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Center for Human Rights

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DOMINICAN REPUBLIC: TIME TO MOVE FORWARD TO RESOLVE STATELESSNESS

On May 16, President Leonel Fernandez won a further term in office using the electoral slogan “*Pa'lante*” (“moving forward”) with a campaign message of modernization and development for the country. But the Dominican Republic is not utilizing all its human resources to move forward. An illegal retroactive application of nationality laws is leaving increasing numbers of Dominicans of Haitian descent functionally stateless. Hundreds of thousands of people are left in legal limbo and, in practice, most of them now have no access to either Dominican or Haitian nationality. This issue must be resolved if the country truly wants to modernize and develop.

Stop Retroactive Application of Nationality Laws

The Dominican Constitution states that all children born on Dominican territory are Dominican citizens, apart from children of diplomats and children of people “in transit”. Because “in transit” was defined in the previous Dominican migration law as being in the country less than ten days, children of foreigners born in the Dominican Republic have had the right to Dominican nationality. Children of Haitian origin were often denied this right in practice, but the right existed. Many Haitian migrants did in fact register their children born in the Dominican Republic, using the temporary worker’s card (“*ficha*”) issued to them by the former state sugar company. Dominican registry offices accepted the “*ficha*” as proof of a parent’s residence in the country and registry offices granted birth certificates and identity cards to children who then grew up as Dominican citizens.

In 2004 the Dominican Republic passed a new migration law which re-defined “in transit” as not being a legal resident, a definition which was rejected by the Inter-American Court of Human Rights in a 2005 judgment. Regardless, this new definition cannot be applied to people born before the 2004 Migration Law came into force as it is prohibited under international and Dominican law to apply legislation retroactively. Yet, on a recent mission to the country, Refugees International and the Robert F Kennedy Memorial Center for Human Rights met 25 people, and heard about the cases of hundreds more, who had been issued

Policy Recommendations

The Dominican Government:

- ❑ Stop the retroactive application of the 2004 Migration Law;
- ❑ Ensure that any investigation into identity documents is conducted with due process, with written notice to individuals and a right of appeal to a court;
- ❑ Formulate a regularization plan in consultation with affected communities.

The international community, and particularly the US Government:

- ❑ Urge the Dominican government to comply with its international legal obligations ensuring that any document investigation is conducted following due process without retroactive application of the law and avoiding the creation of statelessness.

Donor governments:

- ❑ Ensure that people without identity documents are not excluded from social programs they are supporting in the Dominican Republic.

documents by Dominican registry offices which were now “under investigation,” which in practice means they cannot use their documents for essential activities requiring proof of citizenship.

The following are three examples of people who grew up as Dominican citizens but are now “under investigation” because of their Haitian ancestry:

1. Ángel is a talented baseball player and was offered a contract by the US baseball team, the San Francisco Giants. Officials at the registry office refused his request for an official copy of his full birth certificate, informing him that his documents are under investigation because he is of Haitian origin. Since he could not get a passport, he lost the contract with the Giants.
2. Altagracia is a good student who cannot go to university because the registry office refused her request for an official copy of her birth certificate. The office informed her that it was because her surname is Haitian.
3. Teresa was refused a birth certificate for her 6-month-old baby because of her Haitian surname. She had registered her first 3 children previously without problems.

All of these people were born in the Dominican Republic and had been issued Dominican birth certificates and identity documents by Dominican registry offices.

There are also many cases of refusals of identity card renewal applications by Dominicans of Haitian descent. In 2004, for administrative reasons, the Central Electoral Board extended all identity cards scheduled to expire in 2006 for two years to June 2008. Therefore, in June hundreds of thousands of identity cards will need to be renewed. Serious concerns exist about what will happen when Dominicans of Haitian descent seek to renew their identity cards.

Conduct Investigations with Due Process

In March 2007 the Dominican government issued Circular No. 17, a directive requiring registry offices to investigate any birth certificates that had been issued “irregularly” to children of foreigners “who had not proved their legal residence or status in the Dominican Republic.” In practice this circular is being used to de-nationalize Haitians’ descendants, as registry offices are equating being of Haitian descent with fraud.

At present these investigations lack due process. People are not informed that their documents are “under investigation,” so they have no opportunity to appeal the decision. Most find out by chance when they request official copies of birth certificates and are refused because of the alleged “investigation.” It is still unclear how many people are currently in this legal limbo.

Dominican officials have stated that it is too expensive to notify individuals that their cases are under investigation. Under international law lack of resources is not accepted as an excuse for a state to deny due process to individuals. If the Dominican Republic is going to carry out investigations that can potentially result in the loss of a person’s nationality, it must inform them in writing, and allow an effective right of appeal to a court. Under Dominican law only a judge can investigate the validity of identity documents and make a determination of Dominican nationality, not registry offices or the Central Electoral Board.

Dispel the Myths

Descendants of Haitians who live in the Dominican Republic do not all have access to Haitian nationality, despite the Dominican government’s over-simplified claims to the contrary. Under the Haitian Constitution and Haiti’s 1984 law on nationality, the following groups of people of Haitian origin born outside of Haiti will not have automatic access to Haitian nationality:

- Children of Haitian asylum-seekers and refugees, since their parents have “renounced their nationality.”
- Grandchildren and great-grandchildren of Haitians, since their parents have to be “native-born Haitians.”
- Children who have only one parent who is Haitian.
- Children of Haitian parents who do not have identity documents (without which they cannot prove they are “native-born Haitians”). Few Haitians in the Dominican Republic have identity documents because Haitian civil registry offices have barely functioned for years.
- People previously registered as citizens of other countries and who now wish to recover their Haitian nationality; they must reside in Haiti for five years, before applying for naturalization.

In addition, many Dominicans of Haitian ancestry have no connection to Haiti. Having grown up in Dominican culture, they speak Spanish and may not speak Haitian Creole, and Haiti is a foreign country to them.

Establish a Regularization Plan

The 2004 Migration Law requires the government to develop a regularization plan that would give citizenship or legal residence to “non-residents” who meet certain requirements. This would not apply to Dominicans of Haitian origin, but to Haitian migrants. The Dominican government has not yet produced a regularization plan. It should do so without further delay and should consult with affected communities concerning its formulation.

Refugees International Advocate Melanie Teff and Robert F. Kennedy Memorial Center for Human Rights Program Officer Marselha Gonçalves Margerin assessed the situation of people of Haitian descent in the Dominican Republic in May 2008 and also participated as election observers.