



DOMINICAN REPUBLIC: HUMAN RIGHTS GUARANTEES UNDERMINED

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 32ND SESSION OF THE UPR WORKING GROUP, JANUARY 2019

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CONTENTS

INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	4
THE NATIONAL HUMAN RIGHTS FRAMEWORK	5
RIGHT TO NATIONALITY AND STATELESSNESS	5
INTERNATIONAL ACCOUNTABILITY	6
SEXUAL AND REPRODUCTIVE RIGHTS	6
DISCRIMINATION	6
HUMAN RIGHTS SITUATION ON THE GROUND	7
RIGHTS OF STATELESS PEOPLE	7
SEXUAL AND REPRODUCTIVE RIGHTS	8
HUMAN RIGHTS DEFENDERS AND JOURNALISTS	8
POLICE AND SECURITY FORCES	9
DISCRIMINATION AND VIOLENCE AGAINST LGBTI PERSONS	9
ILLEGAL DEPORTATIONS AND EXPULSIONS	9
RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW	10
ANNEX	13
INTRODUCTION	4
FOLLOW UP TO THE PREVIOUS REVIEW	4
THE NATIONAL HUMAN RIGHTS FRAMEWORK	5
RIGHT TO NATIONALITY AND STATELESSNESS	5
INTERNATIONAL ACCOUNTABILITY	6
SEXUAL AND REPRODUCTIVE RIGHTS	6
DISCRIMINATION	6
HUMAN RIGHTS SITUATION ON THE GROUND	7
RIGHTS OF STATELESS PEOPLE	7
SEXUAL AND REPRODUCTIVE RIGHTS	8
HUMAN RIGHTS DEFENDERS AND JOURNALISTS	8
POLICE AND SECURITY FORCES	9
DISCRIMINATION AND VIOLENCE AGAINST LGBTI PERSONS	9
ILLEGAL DEPORTATIONS AND EXPULSIONS	9
RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW	10
ANNEX	13

INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of the Dominican Republic in January 2019. In it, Amnesty International evaluates the implementation of recommendations made to the Dominican Republic in its previous UPR, including in relation to discrimination against LGBTI people, maternal mortality and decriminalization of abortion.

Amnesty International also raises concerns about the rights of stateless persons, attacks on human rights defenders, killings by law enforcement officials, and illegal deportations and expulsions.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second UPR in February 2014, the Dominican Republic accepted 84 recommendations and rejected 50.¹

The majority of recommendations accepted by the Dominican Republic related to ensuring the Ombudsman's office complies with the Paris Principles and is adequately resourced,² combating all forms of discrimination and gender-based violence against women and girls,³ combating trafficking⁴ and child labour,⁵ and strengthening the educational system.⁶

While the state also accepted recommendations to prevent discrimination and violence against LGBTI people,⁷ and to strengthen protections against racial discrimination,⁸ the state has yet to

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, Addendum, 11 June 2014, A/HRC/26/15/Add.1, page 2.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/15, recommendations 98.24 and 98.26 (Ukraine), 98.25 (France), 98.27 (United Kingdom of Great Britain and Northern Ireland).

³ A/HRC/26/15, recommendations 98.29 (Spain), 98.34 (Thailand), 98.35 (Malaysia), 98.54 (Nicaragua), 98.55 (Uruguay), 98.56 (Norway), 98.57 (Paraguay), 98.58 (Singapore), 98.59 (Switzerland), 98.60 (Turkey), 98.61 (Belgium), 98.63 (Colombia), 98.64 (Democratic People's Republic of Korea), 98.65 (France), 98.66 (Germany), 98.67 (Italy).

⁴ A/HRC/26/15, recommendations 98.71 (Singapore), 98.72 (Trinidad and Tobago), 98.73 (Algeria), 98.74 (Bolivia).

⁵ A/HRC/26/15, recommendations 98.69 (Turkey), 98.70 (Ecuador).

⁶ A/HRC/26/15, recommendations 98.100 (Cuba), 98.101 (Belgium), 98.101 (Chile), 98.103 (Djibouti), 98.104 (Egypt), 98.105 (Indonesia), 98.106 (Malaysia).

⁷ A/HRC/26/15, recommendations 98.41 (Mexico), 98.42 (Netherlands), 98.43 (Norway).

⁸ A/HRC/26/15, recommendations 98.36 (Viet Nam), 98.37 (Angola), 98.38 (Bolivia), 98.40 (Somalia).

pass comprehensive anti-discrimination legislation. In addition, the Dominican Republic accepted a number of recommendations related to comprehensive reform of the police and to strengthening investigation and prosecution of alleged human rights violations by the police.⁹ However, the number of killings by the police remains high.

Amnesty International regrets that the Dominican Republic did not accept recommendations to guarantee the right to nationality and to prevent and resolve cases of statelessness.¹⁰ The Dominican Republic continues to be home to the largest stateless population in the Americas region. Amnesty International is concerned that the measures adopted by the Dominican government to address cases of statelessness, including Law 168-14, are arbitrary and poorly implemented.¹¹ Amnesty International also regrets that the Dominican Republic did not accept recommendations to ratify a number of key international human rights treaties, in particular the International Convention for the Protection of All Persons from Enforced Disappearance and the UN Conventions on Statelessness,¹² and to extend a standing invitation to UN special procedures.¹³

Although the Dominican Republic accepted a number of recommendations to reduce maternal mortality, it did not support recommendations to “guarantee full and effective recognition of sexual and reproductive rights,” including by decriminalizing abortion.¹⁴ Dominican civil society continues to lobby for decriminalization of abortion in three instances: where the pregnancy poses a risk to the life of a pregnant woman or girl, where the fetus could not survive outside the womb, and where the pregnancy is the result of rape or incest.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

RIGHT TO NATIONALITY AND STATELESSNESS

In September 2013, the Constitutional Court of the Dominican Republic issued Judgement 168-13 which states that children born to foreign parents who did not have regular migration status had never been entitled to Dominican nationality. The Judgement was applied retrospectively to people born since 1929. Amnesty International considers that Judgement 168-13 constitutes a retroactive and arbitrary deprivation of nationality, that it

⁹ A/HRC/26/15, recommendations 98.46 (Canada), 98.47 (Australia), 98.48 (France), 98.49 (Spain), 98.50 (Switzerland), 98.51 (United States of America), 98.52 (Germany), 98.53 (Italy).

¹⁰ A/HRC/26/15, recommendations 98.111 (Spain), 98.112 (Mexico), 98.113 (Uruguay), 98.114 (Argentina), 98.115 (Italy), 98.116 (Brazil), 99.117 (Germany), 98.118 (Chile).

¹¹ See also: Amnesty International: Dominican Republic: 'Without paper, I am no one': Stateless people in the Dominican Republic, 19 November 2015 (AMR 27/2755/2015).

¹² A/HRC/26/15, recommendations 98.16 (Uruguay), 98.17 (Brazil), 98.18 (Ireland).

¹³ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/15, 98.31 (Portugal), 98.32 (Montenegro), 98.33 (Uruguay).

¹⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Dominican Republic, 4 April 2014, A/HRC/26/1598.98 (France), 98.94 (Netherlands).

disproportionately affects Dominicans of Haitian descent, and that it is therefore discriminatory.¹⁵

In May 2014, the Dominican Congress adopted Law 169-14 in response to a wave of criticism of Judgement 168-13 at both national and international levels. Although this is a step in the right direction, the new Law fails to provide for automatic restoration of Dominican nationality to those who had been arbitrarily deprived of it by Judgement 168-13.

The Law divides those affected into two groups: those who have at some point been registered in the Dominican Civil Registry (Group A) and those whose births have never been registered (Group B). The Law stipulates that people belonging to Group A could be formally recognized as Dominicans, but only after an administrative process carried out by the Central Electoral Board, the same institution that in previous years had sought to block their access to identity documents.

With regard to Group B, the Law creates an impediment to exercising the right to nationality by forcing people to register as foreigners and to undergo a complex process which could eventually enable them to apply for naturalization as Dominicans; it does not lead to automatic acquisition of nationality.

INTERNATIONAL ACCOUNTABILITY

In November 2014, the Dominican Constitutional Court issued Judgement 256-14 seeking to challenge the jurisdiction of the Inter-American Court of Human Rights (IACtHR).¹⁶ The ruling came only two weeks after the condemnation of the Dominican Republic by the IACtHR in the case of *Expelled Dominicans and Haitians v the Dominican Republic*. Amnesty International is concerned at the efforts by the State party to deny its treaty obligations of compliance with the Inter-American human rights system, as threats of withdrawal from the region's highest human rights court would deprive people in the Dominican Republic of a crucial avenue to seek remedy for human rights violations.¹⁷

SEXUAL AND REPRODUCTIVE RIGHTS

A comprehensive reform of the Criminal Code has been ongoing for several years. Under the Criminal Code currently in force, women seeking abortion services, and those who provide those services, face criminal sanctions regardless of the circumstances in which the abortion was sought or provided.

DISCRIMINATION

Although a comprehensive anti-discrimination bill was drafted and consulted with civil society organizations in 2016, the bill has not been tabled, leaving many marginalized and discriminated groups, including LGBTI people, without adequate protection.

¹⁵ See Amnesty International report AMR 27/2755/2015 '*Without papers I am no one*' – Stateless people in the Dominican Republic (2015) at <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>

¹⁶ Sentencia TC/0256/14, Tribunal Constitucional de la República Dominicana, at <https://www.tribunalconstitucional.gob.do/content/sentencia-tc025614>.

¹⁷ See Amnesty International, *Dominican Republic: Withdrawal from top regional human rights court would put rights at risk* (2014) at <https://www.amnesty.org/en/latest/news/2014/11/dominican-republic-withdrawal-top-regional-human-rights-court-would-put-rights-risk/>

HUMAN RIGHTS SITUATION ON THE GROUND

RIGHTS OF STATELESS PEOPLE

Amnesty International has documented the impact of Judgement 168-13 of the Constitutional Court on the enjoyment of human rights by Dominicans of Haitian descent, in particular their rights to a nationality, to recognition as a person before the law, and to identity. With no automatic access to Haitian nationality, many have been left stateless.

Although the Dominican government has shown some willingness to mitigate the harshest consequences of the Judgement, including the passing of Law 169-14 in May 2014, the authorities have yet to acknowledge the problem of statelessness, let alone to provide comprehensive and effective measures to prevent and end it. Several groups of people remain stateless or effectively stateless, owing to the inadequacy of the solutions provided by Law 169-14, shortcomings in its implementation and its failure to propose solutions for some neglected groups.¹⁸

Moreover, the failure by the Dominican authorities to carry out a comprehensive census of the stateless population in the country, means that there are no reliable estimates of how many people are currently stateless or at risk of statelessness. An estimated 30% of Group A (which includes only 20,872 individuals out of an official estimate of 61,049 individuals) are able to access some sort of Dominican identity document proving their Dominican nationality, according to the Inter-American Commission on Human Rights in its Annual Report 2017.¹⁹

Of the estimated 53,000 individuals in Group B, only 16% were able to register during the 180 days period established by Law 169-14, according to government data cited by the Inter-American Commission on Human Rights. The authorities stated that by November 2017, 5,401 individuals had received their birth certificate and permanent regularization card. The Law requires a two-year period after the approval of the registration before people are able to request naturalization as Dominicans. At the time of writing, no one was known to have been naturalized under the plan. Most of the individuals affected remain stateless in the absence of another nationality.

Years of discriminatory policies and practices have created a wide variety of complex situations which Law 169-14 has failed to address. For example, it does not provide a solution for people who were wrongfully registered as foreigners even though they were born in the Dominican Republic well before the 2004 Migration Law and the establishment of the Registry of Foreigners in 2007.

Another situation is that of children of mixed couples. Even though children with at least one Dominican parent have a constitutional right to Dominican nationality, in practice, if the mother is undocumented, her children are denied birth registration and have no means of proving their Dominican nationality.

¹⁸ See Amnesty International report AMR 27/2755/2015 '*Without papers I am no one*' – Stateless people in the Dominican Republic (2015) at <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>

¹⁹ Inter-American Commission on Human Rights, Annual Report 2017, <http://www.oas.org/en/iachr/docs/annual/2017/TOC.asp>

People who are effectively stateless or lack identity documents face discrimination in their enjoyment of a range of economic, social and cultural rights, including completing schooling and accessing higher education, as well as accessing formal employment, adequate healthcare, social security and pensions. Their right to freedom of movement is also severely limited and they are at risk of expulsion to Haiti. They are vulnerable to violence and exploitation and, in the vast majority of cases, are condemned to lives of poverty and marginalization. Their access to judicial remedy for human rights violations is also hampered.

SEXUAL AND REPRODUCTIVE RIGHTS

On two occasions since 2014, President Danilo Medina has rejected draft reforms of the Criminal Code approved by the Congress that maintain the ban on abortion.²⁰ He has urged Congress to decriminalize abortion in three circumstances: where the pregnancy poses a risk to the life of a pregnant woman or girl, where the fetus could not survive outside the womb, and where the pregnancy is the result of rape or incest.

A revised Criminal Code that integrated the decriminalization of abortion in the three instances set out above was finally approved in 2014, however, in December 2015 the Constitutional Court struck down the proposed reforms through Judgement 599-15 leaving the old Criminal Code in force, which dates back to 1884.²¹ In July 2017, Congress rejected a new proposed reform of the Criminal Code that failed to decriminalize abortion in the three limited circumstances.²²

HUMAN RIGHTS DEFENDERS AND JOURNALISTS

In the aftermath of Judgement 168-13, violent rhetoric against human rights defenders, journalists and those perceived to defend the rights of Dominicans of Haitian descent emerged from ultra-nationalistic groups. People denouncing the Judgement were regularly called “traitors to the homeland” and public demonstrations were held in different parts of the country during which the portraits of prominent journalists were burned.²³

In September 2016, Dominican lawyer and human rights defender, Genaro Rincón Mieses, was verbally and physically assaulted in Santo Domingo.²⁴ Other defenders advocating against statelessness in the country, including an Amnesty International delegate, have reported receiving threats, intimidations and insults related to their work.

²⁰ See Amnesty International, Urgent Action AMR 27/018/2014 *Dominican Republic: Further information: President vetoes full ban on abortion* <https://www.amnesty.org/en/documents/AMR27/018/2014/en/> and Amnesty International, Urgent Action AMR 27/5478/2017 *Dominican Republic: Further information: Abortion vote pending after President's veto* <https://www.amnesty.org/en/documents/amr27/5478/2017/en/>

²¹ See Amnesty International, *Dominican Republic takes women's rights back to 1884* (2015) at <https://www.amnesty.org/en/latest/news/2015/12/dominican-republic-takes-womens-rights-back-to-1884/>

²² See Amnesty International, Urgent Action AMR 27/6724/2017 *Dominican Republic: Further information: Congress rejects regressive abortion reform* <https://www.amnesty.org/en/documents/amr27/6724/2017/en/>

²³ See Amnesty International, Urgent Action AMR 27/0004/2015, *Dominican Republic: Journalists threatened and harassed* at <https://www.amnesty.org/en/documents/amr27/0004/2015/en/>

²⁴ See Amnesty International, Urgent Action AMR 27/4901/2016, *Dominican Republic: Defender combatting statelessness attacked: Genaro Rincón Mieses* at <https://www.amnesty.org/en/documents/amr27/4901/2016/en/>

POLICE AND SECURITY FORCES

While the Dominican Congress passed the new Organic Law of the National Police in July 2016, killings by law enforcement officers remain high.²⁵ There has been no progress in the investigation into the enforced disappearance of three men whose cases were documented by Amnesty International.²⁶ Amnesty International has also documented the use of excessive force and harassment by the police against peaceful activists.²⁷

DISCRIMINATION AND VIOLENCE AGAINST LGBTI PERSONS

In June 2017, the dismembered body of Rub Mori, a transgender sex worker and activist with community organization *Este Amor* (This Love), was found in a wasteland in the eastern Dominican municipality of Higüey. This case highlights the extreme violence transgender women face and their need for protection against discrimination and gender-based violence.²⁸

ILLEGAL DEPORTATIONS AND EXPULSIONS

Since the end of the National Plan for the Regularization of Foreigners in June 2015, the International Organization for Migrations reported that by September 2017 nearly 230,000 people had returned to Haiti from the Dominican Republic. These include more than 96,000 Haitian migrants who had allegedly been deported, and over 130,000 people who returned “spontaneously” after receiving threats or being pressured to leave. In addition, more than 1,000 Dominican nationals may have been forcibly expelled to Haiti in violation of international law, including various cases documented by Amnesty International. At the beginning of May 2016, UNHCR verified the cases of 1,582 individuals born in the Dominican Republic who were in Haiti.

Despite the commitment by the Dominican authorities to respect human rights in deportation procedures, allegations of failure to respect due process are frequently reported, including as documented by Amnesty International. Moreover, the mechanisms for holding migration officers and members of security forces involved in deportation procedures to account for possible abuses and human rights violations have not been clarified.

²⁵ See Amnesty International, Annual Report 2016/2017, p.14 and Amnesty International, Annual Report 2017/2018, p.149

²⁶ See Amnesty International, Urgent Action AMR 27/0004/2014, *Enforced disappearance suspected: Randy Vizcaino González* at <https://www.amnesty.org/en/documents/amr27/004/2014/en/>

²⁷ See Amnesty International, Urgent Action AMR 27/014/2014, *Dominican Republic: Torture denouncers threatened by the police: Ana Patricia Fermín* at <https://www.amnesty.org/en/documents/amr27/014/2014/en/> and See Amnesty International, Urgent Action AMR 27/2945/2015, *Dominican Republic: Police break up peaceful protest violently* at <https://www.amnesty.org/en/documents/amr27/2945/2015/en/>

²⁸ See Amnesty International, Dominican Republic: Horrifying killing of transgender woman highlights need for protection against discrimination (2017) <https://www.amnesty.org/en/latest/news/2017/06/dominican-republic-horrifying-killing-of-transgender-woman-highlights-need-for-protection-against-discrimination/>

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF THE DOMINICAN REPUBLIC TO:

INTERNATIONAL AND NATIONAL ACCOUNTABILITY

- Fully implement the binding judgements issued by the Inter-American Court on Human Rights, including through undertaking any necessary administrative, legislative and constitutional reforms;
- Leave without effect Judgement 256-14 of the Constitutional Court and clearly acknowledge the competency of the Inter-American Court of Human Rights.

DISCRIMINATION AND RIGHTS OF STATELESS PEOPLE

- Acknowledge the impact of Judgement 168-13 on the extent of statelessness in the Dominican Republic, and the limitations on solutions provided under Law 169-14, as a first step towards identifying and implementing effective measures to eradicate statelessness;
- Fully cooperate with UNHCR in fulfilling its mandate in relation to statelessness, including by giving due consideration to technical advice on developing a robust methodology for counting those who are stateless and effective measures to eradicate statelessness;
- Promptly issue adequate documentation to fully recognize the Dominican nationality of all those in Group A, without undue administrative barriers or unfounded differential treatment of people under the same circumstances, and ensure that they receive all the identity documents that they request with no further delays;
- Adopt new legislation to recognize the right to Dominican nationality of those born in the Dominican Republic before 26 January 2010, including those in Group B, regardless of the migration status of their parents, in line with legislation in force before the 2010 Constitution, and implement the new legislation in a manner that ensures that all beneficiaries are promptly registered in the Dominican Civil Registry;
- Establish and make public clear procedures to facilitate the registration of births in the Dominican Civil Registry of all the children who are entitled to Dominican nationality, without discrimination, including by amending the 2004 Migration Law;
- Establish clear and simple procedures to correct mistakes in the Dominican Civil Registry, including erroneous allocation of a pink proof-of-birth certificate (used to distinguish foreigners) to children entitled to the Dominican nationality or wrongful registration in the Register of Foreigners;
- Ensure that people born in the Dominican Republic and entitled to the Dominican nationality are able to obtain or renew their identity documents, regardless of their parents' ancestry or migration status, in compliance with the decisions of the IACtHR;
- Ratify and implement the UN Convention relating to the Status of Stateless Persons and the UN Convention on the Reduction of Statelessness.

SEXUAL AND REPRODUCTIVE RIGHTS

- Reform the Criminal Code to ensure that women and girls seeking abortion services are not subject to criminal sanctions and that health professionals are not criminalized for providing safe abortion services;
- Ensure that counseling, information, and safe and legal abortion services are available, accessible, acceptable and of good quality for all women and girls who require them.

HUMAN RIGHTS DEFENDERS AND JOURNALISTS

- Publicly recognise women human rights defenders, LGBTI defenders, environmental defenders, defenders of the rights of stateless people and Dominicans of Haitian descent, and other defenders who face threats or attacks, and enable them to carry out their work;
- Publicly condemn all acts of intimidation against human rights defenders, including those who are journalists;
- Refrain from using language that stigmatizes, abuses or discriminates against human rights defenders, in particular those who defend the rights of stateless people and Dominicans of Haitian descent, for example by characterizing them as “criminals, foreign agents, terrorists, threats to national security, or morally corrupt”;
- Adopt and implement legislation to recognize and effectively protect all human rights defenders;
- Ensure thorough, prompt and independent investigation into all reports of threat and other human rights violations against human rights defenders, and bring to justice those suspected of criminal responsibility for such crimes;
- Ensure young human rights defenders and youth-led organisations engaged in the defence and promotion of human rights are recognized and protected, including by removing age-based discriminatory practices restricting their participation in public decision-making, and by providing resources for their work.
- Fully co-operate with the UN human rights mechanisms, including by extending an invitation to the Special Rapporteur on the situation of human rights defenders to conduct visits without restriction on duration and scope, and ensure they are allowed to meet with human rights defenders without hindrance.

POLICE AND SECURITY FORCES

- Ensure strict adherence by all officers to national and international standards related to the use of force and firearms;
- Thoroughly, independently and timely investigate all reports of human rights violations by the police and bring the perpetrators to justice;
- Ensure that victims of human rights violations by the police and their families receive full reparation.

DISCRIMINATION AND LGBTI RIGHTS

- Continue to work with civil society organizations to pass comprehensive anti-discrimination legislation;
- Investigate all killings of LGBTI people independently and impartially and take all steps to unmask any potentially discriminatory motive.

ILLEGAL DEPORTATIONS AND EXPULSIONS

- Ensure that all cases of suspected irregular migrants are individually assessed, that all deportees receive deportation orders in writing, that all deportation orders set out on their legal basis and its application to the individual's personal circumstances, and all deportees have the right to challenge the deportation order before an independent court of law, with suspensive effect;
- Establish transparent, clear and fair procedures to screen and protect Dominicans of Haitian descent from expulsion, in particular those lacking identity documents, and make these procedures public;
- Allow the immediate and unconditional return to the Dominican Republic of any expelled Dominican of Haitian descent who wishes to return and provide them with access to effective remedies and adequate reparations for the human rights violations they have suffered, as well as with identity documents if they had not yet been able to access to those.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²⁹

Haiti: "Where are we going to live?", Migration and statelessness in Haiti and the Dominican Republic, 15 June 2016, AMR 36/4105/2016

Dominican Republic: Submission to the UN Human Rights Committee, 7 December 2015, AMR 27/2978/2015

Dominican Republic: 'Without paper, I am no one': Stateless people in the Dominican Republic, 19 November 2015, AMR 27/2755/2015

Amnesty International Report 2017/18, Dominican Republic, POL 10/6700/2018

²⁹ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/americas/dominican-republic/>

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