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REPORT No. 209/19
PETITION 816-10
REPORT ON ADMISSIBILITY

EMILDO BUENO OGUIS
DOMINICAN REPUBLIC

Approved by the Commission on December 6, 2019.

Cite as: IACHR, Report No. 209/19, Petition 816-10. Admissibility. Emildo Bueno Oguis.
Dominican Republic. December 6, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Open Society Justice Initiative and Center for Justice and International Law (CEJIL)
Alleged victim:	Emildo Bueno Oguis
Respondent State:	Dominican Republic
Rights invoked:	Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 17 (Rights to Family), 20 (Right to Nationality), 22 (Freedom of Movement and Residence), 23 (Right to Participate in Government) and 24 (Right to Equal Protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	June 2, 2010
Additional information received at the stage of initial review:	December 19, 2011, February 8, 2013
Notification of the petition to the State:	June 21, 2013
State's first response:	October 24, 2013
Additional observations from the petitioner:	July 26, 2013, November 4, 2014
Additional observations from the State:	October 10, 2014, April 8, 2015
Precautionary measure granted:	July 31, 2008 (MC-195-08) ³

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on April 19, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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¹ Hereinafter "Convention" or "American Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

³ The precautionary measures were issued in favour of Emildo Bueno Oguis and other members of his family, after they were subjected to various threats and acts of violence – allegedly in retaliation for legal actions initiated to challenge the refusal of Dominican authorities to issue documents identifying them as citizens of the Dominican Republic. The precautionary measures were lifted by the IACHR on January 23, 2012 after consultations with both the State and the beneficiaries.

Rights declared admissible	Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 17 (Right to Family Life), 20 (Right to Nationality), 24 (Right to Equal Protection), and 22 (Right to Freedom of Movement and Residence) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.b of the Convention applicable
Timeliness of the petition:	Yes, in the terms of section VI

V. ALLEGED FACTS

1. This petition is presented on behalf of Emildo Bueno Oguis (“Mr. Bueno” or “the alleged victim”) primarily on the basis that the State allegedly violated his right to nationality (among other rights) by (a) effectively revoking his citizenship (pursuant to a legal and policy framework introduced by the State); and (b) refusing to issue him a copy of his birth certificate on the basis of this legal framework. The petitioners contend that the facts of this case are emblematic of a larger problem of (racial) discrimination against Dominicans of Haitian descent.

2. By way of background the petition states that (a) the alleged victim was born in Esperanza, Dominican Republic on May 22, 1975 to Haitian nationals who were working and living in the Dominican Republic at the time; (b) pursuant to the then Constitution⁴ of the Dominican Republic, Mr. Bueno was recognized as citizen; and accordingly his birth was registered in the civil registry of Esperanza, and an official birth certificate was issued to his parents; (c) over the ensuing three decades, Mr. Bueno’s citizenship was repeatedly recognized by the State in various ways, including the issue of a national identity card (*cédula de identidad y electoral*) at the age 18, and the issue of a passport in 2006.

3. According to the petition, in July 2006, the alleged victim married Ms. Edyne Joseph, a national of the United States of America (“the US”). The petition indicates that following the marriage, Mr. Bueno and Ms. Joseph applied to the US immigration authorities for a permanent residency visa so as permit Mr. Bueno to join his wife in the US. The petition further states that the application required the submission of a certified copy of Mr. Bueno’s long-form birth certificate, which would constitute proof of his legal identity and nationality. The petitioners indicate that at that time, the civil registry rules prevailing in the State prohibited the use of original birth certificates as proof of legal identity and nationality, and that applicants were required to obtain a new copy from civil registry authorities for this purpose.

4. The petitioners allege that in September 2007, Mr. Bueno applied for, but was denied a copy of his birth certificate by the civil registry authorities, ultimately on the ground that he was no longer recognized as a citizen of the Dominican Republic because his parents were (now) classified as “in transit” at the time of his birth, and therefore lacked the legal status to register Mr. Bueno as a citizen of the Dominican Republic (by birth).

5. According to the petitioners, this refusal was administratively based on an internal memorandum known as “Circular 017” issued by the Administrative Chamber of the Central Electoral Board (*Junta Central Electoral*, or “JCE”). According to the petitioners, the JCE is the government agency in charge of all civil registry activities in the Dominican Republic. The petitioners submit that Circular 017 was issued in

⁴ According to the petitioners, at the time of Mr. Bueno’s 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.” The “in transit” exception was legally applicable only to persons who were in the country for a period of 10 days or less.

March 2007 and that it sought to address and investigate the “improper” or “irregular” issuing of birth certificates by civil registries to children of “foreign parents” who had not proved their residence or legal status in the State.

6. The petitioners claim that Mr. Bueno was subjected to this regime of investigation but without being provided any time limit on the investigation or written notification that his request had been submitted for investigation. The petitioners add that in the implementation of Circular 017, the JCE retroactively applied the General Law on Migration 285/04 to persons born before its enactment in 2004. According to the petitioners, this law, for the first time, made legal residence and/or regularized status of parents a requirement for their children to acquire Dominican nationality.

7. On February 22, 2008 the alleged victim challenged the refusal of the JCE to issue a copy of his birth certificate by filing an action for the protection of fundamental rights (*recurso de amparo*) before the Contentious Taxation and Administrative Tribunal (*Tribunal Contencioso Tributario y Administrativo*). The petitioners state that Mr. Bueno pleaded that (a) Circular 017 was unconstitutional; and (b) the JCE, by applying Circular 017, had violated Mr. Bueno’s fundamental rights to juridical personality, nationality, equality before the law, nondiscrimination, and freedom of movement, dignity, juridical security, and due process. In response, petitioners assert that the JCE argued that (a) notwithstanding the government’s original recognition of his Dominican nationality at the time of his birth, Mr. Bueno was never entitled to Dominican nationality; (b) his Haitian national parents were living in the country as sugar cane plantation workers, they were “in transit” – a condition that made their son ineligible for Dominican nationality.

8. According to the petitioners, on April 30, 2008, the Contentious Taxation and Administrative Tribunal ruled against the alleged victim, holding that (a) there had been no violation of his fundamental rights; and (b) that Circular 017 was not unconstitutional, and that the JCE was legally authorized to issue Circular 017 by virtue of Law 659. As result, the petitioners state that on June 13, 2008, Mr. Bueno filed an appeal with the Supreme Court of Justice, the outcome of which was pending at the time the petition was filed in 2010.

9. According to the petitioners, the Supreme Court of Justice held a hearing on May 6, 2009, but did not ultimately issue a ruling until November 2, 2011 (which upheld the decision of the lower court). Petitioners state that counsel for Mr. Bueno only became aware of the judgment on December 1, 2011 by means of the news media.

10. The petitioners contend that copies of birth certificates are required for a variety of important civil, political and economic activities that require proof of legal identity and nationality, including, as in Mr. Bueno’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. 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. According to the petition, Mr. Bueno’s passport was due to expire in 2012, but that his national identity card remained valid⁵. However, the petitioners claim that when the time comes for Mr. Bueno to renew these documents, he will not be able to do so for lack of access to certified copies of his birth certificate and that accordingly, his ability to enjoy his lawful Dominican nationality will be further restricted.

⁵ In the petition, the petitioners explain that the expiration date on Mr. Bueno’s national identity card is May 22, 2008. However, in 2004 the JCE announced a blanket extension of all national identity cards due to expire after 2006, as the agency was undergoing a massive internal restructuring which included the issuance of new national identity cards to all adult Dominicans. According to the petitioners, these new national identity cards would not be issued until after the May 2010 (legislative) elections.

11. The petitioners contend that the 2010 Constitution of the Dominican Republic serves to compound Mr. Bueno's situation. In this regard, the petitioners submit that 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; but that the new Constitution further widens this exemption to exclude children of persons who are illegally residing in the country.

12. The petition also makes mention of threats and violence perpetrated against Mr. Bueno and his family in 2008 before Mr. Bueno migrated to the United States⁶. This issue was the subject of an application to the Commission for precautionary measures – which were granted, and then subsequently lifted⁷.

13. The petitioners state that in September 2008, the United States government informed Mr. Bueno that it had accepted an original copy of his birth certificate in lieu of the current certified copy which the Dominican government had refused to issue him, and that his visa application had been accepted. The petitioners state that Mr. Bueno moved to the United States that same month. The petitioners also state that on June 5 2012, Mr. Bueno successfully renewed his passport at the Consul-General of the Dominican Republic in Miami, Florida. According to the petitioners, Mr. Bueno was only required to show his previous passport as well as his national identity card. For the petitioners, the issue of a new passport was tantamount to recognizing Mr. Bueno as a citizen of the Dominican Republic, which contradicted the previous position of the administrative and judicial authorities in the Dominican Republic.

14. In relation to exhaustion of domestic remedies, the petitioners ultimately contend that the alleged there was undue delay in the completion of judicial proceedings, and that this warrants an exception to the requirement of domestic remedies. In this regard, the petitioners note that the decision of the Supreme Court of Justice in 2011 was issued more than three years after Mr. Bueno filed an appeal against the decision of the Contentious Taxation and Administrative Tribunal. The petitioners also argue that at the time of the appeal, the Supreme Court of Justice was the highest court of resort in the State. The petitioners acknowledge that a Constitutional Court (*Tribunal Constitucional*) was established under the State's 2010 Constitution, but that it did not come into operation until January 2012. The petitioners also contend that the Constitutional Court would, in any event, be a futile avenue of appeal for Mr. Bueno, given the Court's decision in the case of *Juliana Deguis Pierre*⁸. Accordingly, the petitioners argue that this judicial body would not represent an available or effective remedy. In any event, the petitioners contend that requiring Mr. Bueno to make a further appeal to the Constitutional Court would only serve to increase the already unwarranted delay in completing domestic judicial proceedings.

15. The petitioners mention that in 2014, the Congress of the Dominican Republic passed a new law (Law 169-14 – *Ley de Régimen Especial y Naturalización*) that purportedly established a framework for regularization and naturalization of the population affected by the *Juliana Deguis Pierre* decision. According to the petitioners, the law separates the affected population into two categories: (i) those whose births were registered by the Dominican civil registry (Group A); and (ii) those who were never registered (Group B). The petitioners state that according to this law, the first category was not entitled to nationality under the Constitution, but due to the fact that it was the Dominican authorities that erred in including them in the civil

⁶ Some of these acts included: (a) surveillance of family members by unknown individuals, including surveillance of Ms Gyselle Baret (the common law wife of a first cousin); (b) abduction and torture of Ms. Baret.

⁷ MC 195-08 – granted on July 31, 2008 and subsequently lifted on November 11, 2011. The application for precautionary measures preceded the petition and was adjudicated separately from the petition. The petition does not, for the purpose of admissibility, request the Commission to adjudicate the circumstances that led to the grant of precautionary measures.

⁸ In this case, the petitioners assert that Juliana Deguis Pierre, a Dominican-born daughter of Haitian nationals, was denied a birth certificate on account of her parents' migration status. Though registered as a Dominican citizen at birth, the Constitutional Court (by majority) held that Juliana Deguis Pierre did not meet the criteria for the acquisition of Dominican nationality because her parents were classified as "in transit" in the Dominican Republic at the time of her birth.

registry in the first place, they should be granted an amnesty and have their citizenship reinstated. With regard to the second category, the petitioners state that those not previously recorded in the civil registry must now register as foreigners, and then wait a two year period before becoming eligible to apply for naturalization. According to the petitioners – Mr. Bueno falls in the first category. Further, the petitioners point out that Law 169-14 does not recognize Mr. Bueno’s nationality by birth on the territory (*jus solis*).

16. The State denies that it violated any of Mr. Bueno’s rights, arguing that the refusal of the JCE to issue a birth certificate to Mr. Bueno took place within the context of a legal and policy regime that was upheld as constitutional by the domestic courts (Contentious Taxation and Administrative Tribunal and the Supreme Court of Justice). According to the State the courts (a) upheld the authority of the JCE to emit Circular 017 based on Law 659; (b) confirmed that the application of Circular 017 was warranted to deal with birth certificates that had been issued fraudulently or illegally and/or to suspend the issue of birth certificates and other documents where fraud or illegality was suspected; (c) held that this consideration applied to persons born in the Dominican Republic – who were not entitled to nationality *jus solis*, because their parents were classified or suspected of being “in transit”. The State further argues that the domestic courts found no violations of Mr. Bueno’s fundamental rights. The State also submits that the Supreme Court of Justice had previously upheld the constitutionality of the General Law on Migration 285/04 (which amplified the definition of “in transit”, and disqualified children born of “in transit” persons from gaining citizenship of the Dominican Republic).

17. Despite the foregoing, the State asserts that in recent times, the JCE has made administrative improvements - such as Circular 32/2011 of October 19, 2011 which instructs civil registry officials to freely issue birth certificates to children of foreigners that are under investigation by the JCE – pending the resolution of such investigations.

18. According to the State, the petition is inadmissible for failure to exhaust domestic remedies and because of “supervening information”⁹ According to the State, the petition is inadmissible for failure to exhaust domestic remedies and because of “supervening information”. Particularly, the State argues that Mr. Bueno did not appeal to the Constitutional Court, following the ruling of the Supreme Court of Justice in 2011. The State indicates that the Constitutional Court was created by the 2010 Constitution of the Dominican Republic as the final judicial authority on constitutional issues. The State claims that the Constitutional Court came into force when the Constitution was promulgated on January 26, 2010; and that accordingly, this court was available to Mr. Bueno following the ruling of the Supreme Court of Justice. However, the State also indicates that the 2010 Constitution provides for the Supreme Court of Justice to assume the functions of the Constitutional Court pending its operational establishment.

19. The State submits that since its establishment, the Constitutional Court has adjudicated a number of cases in which it has remedied violations of constitutional rights by means of the remedy of Amparo. The State also indicates that on some occasions, the Constitutional Court has overturned decisions of the Superior Court of Justice, as well as ruled against the JCE. The State contends that the Constitutional Court represents an available and effective remedy which Mr. Bueno failed to exhaust; and that this failure to exhaust renders the petition inadmissible.

20. In relation to its claim of supervening information, the State makes the following submissions: (1) Mr. Bueno is able to enjoy his right to nationality and that there is no impediment to obtaining his birth certificate (or other documents); (2) Mr. Bueno is registered as a voter (in the municipality of Villa Altagracia, in the province of San Cristobal) and therefore is able to exercise his right to political participation; (3) the JCE has now created facilities for non-resident Dominican citizens to exercise the right of political participation, but Mr. Bueno has neither registered for, nor taken advantage of these facilities; (4) Mr. Bueno was issued a new passport in June 2012 by the Consulate of the Dominican Republic in Miami,

Florida; (5) Mr. Bueno has visited the Dominican Republic 12 times since his migration in 2008; (6) Mr. Bueno is able to move freely within the Dominican Republic and to travel to other countries with the documentation that he holds; (7) Mr. Bueno has not been impeded from having contact with his family in the Dominican Republic or elsewhere; (8) With his documents of citizenship (passport and national identity document), Mr. Bueno is able to exercise his right to property in the Dominican and in other countries; (9) The JCE has extended the validity of national identity cards that expired between 2000 and 2012; accordingly Mr. Bueno's national identity card remains valid (despite a formal expiry of May 2008).

21. In conclusion the State contends that this "supervening information" demonstrates that Mr. Bueno has not been hindered in his enjoyment of his right to nationality (and connected rights). For the State, this status quo, together with the failure to exhaust domestic remedies renders Mr. Bueno's petition inadmissible.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

22. The petitioners allege that the exception contemplated in Article 46.2.c of the Convention is applicable having regard for the three year delay between the filing of an appeal to the Supreme Court of Justice in 2008 and its ruling in 2011. On the other hand, the State contends that the petitioners did not appeal to the Constitutional Tribunal, and thus failed to exhaust domestic remedies. In rebuttal, the petitioners contend that the Constitutional Court was not operational until 2012, and therefore was not available as remedy at the time that the Supreme Court issued its ruling in 2011. Additionally, the petitioners submit that even if the Constitutional Court were available, it was not an effective remedy, given its 2013 decision in the *Juliana Deguis Pierre* case¹⁰.

23. In addressing the issue of the Constitutional Court, there appears no dispute between the parties that this Court was created by the 2010 Constitution of the Dominican Republic. Similarly, there appears to be no dispute that the Constitution also provides for transition phase whereby the Supreme Court of Justice would assume the role of the Constitutional Court until this Court became operational. Nevertheless, it appears to the Commission that the State has conflated the (constitutional) establishment of the Constitutional Court with its actual inauguration as a functioning tribunal. The State does not controvert the petitioner's claim that the Constitutional Court was not operational until January 2012. Similarly, the State does not controvert the petitioner's claim regarding the ineffectiveness of the Constitutional Tribunal, having regard for the *Juliana Deguis Pierre* case. In accordance with the Commission's case law and with decisions of other human rights bodies, ineffective remedies need not be exhausted. For the IACHR, a remedy is ineffective for the purposes of admissibility of the petition when it is demonstrated that it does not have a reasonable prospect of success.

24. The Commission is satisfied that the decision by the Constitutional Court in the case of *Juliana Deguis Pierre* demonstrates that any appeal by to this court by Mr. Bueno would have no reasonable prospect of success, and accordingly, the Commission considers that this remedy (even if available) must be considered ineffective for the purpose of redressing Mr. Bueno's claims.

25. Accordingly, the Commission concludes that as a remedy, the Constitutional Court was neither available nor effective as a remedy, and that therefore, the exception to the exhaustion of domestic remedies referred to in Article 46.2(b) of the Convention applies. Given this finding, the Commission does not consider it necessary to consider the question of unwarranted delay as raised by the petitioners.

¹⁰ The petitioners state that Juliana Deguis Pierre, like Mr. Bueno was denied a birth certificate by the JCE based on the migration status of her parents; and that the Constitutional Tribunal upheld this refusal and ruled that Ms. Deguis Pierre was not entitled to Dominican citizenship. The petitioners contend that any action by Mr. Bueno before the Constitutional Tribunal would most likely have had the same result.

26. The petition was filed with the Commission on June 2, 2010, and the facts alleged therein began in September 2007, with their alleged consequences extending up to the present. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the admissibility requirement regarding the filing period has been satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

27. The petitioners argue that Mr. Bueno suffered violations of his rights under Articles 20, 24, 3, 5 of the Convention, with consequential violations of his rights under Articles 23, 22, 21 and 17 of the Convention. On the other hand, the State denies that Mr. Bueno suffered any such violations. In support of this contention, the State asserts the existence of “supervening information” (pursuant to Article 34 (c) of the Commission’s Rules of Procedure) that renders the petition out of order or inadmissible.

28. In the Commission’s estimation, in the context of this petition, supervening information would have to have the effect of disproving, remedying or neutralizing the essential complaint of the petitioners – which is the denial of a birth certificate to Mr. Bueno. The information classified by the State as “supervening” does not meet this criterion. In this respect, the State does not deny the circumstances that led to the denial of a birth certificate, but broadly contends that Mr. Bueno is now able to exercise his rights of citizenship, as evidenced, for example, by the renewal of his passport in 2012. In this regard, the Commission notes that the State justifies the denial of the birth certificate, which is at variance with subsequent claim of “supervening information”. Accordingly, the Commission does not consider itself barred by Article 34 (c) from considering the claims of the petitioners.

29. Based on the elements of fact and law submitted by the parties and the nature of the matter brought before it, the Commission finds that the allegations regarding the denial of a birth certificate could tend to establish possible violations of Articles 3 (Right to Juridical Personality), 5 (Right to Humane Treatment), 17 (Right to Family Life), 20 (Right to Nationality), and 22 (Right to Freedom of Movement and Residence) and 24 (Right to Equal Protection), in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention.

30. As it relates to the claims by the petitioners in respect of Article 21 (Right to Property) and Article 23 (Right to Participate in Government) the Commission notes that based on the information provided by both parties, a valid national identity card is required to exercise these rights in the Dominican Republic. In this regard the record shows that the validity of Mr. Bueno’s national identity card was extended by the State after its expiry in 2008, and accordingly, it does not appear, prima facie, that Mr. Bueno was prevented from, or unable to exercise his right to property or the right to vote or to participate in government. In this regard, the Commission considers that the petition does not contain any elements that would substantiate, prima facie, violations of Articles 21 and 23 of the American Convention. Accordingly, the Commission considers that the claims under Articles 21 and 23 do not satisfy the requirements of Article 47 b. of the American Convention and are therefore inadmissible.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 5, 17, 20, 22, and 24 and in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention;

2. To find the instant petition inadmissible in relation to Articles 21 and 23 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 6th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren(dissenting opinion), Luis Ernesto Vargas Silva(dissenting opinion), and Flávia Piovesan, Commissioners.