

DOMINICAN REPUBLIC

**SUBMISSION TO THE UN
HUMAN RIGHTS
COMMITTEE**

**COMMENTS ON THE FOLLOW-UP STATE
PARTY'S REPORT OF 24 AUGUST 2015**

**AMNESTY
INTERNATIONAL**



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EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee in relation to the State's party follow-up report of 24 August 2015.

The briefing focus on issues related with the recommendations formulated by the Committee in paragraph 22 of its Concluding Observations.

This briefing shows that instead of taking steps to implement the Committee's recommendations on the right to a nationality, the Dominican Republic has taken measures which have resulted in arbitrary and retroactive deprivation of nationality for tens of thousands of people. In particular, a 2013 judgment of the Constitutional Court (judgement 68-13) made statelessness a matter of law for several generation of Dominicans of foreign descent, contrary to international law.

In May 2014, a government-backed law (Law 169-14) was introduced in an effort to mitigate the harsh effects of this judgment. However, this has proved insufficient as a response to the crisis. The law does not provide for Dominican nationality to be automatically restored to the two groups of affected people identified. Moreover, it failed to address a wide variety of complex situations created by years of discriminatory policies and practices.

As a result, tens of thousands of people, mostly of Haitian descent, living in the country remain stateless. People who are stateless in the Dominican Republic and lack identity documents are denied a range of human rights and prevented from participating fully in society. Contrary to international law, statelessness is often passed from parent to child resulting in a continuing cycle of alienation and marginalization down the generations.

THE RIGHT TO A NATIONALITY

THE 2013 CONSTITUTIONAL COURT JUDGEMENT

The Dominican authorities failed to implement the recommendation formulated by the Human Rights Committee in paragraph 22, as well as numerous related recommendations by other treaty bodies.

On the contrary, in September 2013 the Dominican Constitutional Court issued a judgment (Judgment 168-13) which stated that children born in the Dominican Republic to foreign parents who did not have regular migration status had never been entitled to Dominican nationality. The judgment was applied retrospectively to people born since 1929. Judgment 168-13 constitutes a retroactive and arbitrary deprivation of nationality. It disproportionately affects Dominicans of Haitian descent and is, therefore, discriminatory.

The Constitutional Court is the highest court in the Dominican Republic and its decisions are binding on all other authorities. While the 2004 Migration Law and the 2007 administrative decisions of the Central Electoral Board (JCE) exposed those affected to the risk of statelessness,¹ Judgment 168-13 made statelessness a matter of law for several generations of Dominicans of foreign descent, contrary to international law.

The Dominican authorities have rejected allegations that people in the Dominican Republic who have been arbitrarily deprived of nationality were rendered stateless by stating that affected people have Haitian nationality. Such claims are made on the basis of an article of the Haitian constitution stating that all individuals born abroad to a Haitian mother or father who have never renounced their Haitian nationality are Haitians. However, these fail to take into account legislative and constitutional developments in Haiti that have made the acquisition of the Haitian nationality far from automatic.

In particular, a 1984 decree, which remains in force until now, made it clear that if the person has manifested their choice for or actively enjoyed another nationality, they lose their right to Haitian nationality. This means that it is difficult to claim that Dominican-born children of Haitian parents who acquired Dominican nationality by virtue of the constitutional norm in force at the time, now have Haitian nationality.

In addition, the 1987 Haitian Constitution introduced a prohibition on dual nationality, as a result of which those who had acquired the Dominican nationality have now lost the Haitian nationality.

¹ The 2004 Migration Law denied Dominican nationality to Dominican-born children of irregular migrants. The 2007 administrative decisions of the Central Electoral Board retroactively denied Dominican identity documents to Dominican-born children of Haitian irregular migrants. For more information about the Law and the JCE's decisions, see Amnesty International, "Without papers, I am no one – Stateless people in the Dominican Republic", AMR 27/2755/2015, pages, 13-14. <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>

Although the 2012 Haitian Constitution removed the prohibition of dual nationality, this does not automatically confer Haitian nationality on those who had lost it on the basis of the previous ban on dual nationality. A nationality law to enable those affected to apply for Haitian nationality has yet to be adopted. So, while people affected by the ban on double nationality may be able to acquire Haitian nationality in the future, under current Haitian legislation they are not considered Haitian nationals.

Moreover, the serious shortcomings of the Haitian civil registry and the fact that many people lack identity documents make it even harder for those in the Dominican Republic who would like to prove their Haitian ancestry to claim Haitian nationality.

LAW 169-14, A PARTIAL SOLUTION

In May 2014, a government-backed law (Law 169-14) was introduced in an effort to mitigate the harsh effects of judgment 168-13.

Law 169-14 upheld the Constitutional Court's position that Dominican-born children of foreigners in an irregular situation were to be considered as foreigners. As a consequence, it proposed concessions rather than a remedy for human rights violations. None of the solutions identified provides for the automatic restoration of Dominican nationality to those who already had it under the domestic legal system before 2010.

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

Regarding Group B, as the Inter-American Court for Human Rights later explained, the law created an impediment to the full exercise of their right to nationality and therefore violated international law because it forced them to be registered as foreigners and to initiate a complex process which could eventually lead them to apply for naturalization as Dominicans (commonly referred to as the "naturalization plan"), but did not lead to automatic acquisition of nationality.²

Law 169-14 was a step in the right direction to mitigate the harsh effects of judgment 168-13, but was ultimately inadequate as a response to the crisis.

The Dominican authorities contend that nobody is stateless in the Dominican Republic and that "thanks to Law 169-14, any allegation that in the Dominican Republic tens of thousands of people have been deprived of their nationality has been disproved".³ However,

² *Expelled Dominicans and Haitians v the Dominican Republic*, 28 August 2014, http://corteidh.or.cr/docs/casos/articulos/seriec_282_ing.pdf.

³ "The right to nationality in the Dominican Republic", 156th Period of Ordinary Sessions of the Inter-American Commission of Human Rights, 23 October 2015.

Amnesty International's research has shown that several groups of people continue to be stateless in the country. The reasons for this include the inadequacy of the solutions provided for by Law 169-14, shortcomings in its implementation and the failure to provide any solution at all for some groups of people. Following the publication of Amnesty International's report "Without papers, I am no one – Stateless people in the Dominican Republic" in November 2015, the Dominican government reiterated its denial of the existence of statelessness in the country.⁴

GROUPS OF PEOPLE WHO REMAIN STATELESS

PEOPLE IN GROUP A

Implementation of the Law for Dominican-born people who had been registered in the Dominican Civil Registry (Group A) has been slow and lacked transparency. On 26 June 2015, the JCE published a list of some 55,000 people who could obtain identity documents recognizing them as Dominicans. While the Dominican government was quick to state that it considered the cases of all the people listed to be resolved, many of those listed continue to face obstacles in obtaining identity documents and in having their Dominican nationality fully recognized, while others who have been denied identity documents do not appear on the list.

Although on paper Law 169-14 restores Dominican nationality to people in Group A following a process of "regularization" by the JCE, the lack of identity documents still impedes some of them from getting access to various services and effectively exercising their full rights as Dominican citizens. As long as the Dominican authorities do not grant them nationality papers that can serve as proof of their identity, they remain effectively stateless.

PEOPLE IN GROUP B

There were a number of shortcomings in the implementation of Law 169-14 in relation to people in Group B. As a result, only 8,755 people applied for the naturalization plan under Law 169-14 out of the almost 54,000 that the government had initially estimated that could fall into Group B.

Those who applied only started receiving responses in July 2015, in violation of the procedures set out by Law 169-14 and its implementing regulations. Those who received a positive response were given a residency permit indicating that they were born in the Dominican Republic and have Haitian nationality. However, the Dominican authorities unilaterally assumed that they had Haitian nationality. The Haitian authorities, in contrast, continue to consider all those affected by Judgment 168-13 to be stateless. As Law 169-14 establishes that people can apply for naturalization as Dominicans only two years after receiving a residency permit, all 8,755 people who applied under the law currently remain stateless, unless they have acquired another nationality.

There is currently no legal recourse for people in Group B who were not able to submit an

⁴ Ministry of Foreign Affairs of the Dominican Republic, "Cancillería rechaza el informe de Amnistía Internacional sobre apatridia en la República Dominicana, 20 November 2015, <http://www.mirex.gob.do/medios/noticias/cancilleria-rechaza-informe-de-amnistia-sobre-apatridia-en-la-republica-dominicana>

application under Law 169-14 to have their Dominican nationality restored or to obtain identity documents. The Dominican authorities have not publicly acknowledged the existence of people, estimated to be in their thousands, who could not enrol on the naturalization plan under Law 169-14, most of whom, therefore, remain stateless.

DOMINICAN-BORN PEOPLE WHO HAD BEEN REGISTERED AS FOREIGNERS

A category of people not covered by Law 169-14 are those, also mostly of Haitian descent, who were born in the Dominican Republic well before the establishment of the Register of Foreigners in 2007 and whose births were registered after that date. When they finally managed to gather all the requested documents to register, the JCE placed them on the Register of Foreigners, instead of in the Dominican Civil Registry, retroactively applying the 2004 Migration Law.

In such cases, people registered as foreigners have been arbitrarily deprived of Dominican nationality, to which they were entitled because they were born before the changes in the nationality rules introduced by the 2010 Constitution. Lacking easy access to Haitian nationality, they have been left stateless. Law 169-14 offers no solution for this group of people for whom there is no clear route to get their Dominican nationality restored.

CHILDREN EFFECTIVELY STATELESS

Even though the Dominican authorities have stated that once parents are recognized as Dominicans the children of people in Group A can be registered as Dominican citizens in the Dominican Civil Registry, in practice there are still many obstacles preventing parents in Group A from registering the births of their children. Children of people in Group A remain stateless until they are registered as Dominicans in the Dominican Civil Registry, unless they have acquired another nationality.

With no clear guidance from Law 169-14, the vast majority of children of people from Group B who applied for naturalization under Law 169-14 are considered to be stateless until they can be registered as Dominicans in the Dominican Civil Registry, something which can happen only after their parents naturalize as Dominicans. Children of people in Group B who did not apply remain stateless too, unless they have acquired another nationality, as there is currently no legal recourse for them to be registered as Dominicans.

Children of undocumented foreign nationals born in the Dominican Republic between 18 April 2007⁵ and 26 January 2010⁶ were registered as foreigners and therefore arbitrarily denied their Dominican nationality, while in most cases they have not acquired the Haitian nationality. They also do not have access to the mechanisms set out in Law 169-14 to have their Dominican nationality recognized. The vast majority of them remain therefore stateless.

⁵ This date marks the entry into force of the Register of Foreigners. From this date onward, this recorded the births of most children born in the Dominican Republic to foreigners without regular migration status who have therefore been denied Dominican nationality.

⁶ The entry into force of the new Constitution which explicitly excluded children born in the country to foreigners without regular migration status from obtaining Dominican nationality by *ius soli*.

Another situation yet to be addressed is that of children of mixed couples. Even though children with at least one Dominican parent have a constitutional right to Dominican nationality and are therefore not stateless in law, in practice, if the mother is an undocumented foreigner, children are denied birth registration and have no means of exercising or proving their Dominican nationality.

Contrary to its human rights obligations, the Dominican Republic has failed to put any measures in place to stop statelessness being passed from parent to child. Children stateless from birth may never have the protection of the state that the right to nationality entitles them to.

The discriminatory provisions in the 2004 Migration Law and its implementing regulations obliging hospital staff to issue a proof-of-birth certificate of a different colour to newborn children of undocumented foreign mothers are contributing to statelessness being passed from parent to child. These provisions give excessive discretion to hospital staff in deciding who is a foreigner and who is not and result in countless mistakes and even in denials of any certificate at all.

THE IMPACT OF CONTINUED STATELESSNESS ON OTHER HUMAN RIGHTS

Despite the prohibition of discrimination on the ground of nationality (or lack thereof) under international human rights law prohibits, in the Dominican Republic people who lack identity documentation and are effectively stateless are denied a range of human rights and prevented from participating fully in society. They also face restrictions in carrying out basic social tasks and activities such as opening a bank account, activating a mobile phone or buying on credit.

In particular, people effectively stateless are discriminated against and are prevented from:

- accessing higher education or completing schooling;
- accessing formal employment;
- accessing adequate healthcare, social security and a retirement pension;
- getting married legally or registering the birth of their children, who are also effectively rendered stateless;
- filing a formal complaint with the authorities and seeking remedies if they are the victims of violence or human rights abuses;
- travelling abroad and circulating freely within their own country without risk of arbitrary detention and expulsion if they are stopped at checkpoints;
- exercising their right to vote, stand for election or take part in the conduct of public affairs.

Stateless people are vulnerable to violence and exploitation and, in the vast majority of cases, are condemned to lives of poverty and marginalization. As a consequence of gender

inequalities, stateless women are particularly at risk of abuse. Because statelessness is often passed from parent to child, statelessness results in a continuing cycle of alienation and marginalization down the generations.

RECOMMENDATIONS

Amnesty International recommends that the Dominican Republic:

- Recognize the impact of Judgment 168-13 in terms of statelessness and acknowledge the scale of the problem of statelessness in the Dominican Republic, as a first step towards the identification and implementation of comprehensive and effective measures for its eradication.
- Carry out a comprehensive census or mapping exercise to identify all those who are stateless and at risk of statelessness, compiling disaggregated data by gender, age, status and location, in cooperation with the UN High Commissioner for Refugees and national human rights organizations.
- Issue adequate documentation recognizing the Dominican nationality of all those in Group A and ensure that they promptly receive all the identity documents that they request.
- Take the necessary steps to leave without legal effect Articles 6, 8 and 11 of Law 169-14 requiring people in Group B to register as foreigners and go through a lengthy naturalization process, as ordered by the Inter-American Court of Human Rights in its August 2014 decision *Expelled Dominicans and Haitians v the Dominican Republic*.
- In consultation with Dominican human rights organizations, adopt new legislation recognizing the right to Dominican nationality of all those born in the Dominican Republic before 26 January 2010, regardless of the migration status of their parents, in accordance with the legislation in force before the 2010 Constitution, including those who have been registered as foreigners under Law 169-14, and implement such legislation in a manner ensuring that all beneficiaries are promptly registered in the Dominican Civil Registry and that the requested identity documents are issued.
- Establish and make public clear procedures to facilitate the registration of births in the Dominican Civil Registry of all the children of people who are entitled to Dominican nationality, including by amending the 2004 Migration Law and establishing a clear and simple procedure to correct mistakes such as the erroneous attribution of a pink proof-of-birth certificate for foreigners and mistaken registration in the Register of Foreigners.
- Open an investigation into individuals who have engaged in discriminatory behaviour in dealing with applications for registration and identity documents, including the Central Electoral Board and the General Directorate of Passports, and ensure that disciplinary measures are applied where appropriate.
- Establish adequate oversight mechanisms, with the participation of civil society

organizations, over the actions and omissions of bodies in charge of registering births and issuing identity documents, such as the Central Electoral Board and the General Directorate of Passports, so that arbitrary decisions can be questioned and officials who act in an arbitrary manner held to account.

- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Create or amend domestic legislation in order to ensure full incorporation into national law of the provisions of those conventions.

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