DREAMS DEFERRED:
THE STRUGGLE OF DOMINICANS OF HAITIAN DESCENT TO GET THEIR NATIONALITY BACK
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THE STRUGGLE OF DOMINICANS OF HAITIAN DESCENT TO GET THEIR NATIONALITY BACK

EXECUTIVE SUMMARY

“ANYONE THAT HAS THIS [DARK] COLOR ... EVERYBODY THINKS THAT WE ARE HAITIANS.” – María P.

On September 23, 2013, the Constitutional Tribunal of the Dominican Republic issued Judgment 168-13, ruling that it did not recognize the right to Dominican citizenship of hundreds of thousands of its citizens because they were the children of non-resident foreigners. The decision applied retroactively to generations of people who were born in the Dominican Republic between 1929 and 2010, leaving the citizenship status of these people and their descendants in limbo. This decision left people like those whose stories we share in this report invisible in their own country.

The majority of the people affected by the decision are Dominicans of Haitian descent who were born in the Dominican Republic to Haitian parents at a time when the Dominican Constitution granted them the right to jus soli, or birthright citizenship. These people are Dominicans under the law in force at the time of their birth and are also culturally and linguistically Dominican, yet they face a pervasive “anti-Haitian” sentiment that permeates some sectors of Dominican society and are discriminated against by Dominican authorities because of their Haitian origin. As a result, even before Judgment 168-13, Dominicans of Haitian descent often faced harassment, administrative hurdles, soaring costs, and long delays when applying for official state identification documents that allowed them to exercise their rights as Dominican citizens.

For years prior to Judgment 168-13, a series of migration laws, judicial decisions, and administrative policies formalized this discrimination, consistently chipping away at the constitutional right to jus soli nationality. Judgment 168-13 was the culmination of this institutional discrimination, violating international law and the Dominican Constitution itself by retroactively stripping Dominican citizens of their nationality and labeling them as foreigners in their own country, leaving many of them stateless.

Judgment 168-13 earned condemnation from Dominican civil society and international human rights bodies, including the Inter-American Court and Commission of Human Rights. In response, the Dominican government passed Law 169-14, which promised to restore citizenship to one group of people born in the Dominican Republic, “Group A,” those who had been registered as Dominican citizens prior to Judgment 168-13, and offered a path to naturalized citizenship for a second group, “Group B,” who were not registered as Dominican citizens prior to Judgment 168-13. The arbitrary distinction between the two groups has added another layer to an already complicated problem.

As a result of Law 169-14, the Dominican government considers the situation of individuals in “Group A” to be resolved. However, Law 169-14 has not been the solution to the constant obstacles that Dominicans of Haitian descent face daily in spite of being registered as Dominican citizens. As those in “Group A” reveal in their own words, the majority are still without valid identity documents three years after Law 169-14 was passed. Many in “Group A” have been “re-registered” as citizens in a separate registry that lacks legal basis, marking them literally and symbolically as a second class of Dominican citizen. 23 of the 24 people interviewed were without a valid cédula identity card either because their original registration of birth
had been canceled or they have been unable to get a new cédula with reasonable effort. Without this cédula, Dominicans are unable to register the birth of their children, register themselves in school, run for public office, find stable employment, get married, or access social and health services. If individuals in “Group A” do try to obtain new documents from the State, they must navigate an arduous process with little support or resources, further complicated by express discrimination by state officials and suspicious cancellation or withholding of documents with little to no explanation. Worst of all, problems with documentation often present issues for the next generation, meaning that those in “Group A” are unable to plan for their futures or for the futures of their children.

Although efforts to defend the rights of Dominicans of Haitian descent have surged in response to Judgment 168-13 and Law 169-14, the lack of political will on the part of the Dominican State to address the situation is clear from subsequent acts. Local courts have nullified original birth certificates of those in “Group A,” invalidating not only a document that allows them access to civic services but one that also serves as a tangible marker of their Dominican citizenship. Human rights defenders and journalists who work to defend and protect the rights of Dominicans of Haitian descent have been the targets of harassment and accusations of anti-nationalism, which have gone unaddressed by the Dominican government. Lastly, and perhaps most importantly, the entrenched racial and xenophobic discrimination, the “anti-Haitianism” that underlies these denationalization policies and has historically permeated Dominican society endures without measures in place to address it.

Three years after the incendiary moment of the Constitutional Tribunal’s Judgment 168-13, the international community must ensure that the Dominican government does not continue to hide behind Law 169-14 as a “solution” to the human rights violations that those affected by the decision suffer. The Dominican State must be held accountable for its disregard of international law and must eliminate the legal, practical, and social barriers to recognizing and respecting the right to nationality for those in “Group A” and all those affected by Judgment 168-13. The government must act now to ensure that these violations do not continue for another generation.

In the report, we make the following recommendations to the Dominican Government and to the international community:

1. **To the Government of the Dominican Republic**
   a. Establish a formal and permanent space for public conference, discussion and evaluation of the implementation of Law 169-14 and the situation of persons it has affected. Ensure that a diverse group of stakeholders are invited to the table, including representatives from the community of Dominicans of Haitian descent and civil society organizations working on their behalf.
   b. Eliminate the practice of using a separate registration book, the “Libro de Transcripción” for those in “Group A.” Commit to a system that is free from discrimination and distinction and ensure State agents take responsibility for ensuring the right to nationality for Dominicans of Haitian descent.
   c. Establish a process that guarantees effective and efficient access to the Civil Registry for those attempting to establish their legal status and obtain their identity documents.
   d. Ensure that the police, armed forces, and other state agents refrain from harassment and discrimination against Dominicans of Haitian descent, including any use of means of coercion, intimidation, disproportionate use of force, or expulsion.
e. Publicly denounce threats and intimidation directed at human rights defenders and journalists, including those who work to defend the right to nationality of Dominicans of Haitian descent.

f. Investigate in a timely manner all former and current cases of attacks, threats or intimidation against human rights defenders and journalists.

g. Address the longstanding racial and xenophobic discrimination that has permeated many sectors of Dominican society and which is at the root of the policies of denationalization of Dominicans of Haitian descent.

Specific recommendations for the Central Electoral Board (JCE)

h. Clarify the requirements for persons in “Group A” to obtain their documents in an expedited manner, including firm deadlines for receipt of documents.

i. Ensure members of “Group A” can obtain their documents in the local oficialía where they reside and are not required to travel to Santo Domingo to enquire about the status of their documents or copies.

j. Cease using the “Transcription Book,” and ensure that the persons in “Group A” are recognized in the Civil Registry and they can maintain the information they were registered with initially. Abstain from continuing to nullify the original birth certificates of those in “Group A.”

k. Ensure timely information, frequent training, and sanctions to those authorities that deliberately or arbitrarily attempt to circumvent the rights of persons in “Group A” to their documents.

l. Establish a mechanism to receive and address complaints from citizens who experience violations of their rights while attempting to obtain their documentation.

m. Ensure due process in all decisions regarding the issuance of documentation to Dominicans of Haitian descent.

2. To the International community

a. Support local and international civil society groups in their efforts to protect the rights of Dominicans of Haitian descent, including those in “Group A.”

b. Call on the Dominican Republic to recognize and respect its obligations under international law and implement procedures to restore full citizenship and documentation to individuals in “Group A.”

c. Denounce the existing violations of the rights of Dominicans of Haitian descent, including those in “Group A”, and call on the Dominican government to implement restorative proceedings.

d. Call on the Dominican government to publicly address the entrenched culture of racial discrimination in the country that serves as the foundation for many violations of the rights of Dominicans of Haitian descent and support them in these efforts, including with financial support.
INTRODUCTION

José is a proud citizen of the Dominican Republic. He is 39-years old and he was born in Galvan, a small town in the Dominican Republic’s Baoruco province, near the Haitian border. When he came of age, he received his high school diploma and obtained his national cédula identity card. Afterward, he served proudly on behalf of his country in the Dominican army. José longs to go to university to pursue his dream career, social work, to protect and ensure the safety of children in his country.

José is also a Dominican of Haitian descent, which has drastically changed his life trajectory. On September 23, 2013, the Dominican Republic’s Constitutional Tribunal issued Judgment 168-13, which held that José and thousands of other Dominicans of Haitian descent like him were no longer considered citizens of the Dominican Republic.¹

Since 1865 the Constitution of the Dominican Republic has included the right to jus soli nationality, Dominican nationality conferred by virtue of birth within Dominican territory. In 1929, an exception to jus soli nationality was introduced to exclude from Dominican citizenship children born to “foreigners in transit,” people who were temporarily in the country for visits, temporary work, or otherwise short stays.² In the 2013 decision, Judgment 168-13, the Constitutional Court interpreted this “foreigners in transit” exception to apply to all children born between 1929 and 2010 to undocumented migrants living in the Dominican Republic, retroactively stripping these individuals of their Dominican citizenship.³ This included adults like José, who were Dominican citizens born in the Dominican Republic to Haitian migrants and who have lived their entire lives in the Dominican Republic.⁴ Because of this new interpretation of the country’s highest court and the policies that later implemented it, José discovered that his national cédula identity card was disabled and prevented him from undertaking any activity that he previously took for granted as a Dominican citizen, including serving in the army, attending school, or getting a job that allows him to make a contribution to his country and leave the poverty of the bateyes⁵ behind.

“Before, when I was a little boy and I was in school, it was my dream to have a career that helped my family succeed. And I couldn’t because of the level of poverty we lived in the bateyes. My first job was in the army. I was a corporal in the army but because of the little they paid a corporal I decided to leave the army ranks and dedicate myself to social work here in my community. But I see that if I make an effort to finish high school I can work to become a professional and study for a university degree to learn something and do something to help someone in the future. And here I am happily on my way to enroll in university and I’m rejected because my documents weren’t valid to be able to attend university.”

⁵ Bateyes are settlements that built up around sugar mills where cane cutters, most of them Haitians or of Haitian descent, live and raise their families. Residents of the bateyes refer to them by number (bateye 8, 9, etc.) Children of the Nations, “The Origin of the Dominican Batey,” November 14, 2007. Available at: https://cotni.org/news/dominican-republic/2007/11/14/origin-dominican-batey.
Unfortunately, José’s story is not unique. Judgment 168-13 drastically altered the lives of thousands of Dominicans of Haitian descent by stripping them of their Dominican nationality, effectively giving a stamp of constitutional approval to a long history of discrimination against Dominicans of Haitian descent.

In response to the crisis generated by Judgment 168-13 and the intense national and international criticism it provoked, the Dominican legislature passed Law 169-14 in 2014. This law subdivided those people affected by Judgment 168-13 into two groups according to whether they had been registered as Dominican citizens in the Civil Registry prior to the September 23, 2013 judgment (“Group A”) or if they lacked such status at the time of the judgment (“Group B”). José was one of the “luckier” ones, qualifying for “Group A” as he had previously been registered as a Dominican citizen. In accordance with Law 169-14, he is eligible for restoration of his nationality. He already had his cédula identity card, which Law 169-14 stated should be officially recognized. The government assured people in “Group A” like José that their nationality issues would be resolved. However, three years after Law 169-14 was put in place, José is still waiting for restoration of his cédula identity card.

“I am completely desperate. Right now I am scared that they will call me for a job. I have given my CV out to different organizations and I am scared that they will call me for a job and because of my documents I won’t be able to work. I am completely paralyzed. At times, to be honest with you, I have wanted to disappear. When you see that you almost have something; my work has always been my weakness, to work in social work related to the protection of children. But right now if I see that Plan calls me and they tell me that I qualified for the post, we go through all the process to sign the contract and when I present my cédula they tell me “whoa! We can’t hire you because the insurance company will not accept you.” Then this will make my shoulders drop. To be honest, I have even thought about taking my own life.

Imagine how I feel.”

This report calls attention to the problems that continue to afflict many Dominicans of Haitian descent in “Group A” who still experience violations of their right to nationality in the wake of Judgment 168-13 in spite of the government’s promises to resolve their situation. Despite Law 169-14’s guarantee of restored Dominican citizenship, three years later, many in “Group A” do not have valid and functional national identity documents that make this guarantee concrete. We share their stories of how their identities as

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6. See, e.g., Human Rights Watch, “We are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic,” (July 1, 2015), which called Dominicans of Haitian descent “the single largest ethnic group affected by the 2013 decision and the 2014 law.” Available at: https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic.


13. Social service organization where José would like to work.
Dominican citizens were stolen as well as the discrimination and abuse they suffer at the hands of the state authorities as they struggle to have their nationality recognized.

This report in no way looks to ignore the grave situation of those in “Group B” who comprise the grand majority of people affected by Judgment 168-13 who are entitled to jus soli citizenship but who were not registered as Dominican citizens when Judgment 168-13 was issued. Of these people, only a small percentage were able to register in the “foreigners’ book,” el libro de extranjería, which required them to self-report as foreigners in their own country. These people are without a clear path to obtaining citizenship through naturalization despite the guarantee in Law 169-14. In accordance with the estimates from the Office of the United Nations High Commissioner for Refugees (UNHCR), there could be around 133,770 persons experiencing statelessness in the Dominican Republic and urgent actions are necessary to resolve the problem.

José’s story is particularly distressing because, according to the Dominican government, by being included within “Group A” under Law 169-14, in comparison to “Group B,” his nationality would have been restored and he should be guaranteed access to valid identity documents. However, in practice, José and thousands of other Dominicans in the same situation remain in limbo as they are without access to identity documents. For every José that exists, there are at least two Dominicans of Haitian descent in “Group B” whose citizenship has not been recognized and they are effectively stateless. Others may not know their status or may simply have encountered one too many barrier in their flight to obtain proof of their Dominican citizenship. The co-authoring organizations also work to defend and protect the right to nationality of people in “Group B” and others affected by the denationalization policies in the Dominican Republic. However, with this report, we have decided to focus specifically on “Group A” to counteract the official narrative that this group’s situation has been resolved and to propose concrete solutions so that this narrative becomes reality.

In that regard, although this report focuses on the impact of Judgment 168-13 on Dominicans of Haitian descent, with particular emphasis on those in “Group A,” the bias and intolerance that are at the root of these policies go back at least a century. In Section I, we trace the Dominican Republic’s constitutional amendments and the laws and policies that culminated in Judgment 168-13 and its destructive aftermath. Section II tracks the international backlash against these policies and identifies the human rights violations that have been, and continue to be, at issue for Dominicans of Haitian descent. Much has been written...
about the struggle of Dominicans of Haitian descent, but very rarely are the victims afforded the space to speak and give much-needed context to the complex web of court judgments, laws, and governmental policies that restrict their lives. In Section III, José and others in “Group A” speak for themselves, identifying eleven main issues they face everyday in the wake of Judgment 168-13 and Law 169-14.

Section IV illustrates the advocacy efforts on behalf of Dominicans of Haitian descent on Judgment 168-13’s third anniversary, highlighting the local movements that have responded to the crisis of Dominicans of Haitian descent and identifying new obstacles that have sprung up. Finally, in Section V, those in “Group A,” advocates who work on their behalf, and the organizations who contributed to this report make recommendations to the Dominican government and the international community to ensure full restoration of the constitutional rights of Dominicans of Haitian descent, particularly those included in “Group A” under Law 169-14.

By calling attention to the barriers people in “Group A” continue to face, the need for overarching change to all the nationality policies in the Dominican Republic becomes painfully clear. Many of the issues identified in this report will continue to affect future generations of Dominicans.
I. JUDGMENT 168-13: THE CONSTITUTIONAL STAMP ON A HISTORY OF DISCRIMINATION

Judgment 168-13, issued by the Dominican Republic’s Constitutional Court on September 23, 2013, was a landmark moment in a long history of institutionalized discrimination against Dominicans of Haitian descent. Before that judgment, Dominican migration laws, judicial decisions, and administrative acts, not to mention the 2010 constitutional amendment, had continuously etched away at guarantees of birthright citizenship.

The Dominican Constitution had been amended in 1929 and again in 2010 to exclude children of undocumented or resident foreign migrants from claiming birthright citizenship. Such amendments were widely understood to prevent the children born to Haitians who had migrated to the Dominican Republic from becoming automatic Dominican citizens at birth, which incentivized migration. Changes in the Constitution led to implementation of inconsistent policies and practice by Dominican authorities who often discriminatorily applied newer and more restrictive constitutional amendments to older Dominicans of Haitian descent whose citizenship was not affected by the new amendments.

With its ruling in Judgment 168-13, the highest court in the Dominican Republic validated and authorized the retroactive application of constitutional amendments to individuals who were born before these laws were enacted. Overnight, hundreds of thousands of Dominicans of Haitian descent born in the Dominican Republic between 1929 and 2010 were stripped of their Dominican citizenship. The judgment also left the legal status of their children and grandchildren unclear. However, these individuals are still Dominican in every other sense of the word. They were born in the Dominican Republic, they live their lives there, many of them only speak Spanish, and feel entirely Dominican.


32 UNHCR, “Tendencias Globales Desplazamiento Forzado en 2015,” [Global Trends in Forced Displacement 2015] page 61, n. 16. Available at: http://www.acnur.org/pdf/filesadmin/scripts/doc.php?file=filesadmin/Documentos/Publicaciones/2016/10627. (Explaining that there are 133,700 stateless persons, including only people born in the country whose parents, both of them, were born outside the country. It does not include people born in the country having one parent born in the country and the other a Dominican national, in accordance with the 210,000 figure that was released previously.)


EXPLANATION OF IDENTITY DOCUMENTS

- **Constancia de nacimiento**: certificate of live birth issued by a medical center where a child is born. Medical centers are required to issue this document to parents who can prove that they are Dominican. If the parents cannot prove that they are Dominican, the medical center must issue a pink “foreigner” live birth certificate.
  - The constancia de nacimiento is necessary to obtain the acta de nacimiento, or official birth certificate.

- **Acta de nacimiento**: official birth certificate issued by the Civil Registry that serves as the primary form of identification for children under the age of 18.
  - This document is required to apply for a passport and to obtain social services, including an official marriage license, health care, and school enrollment.
  - An acta de nacimiento is required in order to obtain the cédula de identidad.

- **Cédula de identidad**: Individuals are encouraged to apply for the cédula once they turn 18. The cédula is the main form of state identification, and is required for legal employment, opening a bank account, registration for social security, and many other things.

i. Background on Citizenship in the Dominican Republic

To understand Judgment 168-13 and its impact, one must trace the requirements of citizenship in the Dominican Republic back nearly a century.

The Dominican Republic has long relied on the migration of Haitian workers who crossed the border to labor on sugar mills. Like most of the Western hemisphere, the country has historically provided *jus soli*, or birthright citizenship, to children born in its territory since 1865. As a result, children of Haitian immigrants who were born on Dominican soil were automatically Dominican citizens. Despite their right to citizenship, these Dominicans of Haitian descent often faced discrimination on the basis of their skin color, economic class, and family's migratory history. They also often faced problems obtaining identity documents that confirmed their Dominican citizenship.

Beginning with the Constitution of 1929, the Dominican Republic specified that the right to Dominican nationality would be for all persons born on Dominican territory with the exception of the legitimate children born to foreign diplomats residing in the country or to foreigners who were “in transit” through the Dominican Republic. It was this latter exception that was reinterpreted by the Constitutional Court in Judgment 168-13 to apply to descendants of Haitians born in Dominican territory. This was in spite of the fact that the migratory laws in force for decades established clearly that the “in transit” category corresponded...
to persons that entered the territory with the purpose of continuing on through the country with a foreign
destination, and for whom a period of 10 days in the Dominican Republic was considered sufficient.41

It was not until the adoption of the General Law on Migration No. 285-04 in 2004 that the term “in transit”
was modified to include temporary workers, the majority of whom came from and continue to come from
Haiti, regardless of the length of time they stayed in Dominican territory by considering them “non-
resident” foreigners.42 This General Law on Migration also introduced a different birth registry for children
of “non-resident” foreigners that included the issuance of a pink “constancia de nacimiento” (certificate of live
birth) that was distinct from the certificate that was used for Dominican citizens.43

In 2005, the Supreme Court of Justice, in a judgment on the constitutionality of General Law on Migration
No. 285-04, interpreted the term “foreigners in transit” to include individuals without a residence permit,
that is to say people in an irregular migratory situation, regardless of whether they had spent decades
living in the Dominican Republic or whether their children had been born there.44 As a result, the children
born to individuals lacking residence permits were no longer entitled to Dominican citizenship even if
they were born in the country.45

KEY PLAYER: THE CENTRAL ELECTORAL BOARD (JCE FOR ITS ACRONYM IN SPANISH)

The Central Electoral Board (JCE for its acronym in Spanish) is the state agency that oversees the
state offices of the Civil Registry (oficíalias) in the Dominican Republic. As the agency responsible
for the issue of birth certificates and national cédula identity cards, the JCE implements the
constitutional amendments with respect to nationality. The body is also responsible for the
administration and oversight of the governmental elections. Members of the JCE are chosen
by the Senate. In November 2016, Julio César Castaños Guzmán was chosen to be president,
along with new members Rosario Graciano, Roberto Saladín, Carmen Imbert and Henry Mejía.46

In 2007, the Central Electoral Board (“JCE” for its acronym in Spanish) issued Resolution 12-2007, which
created the “Registry of the Birth of a Child to a Foreign Non-resident Mother in the Dominican Republic,”
also called the “Libro de Extranjería” or “Book of Foreigners” in which they began to record the pink (emphasis added) constancias de nacimiento (certificates of live births).47 In effect, the Dominican
government implemented a parallel registration system to record the births of children born to migrants
and foreigners in order to deny citizenship to these children. The system failed to take into account

42 Ley General de Migración [General Law on Migration], No. 285-04 (August 15, 2004), Art. 36. Available at: https://www.oas.org/dil/Migrants/Republica%20Dominicana/Ley%20sobre%20migracion%20N%20285%20del%202004%20%20prohibe%20entrega%20de%20ninos%20sin%20residencia%20en%20la%20Republica%20Dominicana%20(Ley%20285-04)%20del%202004.pdf.
43 Ley General de Migración [General Law on Migration] (August 13, 2004), Art. 36. Available at: https://www.oas.org/dil/Migrants/Republica%20Dominicana/Ley%20sobre%20migracion%20N%20285%20del%202004%20%20prohibe%20entrega%20de%20ninos%20sin%20residencia%20en%20la%20Republica%20Dominicana%20(Ley%20285-04)%20del%202004.pdf.
individuals, who, for many other reasons — the discrimination or delay of JCE authorities or loss of documents, etc. — may have been unable to provide official identity documents that proved their residency in the country.48

Finally, in 2010, the Dominican Republic amended its Constitution to formally incorporate an exception to the right to Dominican nationality under the *jus soli* principle to children of individuals “who reside illegally in Dominican territory.”49 It is worth noting that, by some accounts, the JCE applied the new constitutional exception retroactively, denying Dominican nationality to people of Haitian descent born prior to 2010 who had not yet obtained identity documents to verify their Dominican nationality.50

**ii. The 168-13 Judgment: A Controversial Decision with Broad Implications**

The case that led to Judgment 168-13 attempted to challenge the legality of the policies restricting birthright citizenship to Dominicans of Haitian descent by clearly demonstrating the retroactive application of the broader “in transit” definition.51 The petitioner, Ms. Juliana Deguis Pierre, embodied the thousands of Dominicans who were born in the country to Haitian migrants or Dominican parents of Haitian descent; were registered as Dominican citizens; and who later faced many barriers to receiving their official identity documents.52

Ms. Deguis Pierre was born in Yamasá, Monte Plata in the Dominican Republic on April 1, 1984 to parents who were both Haitian migrants.53 Her parents registered her birth at the *oficialía* in Yamasá that same year.54 She grew up culturally and linguistically Dominican; she speaks only Spanish and hardly any Haitian creole.55 Ms. Deguis Pierre obtained her birth certificate in 1993.56 In 2008, she went to the local *oficialía* of the Central Electoral Board (JCE) to obtain her *cédula* identity card.57 While she was there, the JCE authorities confiscated her birth certificate, telling her that it was “irregular” because she was the daughter of Haitian migrants who were “in transit,” although none of the changes in the 2004 Migratory Law should have applied to her situation.58 In 2010, in light of the constitutional amendment that expressly eliminated the right to Dominican nationality for individuals born in Dominican territory to parents in an irregular migratory status,59 the Central Electoral Board (JCE) released Circular 17-2010, ordering workers in the *oficialías* not to issue, process, sign, or release documents to children of foreign parents,60 though once again this should not have applied to Ms. Deguis Pierre. When the JCE...
refused to hand over her documents, Ms. Deguis Pierre filed an action in the local court for the return of her birth certificate and the issue of her cédula card, which was denied in 2012.\(^61\) She then appealed the decision to the Constitutional Tribunal,\(^62\) which issued Judgment 168-13 on September 23, 2013.\(^63\)

In Judgment 168-13, the Constitutional Court affirmed the retroactive application of the “in transit” exception contained in the 2010 Constitutional amendment to Ms. Deguis Pierre’s situation.\(^64\) The Court considered that she was not entitled to Dominican nationality because she was the daughter of undocumented Haitian immigrants who were “foreign citizens in transit,” despite her being born before the 2010 amendment.\(^65\) The Court ordered that Ms. Deguis Pierre be issued a birth certificate that reflected her foreign status and a special pass for a “temporary stay”\(^66\) in the Dominican Republic, even though she had lived her entire life in the country.\(^67\) Critics of the decision indicated that Judgment 168-13 violated at least four articles of the Dominican Constitution: 1) Article 18, the right to nationality, 2) Article 110, the protection against retroactive application of the law, 3) Article 74, interpretation of fundamental rights in the light most favorable to affected persons, and 4) Article 69, judicial responsibility and due process, in addition to the rulings of the Inter-American Court of Human Rights.\(^68\)

Judgment 168-13 was emblematic because, although apparently neutral, the majority of people affected by Judgment 168-13 are Dominicans of Haitian descent. The decision seemingly approved of the racism and discrimination against Dominicans of Haitian descent,\(^69\) who had always been viewed as Haitian, black, or foreign, but never as Dominican.\(^70\)

Going beyond Ms. Deguis Pierre’s case, the Court explicitly and retroactively applied the decision to thousands of other Dominicans of Haitian descent who were in her situation.\(^71\) To achieve this, the Court ordered the JCE to audit the birth registry books of the Civil Registry since 1929, the year in which the exception to the right to nationality for children of foreigners “in transit” was introduced, and compile a list of the “foreigners” who were “registered irregularly” which would be transferred to a registry


THE DECISION SEEMINGLY APPROVED OF THE RACISM AND DISCRIMINATION AGAINST DOMINICANS OF HAITIAN DESCENT, WHO HAD ALWAYS BEEN VIEWED AS HAITIAN, BLACK, OR FOREIGN, BUT NEVER AS DOMINICAN.
book of foreigners.\textsuperscript{72} In addition, the President of the Dominican Republic, Danilo Medina, approved a Regularization Plan in November 2013 that gave foreigners who wished to regularize their migratory situation in the Dominican Republic 18-months to register themselves.\textsuperscript{73} After that period, those who were not so registered could be deported to Haiti.\textsuperscript{74}

Judgment 168-13 led to harsh criticism for the Dominican State from the international community.\textsuperscript{75} In light of the judgment, the Office of the High Commissioner for Human Rights of the United Nations (OHCHR) urged the Government of the Dominican Republic to “take all necessary measures” to ensure that citizens of Haitian origin are not deprived of their right to nationality,\textsuperscript{76} a sentiment echoed by the High Commissioner for Refugees (UNHCR),\textsuperscript{77} the European Union,\textsuperscript{78} and by the Caribbean Community (CARICOM).\textsuperscript{79} The Working Group of the Universal Periodic Review recommended that the Dominican Republic take “urgent steps to ensure full respect for the right to a nationality [...] and to seek technical advice with UNHCR to identify and prevent statelessness and protect stateless persons.”\textsuperscript{80} UNICEF also urged the Dominican Republic to adopt “a procedure to protect every child’s right to acquire a nationality, in accordance with the country’s international human rights obligations.”\textsuperscript{81}

As a result of the controversial judgment and under significant pressure from local civil society organizations and the international community, the Dominican government proposed a Naturalization Bill to Congress. The Bill recognized the citizenship of those individuals who had been previously registered as Dominican citizens and established a registration process for those born in the country but who had not yet been registered as citizens.\textsuperscript{82} The Bill, now known as Law 169-14, was passed into law on May 23, 2014,\textsuperscript{83} and promised to be a solution to the situation of those Dominicans of Haitian descent affected by Judgment 168-13.\textsuperscript{84}

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\textbf{JUDGMENT 168-13 LED TO HARSH CRITICISM FOR THE DOMINICAN STATE FROM THE INTERNATIONAL COMMUNITY.}
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II. DISREGARD OF INTERNATIONAL LAW: CONTINUED

VIOLATIONS OF HUMAN RIGHTS

The Constitutional Court’s Judgment 168-13 was a watershed moment in the habitual disavowal of the Dominican courts and state institutions’ of international human rights conventions and treaties on the issue of nationality.85 Article 74(3) of the Dominican Constitution recognizes the “constitutional hierarchy” and “direct and immediate application” of the human rights treaties, pacts, and conventions signed and ratified by the Dominican state,86 which include many that guarantee the right to nationality.87 International law recognizes the sovereign right of States to make their own nationality and citizenship laws,88 but establishes a series of safeguards to prevent statelessness.89

The Dominican Republic has consistently argued that Dominicans of Haitian descent who were stripped of their nationality have the right to Haitian nationality and are not stateless.90 However, these statements do not consider that people of Haitian descent born in the Dominican Republic are not automatically considered Haitian nationals under Haitian law.91 Article 11 of the Haitian Constitution states that “each individual born of a Haitian father or mother that have been born Haitian and have not renounced their nationality at the time of the birth”92 has Haitian nationality, which implies that there must be an application process. Experts warn that “the legislative and constitutional developments in Haiti [...] mean that the adquisition of Haitian nationality is far from automatic.”93 Moreover, it is very difficult to get the documents necessary to prove Haitian nationality because of a “dysfunctional system of a civil registry and a weak consular capacity across the Caribbean.”94 The Dominican Republic’s policies leave many Dominicans of Haitian descent without Dominican nationality in violation of international law.


i. The Inter-American System of Human Rights

The bodies of the Inter-American Human Rights System, of which the Dominican Republic is a member State, have been particularly vocal on the right to nationality in the Dominican Republic. Both the Inter-American Court and the Inter-American Commission have consistently condemned the actions of the Dominican state regarding the right to nationality of Dominicans of Haitian descent.

a. Clear Violations of the American Convention on Human Rights

The following rights are particularly relevant to the situation of Dominicans of Haitian descent:

1. The Right to Nationality

Citizenship is the vehicle through which individuals are able to exercise their most basic human rights. The right to nationality is so essential that although States maintain their sovereign right to determine their own nationality laws, Article 20 of the American Convention on Human Rights affirms the right of an individual to the nationality of the state where he or she was born if he or she has no right to any other nationality, and declares that “no one shall be arbitrarily deprived of his nationality or of the right to change it.” In the 2014 Case of Expelled Dominicans and Haitian Persons, the Inter-American Court explained that the right to nationality has two aspects: an individual’s access to basic legal protections through her connection to a specific State, and the protection from arbitrary deprivation of nationality which deprives someone of these legal protections, including her basic civil and political rights. Judgment 168-13’s stripping Dominicans of Haitian descent of their Dominican nationality robs them of both facets of their right to nationality. It removes their legal connection to the Dominican State and arbitrarily deprives them of that connection many years after it was bestowed. Because Dominicans of Haitian descent are not automatically Haitian nationals they are effectively left stateless due to the policies of the Dominican State.

2. The Right to Recognition as a Person Before the Law

Violations of the right to nationality go hand-in-hand with violations of the right to juridical personality. Most of the individuals affected by Judgment 168-13 and the subsequent legislative measures adopted by the Government to provide a “solution” to their situation currently have no clear legal status under the laws of any country. Although Dominicans of Haitian descent...
are in their home country, many are unable to obtain valid official identity documents. As a result, because they have no documentation identifying them as citizens and they don’t have documentation that identifies them as foreigners, they are effectively invisible under the law in the Dominican Republic. On this point, the Inter-American Court has held “the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual’s condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals.”

3. **The Right to Be Free from Racial Discrimination**

The Dominican Republic’s efforts to deprive Dominicans of Haitian descent of their nationality have a strong foundation in racial discrimination. The Inter-American Court’s decision in the *Case of the Girls Yean and Bosico* contextualized the violations the girls experienced within the “vulnerable situation of the Haitian population and Dominicans of Haitian origin in the Dominican Republic,” and cited the United Nations Committee on the Rights of the Child’s “deep concern” at the discrimination against Dominican children of Haitian descent. Other special procedures of the United Nations have also documented a strong “anti-Haitianism” in the country that is “based on skin colour, without distinguishing between Haitians, Dominicans of Haitian descent and black Dominicans with no ties at all to Haiti.” This discrimination on the part of state agents is a violation of the general obligation to respect the rights recognized in the American Convention on Human Rights in accordance with Article 1 of said Convention.

4. **Violations of Other Rights Derived from the Right to Nationality**

As discussed in Section IV, the inability of Dominicans of Haitian descent to obtain documents to exercise their Dominican citizenship restricts their ability to exercise their most basic civil rights. Accordingly, Dominicans of Haitian descent often suffer interference with other essential rights such as the right to family (Article 17 of the American Convention on Human Rights) when they...
are not allowed to marry or register their children as Dominican citizens due to a lack of their own documentation; the right to a name (Article 18 of the American Convention on Human Rights),
if they are unable to register themselves or their children because of issues with documentation;
the right to participate in government (Article 23 of the American Convention on Human Rights);
the right to equal protection if they are unable to vote or hold public office (Article 24 of the
American Convention on Human Rights); and the right to judicial protection (Article 25 of the
American Convention on Human Rights). 115

b. The Dominican Government’s Disregard of Judgments of the Inter-American Court

The Dominican Republic has consistently flouted the judgments of the Inter-American Court of Human Rights, holding the State responsible for violations of the rights of Dominicans of Haitian descent and ordering reparations for the victims. 116 In the 2005 decision Case of the Girls Yean and Bosico v. Dominican Republic, the Inter-American Court tracked the history of discrimination against Dominicans of Haitian descent and the obstacles the State has imposed on their registration as Dominican citizens. 117 The Court held that by withholding birth certificates from two Dominican girls of Haitian descent who were entitled to birthright citizenship, the Dominican Republic had violated the girls’ rights to a name, to nationality, to legal recognition before the law, equal protection, and to humane treatment. 118 The Court ordered that the State undertake a public act of recognition of responsibility, apologize to the victims and their families, pay damages, and adopt “the legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality.” 119 In addition, the Court specified that this process would have to be “simple, accessible and reasonable, since, to the contrary, applicants could remain stateless” and an “effective remedy should exist for cases in which the request is rejected.” 120

Although the decision was issued years before Judgment 168-13, the Court in Yean and Bosico declared that many of the Dominican Republic’s policies and practices regarding the right to nationality of Dominicans of Haitian descent violated the American Convention on Human Rights. 121 In defiance of the Inter-American Court’s decision, the Senate of the Dominican Republic issued a resolution rejecting the judgment and later passed a decision upholding the law that undocumented migrants should be considered as being “in transit.” 122 Since then, many of the discriminatory practices discussed by the

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112 Article 18 reads: “Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.”
113 Article 23 reads: “1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”
114 Article 24 reads: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”
115 Article 25 reads: “1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy, and c. to ensure that the competent authorities shall enforce such remedies when granted.”
Inter-American Court in the *Yean and Bosico* case have become the law of the Dominican Republic.\(^{123}\)

Later, in the 2014 *Case of Expelled Dominican and Haitian Persons*, the Court underscored the complete disregard of the Dominican government for the right to nationality of Dominicans of Haitian descent.\(^{124}\)

The Inter-American Court held that the Dominican Republic violated the rights of Dominicans of Haitian descent, including children, by denying them access to identity documents they were constitutionally entitled to, destroying or confiscating their documents, detaining them without cause, and forcibly expelling them from the Dominican Republic.\(^{125}\)

Ultimately, thirteen days after the Inter-American Court’s decision, the Constitutional Tribunal of the Dominican Republic – the same court that issued Judgment 168-13 – declared the country’s acceptance of the jurisdiction of the Inter-American Court unconstitutional because it had been accepted solely by the Executive Branch and had not passed through the Legislative Branch of the government.\(^{126}\)

In its response to the Constitutional Court’s decision, the Inter-American Commission said “[t]he Constitutional Court’s judgment has no basis whatsoever in international law, and therefore it can have no effect.”\(^{127}\)

c. Indifference to the Recommendations of the Inter-American Commission

The Inter-American Commission has also called attention to the situation of Dominicans of Haitian descent for almost two decades.\(^{128}\)

As early as 1999 the Comission noted the existence of “problems in the documentation and registration of individuals of Haitian individuals born in the Dominican Republic; as well as arbitrary obstacles and bureaucratic attitudes of the state workers towards these individuals”\(^{129}\) and recommended that the State address the issue. Its reporting on the issue and recommendations that the Dominican State address the right to nationality for those of Haitian descent have remained consistent as the State’s policies have gotten worse.\(^{130}\)

In its latest *Report on the Situation of Human Rights in the Dominican Republic*, released in February 2016, the Inter-American Commission expressed that “the situation of Dominicans of Haitian descent, rather than improving, has worsened over the years, as a result of legislative, judicial, administrative, and constitutional practices and measures adopted by various Dominican authorities, which, instead of ameliorating the situation of those affected, have managed to perpetuate the violations of their human rights.”\(^{131}\)

The Commission further emphasized that the effect of Judgment 168-13 had “led to an unreasonable, discriminatory and disproportionate result by considering as ‘foreigners in transit’ Haitian migrants who have lived in the Dominican Republic for 30, 40, or 50 years and who, for that reason, have developed personal, family, and social ties with the Dominican State.”\(^{132}\)

The Commission recommended that the Dominican Republic was to:


“[a]dopt, as soon as possible, the necessary measures to guarantee the right to nationality of those persons who already had that right under the domestic legal system in force between 1929 and 2010. The measures to guarantee the right to nationality of the persons adversely affected by the Judgment 168-13 should be general and automatic. Such mechanisms should be simple, clear, rapid, and fair. They may not be discretionary or be implemented in a discriminatory fashion. The mechanisms must be economically accessible.”

The Commission has also highlighted the need to address the racial component to the discrimination against Dominicans of Haitian descent. In 2015, the Inter-American Commission requested that the Dominican Republic “officially and publicly recognize the existence and the historical, social and cultural impact that racism and racial discrimination have had in the Dominican Republic, and express firmly, its political will to fight it.” However, although nationality policies and laws are neutral with respect to race, the Dominican authorities’ actions are often based on their perception of an individual’s nationality after seeing the color of their skin. The Dominican courts’ affirmations of the Central Electoral Board’s (JCE) discriminatory practices also clearly demonstrate the lack of State will to find solutions in accordance with applicable international law.

Depriving Dominicans of Haitian descent of their Dominican nationality is a clear violation of many rights in the American Convention on Human Rights. As the Inter-American Commission has stated, the Dominican Republic’s failure to comply with the decisions or recommendations of the Inter-American system, particularly with respect to the right to nationality of Dominicans of Haitian descent “undermines the international human rights protections of those under the Dominican State’s jurisdiction.”

ii. Criticisms from Other International Human Rights Bodies

In addition to the Inter-American system, the Dominican Republic has been denounced before various human rights mechanisms for its failure to recognize the right to nationality of Dominicans of Haitian descent and for its discrimination against Haitians and people of Haitian descent. The Dominican Republic is a State Party to many international human rights treaties, including the International Covenant on Civil and Political Rights and its Optional Protocol, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women. As with the Inter-American system, Dominican courts and other governmental institutions have not recognized the application of these conventions or the recommendations of their monitoring bodies to the Dominican Republic.

For example, in 2008, five years before Judgment 168-13, the UN Human Rights Council noted that generations born in the Dominican Republic to Haitian parents with the constitutional right to *jus soli* citizenship were “being denied legitimate expectations of citizenship.”\(^{143}\) The Council called on the Government of the Dominican Republic to urgently conform to the *jus soli* provisions of the Constitution and to ensure that the rights of all persons of Haitian descent were respected.\(^{144}\) Judgment 168-13 later affirmed the denial of citizenship to children born in the Dominican Republic to Haitian parents.

Speaking specifically about the registration process for children born to foreign mothers, in 2013, the Committee on the Elimination of Discrimination Against Women expressed deep concern that “the exception to the *jus soli* principle relating to foreigners ‘in transit’ is systematically applied in an excessively broad fashion even to women who have spent many years, if not their entire life, in the Dominican Republic.”\(^{145}\) The Committee called for the Dominican Republic to “remove all the obstacles for women of Haitian descent and women of uncertain status to obtaining birth certificates for their children, ensuring their access to all rights.”\(^{146}\) The Committee on the Rights of the Child urged the Dominican Republic to ensure “the restoration of nationality to all individuals, including children, born before the Constitution of 2010 who are affected by the Constitutional Court’s ruling of 23 September 2013.”\(^{147}\)

Like the Inter-American Commission, other human rights bodies have addressed the racially discriminatory component of the denationalization policies against Dominicans of Haitian descent. The U.N. Working Group of Experts on People of African Descent affirmed the right of Dominicans of Haitian descent “to reside safely in the territory, as well as children born in the Dominican Republic who are legally registered.”\(^{148}\) The Committee on the Elimination of Racial Discrimination recommended the removal of administrative obstacles to issuing and restoring identity documents to Dominicans of Haitian origin and adoption of non-discriminatory policies with regards to identity documents to ensure that citizens of Haitian origin are not deprived of their right to nationality.\(^{149}\) Similarly, the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance recommended increased oversight over local Civil Registry offices to “encourage [...] an official attitude of facilitation and trust,”\(^{150}\) transparent process in the issuance and denial of identity documents, and notice that “acts of racial discrimination in the exercise of official functions will be severely punished.”\(^{151}\) However, as Section III of this report reveals, acts of racial discrimination are still pervasive.

In spite of these recommendations and statements of concern, the Dominican Republic has persisted without **THE STRUGGLE OF DOMINICANS OF HAITIAN DESCENT TO GET THEIR NATIONALITY BACK**


addressing them in any comprehensive way. Law 169-14 was billed as a response to some of the sharp criticism the government received after Judgment 168-13 by creating a path to legal status for Dominicans of Haitian descent. However, Law 169-14 failed to adequately remedy the situation and has led to additional problems for Dominicans of Haitian descent.

III. LAW 169-14: AN UNFULFILLED PROMISE OF NATIONALITY

Beyond Ms. Deguis Pierre’s case, Judgment 168-13 ordered an audit of the Dominican Republic’s Civil Registry from 1929 until 2010 and the creation of a list of all “foreigners” who were registered as Dominican citizens at birth within two years. The judgment also ordered the creation of a second list of all “foreigners” who were not properly registered as Dominican citizens in the Civil Registry before Judgment 168-13 but who would have been eligible for jus soli citizenship at the time of their birth. Finally, the Court required the government to institute processes to “regularize” the status of these newly “foreign” individuals. The subsequent Naturalization Law 169-14 passed by the Dominican legislature in May 2014 sought to implement the Constitutional Court’s ruling in Judgment 168-13.

i. Who is “Group A”? Legal Definitions

Naturalization Law 169-14 is the Dominican legislature’s “middle ground” between the fulfillment of the Constitutional Court decision, Judgment 168-13, and criticisms of the decision. Law 169-14 sought to limit the impact of Judgment 168-13 by providing for restoration of citizenship to those affected by Judgment 168-13 who were registered as Dominican citizens in the Civil Registry prior to the Court’s ruling and creating a path for those that were not previously registered to opt for naturalized citizenship.

As a result, Law 169-14 divides those affected into two groups, “Group A” and “Group B,” establishing a different nationality regime for each group. “Group A” consists of people, like Ms. Deguis Pierre, who were born in the Dominican Republic and were registered as Dominican citizens in the Civil Registry prior to Judgment 168-13. In contrast to Judgment 168-13’s holding, under Law 169-14, those in “Group A” are not “foreigners” and shall have their Dominican citizenship restored retroactive to their date of birth. Despite this restoration of citizenship, Law 169-14 still perpetuates the discrimination against this group of Dominicans by clearly emphasizing the illegality of “Group A’s” initial registration as Dominican citizens. The law offers “a solution to the problem that those persons who were illegally registered [emphasis added] in the Civil Registry by the State because they have lived their lives under the premise that they enjoyed the right to Dominican nationality and it had become ingrained in Dominican society.”

The second group under Law 169-14, “Group B,” consists of individuals born in the Dominican Republic, who were never registered as citizens in the registry books of the Civil Registry. The Law establishes

a special registry for this second group that documents them as foreigners and makes them eligible to apply for naturalized Dominican citizenship in two years.  

Under Law 169-14, “Group A” is eligible to have their existing identity documents recognized or to have the Central Electoral Board (JCE) provide the necessary documents to those who had not had them before. In June 2015 (months before the expiration of the two-year deadline ordered by Judgment 168-13), the JCE published a list of about 53,827 people who were born in the Dominican Republic and were registered as Dominican citizens prior to the Court’s judgment. Consequently, under Law 169-14 these people belonged to “Group A” and as a result were entitled to restoration of their citizenship and to their identity documents. Some members of “Group A” have reported that the JCE’s audit is not complete.

The concept of “restoration” of citizenship and the provision of corresponding identity documents were also not clearly defined by Law 169-14. Many Dominicans of Haitian descent who had been registered as Dominican citizens prior to Judgment 168-13 already had legitimate birth certificates, cédula identity cards, and other forms of state identification. However, as in Jose’s case, many of those in “Group A” continue in legal limbo because their original identity documents have subsequently been disabled or are otherwise invalidated as a result of Judgment 168-13. Many have also experienced problems in obtaining new identity documents. With the language of illegality still present in Law 169-14, what type of citizenship those in “Group A” were entitled to is not clear. If those in “Group A” are considered naturalized citizens, they would not have all the rights of a Dominican citizen by birth, including running for president or vice president.

Arguably, you could say that individuals in “Group A” are in a better position under Law 169-14 than those in “Group B” because, in principle, they have the right to restoration of their citizenship. The next section looks at the wide gap between Law 169-14’s promises for “Group A” and the harsh reality they experience. As will be explained later, the problems with implementation of Law 169-14 with respect to “Group A” underscores the reality that all Dominicans of Haitian descent in the Dominican Republic face obstacles in the recognition of their right to nationality and the overwhelming need for large-scale reform for all of the State’s discriminatory policies, regardless of how the group has been classified under Law 169-14.

WITH THE LANGUAGE OF ILLEGALITY STILL PRESENT IN LAW 169-14, WHAT TYPE OF CITIZENSHIP THOSE IN “GROUP A” WERE ENTITLED TO IS NOT CLEAR.
ii. **Group A: Beyond the Legal Label**

All of the people interviewed for this report meet the legal definition of “Group A,” they were registered as Dominican citizens prior to Judgment 168-13. However, the vast array of problems they faced as part of “Group A” belie the seemingly simplistic legal definition that created the group. Notably, in spite of the different profiles and specific circumstances of the individuals in “Group A,” all of the people interviewed from “Group A” share two fundamental characteristics.

First, they all have dark skin and/or are descendants of Haitians. They believe Dominican officials treat them negatively because the officials presume they are Haitian on account of their skin color, regardless of their Dominican citizenship. Immigrants and foreigners without dark skin are often treated better than those presumed to be Haitian.

> “Everyone who has [a light skin] color, when they go to Cristóbal to deposit a document they don’t pay them any mind, but someone who has white skin, he could be Haitian once they see his papers, but the person that comes from batey 7,8,9, the person that has this [dark] color everybody thinks that we are Haitians.” (María P, batey 8)

> “Here in Tamayo [city in Baoruco province] we were sitting in the park, there was a Haitian woman and a Chinese man, the Chinese man didn’t have even a paper out of a notebook [he doesn’t have documents] they ask me for my documents, I show them the paper that the JCE gave me to travel, they called the JCE and they let me go, the [Haitian] woman that was from Santana has her documents, but she didn’t walk with her documents and when they asked the Chinese man for his documents, he said he didn’t have them, they took the woman away and left the Chinese man.” (Genaury, batey 8)

> “Each time I go to the capital when I see that the police are there I am nervous because once one has this skin color they will come for you, once they see you, they say ‘morena.’ [show me] your documents.” (María A, batey 8)

Second, everyone interviewed for this report lives in conditions of poverty on the margins of Dominican society. They live primarily in the Baoruco and Independence provinces in the Enriquillo region. Enriquillo has historically been a community of persons of Haitian descent, mainly because of its proximity to Haiti. Its diverse landscape provides many options for cultivation: sugar cane, coffee, bananas, in addition to all the earning possibilities from manual labor and other sectors dominated by the Haitian labor force. In this region, 69.5% of families live in poverty, the highest rate in the country. In the district of El Palmar de Neiba the number climbs to 88.2% of families. Meanwhile, the Dominican State’s investment in education for the year 2014 in the Enriquillo province was $1,166.71 million pesos, the third lowest figure out of the country’s ten regions.

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168 Dark-skinned woman.


OF THE 24 PEOPLE THAT PARTICIPATED IN THE FOCUS GROUPS AND INTERVIEWS:

- 20 are children of Dominican mothers and fathers.
- 4 are children of a Dominican mother and a father who is a Haitian migrant.
- 23 have a cédula identity card but these documents were void when this report was published. As a result, they cannot undertake any legal action without this document.
- 1 person has been able to resolve the situation of his void cédula identity card by himself. Another was able to resolve his voided cédula identity card with the support of an attorney.

It is worth noting that none of the children of the people in “Group A” we interviewed had their cédula identity card or electoral identification even though they had reached the age of majority. For multiple reasons, they were still in the process of getting their cédula identity cards, a process that has been too slow according to them. The Central Electoral Board (JCE) has not expressly denied them documentation, but after many obstacles and many years, the JCE has not given them their documents either. Law 169-14 has neutral language that applies to all descendants of “foreigners in transit” in the Dominican Republic.174 The coincidence of these racial and socioeconomic characteristics with an individual’s inability to obtain valid identity documents demonstrating their right to Dominican citizenship underscores the long history of racial discrimination and xenophobia that is at the root of these policies.

iii. The Voices of Victims in “Group A”

Individuals in “Group A” tell a consistent story: Law 169-14 has not followed through on its own terms. The Central Electoral Board (JCE) has failed to recognize the original identity documents of many people who belong to “Group A” and are not on the list of 53,827 people, and has not issued new ones to those who need them. As a result, there is overwhelming confusion about who is included in “Group A,” what documents they are entitled to, and what their citizenship status is. Interviews with people in “Group A” reveal that the obstacles and discrimination they face from the Dominican State match the serious concerns expressed by local and international advocacy communities.

The immediate and overarching impact of Judgment 168-13 and, subsequently, of Law 169-14 were the feelings of abuse, disrespect, violation, and prejudice that Dominicans of Haitian descent in “Group A” experienced. Individuals in “Group A” feel shame about their lack of legal status in the Dominican Republic.

“In this country, I am not Dominican, I’m not Haitian, I’m not French, I’m not anything because I don’t exist, this leaf that you have in your hands means more than we do.” (Genaury, batey 8)

“I feel like a person that... how do I explain it to you? Someone who doesn’t have papers is equal to a dog.” (Soraida, batey 8)

“What do I feel? Shame, because if you don’t have a cédula [identity card] you are nobody in society, in society you are less than nothing.” (Yafreisi, batey 8)
“Without a cédula [identity card], without documents, I tell you, I feel bad, bad. My daughter can’t register her daughter because of my problem.” (Altagracia, batey 4)

Judgment 168-13 changed the legal status of Dominicans of Haitian descent by taking away their constitutional entitlement to Dominican citizenship. But nationality is a complex and layered concept that is not captured solely by a legal grant or withholding of citizenship. We interviewed people in “Group A” and asked them what it meant to them to “be Dominican” and whether they felt integrated into their national community.

Some of the responses based the concept of nationality on having been born in the Dominican Republic:

“For me, it means everything because when someone is born in a country, one has all of his or her life in the country all of your life in this country.” (Maria A, batey 8)

or on the their parents’ and grandparents’ places of origin:

“My mother is Dominican, I am Dominican too, because when someone is born that’s their country, I was born in Santo Domingo, my mom was born in Santo Domingo, my dad was arrayano, they were Dominicans, I am Dominican because this is my flag.” (Yulisa, batey 5).

But they also expressed their Dominican nationality as a negation; they are Dominican because they were not born in Haiti:

“It’s an honor to be one (to be Dominican) because we were not born in Haiti, I studied here, I don’t know where else to link myself, only here in this country.” (Margot, batey 4).

The majority of Dominicans of Haitian descent interviewed for this report were born in the Dominican Republic to Dominican parents and were entitled to birthright citizenship under the Dominican Constitution at the time of their birth. Judgment 168-13 robbed them of their legal right to citizenship. However, even without access to valid identity documents, they are Dominican because the Dominican Republic is the only homeland they have known and being Dominican is part of their identity.

The tangible effects of the right to nationality are identity documents that prove citizenship and facilitate an individual’s participation in civil activities. Law 169-14 restored nationality to those in “Group A” and granted them the right to official identity documents, regardless of whether they had these documents prior to Judgment 168-13. Without valid and functional documents, Dominican citizenship is an empty promise.

The Central Electoral Board (JCE), as the state agency that controls issuance of birth certificates and cédula identity cards, is tasked with implementing the documents provisions of Law 169-14. Exercising its wide discretion, the JCE unilaterally created a special registration book, the Libro de Transcripción (“Transcription Book” in English) that was not contemplated nor authorized under Law 169-14 or other legislation. This book included all the persons who, according to the audit, met the definition of “Group A” under the terms of Law 169-14. However, by having a separate book solely for all citizens in “Group A,” the JCE created an unnecessary distinction between those citizens in “Group A” and all other Dominican citizens.

The creation of this separate book also introduced additional divisions and discrepancies in the registration records of those in “Group A.” Many people were re-transcribed in the new “Libro de Transcripción” with different information than what was in their original identity documents. The JCE also began canceling, invalidating, suspending, or disabling existing documents held by those in “Group A,” without notifying affected persons. Moreover, the JCE did not notify them that they needed to come to the JCE to obtain new documentation. In addition to the discrepancies in the local oficilías, discrepancies often existed in the records kept by the JCE in the capital, Santo Domingo, when compared to those kept in local oficilías.

The creation of the JCE’s Libro de Transcripción and subsequent cancelation or invalidation of original identity documents has meant that many Dominicans of Haitian descent are without valid identity documents verifying their Dominican citizenship despite a law that guarantees them these documents. “Group A” has been called “a legally segregated citizenry vulnerable to further abuse.” Local advocacy group Reconoci.do has expressed great concern that Dominicans of Haitian descent are unaware of potential effects of the JCE’s creation of a separate registry book, the Libro de Transcripción, that clearly sets them apart from other Dominican citizens.

This section highlights some of the main obstacles those in “Group A” have faced in their attempts to obtain documents from the JCE that authenticate their Dominican citizenship.

176 Central Electoral Board; “Filosofía de la organización” [Philosophy of the Organization]. Available at: http://jce.gob.do/Filosofia-Organizacional.
180 The individual interviewed tended to use these terms interchangeably.
1. Ignorance of Registration Status

A consistent theme among those interviewed is that many people in “Group A” are unaware of whether their existing documents are valid, whether or not they are registered by the Central Electoral Board (JCE) in the Libro de Transcripción, or whether they need new documents. People would find out by chance or when they were barred from some activity, as with José.

“Here in the region, if they send a demand for nullification it’s very rare that the persons know that it’s a demand to invalidate their documents because they don’t have information, no inspector comes to their house to tell them. At least when the person goes to the oficiaļa and they give him a document that says that their documents are being demanded because they are invalid. But for the people to know this they have to go to the oficiaļa. And many times they go to the oficiaļa and they don’t tell them anything.” (Estefani, activist).

For example, Edison discovered through a friend that he was on the list of Dominicans that supposedly had the right to retrieve their documents according to the JCE. He was also told to tell the rest of his community that they should come to receive their documents so that their situation would be resolved too.

Interviewer: “How were you notified that you were on the list of the 55,000 if they never canceled your documents?”

Edison: “Well, I don’t know because when they put out the list a friend went to [the local oficiaļa in] Galván and said to me: ‘I saw you there on the list of people they put out,’ and I went and I was really there. Right then, I asked for a birth certificate to check and they gave it to me. That’s how it was. When I arrived I said that I came to get a birth certificate and they went and they looked and told me that I was there, but that my situation was already resolved and they gave me the certificate. And they told me (in the oficiaļa): ‘look, all these people here are from your community, you can tell them to come, that their problem is resolved. They told me like that.” (Edison, batey 4)

2. Lack of Information and Support to Navigate the Process of Obtaining Documents

The JCE has not provided those in “Group A” with precise information about the steps for retrieving their identity documents. Those interviewed also reported that at times the JCE authorities were simply not willing to offer information. In addition, those in “Group A” often lacked any type of legal support to help them understand the process and advocate for their rights before the JCE authorities. The more poignant descriptions of this lack of support and indifference by authorities came from attorneys who witnessed the plight of many others while trying to help their clients.

“The obstacles that we found in the process were the denials in the different oficiaļas we went to. No one wanted to attend to the people, they didn’t want to give the documents to the people, they didn’t want to give an exact explanation of what was the problem with the person.” (Berenice Anderson, lawyer)
The community leader David Pérez underscores her statement,

“If they enacted the Law (169-14) a long time has passed for the law to be publicized. Moreover, they have not given the space and the required support to people affected by the Judgment and the solution [offered by Law 169-14] so that they can take advantage of the law. As a result, many people were not able to take advantage of the benefits of the law.”

“As a lawyer, I have had to accompany many people to the oficiales to get their birth certificates. Many times I had to hear the officials say to the people that they could not give them their birth certificates because there was a restriction imposed by the JCE. Many times we were witnesses to this while accompanying [our clients], so that we saw and shared the frustration with many people not receiving their documents.” (David Pérez, community leader).

When problems do arise with applications, individuals in “Group A” may be told by JCE officials to seek the help of a lawyer, placing an additional and disproportionate burden on these individuals.

Interviewer: “Are you on the list of the 55 thousand that the JCE has registered?”

José: “If I were on the list I would have my document right now. I am not on the list because I looked at the list in the local government office in Tamayo where it’s kept and I’m not there. I went to the oficilâia in Santo Domingo and the hard part of the situation is that in the oficilâia they don’t know how to explain to you why my documents are invalid. What they suggested to me is to find a lawyer and the lawyer gets an order from a judge requesting that the file [with the invalidated documents] is nullified, and ordering the JCE to immediately register me again and I’ll have the same cédula number.”

3. Discriminatory Treatment by Authorities and Dominican Police

In a majority of the cases, those affected by Law 169-14 complained of being treated badly by the staff at the oficiales. The officials often made reference to an individual’s skin color, or the fact that they were of Haitian descent when the person came to pick up their identity documents.

“When we go to the JCE they treat us badly, when one arrives at the JCE they say: A Haitian is here! Here [in the Dominican Republic] the authority that should be defending us doesn’t defend us.” (Genaury, batey 8)

In some cases, individuals had a general fear that they would be picked up on the way to the oficilâia to retrieve their documents and the police or other state agents would deport them to Haiti simply based their skin color. Some refused to make the trip to the oficilâia so as not to run the risk.

“I feel bad because once someone arrives at Vicente Noble [a central town] to head to the capital the first thing they ask you is for your cédula [identity card] and if I don’t have the cédula [identity card] they make you step down [from the bus]... I cannot do any transaction without the cédula [identity card].” (Erika, batey 4)
“You can’t go to the capital because at the checkpoints they take you off the bus. And the people live in fear.” (Estefani, activist).

These racist attitudes extended beyond the JCE and the police to other civic structures, including courts that could be used to challenge the JCE’s withholding of identity documents:

“I think the civil judge is a racist, the civil judge that is assigned to us from the town of Cristóbal... because he looks at us first based on the color of our skin.” (Maria A, batey 8)

4. Widespread Abuse of Discretion by JCE Authorities to Withhold Documents

Once individuals arrived at the oficialías, they reported that the JCE allows officials broad discretion to introduce additional requirements not included in Law 169-14 as a prerequisite to giving documents to individuals in “Group A.” The authorities have created obstacles that require individuals to provide hard-to-get information about their parents and sometimes questioned the validity of any documentation applicants were able to provide.

“Do you know what they did to me there in the JCE? A lady they call Luz Cruz there in the JCE inspection department sent me to look for all the children’s birth certificates, I didn’t have any money. I went to pawn a card that is still in the pawnshop to get the certificates of my children at 300 pesos each one. I got it, I took it there to the JCE, they sent me to get my mother’s death certificate, a picture of the tomb where my mother and father are buried and still they don’t want to give me the cédula, those people in the inspection department... it’s there they are actually causing harm. I personally brought all my children, I paid my fare, they asked each one questions, the last thing they told me was that my mother isn’t my mother.” (Altagracia, batey 4)

“I went to the capital 2 times, they sent me to Galván, from Galván to Neyba. In the capital, they told me to look for my father’s death certificate, they told me that fathers don’t do registration, that it’s the mother [who was supposed to register me], my mother died when I was a little girl, it was my father who registered me and now they don’t want to declare me through his death certificate, they told me no. The cédula [identity card] is canceled because it’s my mother that had to register me, it was my dad who raised me, if I don’t have a mother I can’t get a cédula [identity card], he registered me without a mother and now they have come with this, what am I going to do if I don’t have a mother?” (Ana, batey 5).

“Each time I go there, they don’t tell me anything. I put the paper in the computer and they say that it has a problem and nothing is resolved (...) As a matter of fact, I went to the capital once and the man (JCE official) said that the man was not my father, but my stepfather. But I don’t know another person as my father. I was born into his hand. He married my mother when I was three months old, he raised me. He is my father. And he (JCE official) said that he is doing me a favor. And I said to him that it’s not a favor that this man is my father. And there he hit his hand on the table and told me that I had to go outside.” (Euclides, batey 4)
Likewise, it was reported that JCE authorities have withheld documents or distinguish individuals’
documents on the belief that they believed the person to be Haitian, without any more information
or any proof.

“I was registered here in Galván, my book is 24º, I was not declared in the foreign registry,
I went many times and they never gave it to me, the original one (birth certificate) they
marked with red tape, this signifies ‘don’t give it to her.’ They put red tape on it, they
don’t ask you anything, they tell you that you are Haitian.” (Margot, batey 4)

5. Discrepancies in the JCE’s New Registry Book, the Libro de Transcripción

Although Law 169-14 did not order the transcription of birth records to a separate book, the JCE
maintains that the registration books of the Dominican Civil Registry were reviewed according to
Judgment 168-13, and as a result, people in “Group A” were subsequently included in the “Libro
de Transcripción” and assigned a new identification number so they could get identity documents.184
Registration of individuals in the new book is one of the recent practices that has generated the most
concern, as it lacks legal basis.

“[These discrepancies are] an abuse they are committing against us because the
JCE knows all of us who are here ... because they have come house by house, tired
of coming to the batey, house by house, they know us by name, they come with our
photo and they ask our neighbors.” (Altagracia, batey 4).

“Among these 55,000 people, there are definitely problematic cases because what
we have realized by accompanying them is that the majority of these persons
were registered. They were in a book and they passed them to another book [the
Libro de Transcripción] with the same facts. But there is the problem that many of
these persons at the moment of being registered, their father’s last name has been
removed. So what happens is that the great majority of these persons, for example,
in the case of adult males, these people have registered their children with the first
surname of their father. When we go with them to the oficialía, at the moment the
person does the transcription they remove the surname of the fathers and only
leave the surnames of the mothers. Then the problem is that these persons in the
documents they have now, after having registered their children with the surname of
their parents, now the children have had two surnames in their documents, but the
documents now show only one surname.” (Berenice Anderson, lawyer).

In other cases, the registry books in the oficiales contained discrepancies that caused cédula
identity cards to be invalidated by JCE authorities.

Interviewer: “Why don’t you have documents at this moment?”

José: “Well, when they were bringing out the new card I went to get the card and
the system says that it’s temporarily invalid.”

184 See, e.g., Dominicanos por Derecho, “Transcripciones y cambios de datos en actas constituyen la continuidad más atroz de la desnacionalización en RD,” [Transcriptions
and changes of the information in records constitute the most atrocious continuation of denationalization in RD (Dominican Republic)] January 28, 2015. Available at: https://
dominicanosderecho.wordpress.com/2015/01/28/transcripciones-y-cambios-de-datos-en-actas-constituyen-la-continuidad-mas-atroz-de-la-desnacionalizacion-en-rd/
THE STRUGGLE OF DOMINICANS OF HAITIAN DESCENT TO GET THEIR NATIONALITY BACK

**Interviewer: “Why?”**

José: “They say that supposedly the 63 B book in [the oficialía in] Galván has some irregularities. The JCE [in Santo Domingo] told me to go to Galván to get a birth certificate. When I went to Galván, the book is invalid because it has irregularities. I have heard it said that those that have been registered in the book were registered on a Sunday at three in the morning. This is completely absurd.”

The process the JCE uses to determine whether to include people in the “Libro de Transcripción” is unclear, lacks transparency, and legal basis. People often were not included in the books of the Civil Registry, even if their names appeared on the JCE’s list of 53,827 people.

“One of the difficulties that you have to confront is that regardless of whether persons appear on the list (of the 55,000) and when we go to make the request they tell us that they are still not in the system, that the person has to come back. It has not been a good experience.” (Estefani, activist).

6. **Suspicious Suspension or Cancelation of Valid Documents**

Although it is not clear from Law 169-14 that “Group A’s” existing identity documents were to be canceled or suspended, many of those interviewed had this experience. Often, those affected would not know about the suspension or cancelation of existing documents until they went to the oficialía or otherwise attempted to use their documents. Many times, the affected persons would receive contradictory information about their situation when they go to the oficialías or even the main office of the JCE in Santo Domingo,

“I had my certificate in Galván and I went to register myself, they gave me the cédula [identity card], now they tell me that it is canceled, because they told me that the cédula had problems. I went to the JCE [in Santo Domingo] with the cédula [identity card] then they told me that the cédula [identity card] wasn’t from there. I was left with my hands empty, I had nothing in my hand, I returned here [to Galván] and when I got to Galván they gave me another certificate again, at that point I registered myself so that they would give me the cédula [identity card] [in the capital], there in the capital they told me that in 10 days they would have the cédula there, until now, since September, each time that I go to the JCE the cédula [identity card] is still being processed.” (Yulisa, batey 4)

The ambiguity and lack of transparency in the process on the part of the JCE gives rise to situations like the one experienced by Juan, who lived and worked with his cédula identity card for many years before it was canceled without explanation.

“I am fighting to get mine [cédula identity card] because each time that I looked for work I could not work because of the cédula [identity card], with my cédula [identity card] all these years I vote and now it does not work. Why doesn’t it work now? I don’t know why it’s canceled, I went to Cristóbal and one of them told me

that this cédula [identity card] is worth nothing and in the capital it’s canceled.” (Juan, batey 5)

7. Identity Theft

In other cases, people in “Group A” went to obtain documents and were told that the Central Electoral Board (JCE) had given someone else their documents.

“I have my certificate, when I went to get the cédula [identity card], another person had stolen my identity, I have 5 kids and I haven’t been able to register them because I don’t have a cédula [identity card].” (Erika, batey 4)

“I came to realize the problem with my cédula [identity card] when I went to get the new one (…) they told me that someone had stolen my identity and that I have to go with my mother and father to the capital. I went with them and they told me that this person had already come to get the cédula [identity card] and my mother told him that she doesn’t know this person and the documents are mine, one of the people who worked there told me that they have to reopen the case, that they have to send a letter to the President of the JCE so they could reopen the case again and investigate if the documents are mine.” (Kiko, batey 5)

8. Economic Hardship in Obtaining Documentation

The cost of obtaining identity documents is also a big obstacle for people that live in poverty, a reality for the majority of people affected by Judgment 168-13. The cost of obtaining documentation perpetuates the cycle of lack of documentation; few people can sustain the schedule that the JCE imposes to travel to the local oficilia or to the JCE central office in Santo Domingo to check in periodically on the state of their application.

“Among this population are the mothers of small children with the dilemma of not being able to register their child at the moment of birth as you would normally do. Or having to submit the family and the documents of this child to a process of investigation where the mother has to pass through a series of difficulties, from having economic costs because she has to travel constantly to know what’s the situation of her child’s or her own document.” (Berenice Anderson, lawyer)

Identity documents are necessary for people to find stable employment but it costs a lot to apply for and obtain them. Those in “Group A” have to spend money to allow them to obtain documents to be able to provide a better life for them and their children.

Interviewer: “What does the process to obtain new documents cost?”

José: “The main process [..] is to get a paper from the mayor, that costs 250 pesos.186 You have to get a paper from the church, that costs 200 pesos. I have to get an official birth certificate for legal purposes that costs 450 pesos in the oficialia. All of the steps the lawyer gives me I have to cover.”

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186 Approximately $5.30 USD. 250 pesos is the amount a worker receives for 8 hours of work.
Interviewer: “How much does the lawyer cost more or less?”

José: “More or less from 25 – 30 thousand pesos.”

9. Multiple Obstacles in Obtaining Documents

The obstacles that those in “Group A” face seldom fall neatly into one of these categories. More often than not, an individual will face many different issues, and when there is success at one stage, another hurdle will appear.

“It’s a chain. One problem leads to another. Already it’s not simply that because of the Judgment [168-13] they canceled that person’s document (...) Because I have to wait for an inspector to come to my house to ask me a series of questions or investigate the entire community. What reasons do they have? Well, on one hand perhaps it could be, but it’s a totally traumatic process to have to hand in a file and wait two or three years for them to give me a response. Or for them to tell me: yes! We are going to give you your birth certificate. You are going to be able to register yourself. And many of these cases these are people that are adults who have children.” (Berenice Anderson, lawyer)

Estefani, the activist, summarizes the obstacles that someone confronts with the denials of documents:

“When you accompany someone knowing they already have documents and the official tells you that I cannot give it to them, that this person is under investigation, or that they are going to send an inspector to investigate. These are the most frequent obstacles we find. Or when they tell the person that they have not received the documents from the person. Or when they receive the documents that they don’t give them responses. Or when you go to the oficialia and they tell you to come back within 15 days to look for an office and when you go and they look and they look, they call the capital and it’s not there because they never sent it. Then among all the papers that are in the oficialia they confuse the papers, the documents. Then they don’t know if they are here or in the capital. The denial is more than one obstacle.” (Estefani, activist)

10. Problems with Documentation for Children of those in Group A

Worryingly, issues with obtaining identity documentation often pass to subsequent generations. Even if a parent in “Group A” receives his or her documentation, it provides no guarantee that his or her child will receive their documentation or be able to use existing documents without issue. Edison received his documents and was told that his problems were resolved but in spite of having his documents returned, his children now suffer from “suspension” of their documents.

Edison: “All of my children were registered at the appropriate time. And when they go to get some document they told them that they were suspended for the time being. They don’t give it to them.”

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187 Approximately $528 to $635 USD: 30 thousand pesos is equivalent to 6 months of uninterrupted work for an informal worker.
Interviewer: “How long is the process for your children to get their documents?”

Edison: “Around 3 years.” (Edison, batey 4)

Edison’s example is not an isolated case; it’s a prevalent problem in other communities in the region.

“For example, in batey 4 we have a family that the parents were audited as part of the 55,000. It was believed that their problem was resolved but all the children’s birth certificates were invalid. The problem isn’t just one case anymore. The problem repeats over and over in the different communities. I see it as negative that at the moment of going to accompany someone to the oficialia or the JCE or to the passport office they tell me that this person is not going to obtain their documents for such or such reason or because the parents or grandparents were of Haitian nationality.” (Berenice Anderson, lawyer)

11. Harmful Narratives that Group A’s Situation has been Resolved

Widespread local and international perception that, due to Law 169-14, the situation of “Group A” has now been resolved detracts attention from the harsh realities that many of these people face everyday. The persons interviewed for that investigation have confirmed that there is still uncertainty about who qualifies as “Group A”:

“Another extremely important thing that we have seen is that according to the oficiales the audit has not ended, when the JCE has already said that they are 55,000 people and no more. And I had the experience yesterday of going with a young woman that submitted her file for a declaration three years ago and she has her complete file. And the response they gave me yesterday is that her mother is being audited. And I ask: ‘Wasn’t the audit complete after the 55,000 people?’ And they tell me: ‘No.’ We still have particular cases of people that are being audited.” (Berenice Anderson, lawyer)

Lack of attention to or knowledge of the problems that “Group A” experiences robs them of support for their cause. It also allows the government of the Dominican Republic to continue to violate their rights unnoticed and not be attentive to the general problem of persons affected by Judgment 168-13 in its entirety.

v. Consequences of Not Having Identity Documents

The lack of a resolution to the problems that continue affecting people in “Group A” and their descendants in obtaining their identity documents has a profound effect on their daily lives. Like people in “Group B,” identity documents are essential for survival and the exercise of basic rights, including:

1. Declaring their children as Dominican citizens;
   “I feel bad because I have 6 children that I have not been able to register, their father has documents but it has to be me that registers them, their father can’t register them on his own and for this I feel bad.” (Masili, batey 8).

2. Registering children in school;
   “There’s the case of a woman that has two children in school, because of the fact that the woman has not obtained her documents, she has not been able to register her two children. Then there is a constant threat by the headmaster of the school where her kids are: a little boy and little girl studying are being threatened with being left out of school.” (David Pérez, community leader).

3. Attending university;
   “You feel bad and discredited and the part that affects me is that because of these papers I have not been able to enter the university and it will continue to affect me because I have not found work, but when I do they are going to ask me for my cédula [identity card] and it’s going to affect me much more.” (Wilfrido, batey 8)

4. Finding formal and stable employment;
   “One of the main difficulties that they face has been not being able to find stable work (...). No one gives you work without cédula. No one will give you a job with a piece of paper saying your name. Immediately, they ask for your cédula. Even to work in someone’s house, if the people go there to seek work, they will ask you for your cédula. Then the main difficulty that these persons face is not being able to find a job and not being able to travel freely.” (Estefani, activist).

5. Accessing social services;
   “With as long as I have had the cédula [identity card], how can there be problems? They will still cover my social security, I am working with it, last week they sent me a letter from the AFP [pension office] and I can’t believe that a person with 35, 40, 60 years using a cédula, and now there is a problem with the cédula … In which country is this done? A group of people that have spent all their life with a cédula, and now they are saying that it has problems.” (Enrique, batey 5)

6. Getting married;
   “In church the pastor asks me for the documents because I am a Christian and I have to get married and I can’t get married without documents.” (María P, batey 7).
and any other civil activity. Without documentation, Dominicans of Haitian descent also fear arbitrary deportation by State authorities.

“If I have my documents I can aspire to have a job and help out my family, do something, I can leave without them stopping me at the checkpoints, each time that they stop me in the checkpoint, each time that I go to the capital when I see that the police are there I am nervous, because since I have this color skin [...] since they see you you must show your documents.” (María A, batey 8)

Finally, and most troubling, without documentation, those in “Group A” are unable to have dreams for their futures or the futures of their children.

“I dream of being a professional, to go to university, that my daughter has her certificate, that they don’t discriminate against her for not having it as they are discriminating against me, that she doesn’t go through what I am going through.” (Yafreisi, batey 8).

“Right now my dream is to have my documents to register my two little kids, and to go to the capital to look for a job.” (María P, batey 7)

“I don’t dream. What will I use to dream? What papers? When I have the papers I will be able to say ‘I am going to do this, I am going to do this’... if I don’t have papers, what will I use to dream?” (Soraida, batey 8).

Their inability to get their identity documents condemns them to a life of uncertainty, a lack of opportunity, and strife.
IV. THREE YEARS LATER: CONTINUED ADVOCACY EFFORTS & ADDITIONAL BARRIERS

As seen in Section III above, Dominicans of Haitian descent in “Group A” continue to face challenging bureaucratic barriers and widespread discrimination in their attempts to obtain their identity documents. Unfortunately, Law 169-14 has exacerbated the situation of Dominicans of Haitian descent because it has instituted complicated processes that have made obtaining identity documents incredibly difficult.

The years following Judgment 168-13 and Law 169-14 have also changed the landscape of advocacy for the rights of Dominicans of Haitian descent. For many, Judgment 168-13 and Law 169-14 were the latest embodiment of more than a century of discrimination against this population.

i. Advocacy of Civil Society Groups

Local civil society organizations have always been very active in fighting against discrimination against Dominicans of Haitian descent. For example, the Movement of Dominican Haitian Women (Movimiento de Mujeres Dominico-Haitianas, MUDHA for its acronym in Spanish), has addressed the social exclusion of Dominicans of Haitian descent by focusing on the rights of women, children, and the elderly since the 1980s. Similarly, the Socio-Cultural Movement for Haitian Workers (Socio-Cultural para los Trabajadores Haitianos, MOSCTHA for its acronym in Spanish) was founded in 1985, initially to provide healthcare to sugarcane cutters who were primarily Haitians. As the legal struggle over the right to nationality of Dominicans of Haitian descent escalated, these organizations began to focus on statelessness of Dominicans of Haitian descent to ensure the larger goal of social integration and inclusion of Haitians and Dominicans of Haitian descent.

The Constitutional Tribunal’s Judgment 168-13 on September 23, 2013 was a watershed moment for civil society. The blatant disregard for violations of the constitutional and human rights of Dominicans of Haitian descent gave local advocacy communities a new target in their historic struggle. Newer organizations have joined older ones like MUDHA and MOSCTHA, forming a large civil society network to advocate for the human rights of Dominicans of Haitian descent in the Dominican Republic. For example, local organizations led by Dominicans of Haitian descent like Reconoci.do (“Recognized” in English), emerged to “fight so that the Dominican State gives us back our identity documents and recognizes our nationality as legitimate children of the Dominican Republic.”

Individuals in “Group A” have also been proactive about the fight to get their identity documents, demanding that the state respect their rights.

The lawyer Berenice Anderson has been witness to several changes for the better:

“Yes, I’ve noticed that persons from the affected communities are willing to find solutions to their problems. People before did not realize that they had a problem. When the Judgment [168-13] happened, many people were impacted but they did

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Persons affected by the law, women especially, have taken important decisions on both an individual level and as a community to change the state of things that currently affects their documentation. María A explains her decision when she was confronted with the offer to “resolve” her lack of identification documentation by applying as “Group B” under Law 169-14, which required her to self-report as a foreigner in her own country:

“Because they told me once that I had to get the cédula [identity card] from immigration, then they were going to give a Dominican cédula within 2 years, I told him that I was never going to accept it because I am from here. My parents are from here, their parents are from here, then this would be denying myself the same nationality. I said that I was not going to accept it and I have to struggle to get my documents here, to be Dominican means a lot to me.” (María A, batey 8)

Estefani’s experience offers a gauge for the rise in feelings of empowerment among persons in “Group A,”

“And the experience of being a leader, of being part of a movement, as young people, on the one hand this is a beautiful experience. On the other hand, you know that things are not always so rosy, because as a leader sometimes you are confronted with a situation where maybe people think you are being paid to accompany someone to get their documents. And not everyone thinks that you are doing things out of love or because someone else was also affected or because you are also part of this group. And as a leader, when you accompany someone [to the oficialía] and that person obtains their documents, this brings you incredible joy.” (Estefani, activist)

Advocates have used many different tools to defend the right to Dominican nationality, including organizing local protests to demonstrate widespread rejection of Judgment 168-13 and Law 169-14, and appearing before international fora like the Inter-American Commission on Human Rights and the CERD Committee. In 2015, a documentary entitled “Our Lives in Transit” was created to document the lives of Dominicans of Haitian descent and to call international attention to the failures of Judgment 168-13 and the specific issues facing the affected population. Other documentaries have also been released more recently on the themes of statelessness and the migrant population. Advocates have consistently requested that the Inter-American Commission on Human Rights present public hearings on human rights and statelessness in the Dominican Republic.
the Dominican Republic," in December 2016, the Inter-American Commission lamented the absence of the Dominican Republic from the discussions and called for a table of dialogue where the Dominican State, civil society organizations, and the Inter-American Commission could speak freely and attempt to find solutions to the problem. 198

Dominican activists have also visited the U.S. to speak with members of the U.S Congress and State Department. As a result, the State Department has spoken out against the deportations that were happening in August 2015 199 and several legislators 200 have written letters urging the Dominican government to protect the rights of Dominicans of Haitian descent.

The international advocacy community has also mobilized around the issue of the right to nationality for Dominicans of Haitian descent since Judgment 168-13. Several organizations, including the co-authoring organizations, Amnesty International, and Human Rights Watch have advocated against the arbitrary deprivation of the right to nationality in the Dominican Republic and the issue has been the subject of various reports and awareness campaigns. 201 International networks on statelessness in the Dominican Republic work with the local groups to seek change and support at every level. 202 Civil society groups from all over the world have also joined the cause of Dominicans of Haitian descent, participating in protests outside Dominican consulates. 203

Across the board, groups have called for proper implementation of Law 169-14 to ensure that Dominicans of Haitian descent in “Group A” have their nationality restored fully, quickly, and without issue. 204 These groups also call on the government of the Dominican Republic to address the racial discrimination and xenophobia that many believe is at the root of the policies that denationalize Dominicans of Haitian descent. 205
ii. Threats and Attacks against Human Rights Defenders and Journalists

Unfortunately, efforts to champion the rights of Dominicans of Haitian descent have led to an increase in threats and attacks against human rights defenders and journalists who defend this cause. The Inter-American Commission on Human Rights has reported on the increased incidence of such threats and attacks since Judgment 168-13. In November 2013, soon after Judgment 168-13 was issued, civil society organizations, journalists, attorneys, judges and others who criticized the Court’s judgment were publicly accused of being “traitors of their homeland” and in a protest organized by an ultra-nationalist group on November 4th, human rights defenders and journalists were declared “anti-nationalist.”

During the November 4th protest, a pamphlet entitled “The Treason Album,” which contained the names and photos of journalists who were supportive of Dominicans of Haitian descent was circulated. Nationalist groups also filed a complaint to investigate journalists Huchi Lora, Juan Bolívar Díaz, Roberto Álvarez and Rosalía Sosa on suspicions of “treason and inciting defiance of the Constitutional Court’s judgment.” Since then, several journalists who use their platforms to advocate for the rights of Dominicans of Haitian descent have been called “traitors to the homeland.” In 2015, journalists Huchi Lora, Juan Bolívar Díaz, Roberto Cavado, and Amelai Deschamps held a press conference to publicly denounce the death threats they continued to receive through comments to articles they published and through comments to articles they published and reactions to television shows on which they appeared. Despite these threats, these journalists have continued their work denouncing the impact of denationalization policies on Dominicans of Haitian descent, as well as the inadequate implementation of Law 169-14.

The situation of human rights defenders who work to vindicate the rights of Dominicans of Haitian descent is equally concerning. In 2011, the Inter-American Commission’s Special Rapporteur’s Report on the Situation of Human Rights Defenders in the Americas noted threats against human rights defenders who fought on behalf of Dominicans of Haitian descent, and particularly the case of Sonia Pierre, who was targeted in response to her participation in a hearing before the Inter-American Commission. The Inter-American Commission’s Office of the Special Rapporteur on Freedom of Expression also commented on attacks, threats and harassment against journalists and human rights defenders, including those who work on behalf of Dominicans of Haitian descent. More recently, human rights defenders expressed that they have been the subject of insults, including being “accused of being traitors and anti-patriotic, of profiting from the Haitians [and that] the harassment is constant.”

In its report on human rights in the Dominican Republic in 2015, the Commission reiterated that these attacks “pose a serious danger to [the] lives and personal integrity” of human rights defenders,
journalists and other advocates, particularly as the actions elicited no response from the Dominican
authorities. The Inter-American Commission called on the “highest State authorities to speak out, in
consistent, clear, public, and firm terms advocating the legitimacy and value of the defense of human
rights and the profession of journalism [...] and] vigorously condemn the attacks committed against
persons who contribute to the public discourse.”

On September 25, 2016, amidst a series of public events and protests commemorating the third
anniversary of Judgment 168-13, human rights defender Genaro Rincon was verbally and physically
assaulted in Santo Domingo while he was riding on a public bus. His attackers shouted insults about
Haitians and those of Haitian descent at Rincon, and identified him as one of the people who worked to
defend those communities. Rincon was able to fend off his attackers and he ultimately escaped. He
suffered a severe injury to his head, and other wounds to his lips, chest, legs and feet.

In addition to physical threats, attacks, and instances of intimidation, civil society organizations report that
there has also been a trend of discrediting, threatening and persecuting human rights defenders through
social networks and the media in order to impede the work of human rights defenders who work on the
right to nationality. Defenders reported that their names and pictures were put on social networks,
along with their home and work addresses and places they frequented. Such posts requested that
the public find them and attack them for being anti-Dominican, pro-Haitian, and traitors to the State.
Moreover, advocates report that the Dominican State is complicit in such acts of intimidation because
none of these events have been investigated and there has been complete impunity since 2013.

In a December 6, 2016 hearing before the IACHR on the Situation of Human Rights Defenders in the
Dominican Republic, civil society organizations reiterated that nationalist forces continued to threaten
them using social media, making specific reference to their work on behalf of Dominicans of Haitian
descent, and labeling them “anti-Dominican.”

223  See Hearing before the Inter-American Commission on Human Rights on The Situation of Human Rights Defenders in the Dominican Republic. (December 6, 2016). Available at:
https://www.youtube.com/watch?v=9NkNBiQJQjw.
224  See Hearing before the Inter-American Commission on Human Rights on The Situation of Human Rights Defenders in the Dominican Republic. (December 6, 2016). Available at:
https://www.youtube.com/watch?v=9NkNBiQJQjw.
225  See Hearing before the Inter-American Commission on Human Rights on The Situation of Human Rights Defenders in the Dominican Republic. (December 6, 2016). Available at:
https://www.youtube.com/watch?v=9NkNBiQJQjw.
226  See Hearing before the Inter-American Commission on Human Rights on The Situation of Human Rights Defenders in the Dominican Republic. (December 6, 2016). Available at:
https://www.youtube.com/watch?v=9NkNBiQJQjw.
227  See Hearing before the Inter-American Commission on Human Rights on The Situation of Human Rights Defenders in the Dominican Republic. (December 6, 2016). Available at:
https://www.youtube.com/watch?v=9NkNBiQJQjw; Acento “Rompen Cristales de Abogada de Oficina de Defensora de Los Derechos Humanos Noemi Mendez Castro,” [They Broke
 cristales-oficina-abogada-defensora-los-derechos-humanos-noemi-mendez-castro/.
iii. Other Issues

In this section, we identify some of the worrisome themes that have emerged recently for Dominicans of Haitian descent, and for those in “Group A” in particular. These are themes that are still developing and are demanding of attention and follow-up.

a. The expulsion of Dominicans of Haitian descent from the Dominican Republic

Local advocacy organizations report that there has been a noticeable increase in the arbitrary detention and expulsion of Dominicans of Haitian descent after Law 169-14, especially after the expiration of the period for those in “Group B” to register.228 Individuals were targeted because of their “Haitian appearance.”229 Although victims would have been able to provide identity documents proving their Dominican citizenship, many were not asked to provide them. In some cases, victims were told that their documentation was invalid.230

b. Judicial affirmation of the annulling of birth certificates and other identity documents

In Section III, people in “Group A” described the cancelation and suspension of their documents without notification. The broad discretion afforded to Central Electoral Board (JCE) authorities also led to the creation of policies that negate the purpose of Law 169-14 or otherwise facilitate its selective implementation. In some of their cases, JCE authorities issued new documents, some with names left out, different identifying information, or other discrepancies that present problems for their holders. Without documents or with documents that contain errors, individuals are barred from a range of civil life. The situation becomes more difficult for those in “Group A” when courts affirm the annulment of the individuals’ original documents, and in effect, the JCE’s arbitrary and discriminatory practices.231

In January 2017, the Civil, Commercial and Labor Chamber of the Court of First Instance of the Judicial District of Monte Plata affirmed the annulment of the original birth certificate of Juliana Deguis Pierre, the petitioner in the infamous Judgment 168-13.232 After Judgment 168-13, Juliana Deguis Pierre was issued a new birth certificate with numbers that differed from her original one.233 The Monte Plata court declared the birth certificate null because “two birth certificates in the name of the same person cannot exist and because it was clear that [the original birth certificate] contained irregularities and defects at the time of its issuance, because her parents were not legal residents in the country.”234 The court’s reasoning contradicts what was publicized as Law 169-14’s solution for Dominicans of Haitian affected by Judgment 168-13.235

In the annulment decision, the court affirmed the reasoning of Judgment 168-13. The judge also confused the provisions of restoration and naturalization of citizenship in Law 169-14, declaring incorrectly that Ms. Deguis Pierre received her birth certificate through the process of naturalization that actually pertains to “Group B.” Lastly, the court did not address arguments that Ms. Deguis Pierre’s new birth certificate was illegally issued by the JCE.

Ms. Deguis Pierre is not the only person who has been affected by an irregular annulment of her birth certificate. By issuing new birth certificates that differ from the original birth certificates to Ms. Deguis Pierre and others in the same situation, the JCE has created a separate category of citizens whose legal status remains unclear under domestic law. The judgment of the Monte Plata court seems to condone this practice, causing confusion and concern about Law 169-14’s impact on Dominicans of Haitian descent. Moreover, the confusion that the court displayed about the different processes in Law 169-14 demonstrates the widespread lack of clarity that exists at all levels of government.

Those we interviewed for this report took stock of the possible opportunities to strengthen advocacy efforts of civil organizations that promote the rights of Dominicans of Haitian descent to raise awareness of the issues.

“I think that the persons directly affected, the institutions and organizations that work on behalf of these persons, we should focus a little more on raising awareness of our complaints in the press, of our demands so that the international community as well as the national community know that despite the efforts that have been made with the enactment of this law, it is not being 100 per cent implemented.” (David Pérez, community representative)

As well as the activities that could be put forward to strengthen the Central Electoral Board (JCE),

“An alternative would be to train the very government agents who work in the oficiales but also those from the JCE (...) so that they know that the law requires that all the persons who were affected the law establishes that they should be given back their documents so that oficiales facilitate this process. I suggest that there should be a change in personnel and whether is new personnel appointed or the current personnel remains, they should be trained on this issue. Another solution would be to involve everyone in the process. Not only the affected population, but also those who are not impacted so that they know their status and their rights.” (Berenice Anderson, lawyer)


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V. CONCLUSIONS & RECOMMENDATIONS

As of the date this report is published, José has yet to obtain officially recognized documents. His dreams of registering for university are deferred until his situation is truly resolved.

It has been more than three years since Judgment 168-13 stripped Dominican nationality from tens of thousands of Dominicans of Haitian descent. Law 169-14, touted as a “solution,” has not fulfilled its mission and, as a result, the harsh reality of Judgment 168-13 continues to affect thousands of people. Those interviewed reveal that despite Law 169-14’s promise, its implementation has led to many obstacles to obtaining their identity documents and, consequently, their ability to access civic life. When attempting to participate in the complex, opaque processes of the Central Electoral Board (JCE), many Dominicans of Haitian descent continue to experience hostile treatment from the authorities showing that of discrimination against people of Haitian descent still persists in the Dominican Republic.

Unfortunately, and in spite of its obligations under international law, the government of the Dominican Republic shows no sign of remedying the situation. Impunity exists for those who attack journalists and defenders of Dominicans of Haitian descent. The judgments that affirm the nullifications of the original identity documents for those in “Group A” serve only to reinforce the wrongs present in Judgment 168-13. These facts indicate a lack of political will on the part of the state to right these wrongs.

Without documentation, the legal status of José and others like him in “Group A” remains unclear and is far from being resolved. With the passage of time, the situation worsens as parents may pass their lack of status to their children. At the same time, there continues to be a vibrant domestic movement of human rights defenders, many of them Dominicans of Haitian descent themselves, working to protect and defend the rights of Dominicans of Haitian descent. These groups bravely face these challenges and the struggle continues on.

In light of the findings of this report, we recommend the following:

1. To the Government of the Dominican Republic
   a. Establish a formal and permanent space for public conference, discussion and evaluation of the implementation of Law 169-14 and the situation of persons it has affected. Ensure that a diverse group of stakeholders are invited to the table, including representatives from the community of Dominicans of Haitian descent and civil society organizations working on their behalf.
   b. Eliminate the practice of using a separate registration book, the “Libro de Transcripción” for those in “Group A.” Commit to a system that is free from discrimination and distinction and ensure State agents take responsibility for ensuring the right to nationality for Dominicans of Haitian descent.
   c. Establish a process that guarantees effective and efficient access to the Civil Registry for those attempting to establish their legal status and obtain their identity documents.
   d. Ensure that the police, armed forces, and other state agents refrain from harassment and discrimination against Dominicans of Haitian descent, including any use of means of coercion, intimidation, disproportionate use of force, or expulsion.
e. Publicly denounce threats and intimidation directed at human rights defenders and journalists, including those who work to defend the right to nationality of Dominicans of Haitian descent.

f. Investigate in a timely manner all former and current cases of attacks, threats or intimidation against human rights defenders and journalists.

g. Address the longstanding racial and xenophobic discrimination that has permeated many sectors of Dominican society and which is at the root of the policies of denationalization of Dominicans of Haitian descent.

Specific recommendations for the Central Electoral Board (JCE)

a. Clarify the requirements for persons in “Group A” to obtain their documents in an expedited manner, including firm deadlines for receipt of documents.

b. Ensure members of “Group A” can obtain their documents in the local oficialía where they reside and are not required to travel to Santo Domingo to enquire about the status of their documents or copies.

c. Cease using the “Transcription Book,” and ensure that the persons in “Group A” are recognized in the Civil Registry and they can maintain the information they were registered with initially. Abstain from annulling the original birth certificates of those in “Group A.”

d. Ensure timely information, frequent training, and sanctions to those authorities that deliberately or arbitrarily attempt to circumvent the rights of persons in “Group A” to their documents.

e. Establish a mechanism to receive and address complaints from citizens who experience violations of their rights while attempting to obtain their documentation.

f. Ensure due process in all decisions regarding the issuance of documentation to Dominicans of Haitian descent.

2. To the International community

a. Support local and international civil society groups in their efforts to protect the rights of Dominicans of Haitian descent, including those in “Group A.”

b. Call on the Dominican Republic to recognize and respect its obligations under international law and implement procedures to restore full citizenship and documentation to individuals in “Group A.”

c. Denounce the existing violations of the rights of Dominicans of Haitian descent, including those in “Group A”, and call on the Dominican government to implement restorative proceedings.

d. Call on the Dominican government to publicly address the entrenched culture of racial discrimination in the country that serves as the foundation for many violations of the rights of Dominicans of Haitian descent and support them in these efforts, including with financial support.
GLOSSARY

Annulment or Annulled ("nullificación" o "nullidad") – people in “Group A” reported that their original documents (usually their birth certificate) have been annulled by the Central Electoral Board (JCE), meaning the original document was no longer valid to apply for and receive social services.

Batey – communities or settlements historically built on or around Dominican sugar mills where sugarcane cutters, most of them Haitians or Dominicans of Haitian descent, live and raise their families. Residents of the bateyes often refer to them by number (batey 8, 9, etc.) Today, many descendants of sugar cane workers still live in bateyes even with the closing of many of the sugar mills.

Birth certificate ("acta de nacimiento") – official birth certificate issued by the Civil Registry that serves as the primary form of identification for children under the age of 18. This document is required to apply for a passport and to obtain social services, including an official marriage license, health care, and school enrollment. The birth certificate is required to obtain the cédula identification card.

Book of Foreigners or Foreign Registry or “Pink Book” ("Libro de extranjería" o “Libro Rosado”) – A separate registry created by the 2004 General Migration Law to register children born to foreign mothers who are not “residing” in the Dominican Republic at the time of the child’s birth. It is commonly referred to as the “pink book” because the birth certificates issued to children of foreigners are a distinctive pink color, visually distinct from regular birth certificates issued from the Civil Registry.

Cancellation or Cancelled ("Cancelación" o “cancelado”) – many people in “Group A” reported that their existing identity documents (usually their cédula identification card) had been canceled by the Central Electoral Board (JCE). After Judgment 168-13, the JCE audited the Civil Registry to determine the legal status of those affected by the judgment, they transcribed at least hundreds of individuals to a different registration book, sometimes with different information and numbers from their initial registration information. The initial documents were sometimes canceled and no longer valid. Those interviewed for this report use “canceled”, “suspended,” or “disabled” to refer to this concept.

Cédula identity card or “cédula” – The cédula is the main form of state identification for citizens once they turn 18 and it is required for legal employment, opening a bank account, registration for social security, and many other civic activities.

Central Electoral Board or JCE – Junta Central Electoral, which translates to the Central Electoral Board. It is referred to by its acronym in Spanish, JCE. The JCE is the state agency that oversees the local offices of the Civil Registry (oficialías) in the Dominican Republic. As the agency responsible for issuing birth certificates, national cédula identity cards and other identity documents, the JCE implements the constitutional amendments and laws with respect to nationality. The JCE published a list of 53,827 names of people who were entitled to restoration of their Dominican citizenship under Law 169-14 as part of “Group A.” The list is commonly referred to as “the List of the 55,000.” Some people who meet the legal definition of “Group A” under the law were not included in the list, causing additional problems.

Children of those in “Group A” – direct descendants of Dominicans of Haitian descent who were not registered in the Civil Registry when Law 169-14 was issued.

Civil Registry ("Registro Civil") – the Dominican entity run by the Central Electoral Board (JCE), which is tasked with registering and overseeing civil acts, including births, marriages, divorces, and deaths.
Certificate of live birth ("Constancia de nacimiento") – certificate of live birth issued by a medical center where a child is born in the Dominican Republic. Medical centers are required to issue this document to parents who can prove that they are Dominican. If the parents cannot prove that they are Dominican, the medical center must issue a pink “foreigner” certificate of live birth. The certificate of live birth (constancia de nacimiento) is necessary to obtain the official birth certificate (acta de nacimiento).

Disabled ("inhabilitado") – many people in “Group A” reported that their existing identity documents (usually their cédula identity card) had been disabled. After Judgment 168-13, the JCE audited the Civil Registry to determine the legal status of those affected by the Judgment, they transcribed hundreds of individuals to a different registration book, sometimes with different information and numbers from their initial registration information. The initial documents were sometimes disabled and no longer valid. Those interviewed for this report use “canceled,” “suspended, or “disabled” to refer to the same concept.

Dominicans of Haitian descent ("personas dominicanas de ascendencia haitiana") – this report uses “Dominicans” to refer to all Dominican citizens and “Dominicans of Haitian descent” to refer specifically to Dominican citizens of Haitian descent, thousands of whom were stripped of their Dominican nationality after Judgment 168-13. We refer to “Dominicans of Haitian descent” as “Dominicans” to underscore their right to Dominican nationality, although Judgment 168-13 deemed them foreigners in their own country.

“Group A” ("Grupo A") – the first of the two groups of people affected by Judgment 168-13 as defined by Law 169-14. “Group A” refers to people who were born in the Dominican Republic prior to 2010 and were entitled to birthright citizenship who were registered as Dominican citizens in the Civil Registry before Judgment 168-13 was passed on September 23, 2013. Under Law 169-14 people in “Group A” are entitled to have their Dominican citizenship restored, recognition of their identity documents, and the right to have their identity documents issued.

“Group B” ("Grupo B") – the second of the two groups of people affected by Judgment 168-13 as defined by Law 169-14. “Group B” refers to people who were born in the Dominican Republic prior to 2010 and were entitled to birthright citizenship but were not registered as Dominican citizens in the Civil Registry before Judgment 168-13 was passed on September 23, 2013. Under Law 169-14, people in “Group B” could have registered themselves in the foreign registry book (self-reporting as foreigners despite their eligibility for birthright citizenship) within 90 days of the law’s passage and are eligible for naturalized Dominican citizenship after two years.

Judgment 168-13 ("Sentencia 168-13") – Judgment issued by the Constitutional Tribunal of the Dominican Republic, the highest court in the country, on September 23, 2013, which affirmed the retroactive application of a constitutional amendment denying birthright citizenship to children of “foreigners in transit” to Dominicans born in the country to foreign parents between 1929 and 2010.

Jus soli nationality – Principle of nationality law whereby citizenship is granted to people born within the territory of a certain country. It is an unconditional automatic grant of citizenship. It is common to almost all countries in the Americas.

Jus sanguinis nationality – Principle of nationality law whereby citizenship is granted by parentage rather than place of birth. This principle may imply some restrictions. It is not the common principle in the Americas, but it is prevalent in the rest of the world.
Law 169-14 ("Ley 169-14") – Law issued by the Dominican legislature on May 23, 2014 categorizing individuals affected by Judgment 168-13 into two groups: “Group A,” those who are entitled to restoration of their Dominican citizenship and recognition or provision of their identity documents, and “Group B,” those who may elect to register as foreigners to regularize their status in the country and apply for citizenship via naturalization after two years.

Oficialía – local offices of the Civil Registry where Dominicans go to register births of their children, marriages, divorces, and deaths. The oficiales are the local offices of the Central Electoral Board (JCE.)

Suspended ("Suspendida") – many people in “Group A” reported that their existing identity documents had been suspended by the JCE. After Judgment 168-13, the JCE audited the Civil Registry to determine the legal status of those affected by the Judgment, they transcribed hundreds of individuals to a different registration book, sometimes with different information and numbers from their initial registration information. Those interviewed for this report use “canceled,” “suspended,” or “disabled” to refer to the same concept.

Transcription ("Transcripción") – The process by which the Central Electoral Board (JCE) transferred individuals in “Group A” to a separate registry book, the “Libro de Transcripción,” sometimes changing the information in an individual’s registration record or assigning individuals a new registration number that is different from the number on their official original documents.

“Libro de Transcripción” (Transcription Book) – A different registry book created by the JCE where many people in “Group A” had the information from their original registration records transferred.
NATIONALITY IN THE DOMINICAN REPUBLIC: TIMELINE

1865
The first inclusion of *jus soli* nationality in the Constitution of the Dominican Republic. “Dominicans are: all persons who have been born or were born in the territory of the Republic, whatever the nationality of their parents.”

1929
The Dominican Constitution is amended to include two exceptions to *jus soli* citizenship. As of this year, children who are born to “foreign diplomats” and “foreigners in transit” are excluded.

1939
Migration Regulation No. 279 is passed that stipulates “Foreigners endeavoring to enter the Dominican Republic with the principal purpose of proceeding through the country towards another country shall be granted the privileges of ‘transients.’ These privileges shall be granted even though the foreigner is not admissible as an immigrant, provided his entry is not contrary to public order and health. Generally "a period of 10 days shall usually be considered sufficient to be able to pass through the Republic [...] (emphasis added).” Foreigners in transit” is now understood to encompass visitors to the country, persons working on board ships or aircraft, temporary workers and their families, and “transients” who were expected to be in the Dominican Republic for a period of 10-days or less.

1978
The Dominican Republic accedes to the International Covenant on Civil and Political Rights (ICCPR) and ratifies the American Convention on Human Rights. Both instruments guarantee children the right to acquire a nationality. The American Convention on Human Rights also prohibits arbitrary and discriminatory deprivation of nationality.

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Juliana Deguis Pierre is born in the Dominican Republic to Haitian parents. Her mother and father, both Haitian migrants living in the Dominican Republic, register her birth in the Civil Registry. Ms. Deguis Pierre is included in the Dominican Civil Registry and is issued a birth certificate. 246

The government passes Law 285-04, expanding the Constitution’s “foreigners in transit” exception to birthright citizenship. 247 The new law denies birthright citizenship to children born in the Dominican Republic to “non-residents” – a broad category which includes undocumented migrants and persons who cannot prove legal residency. 248 In practice, the law is used discriminatorily to deny identity documents to older Dominicans of Haitian descent whose Dominican nationality was previously recognized and cannot be changed by the new law. 249 This General Law on Migration also introduced a different “constancia de nacimiento” (certificate of live birth) for children of “non-resident” foreigners that included the issuance of a pink “constancia de nacimiento” (emphasis added) that was distinctive from the birth form that was used for Dominican citizens. 250

The Inter-American Court of Human Rights decides the case of Yeán and Bosico on September 8. The case concerns two Dominican girls of Haitian descent who were born prior to the 2004 law and entitled to birthright citizenship, but were denied Dominican birth certificates. 251 The girls were denied birth certificates because they were the children of Dominican mothers of Haitian descent whom the Dominican state deemed as “foreigners in transit.” The Court reasons that the Dominican state must “understand that a foreigner who develops connections in a State cannot be equated to a person in transit.” 252 The Court finds that the Dominican Republic has violated the girls’ rights to nationality and juridical personality under the American Convention of Human Rights. 253

On December 14, two months after the Yeán and Bosico decision, the Supreme Court of the Dominican Republic rules that the expansion of the “in transit” exception to birthright citizenship in 2004’s Law 285-04 is constitutional, in express defiance of the Inter-American Court’s decision in Yeán and Bosico. 254


254 Sentence No. 9 de la Corte Suprema de Justicia [Judgment No. 9 of the Supreme Court of Justice] December 14, 2005, described by the Dominican Republic Constitutional Court in its Declaration. Available at: https://www.tribunalconstitucional.gob.do/node/1815.
The Central Electoral Board (Junta Central Electoral, or JCE) issues *Circular 017* which directs civil registry officials not to expedite, process, sign, or issue copies of identity documents to children of “foreign parents,” on the assumption that any such individuals obtained their documents in an irregular manner. A subsequent instruction, *Resolución 12-2007*, instructs registry officers to abstain from issuing any birth certificate that may have irregularities and grants them the power to provisionally suspend birth certificates without the judicial supervision required under Dominican law.

In light of these two policies, the JCE starts to record children born to non-resident parents in a separate registration book (known as the “Pink Book of Foreigners”), denying them *jus soli* (birthright) Dominican nationality.

JCE officials confiscate Juliana Deguis Pierre’s birth certificate as “irregular” when she goes to apply for her national *cédula* identity card. Ms. Deguis Pierre challenges the seizure of her birth certificate in court and requests that her *cédula* identity card be issued.

The Dominican Republic adopts a revised Constitution that includes the expanded “in transit” exception to birthright citizenship in the 2004 Law 285-04. The Dominican Constitution now denies birthright citizenship to those children born to “foreigners in transit or residing illegally in the Dominican territory.”

On September 23, the Constitutional Court, the highest court in the Dominican Republic, issues Judgment 168-13 ruling in the case of Juliana Deguis Pierre. The Court surprisingly applies the broader “in transit” exception contained in the 2010 Constitutional amendment to Ms. Deguis Pierre, holding that she is not entitled to Dominican nationality because she is the daughter of undocumented migrants who are “foreign citizens in transit.” The Court orders that Ms. Deguis Pierre be given a birth certificate that reflects her foreign status and a special pass for a “temporary stay” in the Dominican Republic. The Court also applies the decision to thousands of other

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255 Circular No. 017 from the JCE, HoyDigital, August 26, 2008. Available at: http://hoy.com.do/circular-no-017-de-la-jce/
Dominicans of Haitian descent who are in Ms. Deguis Pierre’s situation.\textsuperscript{264} These Dominicans of Haitian descent are now considered “foreigners” in the Dominican Republic.

On November 29, the government approves a “National Regularization Plan” for Dominicans of Haitian descent whose Dominican nationality was stripped from them in Judgment 168-13, now “foreigners” to the Dominican government, to regularize their legal status in the Dominican Republic.\textsuperscript{265} Individuals must appear in person with their documents to register within 18-months or face deportation.\textsuperscript{266} The plan also refers to individuals born in the Dominican Republic to foreign parents who have the right to “naturalization” through another process.\textsuperscript{267}

On May 23, the Dominican government adopts a “Naturalization Law,” Law 169-14, for persons born in the country to parents who are lacking civil registration and whose parents were irregular migrants.\textsuperscript{268} The law divides these persons into 2 groups. The first group, “Group A,” consists of those, like Ms. Deguis Pierre, who were born in the Dominican Republic and were registered in the Civil Registry as Dominican citizens at birth at the time Judgment 168-13 was issued.\textsuperscript{269} The Law ostensibly restores Dominican citizenship to these individuals and assures their access to valid identity documents.\textsuperscript{270} The second group, “Group B,” consists of persons who were born in the Dominican Republic but who were not registered as Dominican citizens at the time Judgment 168-13 was issued.\textsuperscript{271} Those in “Group B” must self-report as foreigners within 90 days to be able to apply for naturalized citizenship after 2 years.\textsuperscript{272}

On August 28, the Inter-American Court of Human Rights rules that Judgment 168-13 and Naturalization Law 169-14 violate the rights of Dominicans of Haitian descent in the Case of Expelled Dominican and Haitian Persons vs. the Dominican Republic.\textsuperscript{273} The Court orders the Dominican government to take immediate steps to ensure that Judgment 168-13 and provisions of Law 169-14 no longer have legal effects.\textsuperscript{274}

On November 5, The Constitutional Court of the Dominican Republic rejects the Inter-American Court’s decision in Case of Expelled Dominican and Haitian Persons vs. the Dominican Republic and invalidates the country’s recognition of the Inter-American Court’s jurisdiction.\textsuperscript{275} The government proceeds with implementation of Law 169-14.

On June 26, the JCE publishes a list of 53,827 Dominican-born individuals who were born in the Dominican Republic and were registered in the Civil Registry at prior to Judgment 168-13. These individuals are eligible to have their Dominican citizenship restored and identity documents issued. However, many people who were previously registered by the Civil Registry and meet all the criteria for “Group A” outlined in Law 169-14 are not included on the JCE’s list.

Dominican journalists and human rights defenders report an increase in threats and harassment against them in response to their work on behalf of Dominicans of Haitian descent.

In November, a new set of JCE Commissioners is elected to serve a 4-year term with the mandate to implement constitutional laws with respect to nationality.

The JCE’s annulment of Juliana Deguis Pierre’s original birth certificate is upheld by the Civil, Commercial and Labor Chapter of the First Instance Court in the Monte Plata Judicial District. Her lawyers appeal the decision.


METHODOLOGY

The primary source material used in this report is the result of a collaborative project with the Centro de Desarrollo Sostenible (Center for Sustainable Development, CEDESO for its acronym in Spanish). It uses CEDESO’s existing work and relationships in the different bateyes281 in the provinces where they undertook the project: “Towards A Political Culture Based on Dominicans of Haitian Descent’s Right to Political Participation” with funds from the United Nations Democracy Fund (UNDEF).

The work of documenting the personal experiences in the Dominican Republic was done by a team of consultants from Patio Común. The stories and quotes we included were obtained from first hand interviews in the bateyes done by Ivrance Martin and Juan Carlos González Diaz (Patio Común) in coordination with the team from CEDESO. Martin and González Diaz worked with CEDESO to prepare and approve the questionnaires and the list of interviewees. The research team conducted a 3-day visit to the country in October 2016 where they held three focus groups in bateyes 4, 5, and 8, each of which is located in the town of Tamayo, in Enriquillo province, in the southwest of the country. In total, there were 24 adults, 16 women and 8 men who participated in the focus groups. The research team also conducted in-depth interviews with 6 people: 3 of them are people affected by the Dominican Republic’s naturalization policies and 3 are advocates who work on behalf of Dominicans of Haitian descent. A digital tape recorder was used to record the focus groups and all interviews.282

Robert F. Kennedy Human Rights, El Centro de Desarrollo Sostenible (CEDESO), and the American Jewish World Service (AJWS) co-authored this report based on Patio Común’s field research, and additional research and analysis of relevant international human rights standards.


282 The full summary of their field visit is included as an annex to the Spanish translation of this report.
ACKNOWLEDGMENTS

This report was researched and drafted by Kacey Mordecai (Robert F. Kennedy Human Rights) with contributions from Juan Carlos Gonzalez Diaz and Ivrance Martine (Patio Común.) The report was edited by Beneco Enecía (CEDESO), Ronnate Asirwatham (AJWS), Angelita Baeyens and Wade McMullen (Robert F. Kennedy Human Rights).

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Graphic Design: Jennifer Kakaletris Design — Jennifer Kakaletris and David Sankey
THE CO-AUTHORING ORGANIZATIONS

The co-authoring organizations work to defend and protect the right to nationality for all persons affected by the Dominican Republic’s denationalization policies.

**American Jewish World Service (AJWS)**
AJWS was founded in 1985 by American Jews who wanted to join together as global citizens to help some of the poorest and most oppressed people around the globe. Today, AJWS is the only Jewish organization dedicated solely to ending poverty and promoting human rights in the developing world.

**Centro de Desarrollo Sostenible (CEDESO)**
The Center for Sustainable Development (CEDESO) is an organization based in Tamayo, which guides its actions for the promotion and advocacy of community development based on principles of solidarity, tolerance and equality, promoting and implementing initiatives that contribute to local development; focusing on promoting sustainable local development in the Enriquillo Region and the border zone.

**Robert F. Kennedy Human Rights**
Robert F. Kennedy Human Rights was founded in 1968 by Robert Kennedy’s family and friends as a living memorial to carry forward his vision of a more just and peaceful world. The team of attorneys that make up Partners for Human Rights, the organization’s advocacy and training arm, litigate and advocate for the protection of human rights throughout Africa, the Americas and Asia. Since 1984, 45 partnerships have been established in 29 countries. The organization has worked on the issue of the right to nationality for Dominicans of Haitian descent for more than a decade.

*Produced with the support of the United Nations Democracy Fund (UNDEF).*
THE STRUGGLE OF DOMINICANS OF HAITIAN DESCENT TO GET THEIR NATIONALITY BACK

THE PERSONS WE INTERVIEWED

We held two focus groups with individuals in “Group A” and interviewed three individuals to learn how Judgment 168-13 and Law 169-14 have affected them. We also interviewed a lawyer and community advocates who work on behalf of those in “Group A” to ensure their rights are recognized.

Focus Group 1 took place at a community center in Batey 4. Seven women from “Group A” between the ages of 27 and 59 took part.

Focus Group 2 was held at a community center in Batey 8 and included children of Dominicans in “Group A” who were born in the Dominican Republic. These children have not been able to get identity documents because their parents do not have documents themselves or, if their parents do have documents, the documents have been voided. There were a total of 9 participants, 5 women and 4 men.

Focus Group 3 was held in a Christian church in Batey 5 and consisted of Dominicans of Haitian descent in “Group A.” There were 9 total participants, 5 women and 4 men, between 21 and 67 years of age.

Interview #1, CEDESO Office, Tamayo. Berenice Anderson is a lawyer who works for CEDESO on behalf of individuals in “Group A” from the different bateyes.

Interview #2, Batey Cuchilla. Estefani Féliz is a Dominican of Haitian descent who had identity documents prior to Judgment 168-13 and was not affected by Judgment 168-13 or Law 169-14. She has her birth certificate and cédula identity card. She is a community leader and activist in the Reconoci.do movement.

Interview #3, Batey 8. David Pérez is a community representative and leader, lawyer, and evangelical pastor. He has supported CEDESO in their work on behalf of persons in Group A and has offered legal advice to them.

Interview #4, Batey 4 – Edison is a Dominican of Haitian descent. He has had identity documents in the past and retains them now. He has never had problems with identity documents, but appears in the list published by the JCE. His 9 children are registered but the JCE has only given the cédula identity card to three of them. Additionally, they have not yet given these three children copies of their birth certificates.

Interview #5, CEDESO offices, Tamayo – José is the son of a Dominican of Haitian descent who has a cédula identity card, but it’s disabled. He cannot undertake any legal transaction. He does not appear on the list published by the JCE.

Interview #6, Batey 4 – is a Dominican of Haitian descent and child of Dominican parents of Haitian descent. He has no identity documents because he was never given them. He has not been able to register his children.