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Denationalized Dominicans and Haitian Migrants at Risk of Discriminatory Expulsions in Dominican Republic

Briefing Paper – June 2015

Summary

Upon expiration of the National Regularization Plan for undocumented migrants and the end of the Dominican Republic's official moratorium on deportations on June 17, 2015, tens of thousands of denationalized Dominicans and hundreds of thousands of migrants will be left unprotected from the discriminatory migration policies of the Dominican Republic. Individuals arbitrarily deprived of their Dominican nationality by the 2013 Constitutional Court ruling (TC-168-13) in violation of international law are particularly at risk of illegal expulsion and being denied access to basic services. The government must immediately implement safeguards to protect these individuals, many of whom are now stateless, from being subjected to deportation proceedings, and fully restore their Dominican nationality. The Dominican government must also ensure that hundreds of thousands of migrants unable to register under the National Regularization Plan have a chance to obtain documentation before being subjected to deportation.

Arbitrary Deprivation of Nationality

Until 2010, all those born in the Dominican Republic – unless their parents were diplomats or in transit – received Dominican citizenship. The constitution was amended in 2010 to additionally exclude all those born to undocumented migrants from automatically obtaining citizenship. In September 2013 a Constitutional Court ruling (TC-168-13) retroactively deprived over 200,000 Dominicans born in the Dominican Republic to undocumented migrants between 1929 and 2010 of their citizenship, primarily affecting descendants of Haitian migrant workers, most of whom have never left the Dominican Republic and who are not Haitian nationals.

Following mounting domestic and international criticism of the ruling, the Dominican Republic passed the Naturalization Law (169-14) in May 2014 that partially addressed the problem for several thousand of those affected. Law 169-14 created two categories of persons affected by the ruling. For the first group ("Group A"), the government has promised to recognize some form of citizenship for all individuals born to undocumented parents between 1929 and 2010 whose births were previously registered in the Civil Registry – and thus who had at one time possessed a birth certificate or other form of identification recognizing their Dominican nationality. Although the government has claimed that 54,000 individuals in Group A are now again recognized as Dominican citizens, it has yet to clarify whether the law has fully restored the birthright citizenship of Group A or has granted some lesser form of naturalized citizenship that is only prospectively effective from the date of their new "transcription" in the Civil Registry. Further, many in Group A still face difficulty in even accessing their valid citizenship documents.

For an in-depth analysis of the 2013 Constitutional Court decision, please see: Robert F. Kennedy Human Rights' *New Analysis on Case of Juliana Deguis Pierre and National Regularization Plan*, accessible at: http://rfkcenter.org/images/attachments/article/2094/131205%20Right%20to%20Nationality%20in%20the%20Dominican%20Republic_Eng.pdf

In addition, Law 169-14 also created a process to grant some form of residence status for the second group ("Group B") – those born in the Dominican Republic to undocumented parents between 1929 and 2010, but who were never registered in the Civil Registry. With this new status, individuals in Group B would purportedly be able to apply for naturalized citizenship after two years. This registration process violated the right to nationality of individuals in Group B by forcing them to self-report as foreigners and failing to fully and automatically restore their citizenship. While many chose not to participate in this process, 8,755 individuals in Group B registered under law 169-14 by the February 1, 2015 deadline, with the hope of obtaining at least some measure of protection and opportunity to remain in their country. Still other individuals in Group B were unable to register because of lack of information, overly burdensome and expensive application requirements, multiple flaws in the government implementation of the process, and the short time frame to register. As a result tens of thousands of Dominicans of Haitian descent in Group B are now stateless and undocumented, unable to exercise the full range of rights as citizens and extremely vulnerable to exploitation and illegal expulsions.

Regularization of Undocumented Migrants

Simultaneous to the registration process for denationalized Dominicans in Groups A and B, the government set up a "National Regularization Plan" for undocumented foreigners "residing irregularly in the Dominican Republic." Unlike the Naturalization Law, which only covers people born in the Dominican Republic before 2010, the National Regularization Plan was designed for migrants who were born outside of the country and any of their children born in the Dominican Republic after the constitution was amended in 2010. The vast majority of these applicants were born in Haiti and are Haitian citizens who have lived and worked in the Dominican Republic for a significant amount of time and who are seeking legal status to remain in the Dominican Republic. This Plan, which began on June 3, 2014, expires on June 17, 2015. According to the government around 275,000 have registered under the National Regularization Plan to-date, but as with Law 169-14, the government has stated that the National Regularization Plan will not be extended – although individuals who have started the regularization process will have 45 days to complete it. Immediately following the expiration of the National Regularization Plan several officials have announced that the government will fully resume deportations operations targeting any undocumented individual.

Current Situation and Risk of Illegal Expulsions

Despite announcing a moratorium on deportations to be in effect until at least the June 17 deadline, deportations and illegal expulsions have continued throughout 2015. In one instance 30 Dominican-born children were on their way to register for the Law 169-14 accompanied by relatives seeking to register for the National Regularization Plan, when the military summarily expelled them all to Haiti.¹ Another young Dominican of Haitian descent was forcefully expelled to Haiti in late February, after military officials denied him the opportunity to retrieve his Dominican birth certificate from his house just blocks away and he could not pay a requested bribe.² By the account of the *Servicio Jesuita con Migrantes - Jimaní* approximately 200 people are expelled each day through the four border crossings, without an individual hearing or any kind of due process.³

¹ Amnesty International, "Dominican Republic: Mass Deportation in the Dominican Republic," January 28, 2015, accessible at: <http://www.amnestyusa.org/sites/default/files/uaa02015.pdf>

² Amnesty International, "Dominican Republic: Dominican man deported to Haiti: Wilson Sentimo," February 20, 2015, accessible at: <https://www.amnesty.org/en/documents/document/?indexNumber=AMR27%2F0005%2F2015&language=en>

³ Servicio Jesuita con Migrantes – Jimaní, "Nota de prensa Expulsiones colectivas Ejercito Nacional" May 25, 2015.

The Dominican government has a well-documented history of engaging in massive and arbitrary expulsions of migrants and Dominicans of Haitian descent. Although deportations have never stopped in practice, some government officials have promised to officially restart deportations of all persons with irregular residency status on June 18. At the same time, other government officials have indicated that they may slowly roll out new larger-scale deportation operations over the course of the next two months. In either case, after June 17 tens of thousands of denationalized and stateless Dominicans of Haitian descent will be at serious risk of being illegally expelled from the Dominican Republic simply because they “look Haitian.” Still others risk exploitation and extortion by military and other immigration officials due to their vulnerable status.

Absent an express government policy and the implementation of strict and careful screening procedures that comply with due process and international human rights obligations in all deportation proceedings, the Dominican Republic risks further violating the rights of Dominicans of Haitian descent, and expelling them to a country they have never known.

Recommendations

To the Dominican Republic government:

- In compliance with international human rights law, immediately, automatically, and fully restore the nationality of all individuals arbitrarily deprived of their nationality by Constitutional Court decision TC-168-13, including members of both Group A and B, and immediately issue necessary documentation to protect Dominicans of foreign descent from being illegally expelled from the Dominican Republic
- In consultation with civil society and the office of the United Nations High Commissioner for Refugees, ensure the national action plan includes systematic screening procedures to guarantee that all individuals in Group A and B are excluded from deportation proceedings and that family unity is protected. Adequately train officials involved in deportation and screening procedures on international human rights obligations and the exemptions for Group A and B and their family members.
- Extend the deadline for migrants to apply under the National Regularization Plan and ensure that there are adequate facilities to receive and process applications. Ensure that officials do not require documents apart from those specified in the Plan. Applicants under the Plan who are in the process of obtaining a regularized status in the Dominican Republic should be screened out of deportations until a fair determination is made on each individual case.
- Prosecute and sanction all military and border officials, law enforcement agents, and others involved in deportation and screening procedures who abuse the process and commit human rights violations, including threats, extortion, physical and sexual abuse, and excessive use of force.

To the International Community:

- Through multilateral organizations such as the United Nations and the Organization of American States (OAS), call on and offer assistance to the Dominican Republic to promptly address the

potential crisis in the country as a result of the Constitutional Court's 2013 decision, the subsequent promulgation of the Naturalization Law (169-14) and the Dominican government's threat of deportations.

- Ensure all direct and indirect support of the Dominican government's migration policies, in particular aid from the European Union and the United States Department of State and Bureau of Population, Refugees and Migration, protects the rights of denationalized and stateless persons in addition to migrants. Adequately train all partners involved in deportation and screening procedures on international human rights obligations and implementation of the exemptions for Groups A and B.
- Ensure that United States Coast Guard personnel are adequately trained on the different types of individuals who may be expelled from the Dominican Republic, their legal rights, and proper mechanisms by which those individuals should be returned to their own country.

For more information, please see the following communications from Robert F. Kennedy Human Rights:

Robert F. Kennedy Human Rights expresses concern over massive expulsions from the Dominican Republic; urges government to reform failed Naturalization Law, February 2, 2015:

<http://rfkcenter.org/robert-f-kennedy-human-rights-expresses-concern-over-massive-expulsions-from-the-dominican-republic-urges-government-to-reform-failed-naturalization-law>

RFK Center Welcomes Landmark Ruling on Dominican Nationality in Inter-American Court, October 23, 2014:

<http://rfkcenter.org/rfk-center-welcomes-landmark-ruling-in-inter-american-court>

New Dominican Republic Naturalization Law Continues Discrimination against Thousands of Dominicans of Haitian Descent, May 22, 2014

<http://rfkcenter.org/new-dominican-republic-naturalization-law-continues-discrimination-against-thousands-of-dominicans-of-haitian-descent>

Systematic Denationalization Campaign Challenged Before IACHR, April 17, 2014

<http://rfkcenter.org/systematic-denationalization-campaign-challenged-before-iachr>

Dominican Republic Activists Confront Xenophobic Denationalization Policies before IACHR, March 25, 2014

<http://rfkcenter.org/dominican-republic-activists-confront-xenophobic-denationalization-policies-before-iachr-2>

Discriminatory Ruling by Dominican Court Threatens Citizenship, October 3, 2013:

<http://rfkcenter.org/discriminatory-ruling-by-dominican-court-threatens-citizenship>