

October 13, 2010

Contact:
Melanie Teff

DOMINICAN REPUBLIC: NEW CHANCES FOR CHANGE

The impressive solidarity demonstrated by the Dominican Republic in the aftermath of the January earthquake in neighboring Haiti already has led to improved relations between the countries. This must be sustained by reaching bilateral agreement on a migration policy which respects human rights. The Dominican Government should pass the long-awaited regulations for the 2004 Migration Law and put in place a transparent regularization process that gives a path to legal status to foreigners who have lived in the DR for long periods. Despite advances in relations with Haiti, the Dominican Government continues to illegally strip Dominicans of Haitian descent of their nationality and is thus increasing statelessness. This policy must be changed.

BUILD ON THE NEW RELATIONSHIP WITH HAITI

The humanitarian response shown by the Dominican people to victims of the horrific January 12 earthquake in Haiti has opened up possibilities for an improved relationship which would benefit both countries. The Dominican authorities took a number of steps which were of enormous importance in assisting the humanitarian operation. They opened up the border and suspended deportations of Haitians for two months and waived visa requirements for foreign humanitarian workers travelling through the DR to Haiti. Supplies were transported to Haiti through the DR while Dominican search and rescue teams and humanitarian assistance were sent. Many injured Haitians have been treated in Dominican hospitals.

After the initial phase of the crisis, joint meetings of some Dominican and Haitian government ministries took place that continued to improve the relationship between the two countries. Protocols were developed to deal with migrant situations that had previously been dealt with in purely discretionary ways, such as a protocol for how to deal with Haitian children who fled into the DR after the earthquake. The earthquake has also led to some closer relationships between Dominican and Haitian civil society organizations.

POLICY RECOMMENDATIONS

- The Dominico-Haitian Bilateral Commission should prioritize the issue of migration, including a re-evaluation of the 1999 agreement on repatriations.
- The Dominican Government should implement a regularization plan for foreigners who have lived for extended periods in the DR.
- The U.S. and other donor governments should assist the Haitian Government with a program to provide documentation to their citizens in the DR.
- The Dominican Government should revoke Circular 17 and Resolution 12 which are being used to denationalize Dominicans of Haitian descent, and the whole UN Country Team should jointly pursue this issue with the Dominican Government until it is resolved.
- The U.S. should fund programs that prevent and respond to violence against Haitian and Dominico-Haitian women in the DR, and build the capacity of Dominican civil society organizations that work on the rights of Haitians and Dominico-Haitians.

It is estimated that several thousand Haitians crossed over into the DR after the earthquake, especially for medical assistance, but many returned to Haiti again. Post-earthquake migration follows a long history of Haitian migration into the DR, some under government-approved workers' programs. However, many undocumented migrants enter the DR to escape the poverty in Haiti with the assistance of Dominican employers who are eager to hire them.

In the past, most Haitian migration to the DR was of very poor, unskilled workers, who were often exploited by their Dominican employers. Since the earthquake, a greater number of middle-class Haitians has also entered the DR. The outpouring of sympathy by Dominicans towards the victims of the quake, together with the more diverse nature of the migration flows, has led to a change in the image each country's population has of the other. This new positive attitude risks being lost if steps are not taken by both governments to build on it.

ESTABLISH A NEW MIGRATION POLICY

One important recent development is the revival of the Dominico-Haitian Bilateral Commission which finally has met after a ten-year gap. This Commission does have migration on its agenda, but this is not the topic of discussion for the first few meetings. The issue of migration must be prioritized by the Bilateral Commission, and they should consider holding a DR/Haiti migration summit to develop a new and transparent migration policy. The Bilateral Commission should make space to hear the voice of Dominican and Haitian civil society organizations. The absence of a clear migration policy has resulted in numerous abuses of migrants' rights and opportunities for exploitation by corrupt border officials due to the lack of legal procedures.

Since March 2010, deportations have resumed their former random and discretionary manner, usually linked to border agent corruption. Civil society groups at the border report that there were 2,600 deportations by Dominican authorities in the first six months of 2010. If accurate, this is significantly less than the 20,000 deportations that were carried out in 2009. Nonetheless, deportations to Haiti while the country is still in humanitarian crisis may have serious consequences.

Further, since March there has been no due process in the way deportations are carried out. People are often deported through unofficial border posts at night and after several days in detention without food. Deportees are unable

to collect their belongings and receive no deportation papers and no information is passed to Haitian consular officials. This lack of due process is in direct contravention of the 1999 bilateral agreement on repatriations. The Bilateral Commission should re-evaluate this agreement and ensure implementation of a revised agreement that requires the protection of the human rights of migrants in the conduct of any deportations.

THE BENEFITS OF REGULARIZING LONG-TERM FOREIGN RESIDENTS

The 2004 Dominican Migration Law has still not been fully implemented in a legal manner, because it lacks authorizing regulations. Passing these regulations is an urgent matter. One key unimplemented section of the 2004 Migration Law is that which authorizes a path to legal status to foreigners who have been living for extended periods in the DR. A large Haitian community has lived in the DR for decades, many of whom came into the country under bilateral workers' agreements between the two governments. The lack of legal status and documentation of this large group in the DR is hindering the Dominican Government's efforts to modernize and to fight poverty. The Dominican Government has been considering regularization proposals for some time. In 2009 a conference was held to discuss potential regularization plans, but the process appears to have stalled.

The process of developing a final regularization proposal should include full participation of civil society, particularly of representatives of the affected communities. The final plan must be transparent, and must take into account the difficulties that many people will have in documenting their period of residence in the DR. Regularizing foreigners who have lived many years in the DR will mean that their children should be able to access their right to a nationality and citizenship, thus reducing statelessness.

It will be difficult to implement an effective regularization program without also instituting a program to help Haitians in the DR access their Haitian birth and travel documents. There are currently many people who have no identity documents at all. The Haitian Government Minister for Haitians Abroad told RI that his ministry is proposing a new program of documentation for Haitians in the DR, but some international donor funding is needed to make this viable in the current context in Haiti. He told RI that his office is open to seeking the best formula for such a program.

Programs to assist the Haitian Government to provide documentation to its citizens in the DR have been implemented in the past, and need to be reinstated now, especially as Haiti needs help to reconstruct its civil registry system. It is very hard for Haitians in the DR to access their documents. Obtaining a passport from the Haitian consulate is costly (US\$50 – 70) and beyond the means of most Haitians in the DR. Obtaining a Haitian birth certificate for a child over two years of age in the DR is very difficult and also expensive, making it beyond the reach of the majority of people and leaving many children functionally stateless.

PREVENT STATELESSNESS BY ENSURING BIRTH REGISTRATION

The DR changed the conditions for access to Dominican citizenship in its constitution on January 26, 2010. The new rules provide that children born in the DR only have automatic access to Dominican citizenship if at least one of their parents is a legal resident. Nonetheless, RI met with a number of couples where both parents were Dominican citizens with Dominican birth certificates and identity cards, yet were refused Dominican birth certificates for their babies since January 26. The civil registry official told them that their case had to be investigated “because they are Haitian.” This was happening even to Dominican couples where only one parent had Haitian parents. One woman who was refused birth registration for her baby told RI: “My husband is Dominican and has no Haitian heritage, yet we can’t get a birth certificate for our child because my parents were Haitian, even though I have Dominican identity documents. It is not my child’s fault that my parents were Haitian. She should be proud of her Haitian heritage, not feel forced to hide it as she grows up.”

Affected families were unaware of any investigations taking place, and they wait indefinitely to register their children, despite the fact that Dominican law is clear that these children are Dominican citizens as their parents are legal residents. It is possible that these babies might have a right to Haitian nationality, since according to the Haitian Constitution nationality passes by blood to “the children of native-born Haitians,” but it is not at all clear that they would be able to access it in practice. The Haitian embassy in the DR told RI that they will register first-generation babies of Haitian parents, and automatically provide them with birth certificates up until the age of two years. But registration of second-generation babies with

Haitian grandparents would not be automatic and would require investigation. The DR must ensure that the new nationality provisions in its constitution are not applied in a discriminatory manner.

RI was told that few children born to Haitian parents who are not legal residents in the DR since January 26, 2010 are being registered by the Haitian embassy, and that few parents are requesting this service. It is now extremely complicated to ascertain who is a “legal resident” in the DR given the confusing and contradictory rules that have been selectively applied over the past few decades. The United Nations Fund for Children (UNICEF) could play a useful role through their research on documentation practices in the DR, but this research should consider practices both pre- and post-January 26, since the right to Dominican birth registration of several generations of children born in the DR before the constitutional change has to be protected.

STOP THE DENATIONALIZATION OF DOMINICANS OF HAITIAN DESCENT

Prior to January 26, 2010, people born in the DR had an automatic right to Dominican citizenship. The Dominican Government cannot legally apply new rules on citizenship retroactively. Yet, in practice, this is what the authorities have been doing with the 2004 Migration Law (despite the fact that they had not yet changed their constitution and that the authorizing regulations for the 2004 Migration Law have still not been passed). In 2007 the Dominican Government issued Circular 17, followed by Resolution 12, which required registry offices to investigate any birth certificates that had been issued “irregularly” to children of foreigners “who had not proved their legal status in the DR.” Circular 17 and Resolution 12 are being used to strip people of Haitian descent of their Dominican citizenship.

When a person of Haitian descent goes to a registry office to seek an official copy of their Dominican birth certificate (without which they cannot graduate from high school, register for university, obtain a passport, get married, register for social security, etc.) they are informed that their documents are “provisionally suspended” as they are “under investigation.” The Dominican Government claims it is just undertaking “fraud” investigations, but a government cannot change its policies and then claim that any documents they issued under the old policy are now fraudulent. Furthermore, they do not in fact appear to be undertaking any investigations at all. No one with whom RI spoke has seen an investigator for the past three years.

RI met with large numbers of people who grew up with Dominican documents believing that they were Dominican citizens and are now stuck in this legal limbo. RI also met with several Dominicans of Haitian descent with connections to high-ranking government or judicial officials who had been able to use these connections to ensure that their documents had not been placed “under investigation.” A very small number of people have managed to obtain the services of a lawyer in order to challenge the voiding of their documents. Many of these types of cases have been settled by the Dominican authorities.

The current situation is completely discretionary with a total lack of due process. It appears that the Dominican government is unclear about how it will proceed. It must decide to revoke Circular 17 and Resolution 12 if it is to avoid repeated denunciations for illegal and discriminatory practices. The Dominican Government has stated that it plans to issue new identity cards for all Dominican citizens in January 2011. If the policy of retroactive application of new citizenship rules is not resolved before the government issues new identity cards to the whole population, it will lead to a substantial increase in statelessness in the DR and produce serious international criticism.

IMPROVE PROTECTION FOR HAITIAN AND DOMINICO-HAITIAN WOMEN

Living without identity documents makes women more vulnerable to violence, abuse and exploitation. Without legal status, many women fear seeking legal assistance or protection, as they think they will be turned away for having no documents or that this contact with the authorities could lead to deportation.

Last year the U.S. Bureau of Population, Refugees and Migration funded a project to prevent and respond to gender-based violence (GBV) against Haitian refugees and migrants. This project was very successful, and nearly three times the number of planned beneficiaries came forward to seek advice, legal assistance, protection, and assistance with restarting their lives away from abusive partners. The project ran for fifteen months but has now expired. The U.S. should consider further funding for this type of project. The benefits of this project still continue. The Dominican women’s group that implemented the project states that some Haitian and Dominico-Haitian women are still coming to them to seek assistance or looking for GBV awareness-raising programs for their communities, but their resources to respond are now limited.

STRENGTHEN CIVIL SOCIETY TO WORK ON DOMINICO-HAITIAN RIGHTS

Dominican civil society groups and networks who promote the rights of Haitians and Dominico-Haitians are currently overstretched. Many of them are now focused on the humanitarian crisis in Haiti, and their international funding is now directed towards Haiti rather than the DR. It has also been difficult for these groups to take a public stand for the rights of Dominicans of Haitian descent at a time when the DR has been showing solidarity towards Haiti. But this is a key moment to focus on the rights of Haitian migrants and of people of Haitian descent in the DR – just after the constitutional change on nationality, when bi-national diplomacy is restarting, when there is discussion about a potential regularization program, and before more individuals of Haitian descent are retroactively stripped of their Dominican nationality.

Dominican civil society groups working on these issues need support to increase their capacity, particularly in advocacy, communications and legal programs. They need to take part effectively in dialogue with the government, advocate for the rights of the Haitian and Dominico-Haitian communities in the DR within these various processes, and back up their positions with collated evidence. These groups also require support to undertake Dominico-Haitian cultural exchange programs in order to take advantage of the current improvement in Dominico-Haitian relationships and to build stronger relationships with Haitian civil society.

CONCLUSION

The Dominican Government has been rightly commended for its response to the victims of the earthquake. But the steps forward have not yet translated into any improvement in the situation for Dominicans of Haitian descent. The retroactive application of new citizenship rules is contrary to both Dominican and international law. It also hurts the DR’s attempts to fight poverty. As a young woman of Haitian descent said to RI: “I grew up as a Dominican with Dominican identity documents and I wanted to go to university and contribute to my country, the DR. What can I do if Dominican society doesn’t recognize me, after I grew up being told I was a citizen?”

Melanie Teff assessed the situation for Haitians and Dominicans of Haitian descent in the Dominican Republic in August 2010.