



DOMINICAN REPUBLIC

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Open Letter to President Danilo Medina regarding law 169/14 “establishing a special regime for people who were born in the national territory and irregularly registered in the Dominican Civil Registry and on naturalization”

Mr President,

I am writing to you in relation with the “Law establishing a special regime for people who were born in the national territory and irregularly registered in the Dominican Civil Registry and on naturalization” (Nr 169-14), which was introduced by the government and adopted by Congress on 22 May.

Amnesty International acknowledges that this Law responds to the commitment given by you on several occasions that a “humanitarian” solution would be found to address a “human problem”, which was exacerbated by the judgement 168-13 of the Constitutional Court.

The organization believes that the Law and its preamble present some positive features, such as:

- the recognition that the “urgent implementation of measures that enable the right to equality, development of personality, nationality, health, family, free transit, work and education” represent a priority for the Dominican State;
- the recognition that affected people cannot be held responsible and bear the consequences of alleged irregularities committed by state agents;
- the provision that the Central Electoral Board will issue or renew identity cards to all beneficiaries of the “special regime”, i.e. children of “non-resident” foreign

parents who had been registered in the Dominican Civil Registry, and that all the “acts of civil life” of this group of people will be retroactively recognized;

- the provision that the processes established by the law will not entail any cost for the affected people.

It is also very positive that in the letter accompanying the submission of the draft law to the President of the Chamber of Deputies, you acknowledged that the fact that a huge number of people in the Dominican Republic lack juridical personality represents an “unacceptable institutional weakness” and expressed your intention to ensure the right of every person to have an identity.

However, Amnesty International is disappointed that the Law does not truly protect the human rights of those who had been deprived of their Dominican nationality following the judgment 168-13 of the Constitutional Court.

In that decision, the Constitutional Court maintained that migrant foreign workers and their descendants who failed to prove their regular migration status in the country were to be considered as “foreigners in transit” and therefore their Dominican-born children had never been entitled to the Dominican nationality. By doing so, the Constitutional Court ignored previous long-standing authoritative legal interpretations that limited the temporal scope of the “in transit” concept to a period of less than ten days. The Constitutional Court established a criteria for the acquisition of Dominican nationality which was not in force when Juliana Deguis Pierre and the thousands of people in a similar situation were born and retroactively applied its interpretation of “foreigners in transit” to several generations of Dominicans of Haitian descent.

The decision of the Constitutional Court also disregarded the Inter-American Court of Human Rights decision of *The Yean and Bosico Children v. Dominican Republic* (2005) in spite of its binding character. In that decision, the Inter-American Court considered that the migratory status of a person cannot be a condition for the state to grant nationality, because migratory status can never constitute a justification for depriving a person of the right to nationality or the enjoyment and exercise of their rights. The Court also ruled that children cannot inherit the migration status of their parents. Additionally, the Inter-American Court held 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.” It should be noted that the binding character of the Inter-American Court’s decisions is recognised not only in international law, but also in Dominican law. Under current Dominican Law, international human rights law is incorporated in the national legal system at the Constitutional level. This should include compliance with the judgments of the Inter-American Court of Human Rights.

Judgement 168-13 of the Constitutional Court entails an arbitrary deprivation of nationality to thousands of people who were therefore left stateless. While conditions for granting nationality are for each state to decide, international law imposes certain limits on states’ powers in this regard, particularly if states act in a way that may result in statelessness. In order to comply with the prohibition of arbitrary deprivation of nationality, measures leading to deprivation of nationality must meet certain conditions, which include: being in conformity with domestic law; serving a legitimate

purpose that is consistent with international law and, in particular, the objectives of international human rights law; being the least intrusive instrument to achieve the desired result; and being proportional to the interest to be protected. The decision of the Constitutional Court does not satisfy the principles of legality and proportionality and therefore results in arbitrary deprivation of nationality.

Additionally, judgement 168-13 of the Constitutional Court is discriminatory because it has a disproportionate impact on Dominicans of Haitian descent, who constitute a marginalised and vulnerable group. The judgement seemed to have been designed to specifically target this group and therefore constitute a discriminatory deprivation of nationality, which is prohibited under both international law and the Dominican constitution.

Concerns on the solutions brought by the Law

The Law 169-14 does not solve the contradictions with domestic law and international human rights law highlighted above. As a consequence, it brings solutions which take the form of concessions rather than remedy for human rights violations.

None of the solutions identified entails an automatic restoration of Dominican nationality to those who already had it under the domestic legal system in force between 1929 and 2010, contravening the recommendations formulated by the Inter-American Commission of Human Rights (IACHR) at the end of its visit in the Dominican Republic in December 2013.

Although the solution put forward for the children of “non-resident” foreign parents who had been registered in the Dominican Civil Registry (“special regime”) is far more advantageous than the one adopted for those who had never been registered, it still fails to be automatic. Instead of explicitly recognizing that the affected people have Dominican nationality, the law mandates the Central Electoral Board to carry out a regularization process following which the people included in the first group (i.e. children of “non-resident” foreign parents who had been registered in the Dominican Civil Registry) will be “accredited” as Dominican nationals.

Children of “non-resident” foreign parents who had not been registered in the Dominican Civil Registry are obliged to take many more steps before being able to access Dominican nationality. In order to initiate the process, they are required to register themselves as foreigners, which is something that the IACHR deemed to be unacceptable. They then have to apply for regularization under the ongoing National Plan of Regularization of Foreigners with Irregular Migration Status. Only two years after having been regularized, the people affected will be able to apply for naturalization under Law Nr. 1683 of 16 April 1948 regulating the process of naturalization.

The lack of automatic mechanisms for the recognition of Dominican nationality to all those who had been affected by judgement 168-13 of the Constitutional Court means that the people affected remain stateless until the process of regularization and naturalization is completed.

The beneficiaries of the “special regime” could represent a minority of the people affected. A study carried out by the Central Electoral Board in November 2013

identified 24,392 people who had been “irregularly registered” between 1929 and 2007, 13,972 of whom were born to Haitian parents. However, a survey conducted by the United Nations Population Fund (UNFPA), the European Union and the National Statistics Office (ONE) in 2012 found that 244,151 people living in the Dominican Republic were born to foreign parents. Of these, 209,912 were of Haitian descent (father and/or mother born in Haiti). The survey only took into account people born to foreign parents and not successive generations of people of foreign descent. It is therefore very likely that the people excluded from the “special regime” and subject to the process of naturalization represent the vast majority of people affected by judgement 168-13 of the Constitutional Court.

It is also concerning that the “special regime” will only be applicable to people registered in the Dominican Civil Registry between 1929 and 18 April 2007, with the latter being the date of the entry into force of the “Registry of Foreigners” in which births of children whose mothers could not prove their regular migration status in the country have since been registered. Given that it was only the current Dominican Constitution, entered into force on 26 January 2010, which excluded children of irregular migrants born in the country from the acquisition of the Dominican nationality by *ius soli*, children born between 18 April 2007 and 26 January 2010 and registered as foreigners, should not be excluded from the possibility of having their Dominican nationality recognized.

Concerns on the implementation of the law

Amnesty International is also concerned that the lack of automatic mechanisms, as well as the complexity of the law and the ambiguity of some of its provisions, could translate into complications during the implementation of the law, including the application of discretionary and discriminatory criteria, which could result again in arbitrary deprivation of nationality.

In particular, while it is understandable that the law considers “falsification of data, identity theft, or any other type of forgery of a public document” as causes of exclusion from the “special regime” established for the children of “non-resident” foreign parents who had been registered in the Dominican Civil Registry (Chapter I, article 3), it is worrying that the lack of clarity on what cases would exactly qualify for these exclusions and which body would be entitled to take such decisions could leave some of the people affected arbitrarily deprived of Dominican nationality.

Moreover, if it is true that international law accepts fraud and misrepresentation as a legitimate ground for loss or deprivation of nationality, it also requires States to carefully consider the proportionality of this act, especially where statelessness results. The nature or gravity of the fraud or misrepresentation must be weighed against the consequences of denationalization. In this context, considerations such as the person’s links with the State, including the length of time that has elapsed between acquisition of nationality and discovery of fraud also need to be taken into account.

It would therefore be crucial to limit to Courts the competence to decide on what constitutes an exception per Chapter I, article 3 of the law, and to establish appeal mechanisms in order to ensure the right to a review against deprivation of nationality (guaranteed by article 8, paragraph 4, of the Convention on the Reduction of Statelessness). Such a process must afford all judicial guarantees enshrined in

articles 8 and 25 of the Inter-American Convention on Human Rights and provide an effective remedy.

With regard to the process of naturalization of children of “non-resident” foreign parents who had not been registered in the Dominican Civil Registry, Amnesty International is concerned that many people might be excluded from this process. People affected will only have 90 days from the date of entry into force of the law’s implementing regulations to register themselves as foreigners. Given that the vast majority of them belong to the most disadvantaged sector of Dominican society and live in remote areas, it is likely that many of them might lose the opportunity to initiate the process of naturalization unless adequate mechanisms are put in place to ensure that all those affected are made aware of the provisions of the law. Moreover, given the length and the complexity of the naturalization process described by the law, many of the people affected could encounter difficulties in complying with all the requirements, unless sufficient information and support is provided to them.

Amnesty International also notes that the law does not clarify how certain situations created by the Central Electoral Boards and by other state institutions will be dealt with. These include:

- The administrative suspension of birth certificates or national identity cards by the Central Electoral Board, following the entry into force of its resolution, Nr 12-07;
- Denial of issue or renewal of passports by the General Directorate of Passports;
- Issue of birth certificate for foreigners to people who had previously been registered in the Dominican Civil Registry;
- Transcription in the Registry of Foreigners of people who had been previously registered in the Dominican Civil Registry.

The law does not explicitly mention what will be the status of children who could not be registered due to the fact that their parents had been deprived of or denied their identity documents. Although the provision that all the acts of civil life of the beneficiaries of the “special regime” will be retroactively recognized (Chapter I, article 5) would indicate that the beneficiaries will finally be able to register their children as Dominicans, the lack of explicit mention of this situation could lead to confusion and discretion in the implementation of the law. For example, the law does not clarify what will happen to children of Dominicans of Haitian descent who were given a pink proof-of-birth certificate in hospital and therefore deemed to be foreigners although their parents had been registered in the Dominican Civil Registry. This lack of clarity is especially worrying given that, as documented by Amnesty International, there are cases of families in which some children had received a pink proof-of-birth certificate while others a white one despite having all been born to the same parents after the entry into force of the “Registry for Foreigners”.

Furthermore, it is not clear what impact the law will have on the hundreds of judicial proceedings initiated by the Central Electoral Board against people who had been allegedly irregularly registered in the Dominican Civil Registry. Such proceedings are aimed at having the birth certificate of the people declared invalid by courts of first instances. Amnesty International found that the vast majority of these proceedings were initiated against people who had filed constitutional appeals against the denial

of their identity documents by the Central Electoral Board. This body based its judicial applications exclusively on the fact that the parents of the concerned people are Haitian, alleging that birth registration in the Civil Registry was incorrect and violated the law. According to Dominican human rights lawyers, the only evidence brought by the Central Electoral Board to support its application are reports issued by the same body through its Department of Investigations.

In order to mitigate the risks illustrated above, Amnesty International urges you to ensure that the implementing regulations are drafted, and that the Law is applied, in a way that respects, protects and fulfils the human rights of the individuals affected. In particular:

- Draft the law's implementing regulations in consultation with human rights organisations and representatives of the affected populations;
- Ensure that the implementing regulation solve the above-mentioned situations created by the Central Electoral Board and the General Directorate of Passports in a way that respect, protects and fulfils human rights;
- Clarify in the implementing regulation that both the beneficiaries of the "special regime" and those who will go through the process of naturalization are able to register their children as Dominicans, even when they were given pink proof-of birth certificates in hospitals;
- Implement prompt and extraordinary interim measures to protect the rights of the people who are required to comply with the naturalization process until full registration is granted, including full access to the services necessary for the respect, protection and promotion of their human rights;
- Limit to Courts the competence to decide, on a case by case basis, what constitute exceptions foreseen in Chapter I, article 3 of the law, and grant an effective recourse for those affected;
- Ensure due process and the right to a judicial review against any case of deprivation of nationality by ensuring that effective judicial mechanisms are available to those who are deemed to fall under exceptions foreseen in Chapter I, article 3 of the law and those who are found not to be eligible to be regularised under the National Plan of Regularization of Foreigners with Irregular Migration Status mechanisms or not to be eligible to apply for naturalization;
- Carry out a nationwide information campaign in order to ensure that all the affected people are able to access full information about the provisions of the law;
- Ensure that all the affected people, and especially those who need to comply with the naturalization process, receive adequate assistance enabling them to abide by the provisions of the law;
- Establish an oversight committee including representatives of national human rights organisations and of the individuals affected in order to ensure the correct and full implementation of the provisions of the law.

I thank you in advance for your kind attention and look forward to receiving your response to the issues raised in this letter and Amnesty International's recommendations.

Yours sincerely

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