

Summary of Initial Petition in the case of
Emildo Bueno Oguis v. Dominican Republic
Presented to the Inter-American Commission on Human Rights
on June 1, 2010

1. On behalf of Mr. Emildo Bueno Oguis, the Open Society Justice Initiative (OSJI) and the Center for Justice and International Law (CEJIL) write to complain of violations committed against him by the Dominican Republic. We present this initial petition before the Inter-American Commission on Human Rights (“the Commission”) under Article 44, of the American Convention on Human Rights (“the Convention”) and Rules 23 and 28 of the Rules of Procedure of the Inter-American Commission on Human rights (“Commission Rules of Procedure”) for serious violations of his rights and freedoms protected under Articles 3, 5, 17, 20, 22, 13 and 24 of the Convention.

Summary of Facts

2. Mr. Emildo Bueno Oguis was born in the Dominican Republic to Haitian parents who were working and living in the country. At the time of his birth, Article 11 of the Dominican constitution recognized as Dominican citizens “[a]ll persons born in the territory of the Republic, with the exception of legitimate children of foreigners resident in the country in diplomatic representation or in transit.”¹ The “in transit” exception was legally applicable only to persons who were in the country for a period of 10 days or less.² Mr. Bueno Oguis was therefore recognized as a Dominican citizen in his official Dominican birth certificate.
3. Over the next three decades, Mr. Bueno Oguis’ status as a Dominican national was repeatedly recognized and confirmed by different agencies of the Dominican government. Throughout the course of his life, he was issued with a national identity card (*cédula de identidad y electoral*) and a Dominican passport. Together with his original birth certificate, Mr. Bueno Oguis’s identity card and passport allowed him to hold and exercise a wide range of civil, political, social and

¹ Constitution of the Dominican Republic (2002), Article 11.

² Rules of Procedure of Migration No. 279 of May 12, 1939, Section V.

economic rights that were inherent to his status as a national of the Dominican Republic. These included political participation, pursuit of higher education, gainful employment, and purchase of properties. In addition, a recently issued copy of a birth certificate is required in order to exercise certain important family rights, such as to register the birth of a child, to get married and to get divorced, as well as for certain civil rights such as visa applications and enrolling in university. Until 2007, the validity of these documents was never once called into question by civil registry officials.

4. In 2007, Mr. Bueno Oguis requested from his local civil registry authorities a copy of his long-form birth certificate. He need this document in order to complete his family reunification visa request before the US government, which he has filed in order to join his American citizen wife in the United States.
5. Under Dominican law, holders of civil registry documents have unfettered and automatic right of access to these documents.³ However, when Mr. Bueno Oguis went to solicit a copy of his long-form birth certificate in September 2007, civil registry officials told him they were not authorized to give him this document under explicit orders of the Administrative Chamber of the Central Electoral Board (*Junta Central Electoral*, or “JCE”).
6. Faced with the Dominican government’s ongoing refusal to give him a certified copy of his long-form birth certificate, Mr. Bueno Oguis filed a legal challenge against the JCE in February 2008. In particular, he was challenged *Circular 017*, the internal administrative memorandum that was used by his local civil registry officials to justify their denial of his identity documents.
7. Issued in March 2007 on the basis of concerns that civil registry offices had in the past improperly issued birth certificates to children of foreign parents who did not prove their residence or legal status in the country, *Circular 017* prohibited civil registry officers from expediting any requests related to potentially “irregular” birth certificates. It also prohibited activities such as issuing certified copies of birth certificates, and ordered civil registry officers to forward without delay any “suspect” documents and related applications to JCE headquarters for investigation. Mr. Bueno Oguis, as well as many other citizens whose documents were referred for investigation under *Circular 017*, were unable to proceed with any action requiring proof of citizenship or residency, as the JCE did not establish any interim measures that would allow for provisional use of the documents under investigation. This left Mr. Bueno Oguis with no legal protection for his rights as a Dominican citizen.
8. In its implementation of *Circular 017*, the JCE retroactively applied the General Law on Migration 285/04 to persons born before its enactment in 2004. This law for the first time made legal residence and/or regularized status of parents a requirement for their children to acquire Dominican nationality. Furthermore, in ordering that all documents belonging to individuals born to foreign parents be

³ Law 659 of 1955 on Civil Acts, Article 31.

subjected to “investigation,” the JCE was ignoring national laws which mandated that such reviews can only be carried out by judicial authorities.

9. Although the language of *Circular 017* is *prima facie* neutral, referring only to “children of foreign parents,” the instructions were clearly targeting members of one ethnic group: Dominicans of Haitian descent. The Dominican Republic has no significant population of non-Dominican origin other than Dominicans of Haitian descent. Accordingly, the “irregular” processing of birth certificates by “foreign parents” with which *Circular 017* was purportedly concerned was near-universally understood to refer to birth certificates issued to children of Haitian migrant workers. Reinforcing this inference, in some cases JCE officials have replaced the phrase “foreign parents” on official documents referring to *Circular 017* with “Haitian” parents. Research has shown that in implementing *Circular 017*, civil registry officials used skin color, racial features, and or “Haitian-sounding” names of applicants as the basis for concluding that individuals are carrying “suspect” documents. Furthermore, whatever the intent behind *Circular 017*, its disproportionate impact is clear; those affected by these instructions have been almost exclusively Dominicans of Haitian descent.
10. The February 2008 challenge contended that in applying *Circular 017* to Mr. Bueno Oguis’s request for a certified copy of his long-form birth certificate, the JCE had violated his fundamental rights to juridical personality, nationality, equality before the law, non-discrimination, freedom of movement, dignity, juridical security, and due process.
11. In April 2008, the Second Chamber of the Contentious Taxation and Administrative Tribunal issued its judgment in this case. Although the court declared the case admissible, it found that no violation of fundamental rights had taken place. In its decision, the three-judge panel argued that *Circular 017* was not in conflict with the Constitution. The written decision included no substantive discussions of the rights violations alleged
12. In June 2008, Mr. Bueno Oguis filed a subsequent motion before the Dominican Republic’s Supreme Court of Justice, requesting that requested that the judgment of the Second Chamber of the Contentious Taxation and Administrative Tribunal be vacated. On May 6, 2009, the Supreme Court of Justice held a hearing on Mr. Bueno Oguis’ case wherein both parties reiterated their arguments on appeal. Since then, no further action has been taken in Mr. Bueno Oguis’s case.

Violations of Convention Rights

13. The Dominican Republic has violated the Convention rights of Mr. Bueno Oguis in the following ways.

Arbitrary Deprivation of Nationality (Article 20)

14. The arbitrary decision to refuse to recognize Mr. Bueno Oguis as a Dominican national on the basis of *Circular 017*, and the consequent refusal by the JCE to

issue to Mr. Bueno Oguis a certified copy of his birth certificate, together with the subsequent judicial decision upholding this decision together constitute arbitrary deprivation of his nationality. This blatant violation of Article 20 of the Convention has left Mr. Bueno Oguis stateless.

15. Although Mr. Bueno Oguis's original birth certificate correctly acknowledges his lawful Dominican nationality, the peculiarities of the Dominican Republic's civil registry system mean that access to certified copies of this document is equally as important as the initial acknowledgement. At the time that Mr. Bueno Oguis initiated this legal action, certified copies of birth certificates were only valid within a three month period. These certified copies are necessary certificates for a variety of important civil, political and economic activities that require proof of legal identity and nationality, including, as in Mr. Bueno Oguis's case, the application for residence in the United States. In the absence of such documents, Dominicans are unable to prove their nationality or exercise the rights inherent in their condition as citizens, and thus are left *de facto* stateless.
16. Certified copies of birth certificates are also required to apply for and renew national identity cards (*cédulas de identidad y electoral*) and passports – two other key documents which in the Dominican Republic offer proof of nationality and open the door to full enjoyment of a host of fundamental rights. Although Mr. Bueno Oguis's *cédula* and passport are both still valid, their expiration date is drawing near. When the time comes for him to renew these, he will not be able to do so for lack of access to certified copies of his birth certificate, and his ability to enjoy his lawful Dominican nationality will be further restricted.
17. The government's actions constitute arbitrary deprivation of nationality as: i) the JCE failed to give Mr. Bueno Oguis written notice of its original decision not to issue him a certified copy of his long-form birth certificate; ii) it failed to explain to him the investigative process to which his documents would be submitted; and, iii) the application of *Circular 017* to his case constituted impermissible retroactive application of the 2004 migration law, requiring civil registry officials to undertake investigative duties which they were not mandated to execute under Dominican law.
18. As noted above, the Dominican Republic has recently adopted a revised constitution which fundamentally alters the right to Dominican nationality. Previously, the only persons exempted from the constitutional guarantee of the right to nationality were the children of diplomats and the children of persons in transit. The new Constitution further widens this exemption to exclude children of persons who are illegally residing in the country. This new nationality provision directly contradicts the ruling of the Inter-American Court of Human Rights in *Dilcia Yean and Violeta Bosico v. Dominican Republic* that the migratory status of a parent

should have no bearing on a child's right to nationality.⁴ It also entrenches the policy of arbitrary deprivation of nationality against Dominicans of Haitian descent.

Failure to Secure Equal Protection (Article 24)

19. The decision that Mr. Bueno Oguis was no longer a Dominican national and the consequent refusal to issue him with a certified copy of his long-form birth certificate on the basis of *Circular 017* were based on his Haitian national origin, and as such constitute discrimination in violation of his Article 24 right to equal protection before the law.
20. In addition, the congressional debate surrounding the recent modification of the constitution suggests that racial discrimination was a factor in the decision to change the law on citizenship, and that it was drafted and approved in order to exclude Dominicans of Haitian descent from the right to nationality on the basis of their race. Although Mr. Bueno Oguis was considered a Dominican citizen under the previous constitution, the JCE has so far refused to accept that he is in fact a Dominican citizen, and there has been no indication it will change its position following entry into force of the new constitution. By denying nationality to persons born in the country because of their parents' residency status, this new provision codifies within the constitution the discriminatory elements of both *Circular 017* and the Law on Migration 285/04. While a government may change constitutional or statutory provisions governing access to nationality, it may not do so for prohibited reasons, such as racial discrimination, or in a manner that generates discriminatory effect.

Denial of Juridical Personality (Article 3)

21. By deciding that Mr. Bueno Oguis was no longer a Dominican national and consequently refusing to issue him with a certified copy of his long-form birth certificate, thereby arbitrarily depriving him of his nationality, the government of the Dominican Republic withdrew his right to recognition as a person before the law, violating his Article 3 right to juridical personality.
22. The Inter-American Court of Human Rights has previously recognized the strong link between recognition of nationality and recognition of juridical personality.⁵ Absent a certified copy of his birth certificate, Mr. Bueno Oguis was left unable to

⁴ *Yean and Bosico v. Dominican Republic*, at para. 156. The Court noted that "considering the right to nationality of the children of migrants in the Dominican Republic according to the pertinent constitutional provision and the international principles concerning protection for migrants, the Court considers that: (a) The migratory status of a person cannot be a condition for the State to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of his rights; (b) The migratory status of a person is not transmitted to the children, and (c) The fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born."

⁵ *Yean and Bosico v. Dominican Republic*, Inter-American Court of Human Rights, Judgment of September 8, 2005, at para. 178.

prove his nationality and therefore incapable of holding and exercising the rights inherent in his condition as a citizen of the Dominican Republic.

Degrading Treatment (Article 5)

23. Arbitrary denial of nationality based on racially discriminatory motives constitutes treatment contrary to Article 5 of the Convention. The decision that Mr. Bueno Oguis was no longer a Dominican national and the refusal of his request for a copy of his birth certificate on the basis of *Circular 11* and the 2004 Migration Law were due to racially discriminatory reasons. The subsequent entrenchment of those laws in the recent amendment of the Constitution is an attempt to give further legal justification to the discrimination. Such an official policy of singling out members of a racial, ethnic or national origin group for exclusion from nationality constitutes degrading treatment.

Consequential Violations of Fundamental Rights (Articles 23, 22, 17, 21)

24. As a result of the decision that Mr. Bueno Oguis was no longer considered a Dominican national and the refusal to issue him with a certified copy of his birth certificate, he is not able to exercise certain family rights such as registering the birth of a new child, getting married or divorced, and unable to exercise certain civil rights such as applying for visas or registering for university. In addition, he will be unable to obtain a new national identity card, the *cédula de identidad y electoral*, when it expires. The *cédula* is the single most important identity document for Dominican citizens. It serves as the key to access a wide range of civil, political, social, and economic rights, without which Mr. Bueno Oguis is unable to exercise many rights that require proof of nationality, leading to consequential violations of his rights to freedom of movement (Article 22), family life (Article 17), political participation (Article 23) and property (Article 21).
25. *Freedom of Movement.* All adult Dominican citizens are required to carry with them a valid *cédula* at all times to prove their lawful residency in the country. Without one, they become vulnerable to detention, fines and even expulsion. Furthermore, a current and valid certified copy of a birth certificate is required to apply for a visa, or to apply for or renew a Dominican passport. Once Mr. Bueno Oguis' current passport expires, on October 23, 2012, he will not be able to renew it, preventing him from returning to the Dominican Republic (if, as now, he is resident in the United States at the time), or travelling to the United States. Accordingly, without a valid *cédula*, his right to freedom of movement protected by Article 22 is violated.
26. *Family life.* Without a new copy of his long-form birth certificate, Mr. Bueno Oguis is unable to get married or divorced, or to register the birth of a child, violating his family life protected by Article 17. In addition, the inability to travel freely also threatens his family life because without valid travel documents he will not be able to freely travel between the Dominican Republic and the United States, as he has family members in both countries. Mr. Bueno Oguis's wife and mother both live in the United States. His sister, along with several aunts and uncles, reside in Haiti.

27. *Political Participation.* Mr. Bueno Oguis will not be able to exercise rights and obligations inherent in membership in a political community.⁶ Without a valid *cédula*, he will be prevented from voting, standing for election, or accessing the public services of the Dominican Republic, violating his rights to political participation protected by Article 23.
28. *Property.* Without a valid *cédula*, Mr. Bueno Oguis will not be able to purchase or transfer property in the Dominican Republic, violating his right to the use and enjoyment of his property protected by Article 21.

Admissibility of the Petition

Competence of the Commission

29. The Inter-American Commission on Human Rights has *prima facie* jurisdiction to investigate the claim filed by Mr. Bueno Oguis, as the allegations concern the rights to nationality, equal protection before the law, juridical personality, humane treatment, and due process contained in Articles 20, 3, 24, 5, and 22 of the American Convention on Human Rights, as established in Article 44 of the Convention. The Commission has territorial and temporal jurisdiction, given that the alleged events took place under the jurisdiction of the Dominican Republic which became party to the Convention on September 7, 1978.

Exhaustion of Domestic Remedies

30. The petition meets the requirement of exhaustion of domestic remedies established in Article 46 of the Convention. According to Article 46(1)(a) of the Convention, petitions and communications lodged in accordance with Article 44 or 45 of the Convention require first that all remedies under domestic law be pursued in accordance with generally recognized principles of international law. Mr. Bueno Oguis's case is currently awaiting a decision by the Dominican Republic's Supreme Court of Justice, the highest court in the land.
31. As per Article 46(1)(b) of the Convention, petitions should be lodged within a period of six months from the date on which the petitioner was notified of the final judgment. However, according to Article 46(2) of the Convention, this provision shall not be applicable when "the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have been violated," or when the petitioner "has been denied access to the appeals under domestic law or has been prevented from exhausting them," or when there has been "an unwarranted delay in rendering a final judgment under the aforementioned appeals." The jurisprudence of the Inter-American Court of Human Rights has furthermore established that domestic appeals must be "effective,"⁷ which shall not be the case when "due to any other situation that comprises a framework of denial of justice, as where there is an undue delay in the decision; or where, for any

⁶ *Yean and Bosico v. Dominican Republic*, at para. 137.

⁷ *Velasquez Rodriguez Case*, Inter-American Court of Human Rights, "Judgment of 29, 1988," at para. 66.

reason, the alleged injured party is not allowed to appeal through the courts.”⁸ The Court has also noted that the rule of prior exhaustion of domestic remedies must not result in any way “in a stoppage or delay rendering useless any international action in support of the victim deprived of defense.”⁹

32. It has now been nearly 12 months since the Supreme Court of Justice of the Dominican Republic took any action on Mr. Bueno Oguis’ case and more than two years since the legal challenge was commenced. There has been no notice from or evident activity by the court since the May 6, 2009 hearing. The delay is not unusual, as the Supreme Court of Justice regularly takes more than two years, to rule upon cases.¹⁰ The Commission has previously found that a delay of 7 months in rendering a final judgment in a case of arbitrary deprivation of nationality was unwarranted, given the significance of the deprivation of nationality.¹¹ Once there is a *prima facie* delay of an unacceptable duration then “it rests upon the respondent government to adduce specific reasons for the delay.”¹² In the meantime, the rights violations alleged by Mr. Bueno Oguis continue unabated as he has not been able to receive a certified copy of his birth certificate. The situation will become worse when his *cédula* expires once the new system is introduced probably later in 2010, and will further degenerate when his passport expires in 2012. In these circumstances he cannot prove his Dominican nationality or enjoy the exercise of the full enjoyment of his right to citizenship established in domestic litigation and covered by the American Convention. This amounts to an unwarranted delay, preventing an effective right of access to a court, and falling within the exception to the exhaustion of domestic remedies provided for in Article 46(2). If the delay in the domestic procedure were permitted to prevent an application to this Commission, it would render the procedures of the Commission useless given the precarious situation of Mr. Bueno Oguis.

⁸ *Judicial Guarantees in States of Emergency*, Inter-American Court of Human Rights, “Advisory Opinion OC-9/87 of October 6, 1987,” at para. 24.

⁹ *Velasquez Rodriguez case*, Inter-American Court of Human Rights, “Preliminary Objections: Judgment of June 26, 1987,” Series c. No. 1, at para. 9.

¹⁰ Eduardo Jorge Prats, *Los Retos del Estado de Derecho en República Dominicana* (paper presented at the “Reformas y Estado de Derecho” seminar held in Santo Domingo, Dominican Republic, on October 8, 2009), available at <http://conare.gob.do/Portals/0/docs/Eduardo%20Jorge%20Prats.pdf>.

¹¹ *Baruch Ivcher Bronstein v. Peru*, Case 11.762, Report No. 20/98, Inter-Am C.H.R. (1997) at paras 53-54.

¹² *Jorge A. Giménez v. Argentina*, Case 11.245, Report No. 12/96 (1996) at para. 101.