

Contesting discrimination and statelessness in the Dominican Republic

Bridget Wooding

Many decades of unregulated migration of Haitians who have come to live and work in the Dominican Republic have resulted in a significant population whose status is uncertain and who are vulnerable to widespread discrimination and abuses of human rights.

In the Dominican Republic, the questions of birth registration and nationality are closely entwined. As is common in Latin America, the rule of *jus soli* here means that a Dominican birth certificate has become the evidence of nationality for children who are born in the country. The birth must be registered for the individual to be able to apply for a *cédula* (identity card) or a passport. A birth certificate also provides access to a host of other rights and special protections for the child, such as protection against trafficking, child labour or early marriage.

Civil registry officials are charged with determining whether the child who has been brought before them to have his/her birth registered is eligible for Dominican nationality. If the official decides that the child does not qualify for Dominican nationality – such as in the case of unauthorised migrants from Haiti – they will refuse to register the birth and there is no clear appeal system against such a decision. The right to birth registration is thus equated to the right to Dominican nationality and denial of birth registration has become the mechanism for denial of nationality to children of irregular Haitian migrants.

Xenophobia

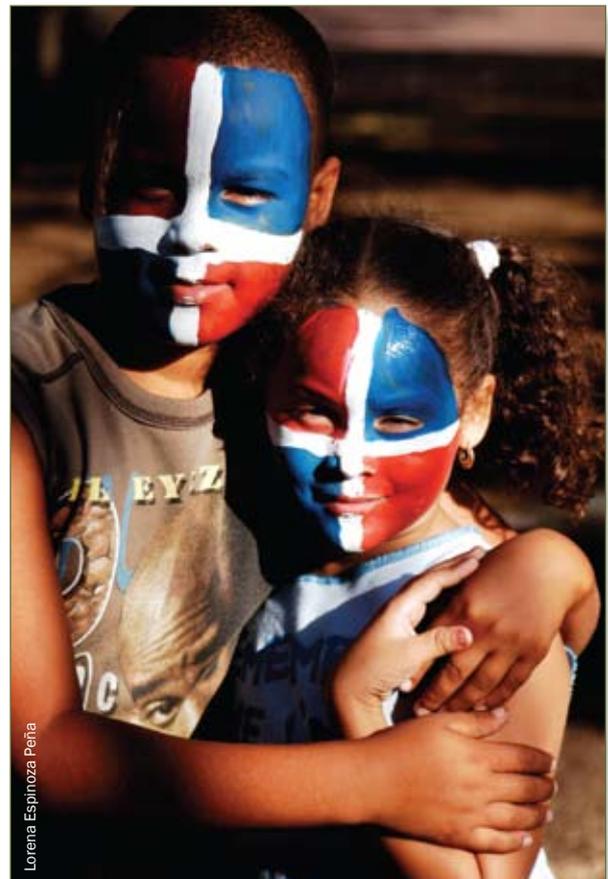
Dominicans hold deep-rooted prejudices against Haitians. They perceive Dominican identity as European, and above all Hispanic, in spite of the fact that Dominicans have African roots too. Dominican xenophobia had its most violent expression in 1937 when the dictatorship of Rafael

Leonidas Trujillo ordered the military to carry out a massacre of Haitian nationals and Dominico-Haitians in the border provinces; some 6,000 people were killed.

Almost fifty years after the overthrow of the Trujillo regime, xenophobia and racism are much less prevalent and virulent but there is still widespread ignorance and prejudice. Political leaders are reluctant to take a lead on the issue of Haitian migration for fear of being accused of betraying national interests. Successive governments have virtually failed in the task of introducing a legal framework compatible with international norms. Most political party leaders are reluctant to address the question and this is compounded by the attitudes of powerful groups in the private sector who have a vested interest in maintaining an unregulated flow of cheap and docile migrant labour in agriculture, construction and tourism. These factors have placed a particular burden on civil society practitioners in the human rights movement, both internationally and in the country. This movement originated

in the 1980s in the campaign against the abuse of migrant cane cutters. It continues today but has broadened the focus to encompass Haitian migrants and their descendents in the country as a whole. One notable change in the movement in recent years is that Dominican NGOs now play the lead role, with international partners providing support, rather than vice versa.¹

According to the Dominican Republic's 2004 Migration Law, a regularisation process for long-term irregular immigrants should have taken place – giving citizenship or legal residence to 'non residents' who meet certain requirements – before the law was implemented but the Dominican government has not produced any regularisation plan



Lorena Espinoza Peña

Children of Haitian descent – with the Dominican Republic flag painted on their faces – in a rally outside the Palace of Justice, Santo Domingo, March 2003.

Sonia Pierre, director of the Movement for Dominican Women of Haitian Descent (MUDHA), received the Robert F Kennedy Human Rights Award in 2006 for her fight against discrimination and efforts to secure nationality for persons of Haitian descent in the Dominican Republic.



change rather than tackle the issue piecemeal.

In October 1998, a group of regional human rights organisations supported the Dominico-Haitian Women's Movement (MUDHA²) in submitting a complaint to the Inter-American Human Rights Commission on Human Rights about the way in which the Dominican authorities had denied birth certificates to two young girls of Haitian descent, Dilcia Yean and Violeta Bosico. The Dominican NGOs on the ground had detailed local information on human

rights abuses endured by Haitians and their descendants in the country and, having exhausted all domestic remedies, decided to take the case – as a test case – through the Inter-American human rights system.

Seven years later, in September 2005, an important legal ruling from the Inter-American Human Rights Court (IACHR) made it binding for the Dominican Republic to comply with Article 11 of its Constitution which guarantees the right to Dominican nationality to all those born on Dominican soil (*jus soli*) unless they are the legitimate offspring of diplomats or born to persons in transit. The IACHR ruled that by denying these girls birth certificates the Dominican government had violated their rights to nationality, to equality before the law, to a name and to recognition of their judicial personality – rights set out in the American Convention on Human Rights which has been ratified by the Dominican Republic.³

The court also ordered that the Dominican government must:

- create a simple, accessible and reasonable system of late birth registrations
- take into account the particularly vulnerable situation of Dominican children of Haitian origin
- ensure that the requirements for nationality are clearly determined, uniform and not applied in a discretionary manner by state officials

- establish an effective process for reviewing refusal of birth certificates
- guarantee access to primary education for all children, regardless of their descent or origin.

On 14 December 2005, the Supreme Court of the Dominican Republic appeared to fly in the face of this landmark regional ruling, stating that the Haitian Constitution should be applied in precedence to the Dominican Constitution, ignoring the territoriality of the application of laws. This court decision says that denying Dominican nationality to the children of undocumented Haitian migrants does not leave them stateless since the Haitian Constitution establishes *jus sanguinis* – the rule that nationality is passed by the blood-line.

The combined result of the Dominican policy of denying birth registration to anyone with suspected Haitian parents and the difficulty of acquiring Haitian documents is that in many cases children are rendered stateless. In the eyes of the Dominican authorities, children inherit their parents' 'irregular' status. In the absence of regularisation programmes or a change in policy, permanent illegality is a very real possibility for many.

In UNHCR's 2006 ExCom meeting,⁴ it was stressed that the Yean and Bosico case had yielded the single most important legal ruling in the world on nationality and statelessness in 2005. Yet this appears to be insufficiently recognised in the Dominican Republic itself and comprehensive enforcement of the sentence seems a distant dream. To their credit, the authorities have complied with financial reparations but, unfortunately, show signs of deepening the discrimination which the Inter-American human rights system had ruled should not be repeated.

Nationality stripping

Two recent bombshells have stoked the debate, presenting fresh challenges for civil society activists. In September 2008, the Director of the Civil Registry prepared a document requesting that some 126 Dominicans of Haitian descent be stripped of their

to date. Until recently there was no alternative civil register or birth certificate for those children whose birthright claim to legally exist is negated. However, in early 2007, the Central Electoral Board established a Foreign Register for children born to undocumented foreign mothers.

For over a decade pro-migrant activists have paid increasing attention to and challenged in a variety of ways the denial of

“San papye – nou se kochon nan labou.” “Without papers – we are like pigs in mud.”

Luisa, an elderly agricultural worker born and brought up in the Dominican Republic

Dominican nationality to children of Haitian origins (or suspected of being of Haitian origins) born in the Dominican Republic. For example, the Dominican government continually repeats the fallacy that all descendants of Haitians who live in the Dominican Republic have access to Haitian nationality. The reality is that under the Haitian Constitution and Haiti's 1984 law on nationality, there are several groups of people of Haitian origin born outside Haiti who do not have automatic access to Haitian nationality.

Justice through the Courts

Early on, a strategic decision was taken by human rights activists to focus on trying to establish jurisprudence to achieve lasting

nationality on the grounds that their parents had neither a Dominican identity document nor a positive migration status at the time of the birth registration. According to the document in question, they were therefore “in transit”. As a Dominican journalist observed with heavy irony, the only possible place they could be in transit to would be “the after-life” because the vast majority has always been attached to this land of immigrants and emigrants.

The recently re-elected President Fernández put before the Congress in September 2008 a proposed reform of the Constitution which includes a new clause stating that Dominican nationality cannot be acquired by children born to those parents who are residing illegally on Dominican soil. Should this watered-down

version of *jus soli* be approved (and there is no obvious reason why it should not be, given that Ireland, for example, introduced exactly such a restriction on the acquisition of nationality), the legal debates will reach even more rarefied levels.

Beyond protesting vigorously against the possible illegal retroactive application of any constitutional change, civil society activists will continue to prioritise highlighting the need for a level playing-field. Unlike the US or most Latin America countries, which have received significant numbers of immigrants, the Dominican Republic has never had a regularisation programme for unauthorised long-term residents – yet is a strong advocate for the rights of Dominican émigrés and their descendants abroad.

However, perhaps the biggest obstacle to confronting the whittling down of the rule of law is not necessarily legal but cultural. While the regional jurisprudence is important and necessary, what is vital is reinforced civic education to ensure the state is called to account as a guarantor of fundamental rights.

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1. See Wooding & Moseley-Williams, *Needed But Unwanted: Haitian immigrants and their descendants in the Dominican Republic*, CIIR, London, 2004.
2. <http://www.kiskeya-alternative.org/mudha/> (in Spanish)
3. See http://www.corteidh.or.cr/seriecpdf/seriec_130_esp.pdf
4. Annual meeting in Geneva of UNHCR's Executive Committee