

**PROGRESSIO**

**International  
Migration Laws and  
Conventions**

Application to the status of Haitians  
in the Dominican Republic and  
Dominicans of Haitian origin

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The Report was compiled in December 2008. In March 2011 the Report was updated to include:

- case studies in migration between: Haiti and the US; Mexico and the US; and Nicaragua and Costa Rica; and
- an update on the situation facing Haitian migrants and Dominicans of Haitian origin in the Dominican Republic following the Haitian earthquake of January 2010.

The updates in March 2011 did not include a revision of other parts of this report to assess changes in the law or other relevant facts, in particular the analysis in Appendix 1 (see separate document) regarding domestic laws and the rights of migrants in certain jurisdictions.

## 1. Introduction

In the 21<sup>st</sup> century, 3 per cent of the world population is an international migrant. The number of people who have settled down in a country other than their own is estimated at 175 million worldwide. In response to these global patterns of immigration, nearly all countries implement domestic migration laws, to regulate and manage the sending, transit and hosting of migrants. There also exists a comprehensive and well-structured legal framework under international law, which seeks to provide for and protect the rights of migrants across the world.

Haitians have been flocking to the Dominican Republic since the 1920s, mainly to work on the sugar cane plantations, and it is estimated that there are now between 500,000 and 1,000,000 Haitians living in the Dominican Republic. Haitians and Dominicans of Haitian descent may suffer from wide-ranging problems whilst residing in the Dominican Republic. The plight of the Haitian migrant worker<sup>1</sup> has been widely recorded and was the subject of a 2007 report by Amnesty International. The report called on the Dominican authorities to protect and promote the human rights of Haitian migrants and Dominicans of Haitian descent by putting an end to arbitrary expulsions of Haitian migrants and discriminatory policies that prevent Dominicans of Haitian descent from obtaining Dominican nationality.

The aim of this research project was to undertake multi-jurisdictional legal research relating to domestic and international migration laws and conventions and to apply this to the situation of Haitians, and Dominicans of Haitian descent, living in the Dominican Republic.

## PART 1: INTERNATIONAL APPROACH TO MIGRATION ISSUES AND SUGGESTED SOLUTIONS

### 1. Introduction

Haitians facing extreme poverty migrate seeking better socio-economic conditions due to the lack of opportunities available in their own country. Historically, Haitian migrant labour was widely utilised in the sugarcane industry in the neighbouring Dominican Republic - currently, Haitian labour is required as a result of labour shortages and the reluctance of Dominican workers to perform physically demanding or dangerous jobs in the agricultural and construction sectors or in domestic services.

The main reason for migration of the Haitians into the Dominican Republic is economic. The Dominican Republic has seen greater development than Haiti. According to the Human Development Report for 2010 of the United Nations Development Programme, the Human Development Index (“HDI”)<sup>2</sup> for Dominican Republic is 0.663, ranking 88 out of 169 countries. The HDI for Haiti for the same period is 0.404, ranking 145 out of 169 countries. The table below captures the various indices used to compare the HDI between the Dominican Republic, Haiti and other countries.

Name of the country	Rank (out of 169)	HDI value	Life expectancy at birth (years)	GNI per capital (PPP US\$)
Zimbabwe	169	0.140	47.0	176.2
Haiti	145	0.404	61.7	949
Dominican Republic	88	0.663	72.8	8,272.6
United Kingdom	26	0.849	79.8	35,087.2
United States	4	0.902	79.6	47,093.9
Norway	1	0.938	81.0	58,809.5

The Dominican Republic receives both legal and illegal Haitian migrants. A large number of the legal migrants who are authorised to enter, stay and engage in paid labour (“regular migrants”) and enter the Dominican Republic with a Haitian passport and Dominican tourist visa. Upon integration into the labour market, they overstay their visa and become irregular.

Many other migrant workers enter the country without legal authorisation and become irregular. Only an estimated 5% of the Haitian migrant workers in the Dominican Republic have valid identification documents, despite long and continued residence in the state. The absence of official recognition is then passed on to the children of such workers who are denied fundamental rights, such as the right to nationality of the country of birth, access to health care, and access to education.

Haitian migrant workers in the Dominican Republic do not enjoy the full protection of human rights laws, may be victims of abuse including “discriminatory treatment, massive expulsions, exploitation, deplorable living conditions and the failure to recognize their labour rights”<sup>3</sup>, coupled with the constant danger that Dominican society may reject them.

The main challenges facing the Dominican Republic as the host/receiving state include economic pressures, security considerations, migration management objectives, racial prejudices and a reluctance to admit those who are perceived to be unable to integrate, resulting in hostility towards Haitian migrants.

This Report presents some provisions of international and national legal instruments and a comparison of best practices of states in similar situations. It recognizes the fact that reform of migration policy is possible only upon consideration of the challenges faced by both the originating and receiving states.

As either or both of the Dominican Republic or Haiti have not ratified many of the international human rights instruments mentioned herein, important principles discussed in this report could be useful in facilitating the information required to stimulate reforms in the Dominican immigration policy, which would contribute to improve the position of Haitian immigrants and the Dominicans of Haitian origin in the Dominican Republic (hereinafter referred to as the “Dominican Haitians”).

## 2. **International Conventions**

A convention, or covenant, is a legally binding agreement between countries, which requires a state that has ratified it to incorporate the convention in its domestic laws. Ratification represents a state’s formal agreement to adopt the norms contained in a convention. States can also unilaterally accede to a convention, which has entered into force - accession generally has the same legal effect as ratification. Declarations and recommendations are normative, in the sense that they set human rights standards that should be respected by all states.

### **AIM 1: TO REDUCE THE ORGANIZED LARGE SCALE IRREGULAR MOVEMENT OF MIGRANTS TO THE DOMINICAN REPUBLIC**

#### 1. **Irregular migration can be reduced in a two step process: effective border control supported by the co-ordination of policies between states in relation to facilitating the return of irregular migrants to their states of origin**

The rights of migrant workers are protected by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (the “International Migration Convention”) (Articles 8–35)<sup>4</sup>. A migrant worker is a person engaged in a remunerated activity in a state of which they are not a national, and without any legal right to be there. The definition covers documented and undocumented migrants. The protection under the Convention extends to ‘members of the family’ i.e. persons married to migrant workers or having with them an equivalent relationship, as well as their children and other dependents recognized as family members by applicable legislation.

The Preamble to the Migration Convention recognizes the need to prevent clandestine movements and trafficking in migrant workers, whilst also protecting their fundamental rights. Vice President Fratini, Commissioner of the European Commission responsible for Freedom, Security and Justice, explains that “...by being tough on illegal immigration we prevent immigrants from being exploited and we remove the key pull factor for illegal immigration”.<sup>5</sup>

The Migration Convention recognises that the problems involved in migration are more serious in the case of irregular migration. It proposes that states concerned should collaborate in taking appropriate actions against the dissemination of misleading information relating to migration, to detect and eradicate illegal or clandestine movements

of migrant workers and to impose sanctions on those who are responsible for organizing and operating such movements such as employers of illegal migrant workers (Article 68).

To facilitate effective border control, the European Commission advocates the use of biometric technology, including the mandatory collection of passenger name records (PNR) and biometrics (fingerprints, facial scans etc) in visas and passports. The policy recognizes that the European Union in combating illegal immigration shall respect data protection obligations and the protection of fundamental rights.<sup>6</sup> The main advantage of such measures is secure documents, which are helpful in identifying persons trafficked for prostitution, pornography and slavery.<sup>7</sup>

The United Kingdom, through its e-borders programme, has adopted an integrated technology approach to capturing the data of passengers entering or leaving the UK. The programme obliges air, sea and rail carriers operating internationally to and from the UK to collect advance passenger information. The Immigration, Asylum and Nationality Act 2006 provides for the implementation of the programme (Sections 36 and 37). The enhanced powers of border authorities under the programme have been criticized as the programme generates profiles of 'high-risk' individuals. An individual whose identity is not recorded or who has a false identity may circumvent the checks. The process may also constitute a breach of privacy and data protection laws as biometric and personal data is linked and stored on a central database, the security of which may be compromised.

## 2. **Encouraging effective partnerships between state parties and organizations to allow for legitimate channels of migration and for return arrangements to facilitate the safe and dignified return of irregular migrants**

### 2.1 Promoting legal migration in recognition of the basic human right of free movement of people

The ICCPR guarantees every person the right to liberty of movement and the freedom to choose their residence (Article 12). The right to freedom of movement and residence within the border of the state and the right to leave any country and to return to one's country is guaranteed by Articles 5 of the Race Convention, and to parents and children under Article 10 of the CRC. Article 39 of the Migration Convention guarantees liberty of movement to migrant workers and their families.

Freedom of movement is one of the four basic freedoms of the European Union applicable throughout the European Economic Area.<sup>8</sup> The Treaty establishing the European Economic Community of 1957 imposed provisions on members of the European community recognising freedom of movement for workers, entailing the abolition of discrimination based on nationality as regards employment, remuneration and work and employment conditions, and the right, subject to conditions justified on the grounds of public policy, public security or public health, to accept offers of employment and to move within members states for this purpose. The right is also granted to their family members.

Having non-discriminatory immigration control is an international obligation on states. Though the requirement that nationals of member states be treated equally with nationals of host states in respect of pay and employment conditions may have added to the cost of engaging and employing community labour (and encouraged European employers to seek labour elsewhere),<sup>9</sup> it has systematized the movement of workers across state borders.<sup>10</sup>

## 2.2 Encouraging information exchange between the host and destination states to reduce irregular migration

Improved information exchange between the host state, receiving states and other involved parties are vital tools in reducing illegal migration. The European Union promotes the use of networks such as ICONet, a web based network for exchanging strategic, tactical and operational information on illegal migration. There are also networks of immigration liaison officers of member states, and Europol.<sup>11</sup> Data exchange facilitates an assessment of enforcement policies, their financial implications and best practice.

## 3. No forced expulsion

International law does not prohibit a non-national from entering and remaining in a state, or the right of a state to formulate laws concerning the entry of non-nationals and the terms of their stay (or establishing differences between nationals and non-nationals). However, it does provide that such laws shall not be incompatible with the international obligations of that state (including human rights obligations), and that they should establish a clear, simple procedure for returning migrants to their state of origin.<sup>12</sup>

Article 7 of the UN Declaration on Non-Nationals provides a safeguard against expulsion of a lawfully residing non-national from the territory of a state pursuant to a decision reached in accordance with law. The UN Declaration (which only has persuasive value)<sup>13</sup> also provides that such non-national shall, except where compelling reasons of national security otherwise require, be allowed to submit reasons why they should not be expelled, have representation and have the case reviewed before the competent authority.

An immigration and asylum appeal before state authorities is followed by a human rights decision in respect of each such claim, generally for parties entitled to the protection of the rights guaranteed by the European Convention on Human Rights (the "ECHR"). In *R v. Razgar*<sup>14</sup>, the House of Lords in the United Kingdom held that where pursuant to an immigration decision by the Secretary of State the claimant's return would result in a violation of his rights under the ECHR, the Secretary of State could not decide in such a manner.<sup>15</sup> ECHR protection was applied to immigrants wishing to avoid return to countries where they face difficulties caused not by deliberate actions of state or non-state actors, but even in conditions where considerations of family connections, health or want of resources present a humanitarian objection to removal from the host country.

Article 1(1) of the American Convention on Human Rights ("ACHR") imposes a duty on the state to respect the rights and freedoms recognized in the Convention, and to ensure to all persons subject to their jurisdiction the exercise of those rights and freedoms, without discrimination for reasons of race. Articles 3 and 20 guarantee the right to judicial personality and nationality and Article 22 guarantees freedom of movement and residence.

The Inter American Commission on Human Rights in its visits to the Dominican Republic (1991 and 1997) reported that Haitians are subject to individual and collective expulsion on grounds of race, nationality etc. The Commission noted that the determination of individuals as being Haitian is based primarily on their colour. The expellees are neither afforded a hearing nor given an opportunity to prove their legal status or establish their length of residency in the Dominican Republic and are detained in inhumane conditions. Dominican documentation is often confiscated or destroyed by officials.<sup>16</sup>

In the Inter American Court of Human Rights case of 'Expulsions of Haitians and Dominicans of Haitian descent in the Dominican Republic',<sup>17</sup> 28 Haitians and Dominicans of Haitian descent working and living in the Dominican Republic were subject to summary collective expulsions and deportations from the Dominican Republic. The expulsions were carried out without notice, hearings or an opportunity for the petitioners to collect their



belongings and contact their families. Dominican authorities conducted discriminatory expulsions, identifying and deporting persons presumed to be Haitians. The Court accepted the petitioners' arguments that the deportation process and expulsions: endangered the life and physical integrity of such persons; violated the duty of the state under Article 1(1) ACHR; violated the petitioners' rights to judicial personality and nationality under Articles 3 and 20 ACHR; violated the petitioners' rights to freedom of movement and residence under Article 22 ACHR.<sup>18</sup> In its resolutions (August 18 and September 14 2000) it granted provisional measures to prevent the petitioners' expulsion. In an attempt to modify the legal and institutional regime governing the existing policy the Dominican Republic signed an agreement with the human rights organizations representing the petitioners. Despite this, an Amnesty International 2007 report recorded numerous unlawful and arbitrary expulsions.<sup>19</sup>

Previous attempts at reforming the deportation process have largely been unsuccessful. In December 1999 a Protocol of understanding on the mechanisms of repatriation was agreed between the Dominican Republic and Haiti. The Dominican Republic undertook to improve its deportation mechanisms, and made a number of specific commitments:

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

Amnesty International noted that Dominican military and immigration officials failed to comply with the above commitments in the majority of deportations.

Mass expulsions violate the internationally recognized rights guaranteed under the UDHR, ECHR, ACHR and the UN Declaration on Non-Nationals. According to the Inter-American Commission on Human Rights, deportation of populations when committed as a part of a widespread or systematic attack directed against civilians is a crime against humanity under Article 7(1)(d) of the Rome Statute for the International Criminal Court.

The strict distinction between migrants and refugees ought to be challenged. Migrants often face a refugee-like situation, and protections provided to refugees could be useful in migration policy. An equivalent of the principle of the prohibition against collective expulsion is the non-refoulement principle, codified in Article 33(1) of the Refugee Convention.<sup>20</sup> Non-refoulement has no geographical limitations.<sup>21</sup> A non-refoulement-like protection could be made integral to the Dominican Republic's migration policy. Similarly, the protection under Article 3 of ECHR, which prevents inhuman treatment of refugees by prohibiting their return to a country where their life or freedom would be threatened, could be integrated into Dominican migration laws.<sup>22</sup>

### 3.2 Evolving and implementing dignified return policies

Return policies should include due process safeguards to protect the dignity of migrant workers. The Migration Convention emphasizes the need to ensure due process for migrant workers and members of their families (Art. 16–20). The arbitrary expulsion of migrant workers is prohibited (Art. 22). Their right to equality, with nationals of the state before the courts and tribunals, must be respected. They must be provided with

necessary legal assistance, interpreters and information in a language understood by them. When imposing a sentence, humanitarian considerations regarding the person's migrant status should be taken into account.

The immigration laws and regulations of the Dominican Republic provide that deportees must be informed of the specific charges justifying deportation, must have the opportunity to be heard and to make a case that they are not in violation of the immigration law. The procedural safeguards for return are applicable to non-nationals only where the country of their nationality accords similar recognition to Dominican nationals living there. The immigration laws violate the generally accepted principle that the right of basic human dignity guaranteed by international human right instruments is applicable to all without discrimination, irrespective of nationality or statelessness.

Re-admission agreements enable one state to remove an individual to another state. They are used as part of the rapid return policy for persons entering or remaining illegally, failed asylum claimants and those whose claims should be adjudicated elsewhere. Readmission agreements have been criticized as they are not public documents and are implemented opaquely. The removal of asylum seekers is carried out as the final step of legislative and administrative processes that do not necessarily protect persons from being returned to countries where they are endangered<sup>23</sup>. To guard against this agreements must be drafted with due consideration to the protections guaranteed in international instruments.

All complaints of abuse of authority should be promptly dealt with, independently investigated and remedied without delay. Furthermore, appropriate training for government officials involved in repatriations ought to be given in order to raise awareness of the need to combat all types of discrimination and to ensure respect for due process.

### 3.3 Facilitating easy access to travel documents

Simplifying the procedure for and costs of obtaining travel documentation would mitigate a major reason for migrants resorting to undocumented travel across state borders. This is pertinent in the case of migrants, whose departure is sometimes characterized by suddenness and haste and the absence of official documents. Further, visa policies of states are discretionary and visas are granted for specific purposes. A realization of this situation in national immigration laws and policies could reduce illegal migration.<sup>24</sup>

The European Community code on visas for short stays could be a useful resource. The code facilitates legitimate travel into the European Union on short term, transit and airport transit visas. It strengthens legal security and transparency of visa rules to benefit both consular staff of the member states and visa applicants to the European Union.

The Stateless Persons Convention provides for administrative assistance to a stateless person. This includes the issue of identity papers to a stateless person in the territory of a contracting state who does not possess a valid travel document, especially those persons who are unable to obtain a travel document from the country of their lawful residence (Article 27). The Convention also provides for the issue of travel documents to those lawfully staying in their territory for the purpose of travel outside their territory (Article 28).

## **AIM 2: GUARANTEEING THE RIGHTS OF DOMINICAN HAITIANS IN THE DOMINICAN REPUBLIC**

### **1. Safeguarding the rights of the Dominican Haitians in the Dominican Republic**

The human rights and fundamental freedoms of individuals who are not nationals of the country in which they live should be guaranteed.<sup>25</sup> The UN Declaration on the human rights of individuals who are not nationals of the country in which they live (the “UN Declaration on Non Nationals”) guarantees the right: to life and security of person; not to be subjected to arbitrary arrest or detention; not to be arbitrarily deprived of liberty; to leave the country, subject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others.

The Declaration provides non-nationals lawfully in the territory of a state the right to liberty of movement and freedom to choose their residence within the borders of the state and, subject to national legislation and due authorization, their spouse and dependant children may join them.<sup>26</sup>

The right to life (Article 9), the prohibition against cruel, inhuman or degrading treatment or punishment (Article 10) and the prohibition of slavery, servitude and forced or compulsory labour (Article 11) are protected under the Migration Convention. Migrant workers are also entitled to basic freedoms like the freedom of thought, conscience and religion (Article 12), and the right to hold and express opinions (Article 13) and protection against arbitrary confiscation of their property (Article 15).

### **2. Recognising the right to nationality of Dominican Haitians**

The Convention relating to the status of Stateless Persons 1954<sup>27</sup> (the “Stateless Persons Convention”) defines a stateless persons as a person not considered as a national by a state under the operation of its law. Statelessness makes impossible the recognition of a juridical personality and the enjoyment of civil and political rights, and produces a condition of extreme vulnerability.<sup>28</sup>

To determine the applicability of the Stateless Persons Convention a distinction may be made between Haitians who migrate to the Dominican Republic without valid legal documentation (irregular migrants) and wish to retain their Haitian nationality while living and working in the Dominican Republic, and the children of Dominicans of Haitian origin currently residing in the Dominican Republic who are denied Dominican nationality. Haitians living in the Dominican Republic retaining their Haitian nationality are not ‘stateless’ and therefore are not protected by the Convention.

Article 11 of the Dominican Constitution provides for Dominican nationality to all individuals born in the country, excluding those born of parents ‘in transit’ (meant to cover travellers, sailors and airport crew, diplomatic and consular staff and tourists). In practice, the ‘in transit’ exception is interpreted by Dominican authorities based on elements of temporality and a lack of intent to make the Dominican Republic the permanent domicile. This is applied to deny the children of Haitian parents born in the Dominican Republic the right to Dominican nationality, irrespective of the time they have spent in the Dominican Republic, in violation of the internationally recognized right to nationality<sup>29</sup>. Amendments to the Constitution were made in January 2010 (see ‘Key Development in Haiti-Dominican Republic relations post January 2010, below).

Many Dominicans of Haitian descent are refused identification papers and birth certificates for their children. In the Dominican Republic, national identification cards (“cedula” for

adults and “birth certificates” for children) are required for accessing the public health system and voting etc. Lack of documents can result in non-recognition of marriages, children of undocumented persons being denied entry to state schools, and such people being vulnerable to arrest, detention and deportation. The policy followed in granting identification papers is largely arbitrary and birth certificates may be refused for reasons ranging from the parent’s lack of Dominican cedulas, the Haitian sounding name of the child, or the child being black or speaking accented Spanish<sup>30</sup>. Obtaining identification documents, even for Dominicans, is complicated, costly and time consuming.<sup>31</sup>

In the absence of legal recognition, Dominicans of Haitian origin residing in the Dominican Republic may fall within the definition of ‘stateless persons’ under the Stateless Persons Convention. The Convention provides that the marital status of a stateless person shall be governed by the law of the country of their domicile. Contracting states must accord to stateless persons treatment as favourable as that accorded to non-nationals as regards property rights. It guarantees the rights of association (Article 13) including the right to form and have membership of trade unions, and free access to courts of law on the territory of all contracting states (Article 16). It provides the right to engage in wage-earning employment (Articles 17-19). It also gives the right to self-employment in agriculture, industry, handicrafts and commerce, to establish commercial and industrial companies and to join liberal professions, to those who hold diplomas recognized by the competent authorities.

The Stateless Persons Convention provides for remuneration of stateless persons including (where these form part of remuneration) family allowances, overtime, paid holiday, apprenticeship and training and benefits relating to collective bargaining and social security (including provisions in respect of injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws, is covered by a social security scheme).

Neither the Dominican Republic nor Haiti has ratified the Stateless Persons Convention, so its provisions are not enforceable against the Dominican Republic. The Convention is generally applied in instances such as the loss of nationality of persons following the creation of new independent states. In the case of Dominican Haitians residing in the Dominican Republic, however, principles derived from the Convention are useful tools in the migration policy reform exercise envisaged in this chapter. The nationality and birth registration laws and regulations of the Dominican Republic should be redrafted to recognise the right to nationality and domicile of Dominicans of Haitian descent in the Dominican Republic and to remove the discriminatory aspects of such laws.

### 3. Upholding the international prohibition on racial discrimination in access to nationality

The right to nationality is an international human right.<sup>32</sup> Nationality is “the political and legal bond that links a person to a given state... entitling him to diplomatic protection from that state.” The discretion given to states in legislating as regards nationality, citizenship or naturalization is subject to the prohibition on racial discrimination<sup>33</sup> in access to nationality and protection against arbitrary state action.<sup>34</sup> This applies to direct and indirect discriminatory policies.<sup>35</sup> Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (the “Race Convention”) states that racial discrimination is 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.

Direct discrimination is less favourable treatment on the basis of prohibited grounds such as race. Indirect discrimination occurs when a practice, rule, requirement or condition is

neutral on its face but impacts particular groups disproportionately, without a reasonable justification. States must abstain from carrying out any action that is aimed at creating a situation of discrimination.<sup>36</sup>

The Committee on the Elimination of Racial Discrimination monitors states' compliance with the prohibition on discrimination.<sup>37</sup> States party to the Race Convention submit reports to the Committee every four years detailing actions they have taken to comply with the Convention. Individuals and groups who believe that they have been victims of discrimination by a state party may complain to the Committee, which will review the matter and make recommendations to all parties involved.<sup>38</sup> The Committee General Recommendation on discrimination against non-citizens has clarified that the Race Convention is not intended to shield from scrutiny racially discriminatory nationality policies<sup>39</sup>. The recommendation provides that the denial of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of the parties' obligations to ensure non-discriminatory enjoyment of the right to nationality. State parties must ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents. Also, that states should take into consideration that in some cases denial of citizenship for long term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles.<sup>40</sup>

The UN Committee has censured various states' discriminatory policies in relation to access to nationality, including:

- (A) Holding that Zairian legislation restricting access to nationality for the Banyarwanda ethnic group to those who could prove that their ancestors had lived in Zaire since 1885 violated the right to nationality of the Race Convention<sup>41</sup>.
- (B) In 1999, when examining the Syrian Arab Republic, underscoring the need "to protect the rights of all persons belonging to ethnic and national groups to enjoy, without discrimination, the civil and political rights listed in Article 5 of the Convention, notably the right to nationality...."
- (C) In 2001, expressing concern about the difficulties experienced by the Crimean Tartar minority in acquiring Ukrainian citizenship, and
- (D) Noting Russia's discriminatory application of formal citizenship rights to the Meskhetian minority in the Krasnodar Krai region in 2003.

Despite this power of censure, the UN Committee has no enforcement mechanism to ensure that recommendations are followed and recommendations may be disregarded by member states.

The Commission on Human Rights created the mandate of the Special Rapporteur on the Human Rights of Migrants to monitor the implementation of migrants' rights, including the prohibition on racial discrimination. It is considered a better monitoring mechanism to ensure the protection of rights under the Migration Convention as the mandate covers all countries (irrespective of whether a state has ratified the Migration Convention) and the Special Rapporteur does not require the exhaustion of domestic remedies in order to act. The monitoring process comprises the following<sup>42</sup>:

- (A) Upon receipt of a complaint of violation of migrants' human rights, the Special Rapporteur sends communications to concerned states to clarify and/or bring to their attention such complaint.

- (B) A country visit is made upon the invitation of the Government, (and in the absence of such invitation, by solicitation of the Special Rapporteur in certain cases depending on the number, credibility and gravity of the allegations and the potential impact that the mission may have on the overall human rights situation).
- (C) The Special Rapporteur submits a report of the visit to the Human Rights Council, presenting his findings, conclusions and recommendations. The report informs the process of redress of complaints by the states concerned.
- (D) The Special Rapporteur also submits annual reports to the Human Rights Council about the global state of migrants' human rights, his main concerns, good practices he has observed and specific recommendations.

There appears to have been no country visits to the Dominican Republic or Haiti by the Special Rapporteur. It is vital that the special Rapporteur mechanism be used to ensure protection of the rights of Haitian migrants living and working in the Dominican Republic.

A proscription against racial discrimination is also provided for by regional organisations in Europe and America<sup>43</sup>. In the case of Dominican Haitians, the Inter American Court of Human Rights in *Dilcia Yean and Violeta Bosico v. Dominican Republic*<sup>44</sup> highlighted the need for recognising the right to nationality of Dominican Haitians. The Court ruled that the proof required by governments to establish that an individual was born on a state's territory must be reasonable and cannot present an obstacle to the right to nationality. The Court ordered the Dominican Republic to:

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

The Stateless Persons Convention obliges contracting states to facilitate the assimilation and naturalization of stateless persons, to make every effort to expedite naturalization proceedings and to reduce the charges and costs of such proceedings. The guarantees envisaged by international instruments must be enforced by the Dominican Republic in its treatment of Haitian immigrants.

### **AIM 3: PROMOTING SOCIAL AND ECONOMIC GROWTH AND DEVELOPMENT IN THE HOST AND THE RECEIVING STATES TO ELIMINATE THE MAJOR 'PUSH AND PULL' FACTORS FOR ECONOMIC MIGRATION**

#### **1. Recognition of the right to decent work and payment of Haitian labourers in the Dominican Republic<sup>45</sup>**

Haitian labour is the mainstay of the booming Dominican economy. The chief sectors where Haitian migrants are employed in the Dominican Republic comprise agriculture, construction and catering & tourism sectors, where conditions can be exploitative.



The most definitive international instrument on the protection of irregular immigrants is the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975 (effective 1978).<sup>46</sup> The convention aims to eliminate abuses connected with illicit and clandestine trafficking of labour, covering social security, equality of opportunity and treatment of migrant workers who perform the same activity as nationals. It obliges member states to respect the rights of migrant workers by eliminating abusive work conditions. It seeks to curb illegal labour migration by requiring members to apply administrative, civil and penal sanctions, including imprisonment for illegal employment of migrant workers. Traffickers of workers into a member state may be subject to prosecution, irrespective of the country of operation.

The Convention aims at regularising illegal employment, granting such workers the right to stay and take up legal employment. In cases where the employment of an illegal worker cannot be regularised, they are entitled to equality of treatment of themselves and their family in respect of rights arising out of past employment (remuneration, social security and other benefits). States must assist and encourage migrant workers and their families to preserve their national and ethnic identity and cultural ties with their countries of origin, including for migrant children to be educated in their mother tongue. In the event of any dispute in the operation of these rights, the migrant worker has the right to present his case to a competent body. The Convention emphasises the importance of educating migrant workers as to the protections provided. The collaboration of states in terms of exchanging information and consulting with representative organisations of employers and workers is also recommended.

The Migration for Employment Convention (Revised) 1949 of the ILO requires ratifying states to facilitate the departure, journey, and reception of migrants for employment and help migrants to find employment, medical care and to be accorded treatment not less favourable than that accorded to a legal citizen with regards to protection from discrimination, social security, housing, and right to collect a salary. Neither the Dominican Republic nor Haiti is party to the Migration for Employment. However, its principles may be useful in the reform of existing Dominican laws.

There are various guarantees to labour rights in Dominican national laws. The Dominican Constitution guarantees the freedom to work and provides for the law establishing maximum length of the working day, days of rest and holidays, minimum wages and salaries and methods of payment and social security. It provides for a free trade union organization but restricts the scope and form of participation in the profits of all agricultural, industrial, commercial and mining companies to permanent workers. Dominican Haitian labour is predominantly comprised of seasonal/temporary workers and therefore cannot benefit from this right.

The Social Security Law 87.01 establishes a Dominican System of Social Security ("SDSS") to further the objective of Article 8 of the Dominican Constitution<sup>47</sup> and for the improvement of quality of life, the reduction of poverty and social inequality and the protection of the helpless and disabled. The guiding principle of the system is the applicability of the social security system to all Dominicans and residents, without discrimination. It envisages insurance benefits for old age, disability and widows (survivors), family health benefits and child day-care for the individual and their family, which includes the spouse or registered partner and children or step-children under 18 (21 if they are students, any age if they are disabled) and dependent parents. In practice, however, it appears that the law has been selectively applied, to the exclusion of undocumented Dominican Haitians, denying them social protection.

The Labour Law 1692 of the Dominican Republic applies without distinction to Dominicans and foreigners and prohibits discrimination, exclusion or preference based on sex, age, race, colour, ancestry, national origin, political opinion, trade union or religious belief,

except as otherwise provided by law for the protection of the worker. In practice, however, the basic right to work and payment of the Dominican Haitian labour force are often denied.

Under international pressure an executive decree (Decree No. 417) was issued by the Dominican Republic in 1990 to regulate the largely undocumented Haitian labour force in the Dominican sugar cane industry, and to legalize the status of Haitians and their descendants in the Dominican Republic. Despite this, little progress was made due as much to lack of enforcement as to a lack of political will. Only some Haitian migrants are recorded as workers but generally the authorities do not legalize their migratory status.

The provision of work permits for regularizing labour and payment for Dominican Haitians, granting the right to form and participate in trade unions and imposing penal sanctions on employers who employ illegal migrants are some of the measures suggested in order to guarantee the right to work and pay for Dominican Haitians.

## 2. **Tackling illegal employment and improving employment opportunities in the countries of origin through policies and strategic cooperation between the states of origin and destination**

The co-development approach practised in France links migration and development policies in the source countries of migrant workers and facilitates their circulation between the countries of origin and destination. It targets overseas development assistance in francophone Africa, with government support supplementing the contributions of migrants, in order to reduce emigration pressures. Germany (with Turkey), Italy (with Senegal) and Spain (with Ecuador) have similar programmes. Destination countries, origin countries and migrant workers all benefit from these programmes. Destination countries are assisted in meeting labour force needs, reducing demographic problems and controlling irregular migration; origin countries receive increased access to visas, increased remittances and return and recirculation of workers; migrant workers receive funds, credit and investment opportunities<sup>48</sup>. To realize the right to work as a 'right of everyone' as enunciated under international instruments such as the ICESCR<sup>49</sup>, steps required by state parties include technical and vocational guidance and training programmes, policies to achieve steady economic, social and cultural development and employment under conditions safeguarding the individual's political and economic freedoms.

A successful example of strategic co-operation between various parties is the Inter-Country Project on Strategic Approaches toward Employment Promotion in Asia in 1989, designed by the International Labour Organisation and the Ministry of Labour of Japan. The main objective was to reduce emigration pressures from selected Asian countries believed to be major sources of irregular migration flows to East Asia, particularly Japan. The project aimed at developing and advocating an employment strategy for selected countries<sup>50</sup>, addressing macro- and micro-level issues based on active labour market policies. It focused on the promotion of work opportunities in rural and urban areas for the poor, unemployed and underemployed. The project mobilized community-based activities, introduced low-cost income generation schemes, offered options to out-migration, furthered collaboration between non-governmental organisations and government agencies and increased the capacity of ministries of labour in designing and implementing micro-interventions for employment creation.

The International Organisation for Migration ("IOM") is a leading intergovernmental agency in the field of migration. One of its objectives is advancing the understanding of migration issues and promoting management of migration to the benefit of migrants and societies. IOM is actively engaged in educating migrants on their rights in the host and receiving countries, promoting international migration law, policy debate and guidance, protecting migrants' rights, migration health and the gender dimension of migration.



As a member of the steering committee of a campaign for countries to ratify the Migration Convention (launched by Migrants Rights International in 1998) the IOM urged states to ratify the Migration Convention. In relation to the Dominican Republic the IOM is undertaking a number of projects: migration health assistance and advice project for increasing HIV/AIDS awareness on both sides of the Haitian border; projects for regulating migrations including the prevention and combating of trafficking of women; and technical cooperation projects on migration management and capacity building for migrants<sup>51</sup>.

In the European Community, the Aeneas programme aims to provide financial and technical assistance to third countries and to support their efforts to better manage migration flows. The purpose is to promote European Community cooperation with third countries and, in partnership with them, contribute the following objectives in relation to:

- (A) The development of their legislation in the field of legal immigration:
  - (1) support actions to combat racism and xenophobia towards migrants;
  - (2) improve legislation and policies on managing labour immigration;
  - (3) support the development of national policies based on a uniform approach to migration, asylum and visas, improve capacity for the registration and documentation of asylum seekers and develop administrative expertise;
  - (4) develop staff training and pooling of information and experience, setting up networks for information on economic migration; and
  - (5) encourage the use of migrant workers' remittances for the macroeconomic development of the countries concerned.
  
- (B) The development of legal migration:
  - (1) study of legal and illegal migratory flows, relevance of the question of false papers;
  - (2) establish, develop or support regional or sub regional dialogues on how to manage migration and asylum;
  - (3) develop the capacity of the national and regional authorities to evaluate current and projected requirements for foreign labour and implement appropriate strategies and pilot projects;
  - (4) develop staff training and pooling of information and experience, setting up networks for information on economic migration;
  - (5) dissemination of information and legal advice on how to go about legal migration and the risks of illegal immigration and trafficking; and
  - (6) develop capacity for documenting persons and collating and processing data.
  
- (C) The development of legislation and national practices on international protection and asylum through the financing of Pilot Regional Protection Programmes:
  - (1) support for, and improvement of, the institutional and administrative framework for international protection and asylum;

- (2) encourage accession to international conventions and improve access to international protection; and
  - (3) strengthen the capacity of the asylum and transit countries to improve the reception conditions for refugees and asylum seekers, the registration and documentation of asylum seekers and develop administrative expertise.
- (D) The establishment of a policy to stem illegal migration, including trafficking in human beings:
- (1) promote regional and sub-regional collaboration and dialogue on the management of migratory flows, including transit migration, illegal immigration and trafficking in human beings;
  - (2) encourage interregional cooperation on border management and controls;
  - (3) build capacity in security of travel documents and visas, including their conditions of issue, identification and documentation of illegal migrants, including own nationals and detection of false documents and visas;
  - (4) support for capacity building in drafting, implementing and monitoring the effectiveness of national legislation and management systems dealing with asylum,
  - (5) migration and prevention of criminal activities, including organised crime and corruption linked with illegal immigration, and development of training for staff dealing with migration and asylum issues; and
  - (6) evaluate, and improve, the institutional and administrative framework and the capacity to implement border controls, and improve the management of border controls, including by means of operational cooperation.
- (E) Readmission and sustainable reintegration of returnees (whether voluntary or not):
- (1) support for the third countries concerned to build capacity for reception and protection in the framework of readmission;
  - (2) support for the sustainable reintegration of returnees and resettlement programmes;
  - (3) support for the targeted socioeconomic reintegration of returnees in their country of origin, including training and capacity building aimed at facilitating their integration into the labour market;
  - (4) assistance in negotiation by the third countries concerned of their own readmission agreements with relevant countries;
  - (5) support implementation of readmission agreements concluded with third countries; and
  - (6) develop the exchange of information concerning, and improve identification of, returnees.

Any third country can have recourse to the Aeneas programme.<sup>52</sup> Measures for Haiti and the Dominican Republic to utilize the Aeneas programme should be investigated through

political and diplomatic channels. Alternatively, international influence may be exercised through CARICOM of which both states are active participants in order to facilitate similar development oriented programmes in the Dominican Republic and Haiti .

A new programme dedicated to migration and asylum, the Thematic Cooperation Programme with Third Countries in the Development Aspects of Migration and Asylum has been launched for 2007-2013 to replace the Aeneas programme. Its objective is similar to the Aeneas programme, i.e. to assist third world countries to improve the management of migratory flows. It covers essential features of migration such as migration and development, labour migration, illegal migration and traffic in persons, migrants' rights, asylum and international protection.<sup>53</sup>

#### **AIM 4: TO ELIMINATE TRAFFICKING OF WOMEN AND CHILDREN FOR PROSTITUTION AND PORNOGRAPHY**

##### **1. Reduction of poverty has the direct effect of reduction in prostitution**

Migrants in the Dominican Republic exist in precarious living conditions in a continuous cycle of poverty. The Inter-American Commission on Human Rights reports overcrowding, lack of hygiene, safe drinking water and sewerage facilities and limited access to medical facilities creating conditions for diseases such as diarrhoea, malaria and tuberculosis. As the migrants work for the state and reside in state-owned properties (e.g. bateyes, worker settlements on sugarcane plantations), the Commission imposes direct responsibility on the state to alleviate the working conditions, housing, health, education, and security of the workers and their families.<sup>54</sup>

Haitian women are even more vulnerable as they face gender discriminatory treatment in respect of the payment of wages, despite comprising more than half of the workforce. Migrant women and young girls who resort to providing sexual services for survival are often silent victims of sexual exploitation and abuse with no means of recourse to authorities due to the threat of deportation. Extreme poverty also results in high rates of malnutrition, and maternal and child mortality.<sup>55</sup>

##### **2. Reducing irregular migration for curbing the crimes of migrant smuggling and trafficking for the purposes of prostitution and pornography**

The United Nations Convention against Transnational Organized Crime defines 'trafficking in persons' as the recruitment, transportation, harbouring or receipt of persons by means of threat or use of force, or other forms of coercion or deception for purposes of exploitation. Traffickers are those who transport migrants and profit economically or otherwise from their relocation. Trafficking has been recognized as a gross human rights violation. Human trafficking is linked to the sexual exploitation of children. Migrant smuggling and human trafficking are related as they are generally organised by international criminal networks for cheap and illegal services.<sup>56</sup> The profits from labour and sexual exploitation are often laundered and used in other criminal activities.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, 2001 (the "Smuggling Protocol") condemns the smuggling of migrants. It aims to guard against the strengthening of organized crime syndicates and their increased ability to circumvent governance systems. It covers the procurement of illegal entry and residence. Illegal migrants are immune from criminal charges (Article 5) and the Smuggling Protocol does not criminalize the smuggled migrants. Penalties for smuggled immigrants derive from national immigration laws.<sup>57</sup> It guarantees the right of migrants to be swiftly and humanely returned to their country of origin (Article 18). The legal and socio-economic causes of

smuggling are established through measures aimed at educating Dominican citizens about the harms of smuggling (Article 15), and prevention of further smuggling.

The EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings was adopted by the Council on 1 December 2005. The EU development policy focuses on poverty reduction and achieving the Millennium Development Goals by continued funding to address factors that make persons vulnerable to trafficking e.g. poverty, discrimination and lack of access to education.<sup>58</sup> Current European Commission priorities in implementing the EU Action Plan are the development of coordination and cooperation mechanisms at the EU level, promoting best practices in the identification and support of victims, networking, involving international and non-governmental organizations as well as developing guidelines for data collection.

The European Commission communication on 'Fighting trafficking in human beings – An integrated approach and proposals for an action plan',<sup>59</sup> (the "Communication") suggests:

- (A) Regular monitoring and follow up of assistance;
- (B) Protection and social inclusion schemes at expert and political levels;
- (C) Political dialogue with third countries at bilateral and multilateral levels; and
- (D) Raising awareness of such issues at the relevant regional and multilateral fora.

These are some of the measures adopted by the European Council to fight human trafficking at the international level. The European Commission urges member states to provide organisational structures, specialised personnel and adequate financial resources to law enforcement agencies to effectively combat human trafficking. Further, member states in the European Union are adapting their legislation regarding the legalisation or criminalisation of the purchase of sexual services of trafficked prostitutes.<sup>60</sup>

Anti-corruption strategies ought to be an integral part of any Dominican anti-trafficking policy. Training and assistance could be sought from bodies such as Europol and Eurojust, who have specific competencies and personnel in combating trafficking.<sup>61</sup> This is in accordance with the Communication priorities, which require member states to ensure that national enforcement agencies involve Europol in exchange of information. Europol can provide access to intelligence databases, offers operational support and expert advice and can generate strategic reports to assist in combating trafficking.

### **3. Curbing the crimes of the trafficking of migrant children for slavery, prostitution and pornography**

A special focus is required to address child trafficking. The CRC, The Organised Crime Convention and Protocol to prevent, suppress and punish trafficking in persons especially women and children, the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999 and the Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000 constitute the international framework on this. The Protocol to the Organized Crime Convention specifies as preventive mechanisms criminalization of child trafficking, stronger border controls and increased security and control of documents.

It is believed that despite universal ratification of the CRC and specific commitments made by more than 190 countries to the United Nations General Assembly to eliminate child trafficking and sexual exploitation, harmonisation of legislation at the international, regional and national level is most important in tackling violence against children. In recognition of this, some countries have targeted the exploitation of children in sex tourism, adopting

laws that allow for the prosecution of sex crimes against children committed in another country, regardless of that country's laws to punish the commercial sexual exploitation of children overseas.<sup>62</sup>

A regional instrument to combat child trafficking is the Council of Europe Convention on Action against Trafficking in Human Beings of 2005.<sup>63</sup> The Convention applies to all forms of human trafficking, national and transnational, whether or not connected with organised crime. It urges members to take specific measures to reduce children's vulnerability to trafficking, by creating a protective environment for them. While recognising the right of free movement of persons, the Convention advocates border controls to prevent and detect trafficking. This includes obliging commercial carriers to ascertain that all passengers have valid travel documents required for entry into the receiving state, to prevent carriers from being used to commit trafficking. It also provides for victims to have legal redress and compensation from the perpetrators, the establishment of a fund for victim compensation and programmes aimed at social assistance and victim integration, which could be funded by assets resulting from compensation. Experts on action against human trafficking have been constituted to monitor the Convention's implementation.

Child protection is envisaged in the Dominican Constitution which recognises the need for the protection of the family system (with the aim of strengthening the stability and well-being, and recognising the moral, religious and cultural needs of society). This protection extends to measures to avoid infantile fatality and to achieve the safe development of children. The Constitution guarantees the right to education to all inhabitants of the territory, and measures to eliminate illiteracy. Primary education is free and compulsory.

Law 136-03 for the protection of children and adolescents applies to all children at risk regardless of national origin, and is therefore applicable to children of irregular Haitian migrants. It aims to ensure that all children and adolescents in the territory fully enjoy their fundamental rights. It defines and provides for the protection of the fundamental rights of children and adolescents by regulating the role and relationship of the state, society, families and individuals with subjects from birth until 18 years of age. It is important that the protections envisaged under international and regional instruments and within the Dominican Constitution be used to eliminate trafficking, and punish traffickers, who exploit the vulnerability of irregular Haitian women and child migrants.

#### **AIM 5: INCREASING AWARENESS OF THE NEED FOR SOCIAL AND CULTURAL INTEGRATION OF HAITIAN MIGRANTS INTO THE DOMINICAN REPUBLIC**

Migrant populations bring benefits which are often ignored and denied by receiving states. Societies with large migrant populations often receive developmental aid and financial assistance from humanitarian agencies for investment into the construction and maintenance of roads, air strips etc. (essential for the delivery of supplies to migrants). Migrants bring skills needed for the growth of the local economy, and generate revenue from income and taxes.<sup>64</sup>

A popular misconception is that migration threatens to reduce native people to a minority in their state. Migration is believed to undermine national security.<sup>65</sup> The hostility of a host community to migrants could be due to factors including competition for resources, rising crime levels, resentment at assistance provided and/or religious and ethnic tension.<sup>66 67</sup>

In the absence of measures to facilitate integration, the ghettoization of migrants and their dependants could fuel inter-community hostility, feeling of alienation, and violence. To prevent this, efforts to incorporate Haitians into Dominican society (through language courses, counseling and the provision of information) should be coupled with a longer term

comprehensive approach (including investment). Public opinion should be harnessed in favour of the need to eliminate discrimination against any section of society.<sup>68</sup>

## **AIM 6: TO ENFORCE THE EXISTING INTERNATIONAL OBLIGATIONS OF THE DOMINICAN REPUBLIC**

Haiti and the Dominican Republic are party to a number of human rights treaties, conventions and protocols which impose on them an obligation to take measures necessary for the implementation of their commitments under these. Failure to take such measures may be addressed in a consultative process (at the international and regional level), followed by infringement action procedures against the violating state.

At the international level a number of initiatives are in place: the mandate of UN Special Rapporteur on the Human Rights of Migrants; measures suggested by monitoring bodies established under international conventions; the International Dialogue on Migration by the IOM; the monitoring role carried out by various UN bodies (ILO and UNHCR); involvement of bodies such as the World Bank, United Nations Conference on Trade and Development (UNCTAD), UNDP and the World Trade Organisation (due to a better appreciation of the link between migration, development and trade).

Regional consultations, in which states gather to exchange information and expertise, have been useful in generating confidence and consensus in relation to international policy reform. Despite their informal and nonbinding nature, they ensure that member states negotiate on an equal basis, facilitating dialogue and exploration of common interests and concerns. International organizations may assist regions in developing migration legislation, reducing irregular migration in certain regions.

The Global Commission on International Migration (October 2005 report) recognised the potential of global initiatives, but warned against the danger of 'wasteful overlap' caused by lack of coordination. In relation to regional initiatives, the Commission recommends strengthening their efficacy by reducing official participation and increasing civil society engagement, which could increase the focus on reform of national migration policies from the human rights perspective. It also recommends engagement with the private sector, especially in relation to regional economic and political issues. It suggests subjecting regional processes to rigorous periodic assessment and evaluation.<sup>69</sup>

The next phase of enforcement involves infringement action procedures, as specified in legal instruments. Procedures may include:

- (A) letters of formal notice of infringement addressed to the infringing state by monitoring bodies,
- (B) requirement for reasoned replies in respect of non-compliance, outlining measures taken to transpose the international obligation into national legislation,
- (C) requirement of follow up on transposition into national law,
- (D) utilizing regional or international court mechanism for continued infringement.

The Dominican Republic is a member of the Caribbean Community ("Caricom"), and is party to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Caricom Single Market and Economy 2001 (the "Revised Caricom Treaty"). The purpose of the Revised Caricom Treaty is to achieve economic development. One of the main objectives of Caricom is to improve standards of living and work within Caricom. The Dominican Republic ought to implement measures towards improving living and

working conditions, and adequate social security policies for Haitian immigrant workers in order to comply with the Revised Caricom Treaty .

Continued non compliance by the Dominican Republic of its international obligations in relation to Haitian immigrant workers increases the risk of sexual violence, slavery, trafficking, child prostitution and violation of labour standards. These practices are contrary to public values widely embodied in laws, regulations, policies and judicial decisions.

Further, the Dominican Republic and Haiti could show their willingness to find a solution to the issues faced by Haitian migrants by ratifying Migration Convention. The Convention would provide guidance to both the Dominican Republic and Haiti to formulate and implement migration policies based on respect of the human rights.

## PART 2: MIGRATION CASE STUDIES

### 1. Key Developments in Haiti-Dominican Republic Relations post January 2010

On 12 January 2010 Haiti was struck by a 7.0 magnitude earthquake that, according to reported figures, killed over 300,000 people and left a further 1.5 million homeless.<sup>70</sup> In the aftermath of the earthquake the Dominican Republic played an important role in helping to coordinate the international response to the disaster as well as itself providing aid. In the period since the earthquake many commentators have reported an improved relationship between the Haitian and Dominican governments.

Following the initial disaster, the Dominican President Leonel Fernandez was the first foreign leader to visit Haiti. He agreed a response plan that included help from the Dominican Telecom Institute (Indotel) and the Corporación Dominicana de Empresas Eléctricas Estatales (CDEEE) to re-establish communication and energy infrastructure in addition to the Dominican National Army working with the United Nations Stabilisation Mission in Haiti (MINUSTAH) to help channel international aid to the hardest hit areas. The government of Haiti has publically recognised the assistance received from the Dominican Republic, including during sessions of the UN Human Rights Council:

“[Haiti] noted that the Dominican Republic had demonstrated solidarity and fraternity, welcoming several of the injured from the earthquake and in opening a humanitarian corridor facilitating humanitarian aid to Haiti. It also noted that the Dominican police contributed with MINUSTAH in tracking escaped prisoners after the earthquake. Haiti expressed its gratitude and hoped the cooperation put in place after January 12 would continue, and would reinforce relations between the two countries.”<sup>71</sup>

The World Bank also recognised the, “leading role of Dominican civil society during the first days of the Haiti tragedy.” Following the earthquake Dominican civil society groups and individuals coordinated to form “Ayuda a Haiti” (Help Haiti)<sup>72</sup>. It now includes over 600 volunteers from over 110 organisations operating development programs across the Dominican-Haitian border.<sup>73</sup>

On June 2, 2010, the Dominican Republic hosted the World Summit for the Future of Haiti as a follow up to an earlier summit held in New York at which a total of almost US\$ 10 billion was pledged towards reconstruction by different countries and international organisations. The Dominican conference aimed to develop an action plan to channel the promised financial and technical aid into the most needed areas.

In July 2010, following the summit, official delegations from Haiti and the Dominican Republic met to re-launch the Bilateral Mixed Commission. The Commission was originally set up in 1996 to enhance cooperation in areas of mutual interest for the two countries, however, it remained largely inactive following its formation. It is hoped that it may now play a role in coordinating future policies between Haiti and the Dominican Republic, including in areas such as migration, repatriation and border control.

However, despite the improvement in Haitian-Dominican relations on a political level, the issue of migration and nationality in the Dominican Republic has arguably become an even greater problem. This is due in part to an influx of Haitian migrants to the Dominican Republic, fleeing the effects of the earthquake.



## Moratorium on deportations

One Dominican policy that was commended in the aftermath of the earthquake was the moratorium imposed on the deportation of illegal migrant Haitians from the Dominican Republic. This came to an end at the beginning of 2011 with the Dominican authorities resuming the deportation of Haitians. According to Dominican officials the crackdown was necessary to stem a rise in illegal immigration following the earthquake and to prevent the spread of cholera. Although Dominican government statements suggested that the deportations target only migrants arriving in the Dominican Republic for the first time, press reports suggest that in some instances the deportations have been carried out arbitrarily on anyone not carrying the necessary papers. This has led to some legal residents also being deported. The Dominican government reports that in January 2011 3,000 undocumented Haitians had been deported<sup>74</sup>, a move that has drawn condemnation from Amnesty International.<sup>75</sup>

## Constitutional changes

Two weeks after the earthquake the Dominican Republic's adopted a revised constitution<sup>76</sup> that includes amendments which deny citizenship to children born to illegal residents. According to press reports the National Assembly said that the change would ensure that Haitians displaced by the earthquake who crossed the border into the Dominican Republic would not claim permanent residence there. It is also thought to be a response to the ruling by the InterAmerican Court of Human Rights that the Dominican constitution in fact granted citizenship rights to Haitians born in the Dominican Republic. The policies pursued in denying citizenship to Dominicans of Haitian descent had already come under criticism due, in part, to the use of the Dominican Migration Law 285-04.<sup>77</sup> The UN's Committee on the Elimination of Racial Discrimination noted concern over the Migration Law's impact on Haitians, in particular that it may lead to "situations of statelessness" and that it was being applied retroactively.<sup>78</sup> It has been highlighted by some that the amendments to the Dominican constitution appear to import the concept from the Migration Law and give it a constitutional basis.

Article 18 of the new constitution identifies Dominican citizens as:

- (1) The children of Dominican mothers or fathers;
- (2) Those who enjoyed Dominican nationality prior to the entry into force of this Constitution;
- (3) Persons born on national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and foreigners who find themselves in transit or reside illegally on Dominican territory. Foreigners shall be considered as being in transit as defined in Dominican laws;
- (4) Persons born abroad to Dominican mothers or fathers, regardless of having acquired, by virtue of their place of birth, a different nationality than their parents. Having reached the age of 18, they may express their will, to the competent authority, to assume dual nationality or renounce one of them;
- (5) Whoever marries a Dominican, as long as they opt for their spouse's nationality and meets the requirements established by law;
- (6) Naturalized persons, in accordance with the conditions and formalities required by law.<sup>79</sup>

According to the Open Society Institute, “In practice, the new constitutional provision on nationality has not dramatically changed the ways in which Dominicans of Haitian descent whose nationality was previously recognized are now being deprived of recognition. Dominicans of Haitian descent born in the country are still being denied cédulas, the birth registration of their children and certified copies of their birth certificates on the basis of their parents’ migration status at the time of their births. What the new constitution has done is to transform the previous policies from an impermissible, unlawful practice—retroactive application of the 2004 migration law—into a constitutional policy.”<sup>80</sup>

In October 2010 the Inter-American Commission on Human Rights held a hearing on the Dominican Republic’s revised constitution and its impact on the right to nationality, specifically in relation to people of Haitian descent. The hearing was requested by a number of NGOs<sup>81</sup>. In particular, concern was raised about the 2004 migration law and the revised constitution. The petitioners noted that, “the law was being applied retroactively, affecting children born in Dominican territory prior to its enactment, which contravenes the Dominican constitution” They also noted the impact of the law on the ability of Dominicans of Haitian descent to access health care, education, employment, property and other civil and political rights.<sup>82</sup>

According to the Dominican government, these laws were an attempt to combat illegal migration. However, a number of human rights groups, such as Refugees International, claim that the laws have led to the targeting of Dominicans of Haitian origin, many of whom are the descendants of regular migrants brought in to work in the Dominican sugar industry. Media reports suggest that some of the Haitians refused papers are effectively left stateless, since they have lived their entire lives in the Dominican Republic and some do not even speak Creole.

#### United Nations Periodic Review

On 4 January 2010 The United Nations General Assembly issued its Report of the Working Group on the Universal Periodic Review for the Dominican Republic. Among other commitments, the Dominican Republic agreed to:

- (1) Improve the legislative, policy framework and enforcement for the protection of women and girls from violence.<sup>83</sup>
- (2) Adopt comprehensive strategies to combat racism, including specific measures on the status and protection of persons of Haitian origin.<sup>84</sup>
- (3) Take the necessary measures to get the activities of the Haitian-Dominican Joint Commission going again.<sup>85</sup>

However, the Dominican Republic did not support the recommendation to adopt, “measures to ensure that Dominicans of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subjected to retroactive cancellation of birth and identity documents.”<sup>86</sup> In response, the Dominican government noted that “application of the law is not retroactive in the Dominican Republic. In addition the Constitution of the Dominican Republic is not subject to interpretation as to who is or is not a Dominican.”<sup>87</sup>

Amnesty International welcomed the Dominican Republic’s support for a number of the recommendations, in particular those relating to the rights and protection of women and girls and combating racism in relation to people of Haitian origin.<sup>88</sup> However, it urged the Dominican Republic to reconsider its position with regards to ensuring that Dominicans of Haitian descent are not denied citizenship. It also encouraged the Dominican Republic to ratify the Migrant Workers Convention, a recommendation that the Dominican Republic

reserved judgement on, noting that it would provide a response in due time.<sup>89</sup> Following the Draft Report of the Human Rights Council on its thirteenth session, the position of the Dominican Republic regarding the Migrant Workers Convention remained under review: “the Dominican Republic will continue to analyse these instruments, with a view to ratifying them as soon as possible.”<sup>90</sup>

### Bueno v Dominican Republic

In June 2010 the Center for Justice and International Law (CEJIL) and the Open Society Justice Initiative (OSJI) submitted a petition to the Inter-American Commission on Human Rights in relation to alleged breaches by the Dominican Republic of the American Convention on Human Rights (the “Convention”).<sup>91</sup> The case was brought on behalf of Mr Emildo Bueno Oguis, a Dominican of Haitian origin who was born in the Dominican Republic and, prior to the Migration Law, was recognised as a Dominican citizen. In 2007 Mr Bueno Oguis requested a certified copy of his birth certificate<sup>92</sup>, however, this was denied to him on the basis that his parents were ‘non resident’ at the time of his birth. The petition raises five principal breaches of the Convention:

- (1) Arbitrary deprivation of nationality (Article 20);
- (2) Failure to secure equal protection (Article 24);
- (3) Denial of juridical personality (Article 3);
- (4) Degrading treatment (Article 5); and
- (5) Consequential violations of fundamental rights (Articles 23, 22, 17 and 21).

### Human Trafficking – the threat of US sanctions

In June 2010 the US State Department added the Dominican Republic to a list of 13 countries which it claims fail to meet the minimum international standards in preventing human trafficking. These countries, described as Tier 3 countries, face the threat of US sanctions, including cuts in non-humanitarian aid. According to the Trafficking in Persons Report 2010 “the Dominican Republic is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically forced prostitution and forced labour.”<sup>93</sup>

The report notes that “undocumented or stateless Haitian people – including the Dominican-born children and grandchildren of Haitian migrants – are vulnerable groups to trafficking,” and that, “the Government of the Dominican Republic does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so.”

In particular, the Dominican government is criticised for not having convicted any trafficking offenders, including officials possibly complicit in trafficking, since 2007. Results in the areas of victim protection, and trafficking prevention were also limited, with no discernable progress being made in these areas.

In January 2011, Luis CdeBaca, head of the State Department’s Office to Monitor and Combat Trafficking in Persons suggested that the Dominican Republic could face US sanctions, including, among other action, the suspension of economic and military aid and the blocking of certain exports to the US. CdeBaca is quoted as giving the Dominican Republic until June to implement recommendations made by the US State Department.

## 2. Haiti-United States Migration Following the 12 January 2010 Earthquake

The United States is home to about 535,000 Haitian immigrants – the largest concentration in any single country of Haitians abroad. As the country descended into chaos following the collapse of the Duvalier dictatorship in the late 1980s, Haitians began arriving in the United States in large numbers. Many received humanitarian protection. Between 1980 and 2000, the Haitian-born population residing in the United States more than quadrupled from 92,000 to 419,000. The Haitian immigrant population in the United States has continued to grow since 2000, although at a slower rate. Recent natural disasters in Central America and the Caribbean have pushed large numbers of migrants to the United States and in the wake of the January 2010 earthquake in Haiti, emigration pressures from the devastated country are likely to grow. The Haitian diaspora in the United States has also traditionally played an important role in assisting Haiti to recover from natural disasters.<sup>94</sup>

Some Haitian –US immigration facts are set out below in accordance with The Migration Information Source.<sup>95</sup>

About one of every 20 Haitians resides in the United States.

The 535,000 Haitian immigrants in the United States represent about one-twentieth (5.5 percent) of the total population of Haiti (9.8 million in 2008).

Haitian immigrants were more likely than other immigrant groups to be naturalized US citizens.

Among the Haitian foreign born, 48.4 percent were naturalized US citizens, compared to 43.0 percent among the overall foreign-born population.

Haitian immigrant women were more likely to participate in the civilian labor force than foreign-born women overall.

In 2008, Haitian-born women age 16 and older (71.7 percent) were more likely to participate in the civilian labor force than all foreign-born women (57.1 percent) overall. Haitian-born men were about equally as likely to be in the civilian labor force (80.7 percent) as foreign-born men overall (80.6 percent).

Nearly half of employed Haitian-born men worked in services or in construction, extraction, and transportation.

Among the 168,000 Haitian-born male workers age 16 and older employed in the civilian labor force in 2008, 26.1 percent reported working in services and 22.3 percent reported working in construction, extraction, or transportation (see Table 2). By contrast, among the 13.6 million foreign-born male workers age 16 and older employed in the civilian labor force in 2008, 17.4 percent reported working in services and 25.9 percent reported working in construction, extraction, or transportation.

Over one of every four employed Haitian-born women worked in healthcare support.

Among the 182,000 Haitian-born female workers age 16 and older employed in the civilian labor force in 2008, 27.2 percent reported working in healthcare support occupations and 22.7 percent reported working in service occupations (see Table 2). By contrast, among the 9.5 million foreign-born female workers age 16 and older employed in the civilian labor force in 2008, 5.4 percent reported working in healthcare support and 25.7 percent reported working in service occupations.

### Haitian immigrants were less likely to live in poverty than other immigrant groups.

The poverty rate among Haitian immigrant families was 12.9 percent in 2008, lower than the poverty rate among all foreign born families (14.9 percent). The difference was even larger among immigrant families headed by a female householder with no spouse present. Among Haitian immigrant households headed by a female with no husband present, the poverty rate was 20.8 percent in 2008, compared to 30.7 percent for all immigrants.

However it should be noted, that in accordance with various sources, traditionally, the Haitian elite, professionals and intellectuals, have sought refuge in the US (as well as in France and Canada). The largest movement of Haitian migrants takes place across the Haitian-Dominican Republic border<sup>96</sup>.

### U.S. Immigration Policy on Haitian Migrants

The environmental, social, and political conditions in Haiti have long prompted congressional interest in U.S. policy on Haitian migrants, particularly those attempting to reach the United States by boat. While some observers assert that such arrivals by Haitians are a breach in border security, others maintain that these Haitians are asylum seekers following a decades old practice of Haitians coming by boat without legal immigration documents. Migrant interdiction and mandatory detention are key components of U.S. policy toward Haitian migrants, but human rights advocates express concern that Haitians are not afforded the same treatment as other asylum seekers<sup>97</sup>.

The devastation caused by the January 12, 2010 earthquake in Haiti has led the Department of Homeland Security (DHS) Secretary to grant Temporary Protected Status (TPS) to Haitians in the United States at the time of the earthquake. The scale of the humanitarian crisis – it is estimated that thousands of Haitians died and the reported total collapse of the infrastructure in the capital city of Port au Prince – resulted in this TPS announcement on January 15, 2010.

It was also announced that Haitian children who were legally confirmed as orphans eligible for inter-country adoption by the government of Haiti and who were in the process of being adopted by U.S. residents prior to the earthquake have been given humanitarian parole to come to the United States. Other Haitian orphans potentially eligible for humanitarian parole include children who were identified by an adoption service provider or facilitator as eligible for intercountry adoption and who were matched to prospective American adoptive parents prior to January 12, 2010.

According to the U.S. Department of State (DOS), there are 54,716 Haitians who have approved petitions to emigrate to the United States and who are waiting for visas to become available. Advocates for Haitians are asking the DHS Secretary to give humanitarian parole to those Haitians with approved petitions for visas. Proponents of expediting the admission of Haitians with family in the United States maintain that it would relieve at least some of the humanitarian burden in Haiti and would increase the remittances sent back to Haiti to provide critical help as the nation tries to rebuild. Those opposed to expediting the admission of Haitians assert that it would not be in the national interest, nor would it be fair to other foreign nationals waiting to reunite with their families. The Haitian Emergency Life Protection Act of 2010 (S. 2998/H.R. 4616) would amend the INA to allow Haitian nationals whose petition for a family-sponsored immigrant visa was approved on or before January 12, 2010, to obtain nonimmigrant visas under §101(a)(15)(V). As noted earlier, this nonimmigrant visa – known as the V visa – is a transitional visa category for immediate relatives (spouse and children) of those seeking Legal Permanent Residence (LPR) who have also had petitions to become LPRs pending for three years.



## Supplemental FY2010 Funding

President Barack Obama has requested that the Congress consider supplemental FY2010 funding to provide for costs associated with relief and reconstruction support for Haiti, including reimbursement of obligations that have already been incurred by federal agencies after the January 12, 2010 earthquake<sup>98</sup>. Only a small portion of the \$2.8 billion requested would pertain to Haitian evacuees and migrants in the United States. Specifically, the President has requested \$220.0 million for the Department of Health and Human Services (HHS) to fund four types of activities, of which two are directly related to Haitians brought to the United States after the earthquake<sup>99</sup>. These two are the state share of Medicaid and Children's Health Insurance Program (CHIP) costs for eligible Haitians, and cash, medical, and repatriation assistance for eligible Haitians<sup>100</sup>. The President's supplemental request also includes \$15 million for the U.S. Citizenship and Immigration Services (USCIS) Examinations Fee Account<sup>101</sup>. USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits almost entirely through monies generated by the Examinations Fee Account<sup>102</sup>. USCIS charges fees for almost all adjudications and services, however, the agency traditionally has not charged the Examination Fee for refugees and asylum seekers. The Administration proposes to use funds for reception and settlement services provided to designated Haitians, fee waivers for eligible Haitians granted TPS, humanitarian parole to bring medical evacuees and certain categories of Haitians into the United States, and costs associated with adoptions and orphans.

More broadly, there are concerns that the crisis conditions in Haiti may result in mass migration from the island. Agencies within DHS that are the leads in handling a potential mass migration include the U.S. Coast Guard (interdiction), Customs and Border Protection (apprehensions and inspections), Immigration and Customs Enforcement (detention and removal), and the USCIS (credible fear determinations).

In her TPS announcement, the DHS Secretary warned of the consequences of Haitians fleeing to the United States:

"At this moment of tragedy in Haiti it is tempting for people suffering in the aftermath of the earthquake to seek refuge elsewhere. But attempting to leave Haiti now will only bring more hardship to the Haitian people and nation.... It is important to note that TPS will apply only to those individuals who were in the United States as of January 12, 2010. Those who attempt to travel to the United States after January 12, 2010 will not be eligible for TPS and will be repatriated<sup>103</sup>."

The DHS previously published a Federal Register Notice on Jan. 21, 2010, announcing the TPS designation of Haiti for 18 months, from January 21, 2010 through July 22, 2011. The designation applies only to Haitians who have continuously resided in the United States since January 12, 2010. TPS will not be granted to Haitian nationals who first entered the United States after January 12, 2010<sup>104</sup>.

Generally the relevant US authorities emphasise that the balancing of DHS's border security and immigration control responsibilities in the midst of a humanitarian disaster in Haiti poses a challenge. However having clear policies in place and promoting legal migration make the process of Haiti-US migrants' movement more regular.

### 3. Mexico – US Migration Case Study

Mexican immigrants represent the largest migrant group in the US. In 2008 there were some 11.4 million Mexican immigrants, which accounted for some 30.1% of all US immigration. Mexican born migrants have represented the largest migrant group in the US for over 30 years, since the date of the 1980 census, when they numbered some 2.2

million. In 2008 Mexico had a population of 106.4 million<sup>105</sup> and some 10% of that population was living in the US.<sup>106</sup> As a result of the recession, the growth of the immigrant population has been somewhat in decline since 2006 yet Mexican immigrants are still drawn to the US by the lure of more and better jobs, higher wages, higher standards of living, healthcare and housing benefits. The profile of a Mexico-US immigrant is typically that of an unskilled worker, on the whole employed within the construction, services and manufacturing industries.<sup>107</sup> A significant 78% of all Mexican migrants are of working age (between the ages of 18 and 54). However these workers tend to be limited in terms of both employable skills and linguistic ability with some 73.8% of Mexican migrants in 2008 reportedly possessing only limited English proficiency, and some 61.5% of the 9.2 million Mexican born adults in the US having no high school diploma or equivalent. This profile along with the largely illegal nature of Mexicans' entry into the US leaves Mexican immigrants in the US vulnerable to exploitation, discrimination and harassment.

Some Mexican-United States migration statistics taken from the Migration Information Source are set out below:

62% of all unauthorised migrants in the US in January 2009 were Mexican.

The Office of Immigration Statistics estimated in 2009 that 6.7 million or 62% of the approximately 10.8 million unauthorised migrants in the US in January 2009 were Mexican.<sup>108</sup> Furthermore in 2008, some 55% of all Mexican immigrants in the US were unauthorised.

Over 50% of all Mexican immigrants settle in California and Texas.

The majority of Mexican immigrants settle in 'traditional' destination states near the border however in the last 20 years, the Mexican foreign born have begun moving with other immigrant groups to 'non-traditional' destinations including Georgia, North Carolina, Nebraska and Ohio in search of opportunity.

Traditionally Mexican immigrants mainly originate from Mexico's centre-west region.

In the past, Mexican immigrants have largely come from traditional sending areas in the centre-west, but increasingly immigrants are coming as well from Mexico's poorer south and southwest regions.

The inward flow of Mexican immigrants has substantially slowed since the start of the recession.

During the last 2 years, the number of Mexicans leaving Mexico for the US has significantly fallen. In the third quarter of 2009, about 142,000 Mexicans departed for abroad<sup>109</sup>. This was 8 percent lower than the number who departed in the third quarter of 2008 (155,000), 39 percent lower than in 2007 (234,000), and 47 percent lower than in 2006 (266,000) (see Figure 1). However, the levels of return migration<sup>110</sup> have remained stable (between 80,000 to 150,000 per quarter) since 2006.

Mexican immigrant men more likely to participate in the civilian labour force.

In 2008, Mexican-born men of working age were more likely to be in the civilian labour force (86.8%) than foreign-born men overall (80.6%). 4.9 million Mexican-born male workers were employed in the civilian labour force in 2008. However, Mexican-born women (52.5%) were less likely to participate in the civilian labour force than all foreign-born women (57.1%). 2.2 million Mexican-born female workers were employed in the civilian labour force in 2008.

Almost 40 percent of employed Mexican-born men worked in construction, extraction, and transportation.

Of the nearly 5 million Mexican born men of working age working in the civilian labour force in 2008, 38.8% reported working in 'construction, extraction, and transportation', 22.8% percent reported working in 'services' and some 17.9% percent reported working in 'manufacturing, installation, and repair'. Together, these three industry groups employed nearly 80% of all civilian employed Mexican-born males age 16 and older. That these three industry groups were all badly affected by job losses in 2008 and 2009, at the peak of the recession, goes a long way towards explaining the decline in Mexican-United States migration in the last 2 years.

Over one-third of employed Mexican-born women worked in services.

Of the more than 2 million Mexican born women of working age employed in the civilian labour force in the US in 2008, 38.6% reported working in 'services', 14.9 percent in 'manufacturing, installation and repair' and 12% in 'administrative support'.

### The Mexican-United States migration model

The experience of having the world's largest economy on its doorstep has had a profound effect upon the development experience of Mexico. Mexico has been 'incorporated' into the American machine as a net exporter of cheap, unskilled labour, feeding its manufacturing, services and construction industries. The effect of this for Mexico has been a fragmented manufacturing sector, and an insecure labour market, deepening poverty and inequality<sup>111</sup>. This in turn has pushed more migrants out of the poor South of Mexico, to the North, and then to the United States. It appears that in the case of Mexico and the United States, the economic integration of the two under NAFTA<sup>112</sup> rather than promoting the two to develop along similar lines and share the social benefits of economic success, has deepened the inequality between them.

In terms of productivity, in 13 years, the economy of the US has gone from being 25.6 times the size of Mexico's, to being 13.4 times the size of Mexico's. In 1995, Mexico had GDP of \$286.7 billion and the US had GDP of \$7,342.3 billion. By 2008 these figures were \$1,088.1 billion and \$14,591.4 billion.<sup>113</sup> However, INEGI and the US Census Bureau show that whereas in 1994 *per capita* GDP in the United States was 2.6 times that of Mexico, by 2004 the ratio had increased to 2.9. In addition, average manufacturing wages in the United States increased from 5.7 times higher than those reported in Mexico in 1994 to 6.8 times higher by 2004.<sup>114</sup> This disparity in wages and income distribution is the major driver for Mexican-US migration and is also a source of the derogatory stereotypes commonly associated with Mexican immigrants.

### US Government policy towards Mexican migrants

US Government policy towards Mexican migrants treads an uneasy path between encouraging temporary migration in recognition of the importance of the migrant contribution to the economy and seeking to minimise the influx of migrants to 'protect' domestic jobs. A key tenet of US governmental immigration policy in the last 5 years has been the Secure Fence Act 2006.

The Secure Fence Act<sup>115</sup> was designed to secure the US's borders to prevent illegal entry, drug trafficking and threats to security by building 700 miles of physical boundaries along the Southern border of the United States. The Act also authorised additional checkpoints, lighting and enabled the Department of Homeland Security to use advanced security technology to reinforce the border. Congress approved \$1.2 billion in a homeland security spending bill to fund the project. It was hoped that the fence would cut off the option of



vehicular access from illegal immigrants, rerouting would-be migrants either by foot or through legal channels. It was also intended to protect the US from potential terrorist threats, as well as playing a role in the war on drugs by making it harder to traffic illegal drugs across the border. By 2008, apprehensions<sup>116</sup> were down by 18% at the Southern border, with some of that reduction being attributed by Border Patrol to the construction of the fence. By April 2009 some 613 miles of new fencing had been constructed from California to Texas. In addition to the physical fence, a 'virtual fence' has been tested, using state of the art video cameras and ground sensors. After significant expenditure this project has been abandoned. The fence and the active efforts of Border Patrol demonstrate the very real efforts that the US government makes to apprehend and send-back illegal Mexican immigrants crossing the border. Many more illegal Mexican immigrants enter the US legally and then simply overstay temporary work or study visas.

#### 4. **Nicaragua-Costa Rica Migration Case Study**

Costa Rica's geographical proximity to Nicaragua, coupled with Costa Rica's relative wealth and welfare system, has encouraged Nicaraguan migration into Costa Rica. Costa Rica rates highly in regional rankings for health care, education, public safety and equality. These factors combine to make Costa Rica an attractive destination for migrant workers from poorer neighbouring countries.

The population of Costa Rica in 2010 was approximately 4,640,000, of which 10.5% was made up of international immigrants.<sup>117</sup> Some estimates suggest that up to an estimated 10% to 15% of the Costa Rican population is Nicaraguan, of fairly recent arrival and primarily of Mestizo origin.<sup>118</sup> Nicaraguans living in Costa Rica are mostly temporary residents and undocumented or illegal migrants. A small number of Nicaraguan migrants are permanent residents or naturalized Costa Ricans.

Nicaraguans in Costa Rica frequently face various forms of discrimination. In terms of employment opportunities Nicaraguans habitually perform the least desirable and most insecure jobs, for example working in agricultural and construction labour, and security and domestic service. Some employers take advantage of Nicaraguans' ambiguous legal status, poverty and ignorance of local laws to exploit them. In spite of this, Nicaraguan workers are vital to the success of the Costa Rican economy, taking on many of the jobs that Costa Ricans would refuse to do.

Nicaraguans are also subject to social and cultural marginalisation. Whereas Costa Ricans are relatively fair-skinned and wealthy, Nicaraguans are considered to be dark-skinned, 'uncultured' and poor, whilst Costa Rica's peace and social stability is contrasted with Nicaragua's history of violence and social disorder. These derogatory stereotypes are reinforced and perpetuated by the negative portrayal of Nicaraguans in the Costa Rican media; a 1998 report of the Commission for Human Rights in Central America found that the portrayal of immigration issues in Costa Rican media had encouraged a climate of social rejection of and xenophobia towards Nicaraguans. As a result, whilst government statistics show that only 3% of Costa Rica's crimes are committed by Nicaraguans, Nicaraguans are often scapegoated as being responsible for Costa Rica's social ills.

There have been cases of serious violence against Nicaraguans in Costa Rica. In November 2005 a 25 year old Nicaraguan national, named Natividad Canda, died following an attack by two rottweilers which had been set upon him by the owner of a workshop. The attack supposedly lasted two hours, during which the dogs mauled and partially devoured the victim. The incident was witnessed by armed Costa Rican policemen, who failed to act to save Mr Canda.

In response to this incident, in March 2007 the Nicaraguan government brought a case against the Costa Rican government before the Inter-American Commission on Human Rights (IACHR), in which it accused the Costa Rican government of discriminating against Nicaraguan immigrants. The case was ruled inadmissible by the Commission on the basis that the evidence presented by the Nicaraguan government was not sufficient to show the existence of a generalized practice of discrimination against the Nicaraguan migrant population in Costa Rica. The Commission did, however, assert the following:

*“Based on the information in the record, the Commission considers it demonstrated that there is a prevailing feeling of intolerance and rejection toward Nicaraguans among certain sectors in Costa Rica. Furthermore, the evidence presented by the State of Nicaragua also leads to the conclusion of the existence of a perception of vulnerability among Nicaraguans, who feel themselves to be the object of discrimination in Costa Rica... However, no evidence has been provided from which to conclude that these perceptions have translated into concrete practices.”<sup>119</sup>*

Furthermore, the Commission expressed concern at the picture painted by various agencies (including the Rapporteurship on Migrant Workers and their Families) of the situation of the Nicaraguan migrant population in Costa Rica. The studies highlighted the difficulties that Nicaraguan migrants face in Costa Rica, particularly if they lack the necessary papers, including that:

- (1) requirements are set by the Educational Development Directorates, which prevent the enrolment of children and adolescents if they or their parents do not have a temporary or permanent residence permit;
- (2) undocumented migrants work in conditions of overexploitation; and
- (3) staff of the Costa Rican Social Security Fund report to the General Directorate of Immigration persons who go for a medical consultation and are found not to have a legal residence permit.

As this case highlights, diplomatic relations between the countries can be strained. In August 2006 Costa Rica enacted a new immigration law, aiming to crack down on illegal immigration from neighboring countries. The bill granted law enforcement agencies greater powers to curb illegal immigration by permitting security forces to raid any home, business or vehicle suspected of having undocumented immigrants, and to detain apprehended immigrants indefinitely.

Relations may be further strained by the border disputes which periodically flare up concerning the San Juan river (the right bank of which forms the border between the two countries). In October 2011 the Nicaraguan army and the Costa Rican police force were involved in a dispute following a Nicaraguan dredging operation in the river. Nicaragua’s top military leader, General Julio Cesar Aviles, spoke of a Costa Rican plot to “generate conflict and hostilities” as part of a “systematic campaign” to claim Nicaraguan territory.<sup>120</sup> Disputes such as this potentially inflame Costa Rican attitudes towards Nicaraguans living in Costa Rica.

**PART 3: LIST OF INTERNATIONAL CONVENTIONS, THEIR RATIFICATION AND RESERVATION STATUS<sup>121</sup>**

	Instrument	Signed		Ratified		Reservations	
		Haiti	Dom. Rep.	Haiti	Dom. Rep.	Haiti	Dom. Rep.
<b>CORE HUMAN RIGHTS TREATIES</b>	ICCPR	Yes	Yes	Yes	Yes	No	No
	ICESCR	No	Yes	No	Yes	n/a	No
	CERD	Yes	Yes	Yes	Yes	No	No
	CEDAW	Yes	Yes	Yes	Yes	No	No
	CAT	No	Yes	No	No	n/a	No
	CAT-OP	No	No	No	No	n/a	n/a
	CRPD + OP <sup>122</sup>	No	Yes	No	No	n/a	n/a
<b>UN CONVENTIONS RELATING TO MIGRANTS</b>	ICPMW	No	No	No	No	n/a	n/a
	Stateless Persons Convention	No	No	No	No	n/a	n/a
	Refugee Convention	-	-	Yes	Yes	No	No
	Protocol to Refugee Convention of 1967	-	-	Yes	Yes	No	No
	Organized Crime Convention	Yes	Yes	No	Yes	No	No
	Protocol to the Organized Crime Convention	Yes	Yes	No	Yes	No	No
<b>ILO CONVENTIONS RELATING TO MIGRANTS</b>	Migration for Employment Convention (No. 97)	No	No	No	No	n/a	n/a
	Convention on Migrants in Abusive Conditions (No. 143)	No	No	No	No	n/a	n/a
<b>REGIONAL INSTRUMENTS</b>	ACHR	-	Yes	Yes	Yes	No	No

## PART 4: LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights, 1969
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 1979
CMW	
CRC	Convention on the Rights of the Child, 1989
CRPD	Convention on the Rights of Persons with Disabilities, 2006
CRSR	United Nations Convention relating to the Status of Refugees, 1951
ECHR	European Convention for the protection of Human Rights and Fundamental Freedoms, 1950
EU	European Union
ICCPR	International Covenant on Civil and Political Rights, 1966
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1965
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance, 2006
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
ILO	International Labour Organisation
UDHR	Universal Declaration of Human Rights, 1948
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees

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<sup>1</sup> i.e. “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” (Article 2.1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)

<sup>2</sup> According to the United Nations Development Programme, the HDI looks beyond gross domestic product to a broader definition of well-being. The HDI provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated

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(measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity and income). The index is not in any sense a comprehensive measure of human development. It does not, for example, include important indicators such as gender or income inequality and more difficult to measure indicators like respect for human rights and political freedoms. What it does provide is a broadened prism for viewing human progress and the complex relationship between income and well-being.

3 Situation of Haitian Migrant Workers and their Families in the Dominican Republic', Inter- American Commission of Human Rights, Organization of American States, Country report on the Dominican Republic. See,

<http://www.cidh.oas.org/countryrep/DominicanRep99/Chapter9.htm#D.Status%20of%20permanent%20illegality>; Site visited 13 December 2008.

4 *The Migrant Workers Convention* adopted by General Assembly resolution 45/158 of 18 December 1990, entered into force in July 2003 and has not been ratified by either Haiti or the Dominican Republic.

5 Package of measures to tackle illegal immigration', Legislative comment, (2008), EU Focus 2006 p. 20; See also, Commission press release IP/06/1026, MEMO/06/296, MEMO/06/297 and MEMO/06/298, July 19, 2006.

6 Communication from the Commission of the European Communities on 'Policy priorities in the fight against illegal immigration of third-country nationals', COM(2006) 401, 19 July 2006 at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0402en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0402en01.pdf); Site visited 6 November 2008. See also, 'UK: e-Borders plan to tackle threats' at <http://www.statewatch.org/news/2005/aug/ebord.pdf>; Site visited 6 December 2008.

7 *Directive 2004/82/EC* provides for an obligation for certain carriers to communicate data contained in their passenger's passports to the authorities which carry out checks on persons at the external border.

8 See, *EC Council Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of member states*.

9 Richard Plender, 'Recent trends in national immigration control', 1986, *International and Comparative Law Quarterly*, 35 (3), pp. 531-566

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See, <http://www.ena.lu/treaty-establishing-protocol-statute-european-investment-bank-rome-march-1957-020302330.html>; Site visited 22 October 2008.

11 Package of measures to tackle illegal immigration', supra n.5; p:21

12 See text of Article 2 of the *United Nations Declaration on Non Nationals* at [www.unhchr.ch/html/menu3/b/o\\_nonnat.htm](http://www.unhchr.ch/html/menu3/b/o_nonnat.htm); Site visited 21 October 2008. Further Article 13 of the ICCPR reads: '*An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority*'.

13 Unlike conventions which are legally binding documents, a declaration such as the UN Declaration on Non-Nationals only has persuasive value. It is nevertheless a valuable source of guidance for the migration policy reform of the Dominican Republic.

14 *R v. Secretary of State for the Home Department (Appellant) ex parte Razgar (FC) (Respondent)*, (2004) UKHL 27. The facts of this case are that following serious ill treatment and torture in detention in Iraq, Razgar came to the United Kingdom via Germany. As his mental state was fragile and he had occasional suicidal tendencies, an application was made to the Secretary of State that Razgar's return to Germany would infringe his human rights. The issue arose due to the decision of the Secretary of State that Razgar's claims were "*manifestly unfounded*". Lord Bingham, in his majority decision held that "*reliance may in principle be placed on article 8 to resist an expulsion decision, even where the main emphasis is not on the severance of family and social ties which the applicant has enjoyed in the expelling country but on the consequences for his mental health of removal to the receiving country.*"

15 In contrast to this, the grant of asylum procedure of the United States consisting of summary asylum interviews aboard US coast guard vessels, has been criticized for failing to meet acceptable due process standards and for favouring Cubans over other groups like Haitians. An instance of this was in 2004, when rebel forces swept across Haiti, hundreds of Haitians fleeing to the United States were intercepted at sea by United States authorities and returned to Haiti. President Bush declared '*We will turn back any refugee that attempts to reach our shore, and that message needs to be very clear as well to the Haitian people*', Ninnette Kelley, *International refugee protection challenges and opportunities*, p. 423. See also, Office of the press secretary at [www.whitehouse.gov](http://www.whitehouse.gov).

16 Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, p.350 (1999).

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17 'National Commission on Human Rights-Haitians in the Dominican Republic-Haitian expulsion case backgrounder' at [www.nchr.org/hrp/dr/iachr\\_backgrounder.htm](http://www.nchr.org/hrp/dr/iachr_backgrounder.htm), Site visited 12 October 2008.

18 The petitioners also claimed the violation of other rights guaranteed by the ACHR such as (Article 5) the right to humane treatment, (Article 7) to personal liberty, (Article 8) to a fair trial, (Article 11) to privacy, (Article 17) right of the family, (Article 19) of the child and (Article 21) right to property.

19 'Dominican Republic: A life in transit-The plight of Haitian migrants and Dominicans of Haitian descent', Report by Amnesty International, AMR 27/001/2007 at <http://www.amnesty.org/fr/library/asset/AMR27/001/2007/fr/dom-AMR270012007en.html>; Site visited 6 November 2008.

20 Non refoulment is a non-derogable principle of international law (rights which states have no legal basis of refusing to honour, even in a conditions of emergency) that precludes a contracting state from returning a person to a place where his life or freedoms would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. See, Aoife Duffy, 'Expulsion to face torture? Non-refoulment in international law', *International Journal of Refugee Law* 2008, Volume 20(3), pp. 373-390.

21 121The Inter-American Commission on Human Rights in the *Haitian Centre for Human Rights et. al v United States*, Case 10.675, Report No. 51/96, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95 Doc. 7 rev. at 550 (1997) has held '*the Commission shares the view advanced by the United Nations High Commissioner for Refugees ...that Article 33 had no geographical limitations.*' See also, J. Crisp 'A New Asylum Paradigm? Globalization, Migration and the Uncertain Future of the International Refugee Regime', (2003), New Issues in Refugee Research Working Paper No. 100, Geneva, Evaluation and Policy Analysis Unit, UNHCR.

22 Article 3 of the ECHR states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'; See also, Recommendation 434 concerning 'the granting of the right of asylum to European refugees', Assembly Debate, 1 October 1965 (15th Sitting), Report of the Committee on Population and Refugees, Doc. 1986.

23 Ninnette Kelley, 'International refugee protection challenges and opportunities', supra n.15.

24 Article 31 of the Refugee Convention recognizes this and therefore, should not be prejudiced on account of failure to obtain documentation authorizing travel from one state to another.

25 *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live* adopted by General Assembly resolution 40/144 of 13 December 1985. See Article 5 of the Declaration at [www.unhcr.ch/html/menu3/b/o\\_nonnat.htm](http://www.unhcr.ch/html/menu3/b/o_nonnat.htm). Site visited 21 October 2008.

26 Article 1 of the UN Declaration on non nationals defines 'alien' as any individual who is not a national of the State in which he or she is present.

27 As of February 2002, the Stateless Persons Convention had 54 parties and neither Dominican Republic nor Haiti was signatory to the convention.

28 *Dilcia Yean and Violeta Bosico v. Dominican Republic*, 23 B.H.R.C. 601.

29 'Dominican Republic: A life in transit-The plight of Haitian migrants and Dominicans of Haitian descent', Report by Amnesty International, supra n. 19.

30 Bridget Wooding and Richard Moseley-Williams, 'Needed but unwanted: Haitian immigrants and their descendants in the Dominican Republic', 2004, Catholic Institute for International Relations, London, p.51.

31 Ibid pp. 49-50

32 *Juridical Conditions and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003, Inter-Am. Ct. H.R. (Ser. A)No. 18 (2003), para. 101.

33 As defined in *Castillo-Petruzzi et al. v. Peru*, Inter-Am. Ct. H.R. (Ser. C) No.52 (1999), para 99, Judgment of the Inter-American Court of Human Rights dated May 30, 1999.

34 Article 1(3) of the United Nations Charter includes among the purposes of the United Nations 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction to race, sex, language or religion...' Article 55(c) of the Charter commits the United Nations to promote non-discrimination. Article 2 of the UDHR states, 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty'; Article 7 holds, 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.' The ICCPR, Article 2 provides '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

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social origin, property, birth or other status' and Article 26 provides that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status'; the ICESCR, Article 2(2) states 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

35 In *Thlimmenos v. Greece* (34369/97), (2000) ECHR 161 (6 April 2000), para. 44 the European Court of Human Rights held that the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

36 See *Hugh Jordan v. United Kingdom*, where the European Court of Human Rights has held in relation to indirect discrimination that where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at the group.

37 See for instance, Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination: Democratic Republic of the Congo 27/09/96, UN Doc. CERD/C/304/Add.18; Syrian Arab Republic 07/07/99, UN Doc. CERD/C/304/Add. 70; Kuwait 15/09/93, UN Doc. A/48/18; Ukraine 16/08/2001, UN Doc. A/56/18; Russian Federation 21/03/2003, UN Doc. CERD/C/62/CO/7.

38 'The Rights of Non-Citizens', University of Minnesota Human Rights Center (2003) at <http://www1.umn.edu/humanrts/edumat/studyguides/noncitizens.html>; Site visited 6 December 2008.

39 See, the House of Lords decision of *Regina v. Immigration Officer at Prague airport and another*, (2004) UKHL 55 (9 December 2004), in which British immigration officers were stationed in Prague airport in 2005 for pre-entry clearance of all passengers before they boarded flights for the UK. This procedure involved racial profiling of asylum seekers from the Czech Republic, a majority of who were Roma. The result was that Czech Roma was 400 times more likely to be refused leave to enter than non-Roma Czech. Concerns that the asylum seekers were being rejected without an opportunity to present their case were voiced. The British government claimed no responsibility to such concerns since the asylum seekers were not on British territory. While the House of Lords agreed to this reasoning, the Court emphasized that such measures could not be applied in a discriminatory manner, as in the present case.

40 Race Convention, 'General Recommendation No.30: Discrimination against Non-Citizens', 01/10/2004, para. 14, International Human Rights Instruments, HRI/GEN/1/Rev.7/Add.1 4 May 2005.

41 Article 5(d) (iii) of Race Convention states: States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of other civil rights, in particular, the right to nationality.

42 Special Rapporteur of the Commission on Human Rights on the human rights of migrants, Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/issues/migration/rapporteur/index.htm>; Site visited 14 December 2008.

43 The ECHR, Article 14 provides that '*the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*'. Article 1 of Protocol No. 12 to the ECHR, entered into force on April 1, 2005, holds that the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status; Article 2 holds that 'No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1'. Article 21 of the European Charter of Fundamental Rights holds that 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited'. See also the African Charter on Human and Peoples' Rights, Chapter 1, Article 2 that 'every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status; the American Convention on Human Rights, Articles 1(1) "The 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, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition" and 24 'All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal

protection of the law'. See also, European Union, Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 2000/43 at [http://www.justice.ie/en/JELR/Pages/EU\\_directives](http://www.justice.ie/en/JELR/Pages/EU_directives); Site visited 27 October 2008. Further Articles 1(1) and 24 of the American Convention on Human Rights explicitly prohibit direct discrimination as held in *Maria Eugenia Morales de Sierra v. Guatemala*, Report N° 4/00 Case 11.625, Inter. Am. C.H.R. OEA/Ser. L/V/II.111 Doc. 20 rev. at 929 (2000), para. 36.

44 Dilcia Yean and Violeta Bosico v. Dominican Republic, supra n. 35 [http://www.justiceinitiative.org/db/resource2?res\\_id=103001&preprint=1](http://www.justiceinitiative.org/db/resource2?res_id=103001&preprint=1); Site visited 23 October 2008.

45 *ILO Multilateral Framework on Labour Migration*, Non-binding principles and guidelines for a rights-based approach to labour migration, 2006, Geneva, International Labour Office, pp. 36-39.

46 *C143 Migrant Workers (Supplementary Provisions) Convention, 1975*. See, [www.ilo.org/ilolex/cgi-lex/convde.pl](http://www.ilo.org/ilolex/cgi-lex/convde.pl)

47 Article 8 of the Dominican Constitution establishes that the State will stimulate the progressive development of the social security, so that each person is able to enjoy adequate protection against unemployment, illness, incapacity or old age.

48 S. Martin, P. Martin, P. Weil, 'Fostering cooperation between source and destination countries', *Migration Information Source*, 1 October 2002, at <http://www.migrationinformation.org/Feature/display.cfm?ID=60>

49 Article 6 ICESCR provides that 'the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right'.

50 The project covered Thailand, Philippines, Bangladesh, Pakistan and China.

51 The International Organization for Migration, <http://www.iom.int/jahia/Jahia/pid/461>, Site visited 13 December 2008.

52 However, the programme is particularly but not exclusively, intended for third countries actively engaged in preparing or implementing a readmission agreement initialled, signed or concluded with the European Community at [http://ec.europa.eu/europeaid/where/worldwide/migration-asylum/documents/themes-migration-awp2005\\_en.pdf](http://ec.europa.eu/europeaid/where/worldwide/migration-asylum/documents/themes-migration-awp2005_en.pdf); Site visited 7 November 2008.

53 European Commission: External cooperation programme, [http://ec.europa.eu/europeaid/where/worldwide/migrationasylum/index\\_en.htm](http://ec.europa.eu/europeaid/where/worldwide/migrationasylum/index_en.htm); Site visited 14 December 2008.

54 See also, 'Dominican Republic: A life in transit- the plight of Haitian migrants and Dominicans of Haitian descent', for a historical background of labour migration into the Dominican Republic. Report of Amnesty International, 2007, <http://www.amnesty.org/fr/library/asset/AMR27/001/2007/fr/dom-AMR270012007en.html>; Site visited 22 October 2008.

55 Ninnette Kelley, 'International refugee protection challenges and opportunities', supra n.15.

56 The communication from the European Commission on 'Fighting trafficking in human beings- an integrated approach and proposals for an action plan', 18 October 2000, p.6.

57 International Organization for Migration; <http://www.iom.int/jahia/Jahia/about-migration/managing-migration/pid/674>; Site visited 25-30 October 2008.

58 COM(2005) 514, 18 October 2005 at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0402en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0402en01.pdf); Site visited 6 November 2008.

59 *Communication from the Commission to the European Parliament and the Council* dated 18 October 2005, COM (2005) 514 at [www.europa.eu/rapid/pressReleasesAction.do](http://www.europa.eu/rapid/pressReleasesAction.do).

60 *Framework Decision OJ L 203, 1 August 2002, p.1; OJ L 13, 20 January 2004, p.44* which prompted the changes in legislation.

61 European Council decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, Article 4(1), OJ L 63, 6 March 2002, p.1.

62 Alison Phinney, 'Trafficking of Women and Children for Sexual Exploitation in the Americas', Policy paper of the Inter-American Commission of Women of Organization of American States and the Women, Health and Development Program Pan American Health Organization; <http://www.paho.org/english/hdp/hdw/TraffickingPaper.pdf>. See also, *The Protection Project's Commercial Sexual Exploitation of Women and Children: A Human Rights Report (2001)*.

63 <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>, Site visited 13 December 2008.

64 Ninnette Kelley puts forth a similar argument in relation to refugees in 'International refugee protection challenges and opportunities', 2007, *International Journal of Refugee Law*, p.405



65 The Indian migration legislation derives support from such reasoning. According to a report submitted to the President of India by the Governor of Assam titled 'Illegal Migration Into Assam', 8 November 1998, illegal migration into Assam is the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the state. The report also states that *'...there is a tendency to view illegal migration into Assam as a regional matter, affecting only the people of Assam. Its more dangerous dimension of greatly undermining our national security is ignored. The long cherished design of Greater East Pakistan/Bangladesh, making inroads into the strategic land link of Assam with the rest of the country, can lead to severing the entire land mass of the North East, with all its rich resources, from the rest of the country. This will have disastrous strategic and economic consequences...'*

See, [http://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal\\_migration\\_in\\_assam.htm](http://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm); Site visited 2 October 2008.

66 Ninnette Kelley, 'International refugee protection challenges and opportunities' supra n.15, p.410. It should be noted however that Ninnette puts forth the above argument in relation to a refugee. Article 1 of the United Nations Convention Relating to the Status of Refugees as amended by the 1967 Protocol defines a refugee as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. See also, J Crisp, 'A new asylum paradigm? Globalization, migration and the uncertain future of the international refugee regime', (2003), New issues in refugee research, Working paper No. 100.

67 Sectarian violence in Bangladesh led to the flight of thousands of Bangladeshi Hindus to India at the end of 2001. Retaliatory incidents erupted in India, and local mobs in border states attempted to push back Hindus who had lived there for years.

68 Various courts have held that evidence of 'a general picture' of disadvantage or 'common knowledge' of discrimination might be sufficient to constitute a *prima facie* case. See, for example, *London Underground v. Edwards (No. 2)* 1999 ICR 494 CA (1999); See also, *Mayer v. Australian Nuclear Science and Technology Organisation* EOC 93-285 (2003).

69 'Migration in an interconnected world: New Directions for Action', Report of the Global Commission on International Migration, October 2005, pp. 71-73.

70 <http://www.reuters.com/article/2011/02/11/us-haiti-quake-shelter-idUSTRE71A45520110211> (accessed March 2011)

71 Draft Response of the Human Rights Council on its thirteenth session (7 April 2010), paragraph 338

72 See <http://www.ayudahaiti.es/en/> (accessed 2 February 2010)

73 According to the World Bank, emergency financing provided under its Social Development Civil Society Fund (CSF) has helped Dominican civil society support Haiti with the promotion of disaster mitigation, cross-border trading programs for women entrepreneurs, sexual and reproductive health programs and the reduction of gender based violence that particularly impacts women living in tents. See <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/DOMINICANEXTN/0,,contentMDK:22644704~pagePK:141137~piPK:141127~theSitePK:337769,00.html> (accessed 2 February 2010)

74 [http://www.google.com/hostednews/canadianpress/article/ALeqM5jqTO\\_DK\\_AKBRViF\\_EVKROQwBzmVg?docId=5819423](http://www.google.com/hostednews/canadianpress/article/ALeqM5jqTO_DK_AKBRViF_EVKROQwBzmVg?docId=5819423); and <http://www.haitilibre.com/en/news-2203-haiti-social-3000-haitians-repatriatedsince-early-january.html> (accessed 02 February 2011)

75 Dominican Republic must stop forcible deportation of Haitians (press release 7 January 2011) <http://www.amnesty.org/en/news-and-updates/dominican-republic-must-stop-forcible-deportation-haitians-2011-01-07>

76 <http://www.suprema.gov.do/Normativas/constitucion.aspx> (accessed 02 February 2011)

77 Law 285-04 – the Migration Law broadened the definition of individuals from 'in transit' to 'non-residents', including individuals with expired residency visas and undocumented workers.

78 Concluding observations of the Committee on the Elimination of Racial Discrimination – Dominican Republic (16 May 2008).

79 Translation from: "Dominicans of Haitian Descent and the Compromised Right to Nationality", the Open Society Institute, October 2010

80 Ibid, page 17

81 Center for Justice and International Law (CEJIL); Global Rights; Red de Encuentro Dominico Haitiano Jaques Viau; Movimiento de Mujeres Dominico-Haitianas (MUDHA); and the Open Society Justice

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Initiative (OSI). Representatives of the State of the Dominican Republic also attended the session, held on 28 October 2010.

82 The Constitution and the Right to Nationality in the Dominican Republic—The Human Rights Brief (29 October 2010). See <http://hrbrief.org/2010/10/the-constitution-and-the-right-to-nationality-in-the-dominicanrepublic/> (accessed February 2011)

83 Report of the Working Group on the Universal Periodic Review: Dominican Republic (4 January 2010): Recommendations 13, 15, 16, 17, 18, 19, 20, 21 of those that enjoyed the support of the Dominican Republic.

84 Ibid, recommendations 9, 10 and 42 of those that enjoyed the support of the Dominican Republic.

85 Ibid, recommendation 41 of those that enjoyed the support of the Dominican Republic.

86 Ibid, recommendation 4 of those not enjoying the support of the Dominican Republic.

87 Dominican Republic response to recommendation 4 of those not enjoying its support.

88 Dominican Republic: Human Rights Council Adopts Universal Periodic Review, Amnesty International Public Statement, 31 March 2010. <http://www.amnesty.org/en/library/info/AMR27/001/2010/en> (accessed 31 January 2011)

89 Report of the Working Group on the Universal Periodic Review: Dominican Republic (4 January 2010): Recommendations 8-10 of those to be examined by the Dominican Republic.

90 Draft Response of the Human Rights Council on its thirteenth session (7 April 2010), paragraph 48

91 Summary of Initial Petition in the case of Emildo Bueno Oguis v. Dominican Republic. The petition relates to alleged violations by the Dominican Republic of Articles 3, 5, 17, 20, 22, 13 and 24 of the Convention. See <http://www.soros.org/initiatives/justice/litigation/bueno>. (accessed 03 February 2011)

92 According to the petition, “These certified copies are necessary certificates for a variety of important civil, political and economic activities.” In this case the copies are required for an application for residence in the United States but they are also required to apply for and renew national identity cards and passports. (paras 15-16)

93 Trafficking in Persons Report 2010 – US State Department. Available from <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm> (accessed February 2011)

94 Haitian Immigrants in the United States by Aaron Terrazas, Migration Policy Institute, January 2010, <http://www.migrationinformation.org/USFocus/display.cfm?id=770&feed=rss>

95 <http://www.migrationinformation.org/about.cfm>

96 Report “Migration in the Carribean: Haiti, the Dominican Republic and Beyond” by James Ferguson

97 CRS Report for Congress by Ruth Ellen Wasem, as of March, 31, 2010

98 Letter from Barack H. Obama, President of the United States, to Nancy Pelosi, Speaker of the United States House of Representatives, March 24, 2010, [http://www.whitehouse.gov/omb/assets/budget\\_amendments/amendment\\_03\\_24\\_10.pdf](http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf).

99 The other two activities included in \$220 million request for HHS would cover costs associated with medical evacuations and costs for HHS public health activities in Haiti.

100 In March 30, 2010 the USCIS Office of Legislative Affairs reported that 215 Haitians had been granted humanitarian parole as of March 29, 2010 (in addition to the Haitian orphans who had received parole).

101 Letter from Peter R. Orszag, Office of Management and Budget Director, to Barack Obama, President of the United States, March 24, 2010, [http://www.whitehouse.gov/omb/assets/budget\\_amendments/amendment\\_03\\_24\\_10.pdf](http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_03_24_10.pdf).

102 CRS Report RL34040, U.S. Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context, by Chad C. Haddal.

103 U.S. Department of Homeland Security, “Statement from Secretary Janet Napolitano,” press release, January 15, 2010. [http://www.dhs.gov/ynews/releases/pr\\_1263595952516.shtm](http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm)

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<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=e54e60f64f336210VgnVCM100000082ca60aRCRD&vgnnextchannel=e54e60f64f336210VgnVCM100000082ca60aRCRD>

105 According to the World Bank’s Development Indicators at <http://data.worldbank.org/sites/default/files/section2.pdf>

106 <http://www.migrationinformation.org/USFocus/display.cfm?id=767>

107 <http://www.migrationinformation.org/about.cfm> which incorporates data from the US Census Bureau’s 2008 American Community Survey (ACS) and 2000 Decennial Census, and the Department of Homeland Security’s Office of Immigration Statistics (OIS) for 2008. It also includes data from the Mexican National Institute of Statistics and Geography’s Survey of Occupations and Employment (ENOE) and the

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Survey of Migration on the Northern Border of Mexico (EMIF), which is conducted jointly by Mexico's ministries of Foreign Affairs, Interior, and Labor and Social Protection, and the College of the Northern Border Region (COLEF) in Tijuana

108 <http://www.migrationinformation.org/USFocus/display.cfm?id=767>

109 Mexican government's National Survey of Occupations and Employment (ENOE), a monthly household survey

110 Measured as the number of migrants entering Mexico, this figure is almost wholly comprised of Mexicans returning from abroad.

111 Polaski, Sandra. 2004. "Mexican Employment, Productivity and Income a Decade after NAFTA." Carnegie Endowment for International Peace, Washington.

112 North American Free Trade Agreement, between the US, Canada and Mexico which was established 01 January 1994

113 <http://data.worldbank.org/sites/default/files/section4.pdf>

114 In USD per man hour

115 <http://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061026-1.html>

116 Used as a rough proxy for illegal border crossings

117 Figures provided by the UN <http://esa.un.org/migration/p2k0data.asp> (accessed 25 February 2010).

118 Figures provided by the US Department of State <http://www.state.gov/r/pa/ei/bgn/2019.htm> (accessed 25 February 2010).

119 Inter-American Commission on Human Rights, Report Number 11/07, Interstate Case 01/06, Nicaragua v Costa Rica, March 8 2007.

<http://www.cidh.oas.org/annualrep/2007eng/interstatecase.eng.htm>.

120 Rogers, Tim, "Costa Rica's Border War with Nicaragua: A Boost for Ortega?", [www.Time.com](http://www.time.com) (Friday 19 November 2010) (accessed 24 January 2011).

121 Source: Office of the United Nations High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/ratification/4.htm>. Site visited 27 October 2008.

122 Haiti accession 23 July 2009.