

# **DENOUNCE AND JOIN THE MOVEMENT TO DEFEAT THE LONG STANDING INHUMANE DISCRIMINATORY PRACTICE OF THE DOMINICAN REPUBLIC, ITS DISCRIMINATORY CONSTITUTION OF 2010, AND THE RULING OF THE CONSTITUTIONAL TRIBUNAL OF SEPTEMBER 23, 2010, REVOKING THE DOMINICAN CITIZENSHIP OF PERSONS BORN TO HAITIAN LABORERS SINCE 1929, RENDERING THEM STATELESS AND PREPARING TO ETHNICALLY CLEANSE THEM FROM THE ONLY COUNTRY THEY HAVE KNOWN.**

## **Overview and Objectives**

The purpose of this position statement is to bring to the attention of the entire world community to the fact that Dominicans of Haitian descent have been and are currently facing a grave state-sponsored campaign of ethnic cleansing reminiscent of the Jewish Holocaust and the Rwandan Tutsi genocide of 1994. We know that the Dominican Republic is not immune to these horrors since we have historical precedent including the Parsley Massacre of Haitians by Rafael Leondis Molina Troujillo in 1937 in which 20,000 or more Haitians were killed in the span of five (5) days because they were Haitian. In all three situations, the groups that were victimized were targeted by the ruling government of their nations as the source of the ills of the society. Legislation, executive dictates and negative propaganda fueled societal hatred of these groups so that they became scapegoats and were perceived as readily dispensable. The propaganda in the Dominican Republic has been so blatant that some Dominicans have taken the liberty to engage in vigilante hostility against Dominicans of Haitian descent and / or Haitians. “In May of 2009, a Haitian man, Carlos Nérilus, was beheaded... in Santo Domingo. Less than two years prior, a Dominican mob lynched three Haitians suspected of being responsible for the murder of a Dominican store-owner. The killer was later found not to be a Haitian.”<sup>1</sup>

## **Historical Context**

There has been a historical pattern of systematic, state-sponsored discriminatory denial of Dominican nationality and accompanying rights to Dominicans of Haitian descent even though pre-2010 Constitutions recognized them as Dominicans, born in the Dominican Republic under the concept of *jus soli* (right of the soil). The authorities have openly expressed fear of African-descended Haitians darkening the significantly fair-skinned European-descended Dominicans. As well, the Dominican authorities have expressed concerns about the Haitians and Dominicans of Haitian descent bringing down the economic standards of the Nation. Furthermore, the authorities are concerned about the participation of Haitians and Dominicans of Haitian descent on the political or other levels in the society. The various institutions in the society have conspired to illegally deny these Dominicans their basic human rights as citizens at the time when there was no constitutional authority to do so. Nothing has been more pernicious and demeaning than the refusal of institutions to register Dominicans of Haitian descent and provide them the necessary documents to access and exercise their rights in the society. The Dominican authorities have been refusing to issue birth certificates to Dominicans-born babies of long-time Haitian parents in the various hospitals throughout the country for years now and even decades.

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<sup>1</sup> Schaaf, Bryan, “Haiti and the Dominican Republic: Same Island, Different Worlds,” <http://haitiinnovation.org/en/2009/05/21/haiti-and-dominican-republic-same-island-different-worlds>

In the face of such inhumane treatment, the Dominicans of Haitian descent have actively resisted on many fronts. Organizations such as MUDHA, led by the courageous Sonia Pierre and others have resisted through many means including the use of legal challenges. One of the legal challenges was brought before the Inter-American Court of Human Rights and resulted in a favorable decision for the cause of the Dominicans of Haitian descent.

A synopsis of the Amicus (Friend of the Court) Brief Open Society's Justice Initiative states the following:

This was the case of ***Yean and Bosico v. Dominican Republic***. In 1997, the mothers of Dilcia Yean, then aged 10 months, and Violeta Bosico, then aged 12 years, went to the civil registry to ask for copies of their daughters' birth certificates. Both mothers had been born in the Dominican Republic and had documents proving their Dominican nationality. Both daughters were also born in the Dominican Republic. However, because they were of Haitian descent, the civil registry refused to give them copies of their birth certificates, and insisted that they produce a list of documents that were impossible to obtain.

The case was taken to the Inter-American Commission by the Centre for Justice and International Law (CEJIL), the International Human Rights Law Clinic at the University of California, Berkeley, and the Movimiento de Mujeres Dominico-Haitianas (MUDHA), the mothers argued that their children were born on Dominican territory and should have been entitled to citizenship under the constitutionally-enshrined principle of *jus solis*, whereby citizenship is determined by place of birth, rather than by descent. Because they were refused permission to register their births, the girls were unable to obtain recognition of their legal personality, and could not enroll in school because they had no identity documents. As undocumented persons they were vulnerable to arbitrary expulsion from the country.

On September 8, 2005, the Inter-American Court of Human Rights issued a landmark decision in October 2005, affirming the human right to nationality as the prerequisite to the equal enjoyment of all rights as civic members of a state. The court held that the principle of *jus soli* was enshrined in the constitution and could not be further restricted. The interpretation of the law that defined individuals born "in transit" so as to include all undocumented migrants was too broad. The burden of producing so many documents in order to claim nationality meant that it was granted in a discriminatory fashion.

The court held that racial discrimination in access to nationality breaches Articles 1, 21, and 27 of the American Convention of Human Rights and concluded that the discriminatory application of nationality and birth registration laws rendered children of Haitian-descent stateless. This violated the recognition of their juridical personality, and was an affront to their dignity. They were unable to access other critical rights to education, to a lawfully registered name, and to equal protection before the law. The expulsion of Violeta Bosico from school violated her right to special protection as a child.

The court ordered damages of \$8,000 to each of the two children, ordered that the judgment be published and that the state apologize to the girls. They also ordered that the law be changed so as to ensure that birth certificates were issued in a way that was not discriminatory and that there was a full judicial review of that process. Education must be available to all, no matter their background.

<http://www.opensocietyfoundations.org/litigation/yeon-and-bosico-v-dominican-republic>

Even though the Inter-American Court of Human Rights issued such a ruling and ordered damages and reforms to ensure the protection of the rights of Dominicans of Haitian descent, the Dominican authorities resisted. They reneged on their agreements and began to explore avenues to amend the then-constitution to legalize their discriminatory treatment of the Dominicans of Haitian descent. They sought to introduce and pass “Amendments passed to the Constitution to introduce the principle of **jus sanguinis**” (citizenship through blood-line). Such authority was achieved on January 26, 2010. Under the leadership of then-President Leonel Fernandez, the Dominican Republic enacted a new constitution which re-introduced criteria for acquisition of Dominican nationality that had only previously appeared in a 1929 Dominican Constitution. In Chapter V, Section 1, Article 18, Paragraph 3, the new constitution states:

The following persons are Dominican Nationals.

Any person born within the territory of the Dominican Republic **except those born to** members of the Diplomatic or consular missions, and **foreigners who are in transit or reside illegally in Dominican territory**. A foreigner “in transit” is any person defined as such by the laws of the Dominica Republic.

In the past, the nation has promulgated and adopted numerous constitutions and none of them repeated the 1929 definition of Nationality. For example, the Constitutions of 1994 and 2002 did not exclude those born to persons who reside illegally in Dominican territory. Dominicans were defined in Title III, Section I – Nationality, Art. 11, as “...All persons born in the territory of the Republic, with the exception of the legitimate children of foreigners residing in the country on diplomatic missions or those who are in transit.” Under the prior constitutions, individuals born on Dominican soil were heretofore Dominican Citizens. The constitution 2010 faced notable criticism, both abroad and at home, with opponents referring to it as an “injustice” and as “step backwards” for ensuring of human rights in the country, especially towards minorities. The constitution has also been criticized for “oppressing the rights of Haitian immigrants.”<sup>2</sup>

Despite the “advances” in relations with Haiti, especially after the January 2010 earthquake, Dominican authorities continued to illegally deprive Dominicans of Haitian descent of their rights as citizens, leaving them without access to health care, education, employment, or the right to vote. This virtual statelessness increases their chance of being subjected to arbitrary detentions and mass expulsion, without judicial review, and in violation of bilateral agreements with Haiti. Mass deportations of Haitians illegally in the Dominican Republic continued in 2012.<sup>3</sup> All of this was happening and intensifying under the watch of President Leonel Fernandez, whom many thought was a friend of Haiti because of his overture to Haiti

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<sup>2</sup> Constitution of the Dominican Republic - Wikipedia, en.wikipedia.org/wiki/Constitution\_of\_the\_Dominican\_Republic.

<sup>3</sup> [www.freedomhouse.org/report/freedom-world/.../dominican-republic](http://www.freedomhouse.org/report/freedom-world/.../dominican-republic).

after the devastating earthquake of January 12, 2010. He was an advocate of that entrenched tradition of demonizing and discriminating against Dominicans of Haiti descent. He was a wolf in sheep's clothing who worked on and pushed the enactment of the January 26, 2010 Constitution. When the Haitian people faced the calamity of the earthquake in January, 2010, the Dominican ruling class sought to benefit from the business generated as a result of Haiti's misery. The Dominican elite have had no objections to the millions of dollars that they have accumulated from trade surpluses with Haiti which is the DR's first market to dump all of their consumer goods. They have had no compunction in taking advantage of the significant wealth their contractors have accumulated from contracts they have received from Haiti's public and private sectors, contracts which allow them to do everything from designing and rebuilding Haiti's crumbling infrastructure to constructing Haiti's hotels and providing basic amenities to Haitians and foreign consumers such as the MINUSTAH forces and other groups in Haiti.

### **Source of the Current Challenge and The Ruling of the Constitutional Tribunal**

The legal challenge that brought about the current decision that has exposed the inhuman treatment of Dominicans of Haitian descent was brought by Ms. Juliana Dequis Pierre, a Haitian-descended Dominican woman. She challenged the action of the government for refusing to register her Dominican-born children to get their birth certificates and for confiscating and revoking her own birth certificate and other identification documents on the basis that she and her children were not Dominicans even though they were born in the Dominican Republic.

On September 23, 2013, the Constitutional Tribunal of the Dominican Republic issued a decision that is not appealable. In this decision, the Constitutional Tribunal ruled that Ms. Dequis Pierre, who is 29 years old and was officially registered as a Dominican citizen at birth, did not in fact meet the criteria for the acquisition of Dominican nationality.” In the same ruling, the Constitutional Tribunal now has even requested the Dominican authorities to identify similar cases of such individuals formally registered as Dominicans as far back as 1929 who would not have qualified as citizens under the 2010 Constitution. A witch hunt has been unleashed to render Dominicans of Haitian descent absolutely stateless.

In a statement appearing in the **World War 4 Report** on October 1, 2013, the author states plainly that: “The Dominican Constitution was amended in 2010 to exclude the children of undocumented immigrants from citizenship... [E]ven before that, the Central Electoral Council (JCE) had refused for several years to issue papers to the grown children of undocumented immigrants. The new ruling goes much further. It is based on a clause in the 1929 Constitution granting citizenship to "all persons who are born in the territory of the Republic, with the exception of the legitimate children of foreigners resident in the country as diplomatic representatives or those who are in transit in it." Citing a 1939 law, the [Constitutional Tribunal] ruled that "in transit" was different from "transient" and included everyone without legal status. The decision could apparently take citizenship away from Dominicans of Haitian descent now in their 80s and render them stateless.<sup>4</sup>

The ruling of the Constitutional Tribunal does not make legal or constitutional sense when it revoked the nationality of a people rendering them stateless based on ancestry without due process retroactively to

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<sup>4</sup> <http://ww4report.com/node/12673>

eighty-four years (84) years, in blatant violation of internationally recognized principles, practices, agreements and law. However, it was not intended to make legal sense. State power sought and received judicial cover for its strategy of cleansing the Dominican Republic of its Haitian-descended Dominican population.

### **Dissenting Voices**

Yet, there are glimmers of hope. Many Dominicans who are not directly affected by this ruling have demonstrated in the Dominican Republic, in the United States and elsewhere in opposition to this ruling and speaking out against its inhumanity. Moreover, a courageous Judge, Isabel Bonilla Hernandez, issued a dissenting opinion. Her dissenting voice represented a comprehensive and logical repudiation of the majority's decision and the opinion is a must read.<sup>5</sup>

In a nutshell, she argued first that, prior to the adoption of the 2010 Constitution, the tradition of *Jus Soli*, right of the soil, was the underlying principle which gave all persons born in the territory of a the Dominican Republic the right to Dominican nationality or citizenship regardless of the parentage of these individuals. As such, the rights of these citizens predating the Constitution of 2010 cannot be taken away without cause and without due process.

Second, Judge Hernandez argued that the Dominican Republic is bound by certain international principles of human rights that have been reduced to agreements, accords, and treaties to which the Dominican Republic is a signatory and, as such, it is bound by these agreements. The Judge stated:

The agreements, conventions and treaties that are ratified by the Dominican State, become part of its domestic legal system , as provided in the Constitution, treaties , covenants and conventions on human rights signed and ratified by the Dominican Republic , have constitutional status and are direct and immediate application by the courts and other state bodies... Inter-American Court of Human Rights (IACHR ) are binding on all states that have ratified the American Convention on Human Rights and also have recognized the competence of the Court. The Dominican Republic, dated twenty-five ( 25 ) March 1999 ( 1999 ) , recognized the jurisdiction of the Court under Article 62 of that Convention... In the framework of international law is a fundamental principle that States have signed treaties, agree to comply with their obligations in good faith, in accordance with international law ‘ *pacta sunt servanda* . ’” **[agreements must be kept]**. The treaty obligations of the States Parties, bind all powers and organs of the state, i.e. , linked not only to the executive, legislative and judicial branches, but other branches of government and their officials to comply in good faith”.

Finally, Judge Hernandez criticized that Constitutional Tribunal for violating the concept of **non-retroactivity**. The principle of non-retroactivity of laws that restrict the rights of the governed is a norm of governance that renders predictable the expectations of the governed and those governing to avoid arbitrary execution of power. She added:

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<sup>5</sup> See her dissenting opinion in Spanish, <http://scharboy2009.wordpress.com/2013/09/26/voto-disidente-de-la-magistrada-isabel-bonilla-hernandez/>

Therefore, the Constitutional Tribunal cannot and should not conclude that the citizenship rights or any rights of Dominicans of Haitian descent can be taken away, restricted or reduced....[t]he principle of non-retroactivity of the law means that it operates to the future and cannot affect the legal consequences prior to enactment . That is, the law applies immediately and into the future, cannot affect the existence of acts or legal effects arising from prior law, except that the new law is more favorable' for its citizens.

Judge Hernandez concluded that the Dominican Constitution, until the reform of January 26, 2010 was silent regarding illegal resident aliens for purposes of nationality. As such, the Constitutional tribunal cannot reach back retroactively to apply such a law and deprive Dominicans of Haitian descent, their nationality.

The ruling elite of the Dominican Republic does not care about the blatant internal inconsistencies of the decision of the Constitutional Tribunal. It has historically maintained political power through a constant campaign of fear mongering, using Haitians and Dominicans of Haitian descent as scapegoats for past and present ills of the Dominican Republic and future threats of blackening its population and bringing down its economy.

We have stood idly by for too long. As in the period of Nazi Germany and the period of the Rwandan genocide, the Dominican Republic has long operated with impunity vis-a-vis respecting and protecting its Haitians residents and citizens of Haitian descent from arbitrary and malicious deprivation of internationally recognized rights to life, liberty, property and other human rights. For decades, Haitians and Dominican of Haitian descents have been super-exploited in the Bateys (sugar plantations) laboring for the private and public plantation owners in near slave-like conditions and dumped back to Haiti when they could no longer work. Now, it wants to cleanse the nation of Haitian blood.

Lest we forget, The Parsley Massacre must remain vivid in our mind so that we do not forget that it could happen again. Author Palash R. Gosh in his article, "The Genocide That Still Haunts Haiti-Dominican Relations," described the Parsley Massacre:

Under the brutal regime of the Dominican dictator Rafael Leonidas Trujillo Molina, in the fall of 1937, up to as many 20,000 Haitians (perhaps many more) were massacred -- many in the most horrific ways -- by Dominican soldiers and civilians wielding machetes, bayonets and rifles...

The bloody purge -- some would call it genocide -- occurred across only five days.

No Haitian (or dark-skinned Dominican suspected of being Haitian) was spared -- women and children were as mercilessly slaughtered as the men-folk.

Dominicans who tried to help Haitians escape the violence were also targeted for death...

During a speech at the border town of Dajabón, Trujillo spelled out his plan for the Haitians:

'For some months, I have traveled and traversed the border in every sense of the word,' he said. "I have seen, investigated and inquired about the needs of the population. To the Dominicans who were complaining of the depredations by Haitians living among them, thefts of cattle, provisions, fruits, etc., and were thus prevented from enjoying in peace the products of their labor, I have responded, 'I will fix this.' And we have already begun

to remedy the situation. Three hundred Haitians are now dead in [the city of] Bánica. This remedy will continue.<sup>6</sup>

### WHAT IS TO BE DONE UNDER THE CIRCUMSTANCES?

**The Constitutional Tribunal of the Dominican Republic has further legitimized the pre-existing conditions to usher in a major period of state-sponsored fascistic onslaught against Haitian people and Haitian-descended Dominican citizens. Haitians and Dominicans of Haitian descent have no rights that the state must respect. No one of us should be under any illusions that what occurred under Trujillo in 1937 cannot happen today. We cannot wait to act. We are calling on the Haitian People (both local and in the Diaspora), the Dominican People and the global community to defeat this state-sponsored ethnic cleansing of Haitian-descended Dominican citizens from the Dominican Republic by doing the following and more:**

- 1) Stand in solidarity in words and deeds with the Haitian-descended Dominicans, the natural leaders of this fight, one in which they have been engaged over a significant period of time by committing to collaborate according to their self-determined needs.
- 2) Call for action by the Inter-American Court of Human Rights regarding the September 2005 decision in *Yean and Bosico*.
- 3) Appeal for U.S. Diplomatic intervention. As of today, the U.S. State Department website homepage on Statelessness<sup>7</sup> reads in part as follows:

The Department of State provides humanitarian assistance and engages in diplomacy to prevent and resolve statelessness... The Department advocates on behalf of stateless people with foreign governments and civil society organizations, and conducts field monitoring of the conditions and challenges that stateless people encounter.

American citizens, demand that our Secretary of State, John Kerry, to bring the full force of his department's above-stated commitment to bear on this issue. *Please see links at this reference*.<sup>8</sup>
- 4) Demand that the United State grants Temporary Protective Status and Asylum to the Dominicans of Haitian Descent suffering persecution in the Dominican Republic.
- 5) Demand that the UN backs up its condemnation of the ruling of the Constitutional Tribunal and the on-going persecution of Haitians and Dominicans of Haitian descent as Ethnic Cleansing;
- 6) Demand that the UN declare that the Constitutional Tribunal's ruling and the actions of the Dominican Republic denying the Dominicans of Haitian descent are in violation of International Agreements against rendering people stateless;

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<sup>6</sup> <http://www.ibtimes.com/parsley-massacre-genocide-still-haunts-haiti-dominican-relations-846773>

<sup>7</sup> <http://www.state.gov/j/prm/policyissues/issues/c50242.htm>

<sup>8</sup> For more information, please see, e.g., <http://www.globalpost.com/dispatch/news/regions/americas/united-states/121212/stateless-refugee-citizenship-obama-second-term>; <http://cmsny.org/2013/05/28/the-stateless-in-the-united-states/>  
[http://www.crin.org/docs/DR%20Compromised%20Right%20to%20Nationality%20\\_IACHR%20report\\_.pdf](http://www.crin.org/docs/DR%20Compromised%20Right%20to%20Nationality%20_IACHR%20report_.pdf)  
<http://www.haitilibre.com/en/news-9595-haiti-diplomacy-official-position-of-haiti-on-the-dominican-decision.html>  
<http://www.unhcr.org/524c0c929.html>

Further, **Haitians should do the following:**

- 1) Demand that President Martelly direct the Haitian Ambassador to the UN to formally and publically request that the Security Council act to condemn the persecution of Dominicans of Haitian descent living in the Dominican Republic as violations of Human Rights, rendering them stateless, and demand that the DR come into compliance with international norms and standards or face sanctions;
- 2) Call for Haitians in Haiti and worldwide, and all people, to boycott everything Dominican.
- 3) Call for President Martelly and his government to accelerate the Reintegration of Haitians living in the Diaspora, including Dominicans of Haitian descent in the Dominican Republic, to help advance economic development of Haiti. Such Reintegration can be virtual, actual, 1% or 100%. To do so, President Martelly should set up several Blue Ribbon commissions made up of Haitians in Haiti and in the Diaspora from the various continents to work to do the following:
  - i. Serve as honorary Ambassadors to attract investments from outside the Country from anyone;
  - ii. Develop processes to implement the gains of the Constitutional Amendments granting Dual Citizenship to Haitians who have become the naturalized citizens of other nations and children of a Haitian Mother or a Haitian father born outside of Haiti to a Haitian mother or a Haitian father. This Blue Ribbon Commission would create and apply the regulations to register the “new” Haitians dispersed worldwide including the Dominican Republic. This Commission would work closely with the Martelly government to facilitate the “new” Haitians to get their national identification cards and to apply for passports.
  - iii. Engage in a major aggressive Public Relations Educational Campaign to facilitate the above and to help restore the dignity of our many of our Dominicans of Haitian descent now rendered stateless. It will not resolve the problem which is one of life and death. However, it helps to unify Haitians. Besides, those impacted in the DR include many who are the grand children and great grandchildren of Haitians born in Haiti. Nevertheless, in this urgent moment, the effort to register our people could yield extraordinary results and possibly some revenue which could be used to assist our people in the DR. The demand is for the government to act by decree now until the Haitian Parliament can achieve Quorum to pass legislation;

**The Haitian Diaspora worldwide and in the U.S. should demand the following**

- 1) That Haitians in every Country of the world, particularly those in the US, should begin to lobby our elected officials to demand the following:
  - i. That the Government of our host nations condemn this Constitutional Court ruling as a violation of international norms, treaties and Agreements on the protection of Human rights;
  - ii. That the Government of our host nations imposes trade sanctions against the Dominican Republic until there is conformity with international norms, treaties and Agreements on the protection of Human rights.
- 2) That Haitians in the US build coalitions with our friends and allies of the Congressional Black Caucus, the Latino Caucus, the Progressive Caucus, NAACP, Lott Carey and others to join us in the advancing the demands of Dominicans of Haitian descent;

**LET US STAND IN SOLIDARITY WITH THE HAITIAN-DESCENDED DOMINICANS  
IN THEIR FIGHT AGAINST ETHNIC CLEANSING!!!**