

ACT Haiti and ACT Dominican Republic Joint Statement on the Dominican Court Ruling 168/13 May 2014

On September 23 2013, the Dominican Republic's Constitutional Court ruled that Juliana Deguis Pierre, who was born in the Dominican Republic to Haitian parents in 1984 and registered as Dominican at her birth as permitted by Dominican law in effect at the time, should be denied Dominican nationality due to her parents' migratory status¹.

The ruling stands in direct contravention of the Dominican Republic's binding international obligations per the Inter-American Court's 2005 judgment in *Yean and Bosico v. Dominican Republic* which states: "*the non-recognition of nationality or of granting of civil registration to Dominican children of Haitian parents violates the rights of the child, the right to nationality, equality before the law, the right to recognition of the personality and the right to a name*". The Constitutional Court also ordered the Central Electoral Board to examine all Dominican birth registries since 1929 and identify for denationalization all persons who were similarly, allegedly, improperly registered. Such retroactive application of new legislation is against Dominican and international law.

By this ruling, the Dominican government has violated several ratified treaties which recognise nationality as a human right, including:

- Article 15 of the Universal Declaration of human rights, 1948.
- The Convention on the reduction of cases of statelessness of 1961.
- Article 5 of the Convention on the Elimination of all forms of Racial Discrimination, 1965.
- Article 24.3 of the International Covenant on Civil and political rights of 1966.
- Article 20 of the American Convention on human rights of 1969.
- Article 9 of the Convention on the Elimination of discrimination against women, 1979.
- Article 7 of the Convention on the rights of the child, of 1989.
- Article 18 of the Convention on the rights of persons with disabilities, in 2006.

Attempts to systematically deny identity documents and therefore nationality to the population were recorded as early as 1980. In 2004, the Dominican Central Electoral Board (JCE) used a new Migration Law to undermine Constitutional guarantee of birthright citizenship. Since 2007, the JCE has used administrative resolutions to authorize civil registry offices to withhold birth certificates, and confiscate ID cards and passports from Dominicans of Haitian descent, simply because of their ancestry. TC 168/13 codifies two decades of discriminatory Dominican policy and practice.

The Dominican government has attempted to pacify national and international opposition to the ruling by proposing a Regularization Plan and a separate Naturalization Plan. Although these, ostensibly, would safeguard some of the original rights revoked, both are inappropriate and inapplicable proposals for persons

¹ Up to 2010, Dominican Constitutional provisions granted nationality on the principle of *jus solis* to all citizens born in the Dominican Republic with the exception of the children of diplomats and persons "in transit", meaning that they were in the country for 10 days or less. In 2004, a new migration law was passed which stated that only the children of a legal resident parent qualified for Dominican nationality, thus establishing a distinction between legal and illegal residents in the country. The new 2010 Constitution thereafter incorporated this new distinction and redefined "in transit" to include irregular migrants. The September 2013 Constitutional Court decision ruled that the definition of "in transit", included in the 2010 Constitution and the 2004 migration law, should apply to all persons born in the country since 1929.

affected by TC 168/13: The Regularization Plan, mandated by the 2004 but never applied, is a mechanism aimed at registering migrant Haitian workers who live and work in the Dominican Republic. The Naturalization Plan aims to offer Dominican citizenship over time to foreigners who are eligible overtime for nationality. Persons affected by TC 168/13 are neither migrants nor foreigners; they are citizen whose nationality was revoked. Given the Dominican Government's efforts to conflate these categories, and to use this conflation to justify their policies, it is very important to recognize that these are two legally and socially very distinct categories, and to not use the terms "migrants" with "citizens" interchangeably (particularly as the rights of both groups are violated in the Dominican Republic, both are subject to deportations, and thus are often confused). Thus neither the Regularization nor the Naturalization Plan plans restores full nationality rights, recognizes the original right of Dominicans of Haitian descent to Dominican nationality guaranteed by the Dominican constitution up to January 2010, nor mitigates the harm caused by TC168/13. **TC 168.13 is final and cannot be appealed.**

On May 15 2014, President Danilo Medina presented a new law on The Special Status of Individuals born in the Dominican Republic with an irregular birth registration and on Naturalization. The draft law was unanimously approved by both chambers and passed into law on May 21, 2014. The law establishes two categories of persons: in Group 1 are persons born in the country of "non-resident foreigners" who were registered in the Dominican civil registry, but with documents that were later considered to be invalid for birth registration of their children. The law now formally validates these birth documents. In Group 2 are persons who were born in the country to "parents with an irregular migratory status" who were not registered in the civil registry. The total number of persons in group 2 is unknown but is expected to exceed the number in Group 1. Approximately 5% of the Dominican population lacks birth certificates, not all of whom are children of migrant Haitian parents. Persons in Group 2 must either register in the Book of Migrants or be registered as migrants in the Regularization Plan, after which there would be a possibility (through not a guarantee) of accessing naturalized citizenship. The law does not establish a time frame for these processes, and the proposed law still represents a violation of the nationality rights of persons in Group 2. Yet, many actors, including the UN, consider this new law to be the beginning of a good political solution in a very complex situation. It remains to be seen how the law will be applied, the time frame in which it is done, and who benefits.

Response to the Court Ruling 168/13

Media coverage has emanated from North America, Europe, the Caribbean and Latin America. Editorials questioning the rationale for the court ruling have appeared in the Guardian, Le Monde, Washington Post and New York Times.

Churches and church groups in the Dominican Republic, Haiti and the wider region groupings have issued a number of statements condemning the ruling including: CONEDO (the Dominican Evangelical Fraternity); CONDOR (the General Assembly of the Dominican Conference of Religious People); the Dominican Republic Evangelical Pastoral; MISSEH (Mission Sociale des Eglises Haitiennes); the Bishops of the Antilles Episcopal Conference; CLAI (the Latin American Council of Churches); members of WISC (Washington Inter-faith Service Committee). In December 2013, a statement was issued by SSID (Social Services of the Dominican Churches).

Dominican civil society organizations swiftly established a coalition of coalitions to protest the ruling called Dominicanos por Derecho (DxD) has mobilised affected people, met President Medina, established a national and international campaign, marched in front of the Dominican Congress and called for protective measures for individuals targeted following increased hostility and death threats from nationalist Dominican sectors.

Haiti initially called its Ambassador to the Dominican Republic; the Haitian Senate subsequently sent a delegation to the Dominican Republic to further investigate the situation. **Venezuela** has attempted in successive meetings to broker agreements between both governments. Outcomes of these negotiations remain vague. **CARICOM** has openly challenged the ruling, called upon GoDR to find legislative and political means to restore nationality rights, and taken the unprecedented step of suspending the Dominican Republic's application for CARICOM membership.

UNHCR has publicly stated that the ruling potentially deprives thousands of their nationality. It has called upon the GoDR to restore full nationality rights to all the persons affected. **UNICEF** and other **UN** offices, including the office of the Secretary General, have pressed for non application of the law.

IACHR (InterAmerican Commission on Human Rights) following week long investigative visit to the Dominican Republic in December 2013 concluded that: *“the ruling implies an arbitrary deprivation of nationality... has a discriminatory effect, given that it primarily impacts Dominicans of Haitian descent, who are Afro-descendant persons; strips nationality retroactively; and leads to statelessness when it comes to those individuals who are not considered by any State to be their own nationals, under their laws”*.

United States of America and the **European Union** have expressed concern that thousands of persons are at risk of statelessness.

What does the Court Ruling 168/13 mean for those affected?

Dominican citizens of Haitian descent are often among the poorest of the poor in the Dominican Republic. They are the descendents of economic migrants and of migrant workers contracted by the Dominican government to help harvest sugarcane and other crops. They have contributed to Dominican society and economy, fully integrated into Dominican society and long since lost ties to Haiti. In spite of this, documented evidence of their economic and social marginalization exists goes back several decades. In addition, they have been the victims of personal and institutional racial discrimination both in their personal lives and the public domain, also well documented, notably by the UN Committee for the Elimination of Racial Discrimination (CERD).

Without their documents, denationalised Dominicans are unable to go to school, to sit the eighth grade national examination, a state requirement for entry into secondary school. graduate or get certifications for courses undertaken, attend university, access medical services, open bank accounts, marry, travel, make needed purchases, legally drive, apply for jobs, register their children’s birth, claim pensions or national insurance, seek police protection, join unions, gain access to justice or to collective bargaining, or vote. Acquired educational certification may be rendered invalid, preventing educated persons from furthering their education or practicing their profession. Thousands of young people already lived in limbo since their identification documents were confiscated in 2007; TC 168/13 by being retroactively applied to 1929, creates a problem of intergenerational statelessness, revoking as it does, citizenship of those who once held it.

What has been the response of ACT member organisations in the Dominican Republic and Haiti?

Today, four members compose the ACT Alliance Forum in the Dominican Republic: one local organisation, Servicio Social de las Iglesias Dominicanas (SSID), and 3 international organizations: Christian Aid, Church World Service and Norwegian Church Aid. 14 members compose the ACT Alliance Forum in Haiti: two local organisations, Service Chretien d’Haiti (SCH) and Mission Sociale des Eglises Haitiennes (MISSEH); and 12 international organisations: Christian Aid, Church World Service, Diakonie Katastrophenhilfe, Finn Church Aid, HEKS/EPER, ICCO&Kerk in Actie, Lutheran World Federation, Lutheran World Relief, Norwegian Church Aid, Pain Pour Le Monde, Servicio Social de las Iglesias Dominicanas and World Renew.

Several organisations in the two Forums have binational programmes and/or perspectives, with programmatic operations run through local organizations in both Haiti and the Dominican Republic. Both the staff and beneficiaries of ACT member organisations, possibly numbering in their hundreds, are potentially affected by this ruling. ACT members’ response has been provided primarily through the local partners. The response has included advocacy, research, support to, solidarity with and accompaniment of affected persons. Since September 2013, individual members have issued separate statements condemning the ruling and exhorting the Dominican government to ensure that no denationalized Dominicans are rendered stateless. ACT Dominican Republic and ACT Haiti remains deeply concerned about the long term practical implications of the TC 168/13 ruling and highly charged, polarized Dominican public opinion on the issue.

What are the next steps for the ACT Forums in the Dominican Republic and Haiti?

The two ACT Forums in the Dominican Republic and in Haiti will continue to provide ongoing support to both secular and faith/church-based partners. Support will include accompaniment and provision of services to affected persons, as well as domestic and international advocacy. In collaboration with the ACT Secretariat, the two ACT Forums will develop unified advocacy messages and strategies based on updated analyses of the context. This work is particularly important in relation to the preparation for the 2nd General Assembly of the ACT Alliance, to be held in Punta Cana in the Dominican Republic in October 2014.

The ACT Forums in the Dominican Republic and Haiti call upon national and regional churches to:

- Advocate through their national and regional bodies to the Dominican government and authorities to ensure that no Dominicans of Haitian descent are rendered stateless
- Promote with their respective governments respect for cultural, ethnic and religious plurality and promote the dignity of all human beings as members of God's family
- Work with faith communities on both sides of the border to promote solidarity and peaceful collaboration between Haiti and Dominican communities

The ACT Forums in the Dominican Republic and Haiti call upon the ACT Alliance International to:

- Advocate at the highest levels for the rights of Dominicans denationalized by TC 168/13
- Present a coherent and unified ACT Alliance position on TC 168/13 and subsequent laws on regularisation and naturalisation at the ACT General Assembly in October 2014
- Support the members of the ACT Forum Haiti and the ACT Forum DR to prepare for the potential consequences of this ruling and subsequent laws on both sides of the border
- Press for peaceful solutions to be found to heal deep factions caused by TC 168/13

The ACT Forums in the Dominican Republic and Haiti call upon the Government of Haiti to:

- Ensure in all its negotiations with the Dominican Government that Haitian migrants and denationalized Dominicans of Haitian descent are treated as completely separate and distinct categories
- Advocate to the Dominican government for the full restoration of nationality and citizenship rights to the persons affected by TC 168/13
- Advocate to the Dominican government for the safe, dignified and respectful conduct of deportations and full application of the Haitian Dominican 1999 Joint Protocol for deportations
- Use the newly established Haitian and Dominican inter-governmental to advocate for the implementation of all necessary measures to prevent statelessness

The ACT Forums in the Dominican Republic and Haiti call upon the government of the Dominican Republic to:

- Restore full nationality and citizenship rights to all persons denationalized by TC 168/13
- Ensure that its proposed Regularization Plan is applied exclusively to legitimate migrant Haitian workers living and working in the Dominican Republic, and not to Dominicans of Haitian descent denationalized by TC 168/13
- Refrain from applying the Dominican Naturalization plan to Dominicans of Haitian descent affected by TC 168/13
- Take all steps necessary to ensure the safety, security and personal integrity of all persons denationalized and potentially at risk of statelessness living in the Dominican Republic
- Return all confiscated birth certificates, ID cards, passports and other forms of national identification to persons from whom they were withheld
- Implement the 1999 agreement signed with the Dominican Government for safe and dignified deportations to the Dominican Republic