is inherently arbitrary because, among other things, it is impossible to tell whether legal residents and even Dominican nationals are among those expelled. Moreover its collective nature makes it virtually impossible for the state to provide the necessary procedural guarantees. Evidence shows that, even in instances where a mass expulsion is purportedly aimed at irregular migrants, legal residents or nationals, or both, are often caught up in such expulsions.

Collective expulsions also contravene the Protocol of understanding on the mechanisms of repatriation agreed by the Dominican and Haitian governments in December 1999. In signing the Protocol, the Dominican Republic undertook to improve its deportation mechanisms and made a number of specific commitments including:

- not to deport Haitians at night (between 6.00pm and 6.00am), during Saturday afternoons or on public holidays in either country;
- to avoid separating nuclear families during the process of repatriation;
- to allow those being deported to collect their belongings and keep their identity documents;
- to give to each person being deported a copy of their deportation order; and
- to give the Haitian authorities prior notice of deportations.

According to the information received by Amnesty International, Dominican military and immigration officials have not complied fully with these commitments in the majority of deportations. Haitian migrant workers who are rounded-up in the street by immigration officials are not given an opportunity to collect their personal belongings or any wages due to them.

The Dominican authorities have not contested the fact that these deportation operations were not carried out according to national and international standards. On the contrary, in a television interview on 11 October 2005, the Dominican Director of Immigration, Carlos Amarante Baret, admitted that on occasions "excesses" were committed during arrests and deportations.(16)

May 2005: mass and collective expulsion of Haitian migrant workers and Dominicans of Haitian descent

On 9 May 2005 in Hatillo Palma, in the north-western Montecristi Province, Dominican shopkeeper Maritza Núñez was killed and her husband Domingo Luzón injured during an attack allegedly carried out by two Haitians. Between 13 and 15 May, in the wake of the attack, members of the Dominican armed forces, accompanied by immigration officials, summarily deported more than 2,000 Haitians and Dominicans of Haitian descent living in the area. According to those expelled, military personnel entered their homes and places of work in order to round them up. The majority of those expelled were women and children. Some minors were deported without their parents; others were left behind when their parents were deported.

It was reported that the police and military denied those about to be expelled the right to challenge their expulsion, for example by presenting documents proving that they had a legal right to stay in the Dominican Republic either because they were Dominican nationals or because they had valid temporary migrant worker permits. Amnesty International was told that these documents were confiscated, destroyed or ignored by military and immigration officials during the expulsions. Among those deported were Haitians who had lived in the Dominican Republic for more than 30 years and who no longer had any ties with their country of origin. It was reported that none of those expelled was allowed to make a telephone call to seek legal representation to challenge the lawfulness of their deportation or contact relatives or friends. The criteria used to decide on these expulsions appears to have been overtly racist; that is based on the skin colour of the people deported and on the assumption that they were of Haitian origin or nationality.

Amnesty International has also received allegations that the deportations were carried out in an inhumane manner. Among those arbitrarily expelled were minors, pregnant women, women who had recently given birth and people over 60 years of age. According to testimonies, they were "piled up like animals" in trucks and buses and denied access to drinking water and food for several hours. There were also reports of personal possessions, including money, mobile telephones and even motorcycles, being stolen by Dominican officials.

The President of the Dominican Republic, Leonel Fernández Reyna, admitted publicly during a seminar on immigration policy on 23 June 2005 that collective expulsions of Haitians were carried out "in an abusive and inhuman way". He also affirmed that "historically, [the Dominican Republic] has lacked a migration policy towards Haiti which was just and humane", adding that "I myself feel offended when I see that what we traditionally do are mass deportations, that certainly do violate the human rights of Haitians, and we cannot allow our country's international image to be one where we are seen to violate the human rights of our neighbours in the Republic of Haiti." (17)

The collective nature of the deportation operations makes it very difficult for the government to provide the necessary procedural guarantees, including individual assessment, and so ascertain whether Dominican nationals and Haitian migrant workers legally entitled to remain in the country may be among those expelled. During the May 2005 deportations, according to reports, at least 50 Dominican nationals were arbitrarily expelled from their own country. In expelling Dominican nationals, the Dominican Republic is in breach of its international obligations, violating in particular Article 22(5) of the American Convention on Human Rights which provides that "no one can be expelled from the territory of the state of which he is a national."

CASE STUDY – Victim of mass and collective deportation

On 13 March 2005, Marcos* and his family were arbitrarily expelled by the Dominican authorities. At around 6am military servicemen accompanied by immigration officials arrived at batey Boca de Mao, in Valverde province in the north-west of the country and rounded up everyone who was Haitian or "looked" Haitian.

"When they [the military and immigration officials] came to my home and I showed them my Dominican identity card (cédula) they told me: 'Right now we don't want to know about it and right now you are all going to Haiti; legal or illegal, you are all going to Haiti.' Then the military officer took my identity card. The military took the cards of everybody and they sent us to Haiti, empty-handed, with nothing. They also took my motorcycle... From here [Boca de Mao], the truck left at around 7am. There were between 40 and 50 of us in the truck, including children and the elderly. The truck went first to the military base in Mao and came back here to pick some more. We arrived at the border (Dajabón) at around 10am... They sent the people without clothes or shoes."

Marcos and his family had to stay in Haiti for four days before they were able to return to their home in Boca de Mao.

Amnesty International interview, Boca de Mao, June 2006

* Not his real name

The International Covenant on Civil and Political Rights, while not expressly prohibiting the expulsion of nationals, does set out the right of entry, which is necessarily breached by such expulsions. Article 12(4) of this Covenant states that: "No one shall be arbitrarily deprived of the right to enter his own country". The Human Rights Committee stated in its General Comment No.27 that:

"The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one's own country... It also implies prohibition of enforced population transfers or mass expulsions to other countries... The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien... The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence." (18)

The lack of judicial oversight of mass and collective expulsions is among the most pressing concerns because it removes a key protection and puts migrants at greater risk of human rights violations such as arbitrary detention, discrimination, unfair administrative processes and ill-treatment. Deportation procedures should contain appropriate safeguards and conform to international human rights standards.

CASE STUDY - Ill-treatment during deportation

Evans*, a 25-year-old Haitian, has been living in the Dominican Republic in an irregular situation since 2001. He has been deported to Haiti on three occasions, the last time in August 2005.

"Migration caught me and sent me to Haina [a detention centre for deportees]. From Haina to the border town of Elias Piña, I was standing in the bus for five hours, handcuffed to the overhead handrail. They let us go at five o'clock in the morning, after spending the whole night in the bus. We didn't have any food or water. Women and children were on the bus too. The bus seats can fit up to three people but they [migration officers] forced four or five in the same seat, one on top of the other.

They didn't let us go out during the night. People had to relieve themselves in the bus. The guards took the space at the front of the bus and pushed us to the back. They put up to 120 people in the bus with a capacity of 60, and when someone didn't want to get in, they used sticks and pushed us in. When we arrived in Haiti, we were dying. There were pregnant women in the same bus as well.

Migration gave me a paper saying that I didn't have any family in the Dominican Republic and no home. I sell on the streets with a tricycle. I don't have any identity documents and am alone in the Dominican Republic.

I returned to the Dominican Republic through Jimaní with a buscón [trafficker] in December 2005. After crossing the border into the Dominican Republic, the buscón paid at the military checkpoints and they didn't check the bus.

I've been deported on three occasions. On the second one, in 2003, I stayed in the detention centre at Haina for two days without food or water before I was sent to Haiti."

Amnesty International interview, 16 June 2006

* Not his real name.

The 2004 General Migration Law (see below) contains a number of provisions which guarantee due process. At the time of writing, it was unclear what the effects of the 2004 Law would be in terms of due process as the regulations which would govern its implementation were awaiting approval by the President. However, despite the provisions of the new Law, deportation practices and procedures in the Dominican Republic remain harsh and in practice expulsions or deportations, even when decided on an individual basis, are carried out with such haste that individuals are not given the chance to contact family members, let alone to challenge the

expulsion order imposed on them.

Overcrowded buses transporting deportees is creating unsafe conditions which at times has resulted in serious injuries. On 25 September 2006, a bus carrying 81 Haitian migrant workers and seven Dominican migration officers plunged into a river on its way to the border town of Elias Piña, from where the 81 were to be deported to Haiti. Forty-six Haitians and all the migration officers were injured in the accident. Migrant workers who escaped without injuries or sustained only minor injuries were deported; the others required hospitalization.

CASE STUDY - Ill-treatment and arbitrary confiscation of identity documents during migration round-ups.

Eight-year-old Matilde* and five other children were rounded up by migration officers in Máximo Gómez Street in Santo Domingo at about 8.30pm on 4 January 2006. Matilde was allegedly hit twice by a migration officer, making her mouth bleed. This prompted Ariana Cuevas, a neighbour, to intervene. She was also detained. Matilde and Ariana Cuevas were sent to the General Directorate for Migration and then to a detention centre on the outskirts of Santo Domingo known as Vacacional de Haina where they spent the night. According to Ariana Cuevas, immigration officials during the arrest and at the centre used abusive and racist language and threatened them.

Matilde was released from detention the next day when a human rights defender brought proof of her Dominican nationality to the migration office. Ariana Cuevas was also released.

At the time of writing, Matilde's Dominican birth certificate, her only proof of identity and an essential document for getting access to formal education, had still not been returned by the General Direction for Migrations, despite repeated requests.

Amnesty International interview, 16 June 2006

* Not her real name.

3.4 The new migration law

In 2004, the Dominican Congress approved a new General Migration Law (Ley General para las Migraciones, No. 285-04). This contains a number of inconsistencies which have resulted in confusion over the different categories applicable to new migrants and hampered effective application of the law. Furthermore, some articles of the Law contain provisions which discriminate against migrant workers and their descendants.

In 2005, the constitutionality of the law was challenged by several Dominican human rights organizations.⁽¹⁹⁾ The petitioners argued that articles of the Law on Migration were contrary to provisions included in the Constitution and discriminated against Haitian migrant workers and Dominicans of Haitian descent. The basis of the petition were articles in the Law which seek to limit the scope of Article 11 of the Constitution by defining all "non-residents" as people "in transit", and imposing limitations on their right to Dominican nationality (Law on Migration, Article 36 par. 10). By conflating the two categories – people in transit and non-residents -- the new law has created considerable confusion.

Acting in its capacity as a constitutional court, the Supreme Court of Justice dismissed the petition and, in December 2005, ruled the law to be constitutional. The Supreme Court's ruling could have major legal repercussions in relation to the rights of migrants and the right to a nationality for Dominican children of Haitian descent. In fact, the Dominican government has asserted that in the light of the Supreme Court's ruling and the provisions of the Migration Law children born on Dominican soil of Haitian parents can no longer acquire Dominican nationality.

The Migration Law contains further provisions that clearly discriminate against non-Dominican nationals in general and migrant workers in particular. Article 22 of the Migration law provides for the recognition of the civil rights of non-nationals living in the country – including migrant workers in a regular situation – only where their country of nationality accords similar recognition to Dominican nationals living there. Thus respect of the rights of migrant workers is conditional on a reciprocal arrangement in another state. However, the Human Rights Committee clearly stated in its General Comment No.15 that "the rights set forth in the International Covenant on Civil and Political Rights apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness... [T]he general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens."⁽²⁰⁾

Contrary to what the Dominican Constitution states, Article 28 of the Migration Law contains discriminatory provisions in relation to the equal protection of the law. The Article states that non-resident women who give birth in the Dominican Republic must register the birth of their children at the embassy or consulate of the country of which they are nationals. However, if the father is Dominican, the children of a non-resident woman can be registered at the Civil Registry Office in the place of birth. In addition, this Article states that maternity clinics should issue a pink birth certificate to mothers who are not legal residents or who are unable to prove their migratory status; all other children receive white birth certificates. Children with pink birth certificates will not be able to register their births in order to obtain Dominican nationality. Thus they are denied the right to claim their nationality based on their place of birth, a right guaranteed by the Dominican Constitution.

4. Nationality matters

"The child shall be registered after birth and shall have the right to a name [and] the right to acquire a nationality..."

Convention on the Rights of the Child, Article 7.1⁽²¹⁾

The importance of nationality is that it entitles the individual on whom it is conferred to the protection of the state and to a variety of rights and obligations, such as the right to participate in elections, to vote and to stand for election. Nationality is also a fundamental human right enshrined in international human rights instruments.⁽²²⁾

In the Dominican Republic, the right to a nationality is provided for by Article 11 of the Constitution which defines a Dominican national as any individual born on Dominican territory with "the exception of the legitimate children of foreign diplomats resident in the country or foreigners who are in transit". Furthermore, Article 9 of the Civil Code stipulates: "Dominicans are: First – All persons who have been born or will be born on the territory of the Republic, whatsoever the nationality of their parents."

All states have jurisdiction in determining who has the right to be a national and the conditions for acquiring, losing and retaining nationality. However, this authority is limited by the obligation to ensure the full protection of human rights without discrimination.⁽²³⁾

In September 2005, the Inter-American Court of Human Rights handed down a landmark decision in the case *The Yean and Bosico children v the Dominican Republic*. The Court found that in preventing the two children from obtaining their birth certificates, the Dominican Republic violated their right to nationality, the right to judicial personality, the rights of the child, and the right to equal protection before the law.⁽²⁴⁾

The Dominican state had taken the position and implemented policies whereby children of Haitian origin born in the Dominican Republic would not be Dominican nationals because their parents are Haitian migrant workers and are considered to be 'in transit' despite the fact that they have been living in the country for several years, even decades. Article 36⁽¹⁰⁾ of Migration Law 284-05 tries

to legitimize this practice by limiting the application of the Constitutional provisions with regard to nationality (Article 11 of the Constitution).

The Civil Chamber of the Appeals Court of the National District stated in 2003 that:

"It is not possible to equate the situation of a foreigner's illegality to the notion of transit, because they are different concepts; also, in neither the regulations for the application of the Migration Law nor the report issued by the [Inter-American] Commission on Human Rights [on the Situation of Human Rights in the Dominican Republic in 1999], is the condition of legality established as a requirement for having the right to the nationality of the place of birth... that, in the instant case, there is no possibility that the parents of the children who are applying for their birth to be registered can be considered in transit because, from the documents in the case file, it is clear that they have lived in the country for several years... [and] that, although it is true that the parents of the child live in the country illegally, it is no less true that this situation of illegality cannot in any way affect the children, who can benefit from Dominican nationality merely by proving that they were born on Dominican territory, and that their parents are not diplomats in the country and are not in transit in it."

Judgement No.453 of the Civil Chamber of the Appeals Court of the National District, 16 October 2003

In 2001 the UN Committee on the Rights of the Child expressed its deep concern "at the discrimination against children of Haitian origin born in the territory [of the Dominican Republic] or belonging to Haitian migrant families, especially their limited access to housing, education and health services, and note[d] in particular the lack of specifically targeted measures to address this problem." In relation to registering births, the Committee, indicated that "in particular, concern [was] expressed about the situation of children of Haitian origin or belonging to Haitian migrant families whose right to birth registration has been denied in the State... [and, as a] result of this policy, those children have not been able to enjoy fully their rights, such as to access to health care and education."(25)

The right to a nationality is enshrined in several international human rights instruments. The Universal Declaration of Human Rights stipulates in Article 15 that "everyone has the right to nationality" and that "no one shall be deprived of his nationality nor denied the right to change his nationality". Although the Universal Declaration is not binding on states, other international and regional human rights instruments further guarantee the right to a nationality and impose an obligation on state parties to these conventions to protect the right to a nationality.

Article 24 of the International Covenant on Civil and Political Rights imposes on the Dominican state a legal obligation to protect the right to a nationality for every child.

Article 7 of the Convention on the Rights of the Child stipulates that "[t]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents". It also states that "State parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would be otherwise stateless."

Article 20 of the American Convention on Human Rights states: "Every person has the right to a nationality. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality. No one shall be arbitrarily deprived of his nationality or of the right to change it".

The Dominican authorities are clearly in breach of international human rights law which requires them to ensure that all children born in the Dominican Republic are accorded equal rights and particularly the right to a nationality, without discrimination based on their parents nationality or origin.

4.1 Obtaining a birth certificate

One of the major challenges that Dominican children of Haitian descent face in gaining Dominican nationality is obtaining a birth certificate from a Civil Registry Office.

The Central Electoral Board is the administrative body responsible for recording registrations of births and establishing registration requirements. The registration itself takes place at one of the countries 158 Civil Registry Offices or one of 30 authorized hospitals and maternity clinics. A survey conducted in 2002 showed that nearly 22 per cent of children in the Dominican Republic under four and 6.1 per cent of children aged between 10 and 14 did not have a birth certificate. In general, 13 per cent of minors under 15 do not have a birth certificate.(26) The number of unregistered births of Dominicans in general is of great concern but is a particularly acute problem for Dominicans of Haitian descent.

Births can be registered in two ways. The first requires registration within 60 days of birth. The second allows for the late registration of births (after the 60-day limit). In each case, parents wishing to register the birth of their child have to provide several documents. Most Haitian migrant workers and Dominicans of Haitian descent have no option but to use the late registration process because they are seldom allowed to register the birth of their children before the 60-day limit.

The registration requirements in the case of late registration of births vary according to the age of the applicant. For instance, the requirements in force at the time of writing for the late declaration of birth for those over 16 years of age were: (27)

- (1) Certification of birth from the clinic or hospital where the child to be registered was born, issued by the doctor, clinic or hospital, midwife or auxiliary mayor.
- (2) Current identity cards of the parents, or of the mother if the father is not known or does not recognize the child; or of the person making the declaration. If one or both parents are deceased, death certificates must be presented.
- (3) Recent marriage certificate of the parents of the person to be registered, if they have been married;
- (4) Certification of the Registry Offices of the Municipality or National District where the person to be declared was born showing that the latter has not been registered before.
- (5) Baptism certificate with birth certification.
- (6) Two photographs of the person to be registered.

CASE STUDY - Denial of the right to a nationality

Marina* was born in Jacmel, Haiti. Since 1985 she has lived in the Dominican Republic, where she has given birth to three children. For most of her time in the Dominican Republic Marina had an immigration visa. However, she eventually obtained a provisional residence and an identity card for foreigners. She has been fighting for years to secure Dominican nationality for her children by registering them at a Civil Registry Office in Santo Domingo. She has had to comply with three different sets of requirements just to give a legal name to her children.

Marina succeeded in registering two of her children, Raúl* and Sofia* who are now 18 and 16 years old respectively. However, Juan* has been prevented from registering his birth on the grounds that his mother was Haitian and therefore must become a permanent resident of the Dominican Republic to proceed with the registration of his birth.

Marina has been trying now for more than four years to obtain a birth certificate for Juan so the he can continue his education and have the opportunity to work legally in the country where he was born. Juan was in his first year in higher education but was asked to stop attending classes until he could present proof of his identity, namely his birth certificate. Amnesty International interview, June 2006

* Not their real names.

Civil Registry Offices do not apply these requirements consistently. As a result, it is not uncommon to find that some children in the same family have been registered while others have not. Amnesty International's research shows that in districts where there are large numbers of Haitian migrant workers or Dominicans of Haitian descent, the Civil Registry Office requests additional documents, not required in law.

"The difficulties arise when you go to register a child [at the Civil Registry Office]. This woman, for example, she had her documents, but they were suspicious 'You have a Dominican identity card, but, aren't you Haitian?' They started to create problems and this woman had her Dominican identity card, her birth certificate. Everything was legal and they were hassling her. Purely because of her physical appearance and her difficulty in speaking Spanish, they were suspicious and said 'this cédula is false', 'you bought this birth certificate'. Imagine the problem that might arise for a woman who doesn't have a cédula... I go very often to the Civil Registry Office [accompanying parents]. When we go there, I am afraid they are going to present obstacles. It never fails to happen: 'Do you have your passport? Your wife has her passport, her visa? No? Then go away!'... The truth is that the reception is very bad, very bad. In some Registry Offices the treatment is slightly better, but some are terrible. When a black woman goes there they dismiss her."

A nun working with migrant workers and Dominicans of Haitian descent in Santo Domingo, 16 June 2006

Haitian migrant parents and Dominican parents of Haitian descent often face discriminatory practices at the Civil Registry Offices effectively preventing them from registering the birth of their children. Suspicion regarding the authenticity of documents presented for the registration of births, use of derogatory language and dismissive attitudes are added obstacles that most Haitian parents, or parents perceived to be Haitian, have to overcome in order to ensure the human rights of their children, including the right to a name and the right to a nationality.

CASE STUDY

"I have a daughter who is one year and 7 months old. During my pregnancy I had my medical check-ups at Altigracia Hospital [Santo Domingo] and I always used the name my parents gave me at birth. But because I wanted to study and had to pass national exams, I had to pay a lawyer R\$3,000 (US\$90) so he could get me a Dominican birth certificate because without that document I wouldn't be able to sit the exams.

My mistake was that when I went to the maternity clinic to give birth I didn't use the name on my Dominican birth certificate but my real name, the name on my Haitian birth certificate. Later on, the doctors told me that I wouldn't be able to obtain a birth certificate for my daughter unless I registered under the name on my Dominican birth certificate. I was told that I had to pay R\$700 (US\$21) to change the names at the maternity clinic, regularize my documents and then register my daughter's birth. Furthermore, with my current birth certificate I won't be able to obtain a Dominican identity card, so I have to request a new birth certificate. When I sent my documents back to Barahona [the main Civil Registry Office in the district where Rachel* was born], in order to get a new birth certificate for the purpose of obtaining an identity card, they asked for me R\$1,500 (US\$45) to process it."

Rachel* was born in a batey in the Barahona region in the south-west. A lawyer "bought her" a father and mother with Dominican identity cards so she would be able to obtain a Dominican identity card and have "legal status" in the country, although under another identity. She is 19 years old and has carried out all her studies under a name that is not hers. Amnesty International interview, Santo Domingo, June 2006

* Not her real name

"[To declare] the children that were born at home, you have to go to the mayor's office. You have to pay something to the mayor and you have to bring three witnesses testifying that the child was born at home on a given date and time. The mayor gives you a paper, you bring it to another place and have it signed and then you can go to the Civil Registry Office. But there, they tell you 'Come back tomorrow, come back the day after tomorrow'. Now I have two of my children to register and I've been striving for two months to have them registered. When I go on a Monday, they [the officials] tell me to come on Tuesday. I go on Tuesday, then, it's on Wednesday, then Thursday and so on until the following week. On Monday it starts all over again. You have to pay transport every time so I have to spend the whole day without eating because the office is far away. At the mayor's office, you don't have difficulties obtaining the paper but at the Civil Registry Office registering the birth it is very difficult".

A Dominican man of Haitian origin living in Santo Domingo

The birth certificate is the legal document that identifies a person and determines the juridical and political connection with the Dominican State; it is the official document stating Dominican nationality. A person without a birth certificate is situated outside the State's juridical system and is being denied his or her rights. The right to juridical personality is enshrined in the Americas Convention on Human Rights (Article 3) and grants individuals recognition before the law and, as such, it is a fundamental condition for the enjoyment of all the basic freedoms. Without birth certificates Dominicans of Haitian descent are unable to secure employment, have access to public services including education and health care, participate in the political process, move about freely, and have access to the judicial system.

5. Conclusion and recommendations

5.1 Conclusion

Haitian migrant workers and Dominicans of Haitian descent are at risk of a range of human rights violations in the Dominican Republic. The factors which give rise to these violations are varied, but all are rooted in widespread and persistent racism, xenophobia and discrimination.

Haitian migrant workers are at risk of being detained and deported to Haiti as part of collective and mass expulsions without proper judicial review. Amnesty International's research shows that these expulsions deprive Haitian deportees of a series of fundamental human rights, including the right to equal protection before the law, to due process of law in reviewing the expulsion order, and to freedom from discrimination.

Round-ups of suspected irregular migrants are often driven by discrimination on grounds of ethnic origin, nationality and language. As a result, Haitian migrant workers who are in the country legally as well as Dominican nationals who are believed to be Haitian because of their skin colour, face detention and expulsion. Inadequate or non-existent mechanisms for reviewing deportation orders mean that

they are unable to challenge these decisions.

Migration control in the Dominican Republic falls far short of the safeguards established in the General Migration Law, the Dominican Constitution and international human rights law. Concerns over the collective and mass expulsions of Haitian migrant workers and the abuses that accompany them will remain a source of concern until the Dominican government takes decisive action to bring its migration policies and practices into line with its international obligations.

Children born in the Dominican Republic to Haitian parents are frequently denied their right to a nationality and are *de facto* stateless. Despite the ruling of the Inter-American Court of Human Rights condemning the Dominican Republic's treatment of children of Haitian descent, the Dominican authorities continue to deny Dominican nationality to children born in the country whose parents are undocumented or irregular migrants. This implies a violation of their social, economic, civil and political rights from birth, which breaches not only international and regional obligations but also the Dominican Constitution.

Current policies regarding migration and the granting of nationality undermine the right of thousands of Haitian migrants and Dominicans of Haitian descent to enjoy a whole range of human rights. They also help to reinforce xenophobic and discriminatory attitudes. The following recommendations set out practical steps which the Dominican authorities must take to fulfil their obligations to promote and protect human rights and to put an end to the violations against Haitians and Dominicans of Haitian descent outlined in this report.

5.2 Recommendations

Amnesty International urges the Dominican authorities to demonstrate a clear political will and commitment to protect and promote the human rights of Haitians migrants and Dominicans of Haitian descent. In particular the Dominican government should take the following steps:

Deportations, mass and collective expulsions

- Refrain from any collective and mass expulsions of Haitian migrant workers and ensure that measures are taken to guarantee that the human rights of both documented and undocumented migrant workers are respected in any expulsion process.
- Stop summary deportations and ensure that all those whose expulsion is being considered have their cases individually examined in a fair and transparent procedure where they can challenge the expulsion and to have their cases reviewed.
- Take measures to ensure that arrests and deportations by immigration officials and military personnel are conducted with due respect for human rights and the rule of law and that all complaints of abuse are promptly, independently and impartially investigated.
- Ensure that all prosecutions of undocumented migrants are conducted with full respect for international human rights law -- in particular the right to a fair trial -- including taking specific measures to ensure that defendants are brought promptly before a judicial or similar authority and that they are able to communicate with family members.
- Ensure that detention measures are in conformity with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and particularly for children, in conformity with the UN Rules for the Protection of Juveniles Deprived of their Liberty. Adequate detention conditions should be provided at all times including prior to and during any individual expulsion process.
- Take measures to ensure that any child or woman detained in a deportation process is granted appropriate protection as required by the UN Convention on the Rights of the Child, and the UN Convention on Elimination of All Forms of Discrimination Against Women.

Discrimination, racist and xenophobic attacks against Haitian migrant workers

- Guarantee the right of Haitian migrant workers and Dominicans of Haitian descent to be free of all forms of discrimination, as enshrined in international standards, paying a particular attention to women and children.
- Ensure that discrimination, racist and xenophobic attacks are not tolerated in any circumstances, that such incidents are thoroughly and impartially investigated and those responsible are brought to justice.
- Establish mechanisms to inform Haitian migrant workers and their descendants of their rights including efficient and accessible mechanisms to lodge complaints when they are subjected to discrimination or to racist and xenophobic attacks.
- Guarantee access to effective remedies, including equal access to national courts and the judicial system, for migrant workers and Dominicans of Haitian descent who have been subject to discriminatory practices or to racist and xenophobic attacks.
- Protect and promote the economic, social and cultural rights of Haitian migrant workers and Dominicans of Haitian descent, including the right to an adequate standard of living. In particular, take steps to end unlawful and discriminatory practices that deny non-citizens access to employment, property ownership, and public services including medical facilities and education.
- Protect and promote the human and labour rights of all Haitian migrant workers and Dominicans of Haitian descent in the workplace, irrespective of their migratory status.

Nationality and registration of births

- In accordance with Article 11 of the Dominican Constitution, recognize the right of all Dominican-born children without discrimination on any grounds, to Dominican nationality.
- Revise the current migration legislation, policies and practices to ensure that they do not contain discriminatory provisions in relation to the right to Dominican nationality for Dominican-born children of Haitian parents and bring it in line with international human rights law.
- End discriminatory practices at the Civil Registry Offices against Dominicans of Haitian descent and hold officials who discriminate against children of Haitian descent to account.
- Comply in full with the findings of the Inter-American Court of Human Rights in the case *Yean and Bosico v the Dominican Republic*, in particular:

- a) Guarantee the non-repetition of discriminatory practices during the registration of births of Dominican-born children of Haitian parents;
- b) Adopt legislative, administrative and other measures needed to regulate the procedure and requirements for acquiring Dominican nationality through the late declaration of birth and ensure that this procedure is simple, accessible and reasonable;
- c) Ensure that a remedy is implemented for cases in which the request for late registration of births is rejected and that unsuccessful applicants are informed of this remedy.

- Ensure the full implementation of the provisions of the UN Convention on the Rights of the Child, without discrimination of any kind, with regard to all minors present on Dominican territory;
- Ensure that the best interests of migrant children and descendants of migrants is the primary consideration in all actions concerning them during every phase of their presence in the Dominican Republic, regardless of their legal status or that of their parents.

General recommendations

- Ratify the UN International Convention on the Protection of All Migrant Workers and Members of their Families; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the 1961 Convention on the Reduction of Statelessness.
- Submit, as soon as possible, all overdue reports to UN treaty bodies, including:
 - The fifth periodic report to the Human Rights Committee;
 - The sixth periodic report to the Committee on the Elimination of Discrimination Against Women;
 - The third and fourth periodic reports to the Committee on Economic, Social and Cultural Rights;
 - The second periodic report to the Committee on the Rights of the Child.

(1) The UN Development Programme's National Report on Human Development Dominican Republic 2005 (Informe Nacional de desarrollo humano República Dominicana 2005) considers that 416,000 Haitians living in the Dominican Republic would be a moderate estimate for 2003.

(2) Bridget Wooding and Richard Moseley-Williams, *Needed but unwanted: Haitian immigrants and their descendants in the Dominican Republic*, p38.

(3) UNDP, *Informe Nacional de Desarrollo Humano República Dominicana 2005*.

(4) During the review of the Dominican Republic's second periodic report at the 29th Meeting of the Committee on Economic, Social and Cultural Rights, the representative from the Dominican Republic stated: "The Dominican Republic was subjugated for 22 years; now it has no desire to repeat the experience through a peaceful invasion with external support"; E/C.12/1997/SR.29. (NFT: "La República Dominicana ha estado sojuzgada durante 22 años; ahora no desea repetir la experiencia a través de una invasión pacífica apoyada desde el exterior.") Haitian troops occupied the Dominican Republic from 1822 to 1844. The Dominican Republic obtained its independence first from Spain in 1821 and then finally from Haiti in 1844.

(5) Article 1, General Comment No.18 on Non-discrimination, Human Rights Committee, 10 November 1989.

(6) Organización Internacional para las Migraciones (OIM), Facultad Latinoamericana de Ciencias Sociales (FLACSO), *Encuesta sobre inmigrantes haitianos en la República Dominicana: Resumen de Resultados*, Santo Domingo, 2004.

(7) The Dominican Republic has not yet ratified the Migrant Workers Convention. It has however ratified the following human rights instruments: the ICCPR and its (first) Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child. Furthermore, within the Inter-American system, it has ratified the American Convention on Human Rights ("Pact of San José") and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention Belém do Pará").

(8) Inter-American Court of Human Rights, Advisory Opinion OC-18/03 on the Juridical Condition and Rights of Undocumented Migrants, 17 September 2003, para134.

(9) UNDP, *Informe Nacional de Desarrollo Humano República Dominicana 2005*.

(10) Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

(11) Inter-American Court of Human Rights, Advisory Opinion OC-18.03. *Juridical Condition and Rights of the Undocumented Migrants*. Concluding Opinion of Judge A. A. Cançado Trindade, para33.

(12) Economic and Social Council, *Human Rights and Extreme Poverty*, Report submitted by AM Lizin, Independent Expert on the question of human rights and extreme poverty, Mission to the Dominican Republic, (E/CN.4/2003/52/Add.1), 16 January 2003, para8.

(13) Concluding observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic, (CERD/C/304/Add.74) 26 August 1999, para5. On 5 December 2006, the Dominican Republic submitted jointly to the Committee its 9th, 10th, 11th, and 12th periodical reports which will be considered at the Committee's 72nd session in early 2008.

(14) Concluding Observations of the Committee on the Rights of the Child: Dominican Republic (CRC/C/15/Add.150), 21 February 2001, para22.

(15) *Ciudadanía y Democracia en la República Dominicana: Encuesta de Opinión Pública Nacional*, República Dominicana 2004, Santo Domingo: Fundación Global Democracia y Desarrollo (FUNGLODE)/Instituto Nacional de Opinión Pública (INOP), 2006.

(16) EFE, 11 October 2005.

(17) Leonel Fernández, "La comunidad internacional debe ayudar a Haití", Seminario presentación de prioridades de la Zona fronteriza de la República Dominicana, Revista Dominicana de Política exterior, Año I, Núm. 1, Noviembre 2005-Enero 2006, p69. Also reported in Listín Diario, "Fernández admite maltratos en repatriaciones haitianos", 24 June 2005.

(18) Human Rights Committee, General Comment No.27: Freedom of movement (Art.12), (CCPR/C/21/Rev.1/Add.9), 2 November 1999, paras19 and 20.

(19) According to Article 46 of the Dominican Constitution, a law that violates the Constitution is automatically invalidated. The Supreme Court is the only institution with the competence to assess the unconstitutionality of the laws adopted by the national Congress and its rulings in these matters cannot be appealed.

(20) Human Rights Committee, General Comment No.15: The position of aliens under the Covenant, 11 April 1986, CCPR General Comment No. 15, paras1-2.

(21) The Dominican state ratified without reservations the Convention on the Rights of the Child on 11 July 1991.

(22) Universal Declaration of Human Rights, Article 15; ICCPR, Article 24(3); Convention on the Rights of the Child, Article 7(1); Migrant Workers Convention, Article 29; the Convention on the Reduction of Statelessness, Article 1(1); and American Convention on Human Rights, Article 20.

(23) ICCPR, Article 26. Another principle limiting the latitude of states in determining who are its nationals is the obligation to avoid statelessness. This obligation is enshrined in the 1961 Convention on the Reduction of Statelessness, which the Dominican Republic has not yet ratified but has signed.

(24) Inter-American Court of Human Rights, Case of the Yean and Bosico Children v. the Dominican Republic, Judgment, 8 September 2005. Series C No. 130.

(25) Concluding Observations of the Committee on the Rights of the Child. The Dominican Republic, (CRC/C/15/Add.150), 21 February 2001, paras22 and 26.

(26) Visión Mundial, Estudio de línea de base sobre el sub-registro de nacimientos de niños y niñas en las comunidades acompañadas por los Proyectos de Desarrollo de Áreas de Visión Mundial, Santo Domingo, RD, August 2004.

(27) Junta Central Electoral, Resolución sobre declaraciones tardías de personas mayores de dieciséis años de edad, Ley no.07/2003.