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Denationalization in the Dominican Republic: Trapping Victims in the State's Administrative Maze

Wendy Hunter* and Francesca Reece

Department of Government, University of Texas, Austin, Texas, US

*Corresponding author. Email: wendyhunter@austin.utexas.edu

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Abstract

The Dominican Republic retroactively stripped thousands of Dominico-Haitians of their Dominican citizenship yet managed to defuse international opprobrium over time. After a direct assault on people's citizenship status in 2013 provoked the human rights community's ire, the DR employed administrative obstructionism to maneuver around human rights activism and institutions. Policies instituted in 2014 appeared to offer a pathway for Dominico-Haitians to reinstate their citizenship yet were so administratively onerous that most of the affected population remains effectively stateless. Administrative obstructionism makes for an elusive target of attack because it unfolds across a series of decisions over time, transfers responsibility from a highly visible leader to dispersed and faceless bureaucrats, and is exceedingly difficult to monitor. Administrative obstructionism drags out proceedings, causing media attention to wither. Because international forces face special challenges in countering this strategy, a strong domestic opposition movement is necessary to sustain pressure on a rights-violating government.

Keywords: Dominican Republic; identity documentation; citizenship; denationalization

Resumen

La República Dominicana despojó retroactivamente a miles de dominico-haitianos de su ciudadanía dominicana, mas con el tiempo logró desactivar el oprobio internacional. Luego de que este ataque directo a la ciudadanía de las personas en 2013 provocara la ira de la comunidad de derechos humanos, la República Dominicana se valió del obstruccionismo administrativo para eludir al activismo y las instituciones de derechos humanos. Las políticas instituidas en 2014 parecían ofrecer una vía para que los dominico-haitianos restablecieran su ciudadanía, pero eran tan administrativamente onerosas que la mayoría de la población afectada sigue siendo efectivamente apátrida. De esta forma, el obstruccionismo administrativo es un objetivo esquivo de ataque pues se desarrolla a través de una serie de decisiones a lo largo del tiempo, transfiere la responsabilidad desde un líder altamente visible hacia burócratas dispersos y sin rostro, y es extremadamente difícil de monitorear. El obstruccionismo administrativo demora los procedimientos y reduce la atención de los medios. Debido a que las fuerzas internacionales enfrentan desafíos especiales para contrarrestar esta estrategia, es necesario un fuerte movimiento de oposición nacional para mantener la presión sobre un gobierno que viola derechos fundamentales.

Palabras clave: República Dominicana; documentación de identidad; ciudadanía; desnacionalización

In recent years, the Dominican Republic has retroactively stripped Dominican citizenship from tens of thousands of Dominican-born people of Haitian descent.¹ By any standard, denationalization constitutes a flagrant violation of human rights. Notably, however, when advocacy groups and Latin American legal institutions rose up in reaction to the assault on citizenship represented by Constitutional Court judgment TC 168-13 (La Sentencia), Dominican government officials neither backed down decisively nor overtly defied them. Instead, they deftly navigated the situation to preserve the essence of exclusion while conceding just enough to move the case off the front-page news. The policies put forth in a subsequent law (169-14) appear to offer a pathway for people to reinstate their citizenship but are in fact so administratively onerous that much of the affected population has been left effectively stateless. This case is concerning for what it implies about compliance with international human rights norms and for the practical outcome it has produced: the largest population of stateless people in the Western hemisphere.

“Administrative obstructionism” describes a contemporary strategy in which countries accomplish goals considered illegitimate by the international community in ways that limit criticism. The global trend of democratic backsliding exemplifies this strategy (Haggard and Kaufman 2021). Compared to more blatant methods of violating democracy, such as military coups and outright electoral fraud, governments are enacting measures like stiffening requirements for opposition party candidates and incrementally weakening institutional checks and balances. “On its own, each step can appear relatively inconsequential. Yet the outcomes add up” (Lindberg 2018). Eroding democracy rather than attacking it head-on creates a more complicated target.

Administrative obstructionism draws on the concept “administrative burden,” conceived to explain gaps in the uptake of US welfare policies (Moynihan, Herd, and Harvey 2014; Herd and Moynihan 2018). An alternative to overt policy making, administrative burdening refers to the costs—in learning, compliance, and psychological stress—that governments make citizens endure to gain access to public programs they are legally entitled to receive. Learning costs include acquiring information about programs, determining one’s eligibility, and figuring out how to apply. Compliance costs refer to time and money required to prove eligibility, complete forms, and satisfy other necessary transactions. Psychological costs, including frustration and feeling powerless, deter citizens from even applying to programs or wear them down before they succeed. An insidious aspect of administrative burdening is that rules couched in neutral language affect given populations differently. Their disparate impact tends to map onto broader patterns of socioeconomic inequality. Low levels of education and income render costs harder to pay (Moynihan, Herd, and Harvey 2014, 63).

Administrative obstructionism often includes “blame avoidance” (Weaver 1986), whereby rights-depriving officials deflect responsibility to other government agencies. Even if top elected officials appoint the heads of these agencies, the agencies provide political cover for poor policy implementation. Diffusing responsibility and scapegoating bureaucrats for complicating what are presented as otherwise decent policies constitute common examples of blame avoidance. This dynamic, coupled with the excessive costs placed on citizens, delays the resolution of human rights issues and induces media attention to recede over time.

The Dominican Republic is not the only country that has threatened the citizenship of nationals and sought to redefine the polity through less-than-transparent bureaucratic means, including by demanding citizenship-proving documents of those unlikely to have them. The ultimate aim in studying this single case is to identify causal mechanisms and processes that shed light on other cases (Gerring 2004). As the global rise of nationalism

¹ This article uses the terms *Dominico-Haitians* and *Dominicans of Haitian descent or ancestry* to describe Dominican-born people of Haitian ancestry. Other terms risk conflating Haitian descendants with Haitian nationals, a common practice that stems from widespread anti-Haitian sentiment.

puts citizenship norms at risk in a way not witnessed for generations, similar forms of hidden politics in other countries have allowed rights-violating governments to emerge as *de facto* victors (Institute on Statelessness and Inclusion 2020, 11). The Dominican case may therefore illuminate others. For example, the Indian government under Narendra Modi (2014–present) has tasked millions of Muslims with providing evidentiary proof that they are Indian citizens, an unrealistic demand in a country where a sizable share of the population lacks official papers. Similarly, the rollout of a new biometric ID system in Kenya that requires prior documentation has raised the controversial question of who is a Kenyan. Many ethnic Somalis with long-standing, multigenerational residence in the country (and who by Kenyan law are legal citizens) have been unable to muster the requisite evidence.

The story we tell focuses on the use of bureaucratic obstacles to deprive people of citizenship-confirming documents. Bronwen Manby (2020, 197) encapsulates well what the Dominican saga represents more broadly:

In the vast majority of cases, people deprived of citizenship have not been subject to any formal invocation of deprivation provisions in the citizenship law. Rather, they have simply been denied a document that confirms citizenship. Sometimes, they have never had such a document even though entitled in the law; sometimes officials have destroyed documents they previously held; sometimes a document is cancelled on the grounds that it was obtained by fraud; sometimes, there is just an indefinite delay in renewing a document that has expired, or a failure to take a decision. Thus, the methods most often used to denationalise a person are not to invoke the formal processes of deprivation, but simply to deny that he or she ever had citizenship to start off with and assert that any previous recognition was either in error or obtained by fraud.

Administrative obstructionism is an especially apt strategy for eluding international pressure because it tends to unfold across a series of decisions over time, transfers responsibility from a highly visible leader to dispersed and faceless bureaucrats, and is exceedingly difficult to monitor. Monitoring devolves into tracking individual cases and the myriad ways in which minute procedures go awry. Proceedings drag on, and media attention to the original rights violation inevitably withers. The difficulty that international actors experience in countering this strategy means that a strong domestic opposition movement, complete with on-the-ground legal assistance, is necessary to sustain pressure on a rights-violating government. This is lacking in many contexts.

Our contribution is both analytical and practical. In extending the Americanist public policy notions of administrative burdening and blame avoidance (“administrative obstructionism”) to the matter of denationalization, we suggest a way to think about how governments can commit violations yet limit criticism. Since the international human rights system typically responds to egregious “bright-line” violations, more subtle yet purposeful measures can defuse a conflict and reduce international attention over time. The employment of such measures appears to be on the rise globally.

We also seek to inform readers that the denationalized status of many Dominico-Haitians persists even though news coverage has dwindled. A collective resolution of the problem remains imperative, as lacking Dominican citizenship comes with serious adverse consequences, including being barred from formal sector employment, the electoral registry, some public schools (Alrabe et al. 2013),² and the public health system (Corbacho, Brito, and Osorio Rivas 2013). Fear of deportation is ever present, which can force Dominicans of Haitian ancestry to pay bribes to police and other state authorities (Amnesty International 2015). The situation is grave and enduring.

² Katherine Buckingham, Peace Corps volunteer in the Dominican Republic, interview with author, November 14, 2016, Austin, Texas, US.

Denationalization in an unlikely context

Despite long-standing tensions between the DR and Haiti, several factors make it surprising that the Dominican government engaged in efforts at denationalization. The strong standing of birthright citizenship in the Americas, the comparative strength of the Inter-American human rights system, and the DR's heavy reliance on tourism (and therefore the good will of the international community) could have been expected to inhibit the small Caribbean country from going down this path or compelled it to reverse course decisively after being criticized by international actors. Instead, the government pursued a more difficult-to-counter strategy of noncompliance through administrative obstructionism.

Located in a region unique for its widespread application of automatic and unconditional birthright citizenship, the Dominican Republic's historical observance of the *jus soli* principle dates back to the nineteenth century. Moreover, the American Convention on Human Rights, adopted in the western hemisphere in 1969, articulates an especially strong standard for the prevention of statelessness by stipulating that children who would otherwise be stateless must be able to acquire the nationality of the state in which they were born.³ Signatories include the Dominican Republic.

Moreover, the Inter-American system is generally considered as robust and effective as international entities get. A leading proponent, Kathryn Sikkink (2017, 13), writes that "countries in the Global South, especially in Latin America and Africa, have created regional institutions to protect and promote human rights while also enforcing these rights through national court decisions. The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights have produced some of the most far-reaching decisions on human rights issues." In her view, the interaction between civil society activists and the Inter-American system makes for an especially powerful combination (Sikkink 2017, 115). Many others, including the human rights lawyer Ariel Dulitzky (a member of the IACHR from 2001 to 2007), agree that the Inter-American system carries more authority than other regional court systems.⁴ Michael Camilleri and Daniella Edmonds (2017, 1) acknowledge that, while imperfect and under-resourced, "the IACHR has earned its reputation as the human rights watchdog of the Americas."⁵

Finally, the Dominican Republic lacks the geopolitical weight that is often associated with audacious challenges to international human rights norms. A small country in the Caribbean, it attracts more visitors than any of its neighbors (roughly 6.5 million annually) and collects over 10 percent of its GNP through tourism. All signs indicate that it seeks to expand the tourism sector, which would make it even more susceptible to international opinion and associated sanctions.

To be clear, we do not intend to offer a global statement on the effectiveness of the international human rights system.⁶ Rather, we draw attention to a strategy of noncompliance by which countries can sidestep human rights norms and institutions in ways that are difficult for even the most effective international legal bodies to successfully monitor and oppose, and that wear down activists and the media over time. This strategy entails purposely crafting remedies that place high administrative barriers between victims and solutions.

³ The Universal Declaration of Human Rights (1948, Article 15) asserted that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness gave further expression to these principles.

⁴ Ariel Dulitzky, director of the Human Rights Clinic, University of Texas School of Law, interview with author, April 22, 2019, Austin, Texas, US.

⁵ Others, however, such as Staton and Romero (2019), acknowledge that it has an uneven record of compliance.

⁶ We leave that debate to others, such as Moyn (2018), Posner (2014), Sikkink (2011, 2017), and Simmons (2009).

Nonrecognition and erasure of citizenship: A saga of administrative entanglements

The difficulties that Dominico-Haitians have experienced in navigating the country's bureaucracy—most notably the JCE (Junta Central Electoral)—have played a consistent and ongoing role in their marginalization. This section chronicles and analyzes these challenges. From the beginning of many people's lives and extending to their efforts to restore citizenship that was retroactively erased, Dominico-Haitians have done battle with the state. For decades, consistent with the concept of “blame avoidance” (Weaver 1986, 375), government officials have diverted responsibility for their plight to the JCE, the agency in charge of registering and maintaining the records of Dominicans and granting the identification documents necessary to confirm citizenship. It speaks volumes that political leaders continue to allow the JCE this responsibility, knowing full well that the agency (besides being under-resourced and incompetent) employs large numbers of registrars who arbitrarily turn away people with a rightful claim to state services.

As we could expect, the poorest and most marginalized Dominico-Haitians—residents of *bateyes*, shantytown camps constructed around sugarcane mills—experience the greatest difficulties in interacting with the state. Exceptionally limited schooling and income among this population hinder their ability to deal with the bureaucracy in general.⁷ Not having their (Dominican) births registered and certified puts them at a distinct disadvantage in trying to navigate the onerous administrative processes necessary to have their citizenship restored after 2014. Even their higher-status counterparts with official proof of having been born in the country have found it difficult to clear the requisite administrative hurdles and often fail to do so.

Despite long-standing hostilities between the Dominican Republic and Haiti, manifested in strong anti-Haitian sentiments held by many Dominicans (Contreras 2016) and expressed frequently by political elites to mobilize electoral support (Morgan, Hartlyn, and Espinal 2011; Lozano 2014; Mayes 2018; Haggard and Kaufman 2021, 22), the Dominican constitution of 1929 granted citizenship to the children of migrants based on the *jus soli* principle.⁸ It conferred citizenship on every person born in the country except for the children of foreigners present in a diplomatic capacity or otherwise “in transit,” a phrase that was not explicitly defined but was generally understood to mean passing through for ten days or less (Sears 2014; Román and Sagás 2017; Sagás 2017). Thus, for decades, notwithstanding their socioeconomic marginality, the Dominican-born offspring of migrant workers who had settled in the DR were considered legal Dominican citizens. *Jus soli* endured as the ruling principle of citizenship until 2010, when a new constitution abolished its automatic application (República Dominicana 2010).⁹

Even before this legal change, a long-standing problem was that many Dominican-born descendants of Haitian immigrants lacked official evidence of their birth in the country. This was the first administrative strike against them, because birth certificates are the principal means of identification for all Dominican nationals under the age of eighteen, at which age they must apply for voter registration and national identity cards (*cédula de identidad*). Contributing to underdocumentation was the poor state of public health services, which led many Haitian migrants to give birth at home (Riveros 2014, 70); faulty coordination between existing public hospitals and the JCE (UNICEF 2016a, 13, 19, 22–27); and sparse distribution of civil registry offices, especially in regions with high

⁷ The illiteracy rate among youth in the *bateyes* is approximately 20 percent and among those aged sixty and older closer to 40 percent (Hasbún Martínez 2014, 23). See also CESDEM (2015, 6–10).

⁸ See Thornton and Ubiera (2019) on the need for scholars of the DR to consider divisions beyond racial and national identity.

⁹ Since that time, babies born of parents who could not present a national ID card (*cédula*) have been unable to secure Dominican citizenship (Corbacho and Osorio Rivas 2012, 29; UNICEF 2016a, 26).

concentrations of Dominico-Haitians (Corbacho and Osorio Rivas 2012, 29; Riveros 2014). Impeding matters further were discriminatory practices among civil registrars, who often demanded bribes, requested extra-legal parental documents, and employed other arbitrary criteria for exclusion, such as Haitian surnames and accents (Riveros 2014, 69–70; Inter-American Commission on Human Rights 2015, 109, 112, 143). If these considerations made timely birth registration complicated, obtaining a delayed certificate proved even more challenging.¹⁰ The combined result of these practices was an exceedingly low rate of birth registration, especially among older cohorts born and raised in bateyes.¹¹

The story of codified exclusion begins: 2004–2005

A key development that pushed the documentation-citizenship linkage to the fore was a new framework of social protection that the Dominican government sought to implement in the early 2000s. Promoted by the World Bank and Inter-American Development Bank, conditional cash transfers made their way across Latin America in the first two decades of the twenty-first century. Everywhere, acceptance into these income-support programs depended on the state's recognition of applicants as citizens. In the DR, the process of collecting information on people's national origin and documentary status engendered a painful political reckoning over who was a citizen (Hayes de Kalaf 2019). A problem that became acutely evident—and that served as an official basis of exclusion—was just how many Dominico-Haitians had never received Dominican birth certificates and therefore could not readily prove legal citizenship. Even some who possessed them were questioned by authorities. The JCE was given total discretion in identifying and defining “irregularities” (Hayes de Kalaf 2019, 107), which often resulted in codifying the exclusion of Dominican-born people of Haitian ancestry. Notably, elsewhere in Latin America many poor people seeking to enroll in cash transfer programs lacked documentation, but most other countries took committed and proactive steps to try to register them (Hunter and Brill 2016; Hunter 2019).¹²

Concurrent with the expansion of document-dependent social welfare benefits, social unrest was growing and a political storm brewing. The 2004 presidential election occurred amid an economic crisis in the country and a violent coup in Haiti that caused thousands to flee across the border to seek asylum (Ribando 2005, 3). Candidates exploited anti-immigrant anger for political gain, including the eventual victor Leonel Fernández (president from 1996 to 2000 and again from 2004 to 2012), who referred to people of Haitian ancestry as a “threat to national security.” A new migration law was passed in this cauldron of nationalist politics. Law 285-2004 stipulated that newly arrived Haitian migrants, as well as those long settled in the country, would henceforth be classified as “nonresidents” (República Dominicana 2004). Additionally, all nonresidents past and future would be considered “in transit” indefinitely, challenging the understanding of that constitutional phrase as meaning ten days or less. Law 285-2004 thus raised the question of whether *jus soli* citizenship would apply in the future to children born in the

¹⁰ The Dominican Republic requires the physical presence of the father when registering a child if the parents are not married (UNICEF 2016b, 24) or if more than sixty days have passed since the birth. Late registration also comes with a financial penalty.

¹¹ A 1994 survey estimated that half of all residents in bateyes lacked any record of being born in the DR (Riveros 2014, 69). Later surveys estimated that between 22 percent and 25 percent of batey residents lacked birth documents (CESDEM 2008, 19; CESDEM 2015, 6).

¹² Even countries with low bureaucratic capacity such as Bolivia and Peru have engaged in successful outreach, including conducting mobile registration drives, bringing registration services to primary schools and local health clinics, and employing registrars who speak Indigenous languages to interact with their communities. Readily accepting baptismal certificates as evidence of parentage and place and date of birth has been a widespread practice in incorporating previously unregistered people into the civil registry. Relaxing fees and deadlines and not demanding official ID documents of parents to register children have also been crucial to break intergenerational exclusion.

Dominican Republic to migrant workers, as the then most recent 2002 constitution did not include any provisions for nonresidents and their children. The law went into effect in April 2007 with no clarification of status for the children of workers fully settled in the country but who were now considered nonresidents permanently in transit.¹³

Against the backdrop of dismal civil registration and political pushback against immigration, the first legal debate over what it meant for nonresidents to be in transit began when the DR denied late-issued birth certificates to two children of Haitian ancestry who in fact had evidence of having been born in the DR. In 2005, the Inter-American Commission on Human Rights received the initial complaint and, after determining that its severity warranted judicial application of the 1969 American Convention on Human Rights, forwarded the case to the Inter-American Court of Human Rights (IACtHR) for further judgment. In *Case of the Girls Yean and Bosico v. Dominican Republic*, the IACtHR held that, by reinterpreting the “in transit” clause to determine the nationality of the nonresidents, the DR was purposefully excluding Dominico-Haitians from their legal right to Dominican citizenship (Inter-American Court of Human Rights 2005).

Even before the *Yean and Bosico* ruling, however, the DR made the strategic decision to present the girls with birth certificates (Inter-American Court of Human Rights 2005). Fearing damage to the country’s reputation, yet doing the minimum to evade criticism, the government blamed the shoddy Dominican civil registry for overlooking the girls and fixed their individual issue by granting them birth certificates. Despite this concession, however, the IACtHR condemned the Dominican Republic for violating the cornerstone principle of birthright citizenship. Although the government awarded the girls additional reparations, it did not address the underlying structural cause of their deprivation or systematically work to improve registration services in the country. Therefore, despite the IACtHR’s condemnation, this strategy of “turning down the heat” by resolving cases on an individual level persisted in the events that followed.

Administrative obstructionism emerges as a strategy: 2006–2009

After the negative attention created by the *Yean and Bosico* case, the DR continued to discriminate against Dominicans of Haitian lineage, yet in a more subterranean fashion. Circular 017, a memo the JCE issued in 2007 with the acquiescence of the national government, prohibited the offspring of those in an “irregular migratory situation” from accessing any existing birth records. This policy was no doubt intended to target Dominico-Haitians: copies of the memo found in various offices had “foreign parents” crossed out and “Haitian parents” written instead as a reason for deeming records “irregular” (Open Society Foundations 2010, 11; Amnesty International 2015, 15).

A second policy, Resolución 12-2007, further restricted the access that Dominico-Haitians had to their government records by authorizing civil registrars to suspend any state-issued documents found to contain “irregularities” (República Dominicana Junta Central Electoral 2007). The policy suspended any birth certificates issued to children born in the DR whose parents lacked legal documentation at the time of their birth, effectively jeopardizing the citizenship of people whose legal status had never before been officially questioned (Inter-American Commission on Human Rights 2015, 78). Within one year of this policy, the vast majority of the suspended documents belonged to Dominico-Haitians (Open Society Foundations 2010, 13). This act of disenfranchisement led to a spike in media attention throughout 2007, which tapered off in 2008 when the Dominican government employed blame avoidance by holding the JCE and its incompetent, xenophobic officials responsible for the invalidations.

¹³ Hayes de Kalaf (2018) informs this chronology of events.

The JCE was the perfect agency to blame. Even before Circular 017 and Resolución 12-2007 were introduced, established procedures had effectively restricted identity documentation for Dominico-Haitians. The JCE was also notorious for issuing decisions without notice to those affected (Hartlyn 1990), a common practice of organizations that engage in administrative obstructionism. Additionally, after Roberto Rosario (president of the JCE from 2010 to 2016) took exclusionary practices a step further, it became more convenient to shift blame down the bureaucratic chain of command.¹⁴ The hoops that victims of discrimination had to jump through to successfully restore their rights, including trying to identify themselves to JCE officials after their identity documents had been invalidated, deterred many from even trying to appeal their case.

Administrative obstructionism employed fully: 2010–2015

Administrative obstructionism emerged in full force in the 2010–2015 period. Marking the start of this era was a new Dominican constitution, which stated explicitly that the children of migrants “illegally residing in Dominican territory” were excluded from jus soli-based nationality going forward (República Dominicana 2010, Artículo 18). But because it did not cover tens of thousands of people born in the DR before 2010, other, more underhanded means were developed to retroactively exclude them.

The single most egregious development came in September 2013, when the Constitutional Court issued a ruling (168-2013) in the case of Juliana Deguis Pierre, which established that the principle of undocumented migrants being permanently “in transit” would apply retroactively, since the 1929 Constitution (Tribunal Constitucional de la República Dominicana 2013). In other words, the court applied the “in transit” clause of the 2010 Constitutional amendment to Pierre and thousands of others born in the DR to bar them from Dominican nationality due to the undocumented status of their parents. Consequently, any Dominican-born descendant of migrants (since 1929), even with proof of birth in the DR, lost citizenship. Going back eighty-four years, the ruling affected some four generations of people. Thus it included not just the first-generation descendants of Haitian migrants but thousands of Dominican-born children of Dominican citizens thereafter. The retroactive nature of this judgment instantly created the largest population of stateless people (estimates of up to two hundred thousand) in the western hemisphere.

Resolution 168-2013 (*La Sentencia*) generated a dramatic spike in international media attention. This was the bright-line event that activated domestic and international opposition. Following the lead of the domestic human rights community, the United Nations High Commissioner for Refugees (UNHCR) and IACHR condemned it. Expats formed solidarity groups and began mobilizing protest movements, such as the We Are All Dominican movement in the United States. Legal scholars at leading US universities and human rights institutions published highly critical reports (De Vos 2013; Alrabe et al. 2013). The Caribbean Community (CARICOM) suspended the DR’s application for membership (Human Rights Watch 2015, 8).

Prominent international organizations such as Robert F. Kennedy Human Rights provided support to Dominican NGOs such as the Movement of Dominican-Haitian Women (MUDHA) and Reconoci.do. In turn, domestic NGOs served as an essential link between the community and international human rights bodies. Their roles have included providing insight into victims’ daily struggles and bringing their voices to the international stage. However, sustaining, much less expanding, the ranks of domestic activists proved difficult. A poll conducted in the DR by Gallup-Hoy in 2014 revealed that 62 percent of all respondents thought that *La Sentencia* was not anti-Haitian in nature, and 40 percent

¹⁴ According to a well-placed anonymous source, it was Rosario’s ties to the Leonel Fernández faction of the Partido de la Liberación Dominicana (PLD) that led him to tighten JCE procedures even further, with a likely motive being to prevent Haitian descendants from gaining the right to vote.

thought that children born in the DR of undocumented Haitian parents should not be considered Dominican (*Hoy digital* 2014).

The country came under further fire in 2014, when the IACtHR heard a case against the 2013 ruling. In *Case of Expelled Dominicans and Haitians v. the Dominican Republic*, the court found the 2013 decision to be in violation of international law, including the American Convention on Human Rights (Inter-American Court of Human Rights 2014). This ruling confirmed the UNHCR's view that backdating the "in transit" clause made those affected technically stateless and therefore violated international law. The IACtHR ordered that the DR honor its legal obligation to grant nationality to all born within its territory,¹⁵ including the children of Haitian migrants targeted by the 2013 ruling. The Dominican government reacted by withdrawing itself from the IACtHR's jurisdiction, a move that flew in the face of what would be deemed appropriate conduct by international society and was, in fact, illegal under the terms of the Inter-American agreement.

Concerned about possible tourism boycotts and jeopardizing the country's reliance on Petrocaribe for inexpensive oil, Dominican president Danilo Medina responded to the backlash by offering a possible pathway back to citizenship. His awareness of nationalist parties in Congress, which would need to approve the measure, and anti-Haitian attitudes within the JCE, which would implement it, constrained the proposal he ushered through (Díaz 2014; Jorge Prats 2018). Exemplifying administrative obstructionism, the plan set forth by Law 169-14 maneuvered the statelessness issue into a gray zone of compliance/noncompliance with international directives. As encapsulated by one author: "The details were confusing, but that was the point" (Katz 2018).

Law 169-14, commonly known as the Naturalization Law (República Dominicana 2014), divided the newly denationalized population into two groups—A and B—depending on previous documentary status. Group A consisted of those born in the Dominican Republic to "in transit" parents between 1929 and 2007, whose births had been recorded in the civil registry yet were now deemed "irregular" due to the "migrant status" of their parents. Group B, treated below, consisted of Dominican-born individuals (mostly of Haitian parentage) whose births were never registered, making them "undocumented migrants" under the new law. An audit of the civil registry going back to 1929 put some 55,000 to 61,000 people into group A.¹⁶ The stated intention was to "regularize" and restore their Dominican birth documents, putting them on a pathway back to citizenship. The government charged the JCE with annulling group A's original civil registrations, retranscribing those records, and reissuing documents to those it approved. Only about half of those in group A ended up receiving the documentation that restored their Dominican citizenship.¹⁷

Notably, even people in group A (generally of higher socioeconomic status than in group B) found the process frustrating. Their experiences exemplify administrative obstructionism. Reflecting learning costs, there was a glaring lack of information made available about how to proceed: many applicants found it nearly impossible to determine whether their existing documents were valid and how to proceed if they weren't. Later in the process, many could

¹⁵ Its legal obligation covered those born up to 2010, when the constitution changed the birthright citizenship provision.

¹⁶ The official Dominican estimate of group A is 55,000. The Congressional Research Service puts this number closer to 60,000 (Seelke and Margesson 2016), an estimate mirrored by the US Department of State (2017), CEJIL (2017), Amnesty International (2019), and IACHR (2019). In information requested by the authors, the UNHCR estimates group A as 61,049 people.

¹⁷ Amnesty International (2015, 27) reports that of the 60,089 registration certificates audited, 27,510 were authorized. The US Department of State (2017, 14), CEJIL (2018, 40), and Amnesty International (2019, 7) estimate that only about 20,000 from group A restored their citizenship. In information requested by the authors in June 2020, the DR's embassy in Washington, DC, lists the numbers as 24,890 approved, 27,735 transcribed but not approved, and 3,599 pending cases. The UNHCR contends that at least 35,000 persons in group A have not reacquired Dominican nationality.

not assess whether they were in the “authorized” or pending (“transcribed”) category (Inter-American Court of Human Rights 2019, 780). Compliance costs were financial burdens and work disruptions to visit different offices at various points in the application process (local civil registries and the JCE’s central office in Santo Domingo). Psychological costs weighed heavily on applicants, exacerbated by arbitrary and openly discriminatory treatment from JCE authorities at registry offices, which sometimes included requests for specific family identity documents beyond what Law 169-14 required.¹⁸ In a country with little legal aid, seeking assistance from a lawyer to get through the process requires resources that most applicants would have difficulty mustering.

If the learning, compliance, and psychological costs of Law 169-14 were high for group A, they would prove even stiffer for people in group B. The lack of solid legal evidence of their birthplace rests at the core of group B’s vulnerability, making their lot comparatively harder than for group A and bearing out the assertion that “*jus soli* prevents statelessness only where it is accompanied by meticulous and generally recognized documentation” (Price 2017, 28). The plan was to formally designate group B as foreigners and extend to them the possibility of applying for naturalization after two years. After registering as foreigners, they were to file documents to try to prove that they were born in and had spent much of their lives in the DR. Besides those born between 1929 and 2007, the affected included registered children born of undocumented parents between 2007 and 2010, since they had been listed as foreigners in the civil registry after 2007 (Sagás 2017, 10).

The precise number of people in group B is exceedingly difficult to determine because they have not been entered into the civil registry nor counted accurately in the census. Estimates vary significantly, with the official government figure being approximately 55,000 and some NGO numbers running as high as 180,000 to 200,000 (e.g., Human Rights Watch 2015, 12). Clearly, however, only a small fraction of the total number of individuals in group B applied for naturalization successfully, and even fewer ended up receiving papers to corroborate their Dominican citizenship. Those who received a new set of papers still need to go through the last step of becoming naturalized.

The onerous administrative requirements demanded of group B exemplify “politics by other means,” beginning with the sheer paucity of information made publicly available. Poor instructions and little outreach to relevant communities no doubt prevented many of those eligible from even applying. Delays in setting up application units and not opening offices in all provinces of the country created further challenges (Amnesty International 2015, 30–31). Cumbersome documentation requirements constituted a further impediment. Although the registration process itself was technically free, the financial costs involved in getting documents notarized, taking time to travel to civil registry offices, and sometimes even hiring legal assistance were significant for many applicants (Sagás 2017, 10). Additionally, people were required to register in a book for foreigners within 180 days of the 2014 law’s passage, obtain a migratory permit, and complete a burdensome two-year naturalization process with specifications such as a notarized testimony from a certified midwife or seven witnesses to prove birth in the DR—or whatever combination of items a bureaucrat arbitrarily requested (Wooding 2016, 110). Besides having to prove birth in the Dominican Republic, applicants needed to furnish a copy of a residence card, six photos, certificate of no criminal record, parents’ documents, and seven copies of the actual regularization application (Inter-American Court of Human Rights 2019, 786). Reports of unhelpful and even hostile notaries and registrars caused further psychological burdening on an already discouraged and weary population (Amnesty International 2015, 28–31, 34, 36–39). In sum, confusion and misinformation (learning costs); mustering documentary evidence, time, and associated expenses (compliance costs); plus frustration and despair (psychological costs)

¹⁸ The full set of overlapping burdens experienced by applicants are described well in Robert F. Kennedy Human Rights (2017, 32–39).

hindered most in group B from even applying, let alone successfully completing the naturalization process to restore their citizenship (Wooding 2016, 111). Those found ineligible for naturalization at the end of the two-year process hit a roadblock.

In other Latin American countries, the writ of *amparo* could be invoked by any persons who believe that their rights are being violated (Brewer-Carías 2009). Among lower income groups in the Dominican Republic, however, costs are prohibitive. A person would first have to know that such recourse is even possible, would need to possess a legal identity (which is precisely what they lack) to access the courts, and would need to have the material resources to seek legal counsel in a country where legal aid is highly deficient. In the few instances when the courts ruled in favor of plaintiffs' petitions for *amparo*, the JCE dragged its feet and effectively failed to comply.¹⁹ In sum, because it is expensive and JCE noncompliance is a common problem, *amparo* is an ineffective remedy for the vast majority of those seeking to acquire or regain their ID documents.

Voices of those trapped in the administrative maze of the Dominican state testify powerfully to these challenges. Accounts of learning and compliance costs are widespread. One individual (José), when asked if he appeared on the list of the nearly 55,000 that the JCE registered, went to his local government office and found he was not there. "I went to the *oficialía* in Santo Domingo and the hard part of the situation is that in the *oficialía* they don't know how to explain to you why my documents are invalid. What they suggested to me is to find a lawyer" (Robert F. Kennedy Human Rights 2017, 34).

Another individual had this to say:

The judge tells me that I can register my son if I go to La Romana to find the certification of my mother's identification card and they give me a number, they tell me the file it's in, what record, and everything. I go and I write and I don't find anything. Supposedly my mother had an old identification card that she believed was not a legal one. However she never tried to change the card or get a new one. So I went home to investigate. I went to my father, who was closer, to see what he could do, if he could find a birth certificate. When he went they told him no, they didn't want to give it to him. I've waited a year by now. (IACHR 2015, 89–90)

The psychological theme of being discouraged to the point of giving up pervades people's accounts. For example:

I went to apply for my identity card, and handed over my birth certificate. They took my application, put my name in the usual book, like any other Dominican, and told me to return in three months, which is the rule here, to get the identity card. But what happened? When I went back three months later, they began making excuses: that they were out of plastic, excuses, so many excuses. So much time went by and with so many excuses, I stopped going. (IACHR 2015, 109–110)

In the end, the process of denationalization set in motion in 2004 resulted in an estimated 200,000 people no longer being Dominican. By the time the initial registration period ended, only 8,755 people in group B had completed the initial steps necessary to obtain (or regain) Dominican citizenship. Of those individuals, some 6,262 were approved to go further in the process.²⁰ The more or less 2,500 remaining applicants were

¹⁹ Inter-American Commission on Human Rights 2015, 168; Felipe Fortines, National Subcoordinator of Reconoci.do and Dominican lawyer, interview with author, January 19, 2021, Zoom; Kacey Mordecai, staff lawyer for Robert F. Kennedy Human Rights and lead author of *Dreams Deferred*, interview with author, January 29, 2021, Zoom.

²⁰ See IACHR (2015, 14), Sagás (2017, 10), and Wooding (2018, 16).

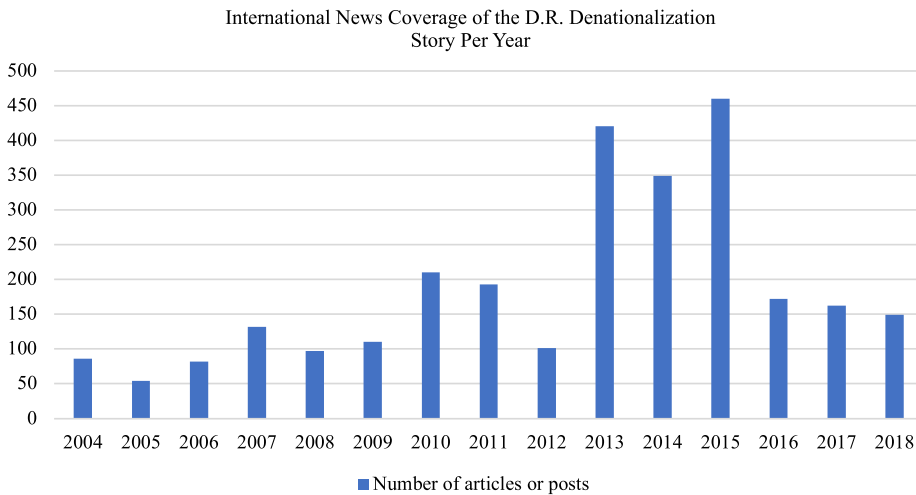


Figure 1. International news coverage of the DR denationalization story. Based on a search of Nexis Uni news archives database; search terms *Haiti* and *Dominican Republic*, January 1, 2004–December 31, 2018; search of results with search term *migrant*.

placed on hold mainly because of their inability to present all of the required documents.²¹ Although the DR extended the application period (from 90 to 180 days) for those placed on hold, only 550 more managed to complete their files. Dominican authorities reported that by November 2017, 5,401 people had received birth certificates and permanent regularization cards. By July 2020, only 750 individuals in group B had made it through the final step.²²

Even if all of the original group of 5,401 applicants were to make it through, this number would represent but a tiny fraction of the total number of people in group B. The pathway back to citizenship has been so fraught with administrative entanglements that it has effectively kept tens of thousands of persons in legal limbo, at risk of deportation, and unsure of what to do. As almost none of them is a Haitian citizen either, they have no other nationality to fall back on.²³ For those who did not initially access the registration procedures set out in Law 169-14, there is no other pathway to regain Dominican nationality (United States Department of State 2015, 23).

Strategy success: Going off the international radar, 2016–present

Stepping back from the details, the picture that emerges is that Dominican state officials methodically chipped away at the citizenship rights of Dominican-born descendants of migrants beginning in 2004. Since the slippage of citizenship status was gradual, human rights groups did not immediately address the problem. The issue garnered a substantial amount of international attention only when the most egregious abuses of power occurred, particularly in 2013. As the sharp downward turn in media coverage in the years following 2015 reflects (see figure 1), advocacy groups and organizations have lost steam

²¹ This comes from personal communication with the UNHCR division that works with the DR.

²² “República Dominicana da la nacionalidad a 750 descendientes de haitianos,” *Listin Diario*, <https://listindiario.com/la-republica/2020/08/09/630018/republica-dominicana-da-la-nacionalidad-a-750-descendientes-de-haitianos>.

²³ Dominican officials maintain that Haitian descendants can conceivably apply for Haitian citizenship under the jus sanguinis principle. For various reasons, legal and logistical, this is far easier said than done.

on the issue because the Dominican government halted the most flagrant abuses. The 2014 law deprived activists and journalists, who thrive on high drama and crises, of necessary fuel for at least two years while the burdensome bureaucratic procedures it established unfolded.²⁴ This time span virtually guaranteed that the international media would move on to other crises and would not return to the issue until another flagrant human rights violation occurred.

A sharp uptick in media coverage between 2013 and 2015 represents the height of attention paid to the denationalization of Dominico-Haitians. After the period to register as “foreigners” ended, the government expelled thousands of Dominicans of Haitian descent (Dominicanos por Derechos 2018, 12; Ahmed 2015; Human Rights Watch 2015, 29–30). In the wake of the renewed media outcry over the 2015 expulsions, the DR suspended deportations later in the year—yet another tactical concession that succeeded in reducing unwanted international attention from 2016 onward.²⁵

A time line encapsulates the major events in the denationalization saga:

- 2004: Codified exclusion of Dominico-Haitians begins.
Law 285-2004 creates “nonresident” designation for migrants, making the citizenship status of future children of migrants unclear.
- 2005: Inter-American Court of Human Rights (IACtHR) rules in *Yean and Bosico vs. República Dominicana* that the DR intentionally excludes Haitian descendants from citizenship via the new nonresident designation.
- 2007: Administrative obstructionism emerges.
March: Circular 017 issued, allowing officials to prohibit migrants and migrant descendants from accessing their government records.
December: Resolución 12 issued, allowing officials to suspend “irregular” identity documents.
- 2010: Administrative obstructionism fully employed.
New constitution excludes the future children of undocumented migrants from birthright citizenship.
- 2013: The Dominican Constitutional Court ruling—TC-168-13 (La Sentencia)—backdates to 1929 the exclusion of the children of migrants from birthright citizenship, rendering hundreds of thousands of migrant descendants stateless.
- 2014: May: Law 169-14 passed to allow migrant descendants the opportunity to reestablish Dominican citizenship through a registration and naturalization process.
August: The IACtHR finds that the 2013 ruling (La Sentencia) and 2014 Naturalization Law violate the rights of Dominico-Haitians.
November: The DR withdraws from the Inter-American Court’s jurisdiction and proceeds to implement Law 169-14.
- 2015: Deportations of Haitian migrants and descendants begin after the registration period for Law 169-14 concludes. Deportations subside later in the year.
- 2017: Administrative obstructionism limits successful restoration of citizenship.
Approximately 20,000 of the 55,000–60,000 in group A were issued new documents that restored their citizenship under the terms of Law 169-14.
Some 6,000 of the roughly 8,500 individuals who applied (of an estimated 55,000 to 180,000 individuals in group B) were issued the documents necessary to take the final step toward naturalization under the terms of Law 169-14. Roughly 750 people in group B eventually were naturalized.

In principle, the 2014 law provided a pathway back to citizenship for people in both groups, allowing the DR to get closer to being within the boundaries of international

²⁴ Yanilda María González, activist of We Are All Dominican, interview with author, September 14, 2016, Skype.

²⁵ Ariel Dulitzky, interview.

law and defuse international opprobrium. The 2014 law certainly allowed some people to regain citizenship, as even Amnesty International acknowledged and the JCE president Rosario Márquez emphasized in a public address—yet with no recognition of the difficulties involved.²⁶ At the same time, its enactment fell far short of providing a solution for most victims of La Sentencia. The process that it established was intentionally burdensome, treated people as undocumented migrants in their own country, and, even if completed, did not guarantee success. The administrative maze it designed was difficult to navigate for many in group A and most in group B. The complexity of the procedures and inconsistency in the reported numbers of affected people rendered it difficult for civil society organizations to even relate clear facts when reporting to the Inter-American human rights system (Wooding 2018, 16). Because the devil lay in the bureaucratic details, it was and remains difficult for international human rights organizations to continue to monitor and contest the matter.

Reflections on the Inter-American human rights system

International human rights activism, besides being unable to stop a rights-violating country from engaging in administrative obstructionism, faces an additional complication. The Inter-American system observes the widely practiced “doctrine of exhaustion of remedies,” which mandates that claimants must exhaust all lower legal avenues of complaint before their claim can be considered by a higher court (International Justice Resource Center 2018). Only a restricted set of conditions allows petitioners to move to the Inter-American system for adjudication before they exhaust all lower legal avenues. By dragging its feet and obstructing citizenship restoration, the Dominican government can slow down the escalation of domestic appeals to the international level, as in the *Expelled Dominicans and Haitians* case in 2014. That case was only heard by the IACtHR because, at the time the complaint was filed, Law 169-14 had not yet been implemented and therefore the first exception to the doctrine of exhaustion of remedies applied (“the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated”). The processes established by Law 169-14 rendered that exception no longer applicable, forcing complaints to remain mired in inadequately resourced domestic legal channels unless claimants can prove that domestic avenues are futile—an effort that can go down a Kafkaesque path when administrative obstructionism is in play.

What does this say about the Inter-American system’s capacity to produce outcomes superior to those that would reasonably be produced by domestic institutions? Although the DR’s 2014 “corrective” was issued largely due to international legal advocacy, there is a clear limit to what relevant international legal institutions can do beyond exert pressure (Martínez 2014, 91; Mordecai, interview). Given how administratively burdened the target population is by the 2014 law and what little legal recourse they have, such as the inability to mobilize the *acción de amparo*, it is not surprising that Inter-American directives and norms could not prevail over the Dominican government more decisively.

Even if core hurdles are cleared—a domestic group mobilizes, activates a transnational network, exhausts all domestic remedies, files a petition with the IACHR, has its claim forwarded to the IACtHR for adjudication, and elicits a rebuke of the government from the Inter-American system—a definitive collective resolution to mass statelessness would prove elusive, even in a region thought to be comparatively conducive to safeguarding human rights. As demonstrated, the types of administrative concessions that elude current

²⁶ “Presidente JCE Rosario Márquez dictó la Conferencia Magistral: ‘Apatridia en la República Dominicana,’” Junta Central Electoral, January 21, 2015, <https://jce.gob.do/Noticias/rosario-marquez-dicto-conferencia-magistral-apatridia-en-republica-dominicana>.

enforcement mechanisms make it very difficult for international human rights forces to triumph over the de facto victories of domestic governments.

In all, despite the Inter-American system's ability to issue "some of the most far-reaching decisions on human rights" (Sikkink 2017, 13), there is little it can do now that the Dominican government has covered itself, however minimally. Moreover, backlog in the legal system effectively paralyzes progress. Skillful noncompliance can "work," and governments can exploit shortfalls in the system. Whereas some might regard the DR's noncompliance as incidental—due to the lack of a strong activist network, no incentive to move beyond tactical concessions, and the short attention span of the international media—it was arguably quite purposeful.²⁷ Those factors were only influential because of governmental strategies to erect onerous administrative roadblocks, divert blame, and defuse outcry. Consistent with this picture of ill intention was the government's use of administrative processes to screen out Dominico-Haitians, its reference to them collectively as "foreigners" even before determining people's individual status, and its insistence on staying the course when it became clear that most victims could not meet the requirements to restore their citizenship. This case thus serves as a corrective to an overly triumphalist perspective on the Inter-American system.

Conclusion

A core takeaway from this analysis is that countries can deprive victims of fundamental redress and get away with serious abuses by moving them into a gray zone, especially if media coverage cannot be kept alive and legal support for victims is lacking. The 2014 naturalization law, marketed as a corrective to the 2013 Constitutional Court ruling, offered no real solution for the largest group affected. Even given the tradition of birth-right citizenship and the Inter-American human rights system, the small Caribbean country did not back down decisively when criticized after enacting *La Sentencia*. Instead, it successfully used administrative obstructionism to keep many from restoring citizenship. The issue has died a slow death as activism and news coverage have faded. Inaccurate perceptions that denationalization has been "reversed" deprive victims of visibility. According to Elena Lorac, the national coordinator of Reconoci.do, "The state does not recognise that there is a problem to be solved. Today our struggle is much more complex than it was at the beginning because now there is a feeling that the situation has been resolved, but it has not."²⁸

Theoretically, we have problematized a strategy that governments can use to deflect international criticism and uphold sovereign decision-making. Administrative obstructionism is most likely to be used by governments that are susceptible to international norms, when the preponderance of pressure comes from outside the country and relevant norm-carrying institutions lack strong monitoring capabilities. It is far more difficult to monitor individual cases and call out countries on administrative manipulations rather than on the law. Relatedly, it is harder to address a series of incremental decisions than to attack a dramatic, bright-line event. Moreover, after a violation has shifted from the realm of high officials to lower levels of government, international forces experience more difficulty in targeting blame. Under such circumstances, a partial concession can serve to diminish international pressure.

²⁷ The objection is not to the DR's effort to cut back on automatic birthright citizenship per se but to the manner in which it was done. France, Ireland, Australia, and New Zealand have eliminated unconditional birthright citizenship in recent years, yet none has done so with a retroactive component (Sears 2014, 436–437).

²⁸ "Dominican Republic: 'We Are Part of a Global Anti-racist Movement,'" CIVICUS interview with Elena Lorac, August 13, 2020, <https://www.civicus.org/index.php/media-resources/news/interviews/4562-dominican-republic-we-are-part-of-a-global-anti-racist-movement>.

An explanatory framework based on administrative obstructionism applies to other issues and countries. Governments around the world are taking furtive and incremental steps through processes of democratic erosion and backsliding to constrain autonomous actors from engaging in full political contestation. In this nationalist era, the same is no doubt happening to deprive people of their rightful citizenship; we are likely to see strategies similar to the ones analyzed here unfold across the globe.

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Wendy Hunter, Professor of Government at the University of Texas, Austin, has written on broad-ranging topics concerning Brazilian politics. She is currently researching the relationship between identity documentation, individual social and political protection, and group empowerment in the Global South. She is the author of *Undocumented Nationals: Between Statelessness and Citizenship* (2019), and articles in *World Politics* and the *Journal of Development Studies* on birth registration and welfare enhancement.

Francesca Reece graduated from the University of Texas, Austin, in May 2019 with a BA in Plan II Honors and Government with Highest Honors. She is a manager in the Intelligence and Counterterrorism Division at the Texas Department of Public Safety.

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