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The Dominican Republic and Haiti: Shame

BY [Santiago A. Canton](#) and [Wade H. McMullen, Jr.](#)

The citizenship squabble in the D.R. is riddled with mistruths and distortions.

Juliana Deguis Pierre was born in 1984 in Los Jovillos, Dominican Republic, 72 miles (116 kilometers) west of Santo Domingo. Under the country's constitutional recognition of birthright citizenship, Deguis—the daughter of two undocumented Haitian immigrants working in the sugar cane fields—was issued a birth certificate recognizing her Dominican nationality. Now 29 years old, she has never traveled outside her native country. She speaks fluent Spanish and hardly any Creole.

In 2008, Deguis visited a *Junta Central Electoral* (Central Electoral Board—JCE) office to request a voter identification card. The officers confiscated her birth certificate on the grounds she had two Haitian last names. The Constitutional Court of the Dominican Republic denied Deguis' appeal of the decision, with a ruling (TC-168-13) on September 23, 2013, that she was wrongly registered as Dominican at birth.

With its ruling, the Constitutional Court, in effect, retroactively overturned citizenship norms that had been in effect from 1929 to 2010. A constitutional provision that excluded anyone born to foreigners "in transit" from claiming citizenship by birth was extended to anyone born to undocumented residents of the Dominican Republic.

The Court then commanded the JCE to produce a list of "foreigners" in a similar position as Deguis under the Court's new interpretation, and register them as foreigners, thereby stripping thousands of Dominican citizens of foreign descent—primarily the sons and daughters of undocumented Haitian migrant workers—of their Dominican nationality.

The Court then ordered the government to regularize all "foreigners living illegally in the country," by officially changing their legal status from nationals to foreigners.

Apart from the injustice inflicted upon thousands of people, the Constitutional Court's decision flew in the face of the Dominican Republic's international human rights obligations, namely the prohibitions against racial discrimination and the arbitrary deprivation of nationality.

However, since last fall the Dominican government has engaged in a widespread misinformation campaign—ranging from opinion pieces in international publications, to sending a high-level government delegation to meet with foreign leaders, and even employing professional lobbyists in Washington—in an attempt to defend the legality of the Court's decision and spin it as a positive development for Dominicans.

The government's cynical, misleading argument was that the ruling and ensuing legislation—the Naturalization Law (169-14)—would regularize the status of undocumented migrants in an attempt to provide them a pathway to citizenship and participation in formal sectors of society. In the process, the Dominican government has essentially converted Dominican citizens into migrants who now need to be "regularized."

In response to domestic and international pressure, the government first adopted the *Plan Nacional de Regularización de Extranjeros* (National Regulation Plan for Foreigners) in November 2013. The plan creates an expedited process by which "foreigners residing irregularly in the Dominican Republic" could gain residency status. For months it was unclear whether the government would force Dominican citizens affected by the ruling to self-report as foreigners. Then, eight months after the Court's decision, the Dominican legislature summarily passed the Naturalization Law introduced by President Danilo Medina. While the law was billed as a humanitarian solution to the situation created by decision 168-13, it offers a practical solution only for Deguis and a handful of others, leaving roughly 90 percent of those affected by the ruling stateless.



Stripped of citizenship: Wichna Joseph (Miky), 20, born in the Dominican Republic of Haitian descent, poses with her Dominican birth certificate at home in San Pedro de Macorís, Dominican Republic. Photo courtesy of Erika Santelices/AFP/Getty



The decision and the policies that have followed, though, are not isolated events. They are another example of a pattern of discrimination against Dominicans of Haitian descent and Haitians in general. The novelty is that, in this case, the country's highest court has put its stamp of approval on a long list of xenophobic government regulations propagated over the past decade.

But that should be a wakeup call to the international community. Currently, one of the largest and most systematic violations of civil and political rights our region has seen in recent history continues to be covered up by Dominican government myths, alongside positive developments designed to distract the world's attention from the current manifestation of an age-old problem.

Myth 1

Only a handful of people are affected by decision 168-13.

There are three main groups affected by the Constitutional Court's decision. The first category comprises individuals like Deguis who were born in the Dominican Republic between 1929 and 2007 to undocumented foreign-born 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 who were arbitrarily and discriminatorily deprived of their Dominican nationality. The Naturalization Law passed in May appears to rectify the situation of individuals in this group by granting them citizenship as foreigners. But it fails to recognize their national birthright, only regranting them nationality because the government once mistakenly gave them birth certificates.

That group is the only one helped by the law. There's a second group that includes individuals born

between 2007 and 2010 in the Dominican Republic to undocumented foreigners—prior to a 2010 constitutional amendment—who have been incorrectly registered as foreigners. According to the JCE, 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. The Naturalization Law expressly excludes this group from the benefits of its special regime, forcing them to self-report to the Regularization Plan as foreigners.

Last are the individuals that comprise the third group, born between 1929 and 2010 in the Dominican Republic to undocumented foreign parents and undocumented Dominicans who have yet to be registered by the JCE. For example, while Deguis was registered at birth and falls into the first category, her four children have yet to be registered by the JCE. It is common for Dominicans of all backgrounds not to be registered, particularly in more rural areas, but discriminatory policies and broad discretion by local civil registry officials have 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 and the immense discretion still afforded to local civil registry officials to thwart individuals’ access to documents, it is impossible to identify the exact number of individuals affected by the Constitutional Court decision. However, the Office of the United Nations High Commissioner for Refugees (UNHCR) has estimated that more than 200,000 people are left stateless by the decision.

Myth 2

The Constitutional Court’s decision complied with international law.

In its September ruling, the Constitutional Court explicitly acknowledged that its new-found interpretation of the concept “in transit” in Article 11 of the Dominican Constitution conflicted with the Inter-American Court of Human Rights (IACHR) decision in the *Yean and Bosico Children v. Dominican Republic* case of 2005.

In *Yean and Bosico*, the iachr 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.”

That decision is binding on the Dominican Republic. Non-compliance is a violation of the government’s ratification of the American Convention on Human Rights (ACHR) in 1978. Ignoring this precedent, the Constitutional Court held that Deguis should not have been granted citizenship at birth and ordered the nullification of her birth certificate.

The retroactive application of the Court’s decision to Deguis and thousands more 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 24(3), together 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 those of Haitian descent, the Court’s decision

perpetuates this discrimination by claiming that nationality “implies the existence of a set of historical, linguistic, racial and geopolitical features”—also in violation of Articles 1(1) and 24 of the ACHR and Articles 2 and 26 of the ICCPR.

The decision deprives Dominicans of Haitian descent basic rights such as voting, participation in government and freedom of movement, and also imperils a number of social, economic and cultural rights: the right to health, to social security, to work, and the right to education.

These are blatant violations of accepted international legal commitments and treaties signed by the Dominican Republic, ranging from the 1961 Convention on the Reduction of Statelessness—which it signed but did not ratify—to 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.

Myth 3

The government’s hands were (and still are) tied because it had to comply with the decision of the court.

Dominican government officials claim that whether they like it or not, the “ruling handed down by the Constitutional Court is binding on the three branches of government” and that President Medina 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 violates binding commitments already signed by the state.

Under the Vienna Convention on the Laws of Treaties, a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In other words, the government may still—at any point—step in to stop the widespread rights violations caused by an internationally illegal decision.

Myth 4

The National Regularization Plan and Naturalization Law address the citizenship crisis caused by this ruling.

The Naturalization Law adopted by the government in May has been billed as a “humanitarian” solution to the citizenship crisis created by the Constitutional Court’s ruling. Admittedly, the law presents a practical solution for Deguis and the first category of the 24,392 individuals affected by ruling. Unfortunately, the law excludes both the second and third groups of individuals. In effect, this means that hundreds of thousands of individuals are prevented from accessing the solution presented by the Naturalization Law.

The arbitrariness of the government’s solution is highlighted by families where half of their children received birth certificates, like Deguis, while their younger siblings are discriminatorily denied such documents at birth. Despite being born and raised Dominican by the same parents in the same community, a brother could now be forced to report to the authorities as a foreigner (or face expulsion), while his sister’s citizenship is recognized.

Thus, while the National Regularization Plan promulgated by the president in an executive order last November is supposed to address the anomalies pinpointed by the Constitutional Court and regularize the status of undocumented foreigners, for many, it makes their situation even more precarious.

Under the plan, Dominicans born to foreign parents and who were never issued documents are now

required to self-report as “foreigners illegally residing in the country” by May 2015, (18 months after the plan comes into force) or face deportation. Should these individuals successfully obtain temporary or permanent residency under the plan, and remain in good standing with the government for two years, they would then be eligible to apply for naturalized citizenship.

But those are both gigantic “ifs.” First of all, those with a criminal record could summarily be denied access, and everyone’s fate will now rest in the hands of the same JCE officials responsible for a long, sordid history of discriminatorily denying them documents in the first place.

Additionally, should the government eventually 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.

Correcting a Wrong

The Dominican government’s actions should be subject to the same international condemnation that has responded to the human rights abuses of repressive regimes from Russia to Egypt and Zimbabwe. In an era of growing awareness of human rights norms, blatant oppression under the veneer of rule of law should be exposed and condemned. As political theorist Hannah Arendt once said, the right to nationality is so fundamental that it can be described as “the right to have rights.”

The government of Haiti was initially strong in raising objection to these offensive policies, but as it rightly stated, this is not a Haitian issue, but an issue concerning Dominican citizens. Meanwhile, most Latin American countries and the international community have remained shamefully silent.

Should the Dominican government follow through on its plans to create a whole generation of second-class citizens of Haitian descent, it will only worsen the ingrained social prejudice and systemic discrimination in the country.

Dominicans who refuse to self-report as foreigners could face deportation by officials known for massive and indiscriminate expulsions. And the surrounding region will see a flood of refugees, asylum seekers and stateless persons, as well as an increase in migration patterns.

That is to say, if left unaddressed, the repercussions of these policies will be felt around the world for years to come.

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It is sad that people are discriminated. It is much sadder that the discrimination based on "a set of historical, linguistic, racial and geopolitical features" is performed by a State; it is even worse when performed by a high court, whose main duty is to defend the people. The excuse from the Government that they have their hands tied (Myth 3) is lame: there is a hierechy of laws in which simple laws are below the Constitution which is in turn below international treaties: no need to be a lawyer to know that.

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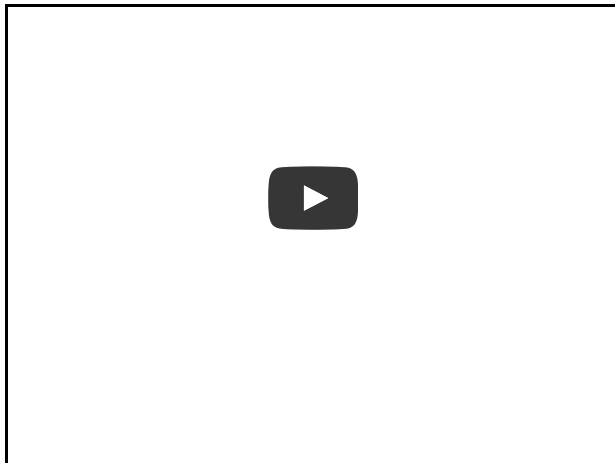


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