



Submission for the Joint General Comment No. 3 of  
the Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families and  
No. 21 of the Committee on the Rights of the Child  
on the Human Rights of Children in the Context of  
International Migration

By the Centro para la Observación Migratoria y el  
Desarrollo Social en el Caribe (OBMICA)

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OBMICA, a think tank focusing on migration and social development in the Caribbean, presents this submission as a complement to our participation in the Americas Consultation on the Joint General Comment on Children in the Context of International Migration at the Universidad Iberoamericana in Mexico City on 28 and 29 June 2017. Given the advanced stage of the document drafting process, our submission is limited to some suggested language regarding the right to a name, identity, and to a nationality (art. 29 CMW; arts. 7 and 8 CRC). Suggestions are made based on the 2<sup>nd</sup> draft dated June 15, 2017.

#### 4. Right to a name, identity, and to a nationality (art. 29 CMW; arts. 7,8 CRC)

**Article 62.** We suggest adding the highlighted text: "...Unregistered children are at risk of becoming stateless particularly when born **to parents** in an irregular migration situation, due to barriers to acquiring citizenship in the country of origin of the parents, as well as accessing birth registration and citizenship at the place of their birth." It is important to add "to parents" because of the affirmation and regional jurisprudence<sup>1</sup> indicating that migration status cannot be conferred from parents to children. Therefore, a child cannot be born into an irregular migration situation, but rather, they are born to parents with an irregular status.

**Article 64.** We suggest adding the highlighted text: "Legal and practical obstacles to birth registration should be removed, including through ensuring a prohibition of data sharing between **health providers**, civil registration, and immigration enforcement, and not requiring parents to produce documentation." Since most birth declaration processes begin in health centers, clinics or hospitals, health providers have a key role to play in providing proof of birth which then facilitates children's birth registration. However, many States, including the Dominican Republic, have migration laws which obligate health providers to report undocumented migrant women giving birth in their centers to migration authorities. States should be encouraged to eliminate such policies and practices, not least because they constitute gender discrimination in the right to health as recognized by CEDAW Art. 12 regarding access to health care. We laud the inclusion of this topic in article 98 of the General Comment on the Right to health.

**Article 64:** We suggest adding the following text to the end of this article, or potentially adding a separate article: "**Where a child's identity documents have been procured irregularly on his or her behalf, and the child requests the restoration of their right to identity, States Parties are encouraged to adopt flexible measures in the best interest of the child, specifically by issuing corrected documents and avoiding prosecution where falsification has been committed by a third party on their behalf.**" In the Dominican Republic, our research has shown that many children and adolescents grow up to discover that their birth certificate or other identity documents were obtained irregularly by a parent or other adult, sometimes as a misguided attempt to protect the child. This

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<sup>1</sup> Inter-American Court of Human Rights. Case of the Girls Yean and Bosico v. Dominican Republic Judgment of September 8, 2005. Art. 156: "(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."

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_%20ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf)

includes irregular practices declaring the child as if she or he were born to a Dominican national instead of their Haitian migrant parent. While such practices should be discouraged by all means, the child or adolescent who is affected by this practice should not be rendered undocumented or stateless because of an act committed by a third party on their behalf. The objective of including this text is to provide guidance to States regarding how to uphold the best interest of the child in cases where identity documents have been obtained for the child irregularly by a third party.

**Footnote 49:** We suggest adding mention of the CRC Committee's concluding observations to the Dominican Republic from 2015 to the end of the footnote. The specific text to be inserted is: "...Dominican Republic (6 March 2015, CRC/C/DOM/CO/3-5), paras. 27-28,57-58.

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Thank you for your consideration of this submission. Queries or clarification may be directed to Allison Petrozziello, Research & Programming Coordinator, OBMICA, [apetrozz24@yahoo.com](mailto:apetrozz24@yahoo.com).