

RK ROBERT F. KENNEDY
CENTER FOR JUSTICE & HUMAN RIGHTS

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July 10, 2014

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Ban Ki-moon
Secretary-General
United Nations

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EXECUTIVE OFFICE
OF THE SECRETARY-GENERAL

Dear Mr. Secretary-General:

The Robert F. Kennedy Center for Justice and Human Rights (RFK Center) learned of your upcoming visit to the Dominican Republic, and as such would like to take the opportunity to share updates on the human rights situation of Dominicans of Haitian descent. The RFK Center has worked on rights issues in partnership with this marginalized population, including through litigation and advocacy at the domestic, regional, and international levels.

As you are aware, the Constitutional Court of the Dominican Republic issued a judgment (TC-168-13)¹ in September 2013 against Ms. Juliana Deguis Pierre, which retroactively altered the criteria for obtaining nationality for those born in the Dominican Republic to foreign parents between 1929 and 2010. This ruling stripped hundreds of thousands of people of their nationality, and was widely condemned by the international community for contravening the Dominican Republic's binding international human rights obligations.

The Dominican government recently passed a Naturalization Law (Ley 169-14) which purports to address the crisis that resulted from the Constitutional Court ruling. Notably, the Law carves out a potential solution to an historic problem for a subset of affected persons. However, it also formalizes the denial of birthright citizenship to the estimated 225,000 children of foreigners who were never enrolled in the Civil Registry, in many cases due to the state's practice of withholding birth certificates and nationality documents from persons perceived to be of Haitian descent. The following discussion aims to provide an analysis of the main shortcomings of the Naturalization Law in addressing the human rights situation for a large group of Dominicans of Haitian descent.

¹ Dominican Republic, Tribunal Constitucional, Sentencia TC/0168/13, regarding the amparo appeal brought by Ms. Juliana Deguis (Deguis) Pierre, 23 September 2013.

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Dominicans of foreign descent with registered births ("Group 1")

The Naturalization Law establishes a "special regime" whereby individuals born between 1929 and 2007 whose births were registered can automatically re-acquire the Dominican nationality that was stripped from them by Constitutional Court ruling TC-168.² Only the 24,392 Dominicans of foreign descent who were previously included in the Civil Registry, out of an affected population of nearly 250,000,³ stand to benefit from this element of the Nationality Law.⁴

By reaffirming the reasoning of the Constitutional Court in its decision TC-168, the Naturalization Law makes a clear statement that the restoration of nationality for Group 1 is not based on Constitutional and human rights but rather on a decision by the government to voluntarily bestow a benefit.⁵ This is highly problematic not only for the message it sends to society at large regarding the nature of the affected individuals' citizenship, but because such second-class nationality could potentially be withdrawn if legislative changes are made in the future. Moreover, as discussed below, even those who should benefit from the "special regime" under the Naturalization Law have, in practice, faced discrimination and denial by state agents.

Dominicans of foreign descent who are undocumented ("Group 2")

The Naturalization Law establishes a separate regime for children born in the Dominican Republic to foreigners, who have not previously been enrolled in the Civil Registry.⁶ An estimated 225,000 Dominicans who should have acquired automatic citizenship by virtue of the *jus soli* regime which was in force until 2010, but were arbitrarily registered as non-nationals, discriminatorily denied birth certificates, or otherwise unable to register their births, must now self-report as foreigners and submit to a process of "regularization" with the possibility of naturalizing after a two-year waiting period. Even should they succeed in eventually obtaining naturalized citizenship, this group would not enjoy the same rights as other Dominicans born in the country.⁷ Moreover, until they are naturalized, they will remain stateless and without the right to vote or access to basic services like other persons born in the Dominican Republic and recognized as nationals.

² Ley de Naturalización (Naturalization Law) – Ley 169-14, Capítulo I – Del Régimen Especial, Approved May 21, 2014. See also Régimen Especial para Personas Nacidas en el Territorio Nacional Inscritas Irregularmente en el Registro Civil Dominicanos y sobre Naturalización (Fact Sheet from Dominican Embassy in the United States).

³ United Nations Population Fund (UNFPA), *Systematization of the Methodological Process of the First National Survey of Immigrants in the Dominican Republic (ENI-2012)*, 2013.

⁴ See *id.*; Audit by Junta Central Electoral, available at http://www.diariolibre.com/noticias/2013/11/08/i410059_junta-central-electoral-registr-847-extranjeros-hay-392-inscritos-irregulares.html; Sentencia TC/0168/13 §2.8.

⁵ See e.g. Considerando Cuatro, Ley de Naturalización; Letter from President Medina to President of the Chamber of Deputies proposing the Ley de Naturalización, 15 May 2014.

⁶ Ley de Naturalización, Capítulo II – III.

⁷ Constitution of the Dominican Republic, Articles 19, 79, 123, 125, 135, 153.

It is important to emphasize that the population of individuals born in the Dominican Republic who lack a Dominican birth certificate are in such a situation through no fault of their own.⁸ On the contrary, state practices prevented thousands of individuals from registering their births based on their perceived ethnicity. As such, even family members with otherwise identical circumstances (i.e. siblings born in the same place in the Dominican Republic, of the same parents) will be treated differently under the Naturalization Law.

Negative effects of the implementation of the Naturalization Law (Ley 169-14)

On its face, the Naturalization Law is an inadequate response to the human rights crisis caused by Constitutional Court decision TC-168-13. However, the implementation of the law has further deepened patterns of discrimination.

The plight of the first group, i.e. those who should benefit from automatic restoration of nationality under the “special regime,” is exemplified by the treatment of Juliana Deguis Pierre, the petitioner in the Constitutional Court case. On Monday, 16 June, lawyers from the RFK Center’s Dominican partners, MOSCTHA, accompanied Ms. Deguis Pierre to the Civil Registry (JCE) to obtain her national ID card (“*cedula*”) per Article 4 of the Naturalization Law. Upon hearing Ms. Deguis Pierre’s last name, a JCE employee told her that she was a “foreigner” and that the JCE could not issue her a *cedula*. A MOSCTHA lawyer asked to speak to a supervisor who gave the same answer and stated that he had received “a directive that no child of a foreigner could be issued a *cedula*.”

This development highlights the persistent threat faced by the entire population of Dominicans of Haitian descent who were denationalized by Constitutional Court decision TC 168-13. As noted above, Ms. Deguis Pierre is in the small minority of those affected by the Court’s decision that should have immediate access to their Dominican nationality under the “special regime” established by the Naturalization Law. However, the President of the JCE, Roberto Rosario, has publicly argued that it is necessary to review the files of every person similarly situated to Ms. Deguis before the JCE can move forward with implementing the Naturalization Law.⁹ According to information made available to MOSCTHA, the JCE appears to have only reviewed 400 of the 24,392 files it has previously audited to date. Mr. Rosario has also publicly criticized Ms. Deguis Pierre for engaging in litigation to vindicate her rights.¹⁰

For many years, pervasive discriminatory attitudes and extensive discretionary authority afforded to local JCE officials have resulted in the systematic denial of citizenship documentation to thousands of Dominicans of Haitian descent. The very same JCE officials are now in charge of

⁸ See e.g. I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

⁹ Roberto Rosario *niega que a Juliana Deguis se le haya negado su cédula de identidad*, Listin Diario, 8 June 2014, <http://listindiario.com/la-republica/2014/6/17/326311/Roberto-Rosario-niega-que-a-Juliana-Deguis-se-le-haya-negado-su-cedula-de>

¹⁰ *Id.*

implementing the “special regime” of the Naturalization Law. The difficulty of Ms. Deguis Pierre – the highest-profile case in the country – in accessing her citizenship documents emphasizes the ongoing concern about whether the Naturalization Law will be implemented fairly. In Ms. Deguis Pierre’s case, as well as for dozens of others who reported similar experiences when attempting to obtain their identification documents, the Naturalization Law is not being implemented as promised by President Medina.

Moreover, the majority of Dominicans of Haitian descent who were denationalized by the Constitutional Court decision, i.e. those who were never registered by the JCE and never issued documentary proof of their Dominican nationality (Group 2), are left even more vulnerable under the Naturalization Law. Hundreds of thousands are now forced to self-report as “foreigners” in order to have the opportunity to apply for naturalized citizenship after two years. These individuals have even less documentation than Ms. Deguis, and could face even more discrimination and higher barriers to first being “regularized” as foreigners, as well as in their eventual bid to regain some form of citizenship.

The draft regulations issued on 5 July with respect to undocumented Dominicans (Group 2) raises still further concerns. For example:

- Eligible individuals, many of whom live in remote areas, will have only 90 days to apply to benefit under the regulations once they are approved¹¹;
- Offices which are to receive claims for this group are yet to be developed,¹² further compounding the problem of a short 90-day window;
- State officials have apparently unlimited freedom to request additional information to establish proof of birthplace of undocumented Dominicans,¹³ creating a situation ripe for abuse of authority and dilatory tactics;
- Adjudication and appeals of nationality claims are made to an administrative rather than a judicial body¹⁴; and
- Failure on the part of the state to respond to initial appeals within 30 days is considered a confirmation of the denial of nationality, raising serious due process concerns.¹⁵

Moreover, all individuals who do not apply under this plan or whose petitions are not approved are subject to deportation.¹⁶

¹¹ Draft Regulations for Naturalization Law 169-14, Art. 3

¹² *Id.* Art. 6.

¹³ *Id.* Art. 12.

¹⁴ *Id.* Art. 17-19.

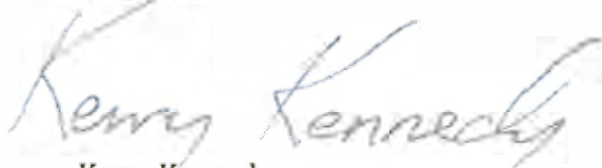
¹⁵ *Id.* Art. 17-19. While this de facto denial can be appealed for a final time, petitioners will be disadvantaged by the failure of the secondary adjudicatory body to provide any legal and factual reasoning.

¹⁶ Plan de Regularización, 22 November 2013, Art. 4; Ley de Naturalización, Art. 7.

In conclusion, the RFK Center and many other advocates are deeply concerned about the continuing human rights violations arising out of last year's the Constitutional Court decision. We are also troubled by the Dominican government's failure to address the serious deficiencies in the Naturalization Law. We urge you to address the issues raised in the present letter in your meetings with President Medina and other government officials.

We would be honored to provide further analysis of the situation in the Dominican Republic upon request. Please do not hesitate to contact us at kennedy@rfkcenter.org or canton@rfkcenter.org. Thank you for taking this information into account.

Respectfully,

A handwritten signature in blue ink that reads "Kerry Kennedy". The signature is fluid and cursive, with the first name "Kerry" and last name "Kennedy" clearly distinguishable.

Kerry Kennedy
President

Robert F. Kennedy Center for Justice and
Human Rights

A handwritten signature in blue ink that reads "Santiago A. Canton". The signature is more stylized and less legible than the one on the left, but the first name "Santiago" is prominent.

Santiago A. Canton
Executive Director, RFK Partners for Human
Rights
Robert F. Kennedy Center for Justice and
Human Rights

5 December 2013

RIGHT TO NATIONALITY IN THE DOMINICAN REPUBLIC

A recent decision by the Dominican Republic's Constitutional Court has arbitrarily and discriminatorily deprived hundreds of thousands of Dominicans of foreign descent of their nationality. The decision stands in direct contradiction to the Dominican Republic's international obligations, contributing to the discrimination of thousands of persons. The Dominican government should comply with the international obligations they have voluntarily accepted, and the international community should act quickly and decisively to avoid a massive and systemic violation of the rights of thousands of Dominicans of Haitian descent.

Overview

The ruling of the Dominican Republic's Constitutional Court in the case of Juliana Deguis Pierre on 23 September 2013 (TC-168-13) stripped thousands of Dominican citizens of foreign descent of their Dominican nationality and ordered the government to initiate a process to implement its decision in clear violation of international human rights law. As a result of the Court's decision, the government has produced an initial list of over 45,000 individuals – **primarily** Dominican citizens of Haitian descent – **who** will be immediately affected by the decision.

Also, as ordered by Court, the government adopted the “National Regularization Plan” to regularize the status of all undocumented foreigners living in the country. Dominican citizens whose nationality has been voided by the Court's decision will also be subjected to this process alongside immigrants (i.e. individuals with foreign citizenship, born abroad). Despite being born Dominican and living their whole lives in the Dominican Republic, those affected by the ruling are identified as foreigners in the National Regularization Plan and, under certain conditions, might be allowed to apply for naturalized citizenship, that may be granted at the discretion of the government.

Constitutional Court Decision 168-13 Violates International Law

In deciding the case of Juliana Deguis Pierre, the Constitutional Court, in violation of international human rights law, retroactively modified the constitutional norm in effect from 1929 to 2010 that determined access to birthright citizenship in the Dominican Republic. Specifically, the Court re-interpreted the constitutional provision that excluded those born to foreigners “in transit” from birthright citizenship, expanding it to additionally exclude all those born to undocumented foreigners. In determining Ms. Deguis' status the Court failed to consider that for more than eighty years, thousands of children born to undocumented foreigners have acquired Dominican nationality at birth, as established under Dominican legislation and as repeatedly recognized by the government in thousands of cases where birth certificates were issued to these individuals affirming their nationality. The Court also failed to take into account the time that parents may have lived in Dominican Republic or ties that they may have developed. Under the new retroactive interpretation, Dominicans born in 1929 and their descendants may all be deprived of their nationality.

In its ruling, the Court expressly acknowledged its interpretation of the concept “in transit” in Article 11 of the Dominican constitution contravened the Inter-American Court of Human Rights decision of *The Yean and Bosico Children v. Dominican Republic* (2005). In *Yean and Bosico* the Inter-American Court held that the Dominican government’s attempt to expand the interpretation of the term “in transit” was incorrect, and that “to consider that a person is in transit, irrespective of the classification used, the State must respect a reasonable temporal limit and understand that a foreigner who develops connections in a State cannot be equated to a person in transit.” The *Yean and Bosico* decision is binding on the Dominican Republic, and non-compliance is a violation of the government’s international obligations.

Using the expanded interpretation of “in transit” – in violation of the American Convention on Human Rights (ACHR) ratified by the Dominican Republic and contrary to a binding Inter-American Court decision – the Constitutional Court held that Ms. Deguis should not have been granted citizenship at her birth and ordered the nullification of her birth certificate. The Court commanded the *Junta Cenal Electoral* (JCE) to produce a list of “foreigners” similarly situated to Ms. Deguis under the Court’s new interpretation and register them as foreigners, stripping them of their Dominican nationality. The Court then ordered the government to regularize all “foreigners living illegally in the country”, via the National Regularization Plan, including all those deprived of their nationality by the Constitutional Court’s decision.

The retroactive application of the Court’s decision represents an arbitrary deprivation of the right to nationality in violation of article 20 of the ACHR, article 15 of the Universal Declaration of Human Rights, and article 18, read with articles 2 and 26, of the International Covenant on Civil and Political Rights (ICCPR). In a context of decades of discrimination against Haitians and Haitians descendants, the Court’s decision disproportionately affects Dominicans of Haitian descent and perpetuates this discrimination by expressing that nationality “implies the existence of a set of historical, linguistic, *racial* and geopolitical features” – in violation of articles 1(1) and 24 of the ACHR and articles 2 and 26 of the ICCPR.

The arbitrary deprivation of nationality also gives rise to a litany of other human rights violations. The vast majority of those affected by the Court’s decision have been rendered stateless in violation of customary international law and the 1961 Convention on the Reduction of Statelessness signed by the Dominican Republic. The government’s arbitrary deprivation of nationality also violates its citizens rights to vote and participate in government, to freedom of movement, and to a family, and imperils a number of social, economic, and cultural rights such as the right to health, to social security, to work, and the right to education in violation of the ACHR, ICCPR, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), and the International Covenant on Economic Social and Cultural Rights (ICESCR).

Hundreds of Thousands of Dominicans Affected by the Constitutional Court Decision

There are three main groups who are affected by the Constitutional Court’s decision. The first category is comprised of individuals like Ms. Deguis who were born in the Dominican Republic between 1929 and

2007 to undocumented foreign parents, were registered with the JCE, and were issued birth certificates recognizing their Dominican citizenship. According to the JCE's initial audit of the civil registry, there are 24,392 individuals like Ms. Deguis who will be arbitrarily and discriminatorily deprived of their Dominican nationality.

The second group is comprised of individuals born in the Dominican Republic to undocumented foreigners between 2007 and 2010 – prior to a 2010 constitutional amendment – who have been incorrectly registered as foreigners. According to the JCE's initial audit of the civil registry, there are approximately 21,449 individuals in this group, the majority of whom are Dominicans of Haitian descent who will continue to be arbitrarily and discriminatorily deprived of their right to nationality. Based on the Court's decision, the National Regularization Plan considers the individuals in these first two categories to be “foreigners illegally residing in the country.”

The third group is comprised of individuals born between 1929 and 2010 in the Dominican Republic to undocumented foreign parents who have yet to be registered by the JCE. For example, while Ms. Deguis was registered at birth and falls into the first category, her four children have yet to be registered by the JCE. While it is common for Dominicans of all backgrounds not to be registered – particularly in more rural areas – discriminatory policies and broad discretion by local civil registry officials have also prevented tens-of-thousands of Dominicans of Haitian descent from registering as well.

The government has yet to release any estimates of how many people in this third category will be affected by the Constitutional Court ruling. In its decision the Court states that the National Regularization Plan “will benefit the lives of hundreds of thousands of foreigners.” A 2013 survey conducted by the United Nations Population Fund (UNFPA) estimated that approximately 244,151 Dominicans born to undocumented foreign parents currently reside in the Dominican Republic.

Based on existing information, the Constitutional Court decision could affect up to several hundred thousand individuals. However, it is irrelevant whether the total number is 1, 14,000, 45,000 or hundreds of thousands of people; the decision of the Constitutional Court represents a unprecedented and massive violation of the right to nationality that discriminatorily targets Dominicans of Haitian descent.

The Dominican Government's Reaction

President Medina and other government officials have repeatedly claimed their hands are tied, and they must implement the Court's decision. However, under international law and the international obligations of human rights treaties ratified by the Dominican Republic, the government is not bound by a judicial ruling that is in clear violation with a decision of the Inter-American Court of Human Rights (Inter-American Court) that is binding on the state. Conversely failure to comply with a decision of the Inter American Court by complying with the Constitutional Court's decision is a human rights violation which gives rise to the international responsibility of the Dominican Republic. In particular, the Constitutional Court expressly recognized that its interpretation of “in transit” – the

principle on which the entire decision of the Constitutional Court rests – directly contradicts the decision of the Inter-American Court's *Yean and Bosico* decision.

Far from complying with its international obligations, the government is moving forward to rapidly implement the Constitutional Courts in violation of its international obligations and against the demands of the international community. Since the Court's decision on 23 September, the JCE has initiated proceedings to nullify Ms. Deguis' birth certificate and released the initial numbers of registered individuals who will be deprived their nationality. The government also approved the National Regularization Plan, confirming plans to subject Dominican citizens affected by the Court's ruling to a process designed the regularize the **status** of undocumented foreigners.

While the National Regularization Plan may, in part, serve a legitimate purpose of regularizing the status of undocumented migrants in the country, any steps to subject Dominican citizens to a process of regularization is a clear violation of their human rights. As it stands, the Plan forces Dominican citizens affected by the Constitutional Court ruling to self report as "foreigners illegally residing in the country" within 18 months of the Plan coming into force or face deportation. The government has announced it will devise a separate path to naturalized citizenship for only a portion those affected by the Constitutional Court's decision, though no details have been released, and it is unclear whether Dominicans of Haitian descent who have yet to be registered by the JCE will also have access to a naturalization plan. Furthermore, should the government grant naturalized citizenship to Dominicans it has deprived of birthright citizenship, it would create a category of second-class citizens without the same rights as Dominicans citizens by birth – such as the right to run for President or become a judge of the Supreme Court of Justice. The prospect of a naturalization procedure for those born as Dominican citizens perpetuate existing discrimination particularly against Dominicans of Haitian descent.

It should be noted that in addition to the human rights violation arising from Dominican citizens being subjected to the National Regularization Plan, civil society and international bodies have expressed concerns with how the Plan will affect immigrants due to the complications generated by, among other **things**, burdensome and **costly** documentation requirements on them in order to access regularized status under the Plan.

RECOMMENDATIONS

To the Dominican government:

- Comply with all international human rights obligations, including the binding decision of the Inter-American Court of Human Rights in the *Yean and Bosico* case, recognizing, via Executive Order or other means, the nationality and birthright citizenship of Juliana Deguis Pierre and all other Dominican citizens of foreign descent deprived of their nationality by Constitutional Court decision TC-168-13.
- Remove all **Dominican** citizens of foreign descent from the scope of the National Regularization Plan.
- Reform the National Regularization Plan as it applies to immigrants (individuals born outside of the Dominican Republic) to conform with recommendations from civil society, UNHCR, and in consultation with other governments that could be affected by the Constitutional Court's decision.

The international community, including the OAS, CARICOM, and international financial institutions, should demand that the Dominican government respect its international obligations and guarantee full recognition of the right to nationality for Dominicans of foreign descent affected by the ruling, and, if necessary, apply appropriate sanctions ensuring the Dominican Republic complies with its international obligations.