

UPHOLDING BIRTHRIGHT CITIZENSHIP IN THE DOMINICAN REPUBLIC

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I. INTRODUCTION

*La cédula es dominicana, pero tú eres haitiano*¹

Many decades of unregulated migration of Haitians who have come to live and work from the neighbouring country have resulted in a significant population in the Dominican Republic (DR) whose status is uncertain, and who are vulnerable to widespread discrimination and abuses of human rights. Successive governments of the three principal political parties² have virtually failed in the task of introducing a legal framework compatible with international norms. Nor have they responded effectively to the notorious and well-documented abuses on the part of migration officials, the security forces, the Central Electoral Board (the authority responsible for the issuance of birth certificates and identity documents to those born in the country), as well as education and health authorities.

Powerful groups of the private sector have a vested interest in maintaining an unregulated flow of cheap and docile labour in agriculture, construction, and tourist resorts. The problem is complicated by the deep-rooted and ubiquitous prejudices in the Dominican people, especially amidst the oligarchy. The perception is that Dominican identity is European and above all Hispanic in spite of the fact that Dominicans have important African roots. These attitudes towards Haiti and Haitian immigrants have their roots in the past, when the Dominican Republic in 1844 separated from Haiti after twenty two years' occupation by the latter. Dominican xenophobia had its most violent expression in 1937 when the dictatorship of Rafael Leonidas Trujillo (1930–1961) ordered the military to carry out a massacre of Haitian nationals and Dominican-Haitians in the border provinces and it is calculated that some 6.000 people were killed.

Beyond these historical realities, mainstream and revisionist currents of scholarship diverge on anti-Haitianism and the rights claims of Haitian-ancestry Dominicans. Much scholarship on Haitian-Dominican relations, together with journalistic and international human rights monitor reporting holds that most Dominicans are anti-Haitian (Martínez 2014). This view presents the two peoples as in permanent struggle, as metaphorical fighting cocks as one author puts it (Wucker 1999). Thus the “fatal conflict model” (Martínez 2003), posits that anti-Haitian feeling has for generations pervaded all strata of Dominican society (Howard 2001, Sagás 2000). Some cultural anthropologists have challenged this supposedly all-pervasive trend towards unmitigated conflict, especially in relation to the cross-border zone (Murray 2010). Most recently, a literary scholar has produced a further corrective to the broad brushstroke anti-Haitian school of thought, which offers the most richly nuanced study of the Haitian-Dominican border to date, focussing on the politics of border crossing (Fumagalli 2015). Over fifty years after the overthrow of the Trujillo regime, xenophobia and racism are much less prevalent and virulent but there is still widespread ignorance and prejudice, especially when provoked by extremists for domestic political ends. Political leaders are reluctant to take a lead on the issue of Haitian migration for fear of being accused of betraying national interests.

The reluctance of most political party leaders to address the question, and the ambiguous attitudes of private sector interests, many of which depend on migrant labourers, have placed particular responsibility on civil society practitioners in the human rights movement, both internationally and in the country. This movement originated in the 1980s in the campaign against the abuse of the migrant cane cutters. It continues today but has broadened the focus to encompass Haitian migrants and their descendents in the country as a whole. One notable change in the movement in recent years is that Dominican Non-Governmental Organizations (NGOs) have played the leading role, with international partners providing support, rather than vice versa. Noteworthy has been the use of strategic litigation, including so-called emblematic legal cases, which may (and have) resulted in landmark judgments (Wooding and Moseley-Williams 2004:80). A prime example of the confluence of local civil society and international human rights organisations successfully combining efforts is the girls Yean and Bosico vs Dominican Republic sentence handed down from the Inter-American human rights system (IACtHR 2005), generating regional jurisprudence on the right to nationality. However, mixed results in the DR including partial compliance (and even backlash in some instances)

suggest legal successes are a necessary but insufficient means for obtaining lasting change (Kristensen and Wooding 2013). Other factors have considerable weight, too, if discrimination and statelessness for persons born of Haitian ancestry in the DR are to be successfully challenged. These include: a broad empowerment of the population affected; and, achieving more favourable public opinion on the ground towards their plight.

This article argues that the “culture of disbelief” which prevails as regards rights compliance for Haitian migrants and their descendants on the part of the rights holders themselves and the duty bearers mitigates against sustainable solutions being found. Following Anderson et al. (2014) I understand a “culture of disbelief” to emerge when various structures and agents, with varying capital, combine to create a “negative decision making environment.” These negative decision making environments generated by distrust between rights holders and state authorities, have been dominant in the various state institutions where rights holders have met state authorities to claim their rights.

Exclusion which began as informal denial of nationality at the point of birth registration, has deepened to include formal deprivation of Dominican documents for persons of Haitian ancestry who had obtained these.³ In what follows the interplay between the state sovereignty take on the matter and civil society contestation is examined, highlighting the lack of significant progress for stateless persons or nationality-stripped persons over the last two years, despite official rhetoric to the contrary.

The article is chiefly based on the author’s research and lived experiences on the ground in Santo Domingo, heading up a Centre for Applied Research on Migrations and Social Development in the Caribbean (OBMICA), which advocates in favour of migrants and their families, as a key factor for development, the strengthening of democracy and inclusive citizenship. An initial section summarises the sequel to Sentence 168-13, understood as a “focusing event”, and sets the scene for the three parallel processes with which civil society actors have had to engage since September 2013. Three subsequent sections discuss these three respective processes against the back drop of a “culture of disbelief”. A final section looks at the perspectives for advancing the rights of migrants and their descendants, building on the lessons from the previous two years.

II. SENTENCE 168-13 AS A FOCUSING EVENT

After a decade of increasingly restrictive measures being introduced on migration and nationality matters in the DR (General Migration Law 285-04⁴, administrative resolutions 012-7 and 017-07 from the Central Electoral Board⁵ and a new Constitution in 2010⁶), in September 2013 the Constitutional Tribunal released its judgement 168-13, which orders that anybody born in the DR to irregular migrants since 1929 should be denationalised.

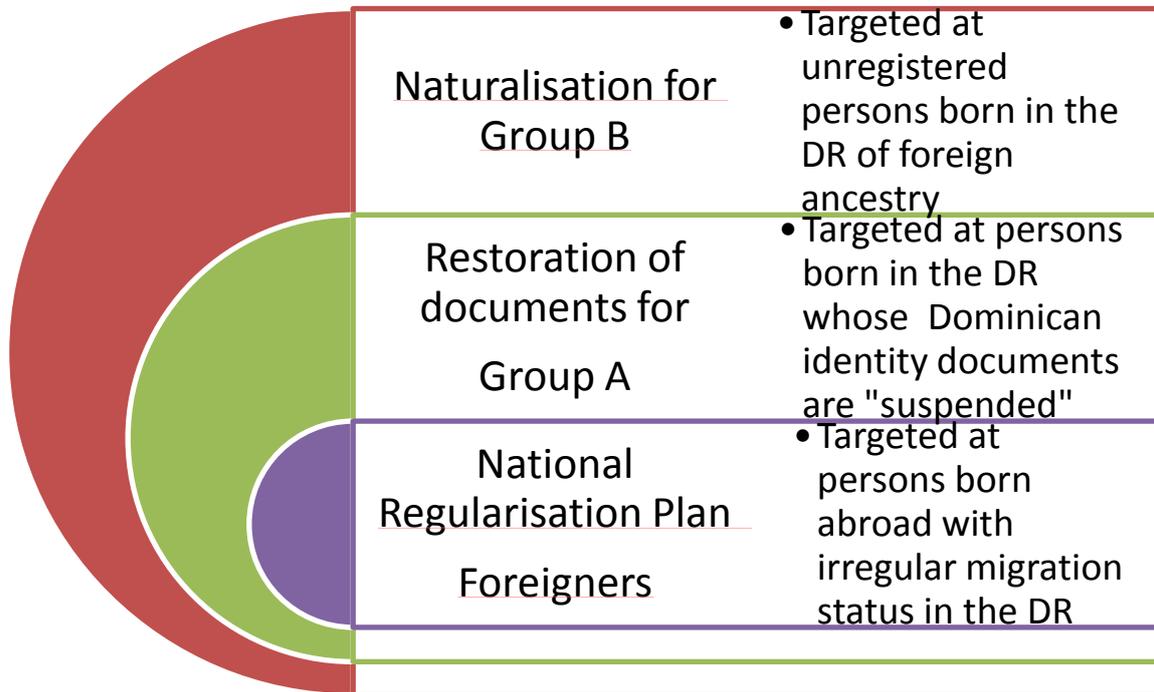
Fine (2013:53) observes that political scientists define a focusing event as a sudden and dramatic occurrence, like a natural disaster or some other kind of external shock to the status quo. As she remarks, the Haiti earthquake in 2010 was just such a sudden event. On the one hand, because of its scale, it generated an unprecedented solidarity with Haiti from many sectors in the neighbouring DR. On the other hand, there was a slight increase in cross-border migration as a result (ONE 2013).

Jan Váně, uses a more expansive definition of the concept as follows: "In a broader sense and when talking of subjects under study, focusing events may be defined as events which draw attention to problems" (Jan Váně, 2012:6). It could be argued that Sentence 168-13 is a focusing event with consequences of a very different nature to those of the Haiti earthquake, insofar as, in highlighting an elitist entrenched resistance to realising the right to Dominican nationality for persons of Haitian ancestry, it whips up anti-Haitianism latent in some sectors of society whereby conservative groups promote ultra-nationalism, often to the detriment of rights compliance for Haitian immigrants and /or Dominicans of Haitian ancestry born in the DR. The controversial nature of the judgement may be evidenced by the level of national and international media coverage in its immediate aftermath. According to one compilation, between 25th September and 25th November, in just two months, the Sentence gave rise to 421 publications, 77 editorials and 295 feature articles in the main written media in the DR and also taking in some key international media.⁷

At the end of 2013, in spite of national and international outcry over the crisis of statelessness which was unfolding, the Constitutional Tribunal evacuated two similar sentences in the same vein as 168-13 in the same month in which the Inter-American Human Rights Commission (IACHR) arrived to investigate the impact of sentence 168-13. Reporting by local human rights defenders to the *in loco* visit of the IACHR in December 2013 to the Dominican Republic was comprehensive (including 3.994 complaints, testimonies and petitions presented to the Commissioners on statelessness matters, IACHR 2013) and followed up in the March 2014 hearing in Washington DC on the question of

statelessness and the Dominican Republic. This was the sixth hearing on the same issue granted by the Inter-American human rights system since 2008 in an attempt to promote spaces for dialogue between concerned civil society and the Dominican authorities.

External and internal pressure generated by the sentence⁸ led the Government to take a series of actions to affirm its sovereignty on migration control and the right to nationality but with some limited concessions to human rights defenders. As mandated by the Sentence 168-13, a decade after the adoption of the 2004 Migration Law, President Medina decreed the National Regularisation Plan for Migrants with Irregular Status (PNRE in Spanish). In May 2014 the Government then proceeded to divide the denationalised population into two groups, under Law 169-14: Group A whose documents were to be restored and persons of Group B whose birth was never registered, were to sign up as foreigners with the possibility of applying for naturalisation after two years. Since mid-2014 up to the present, the Dominican Government has been implementing the three parallel processes: regularisation of foreigners with irregular migration status under PNRE; partial restoration of identity documents for descendants born in the DR (Group A) and register of un-registered descendants (Group B) in a special foreigner's book, the two latter under Law 169-14.



III. THE NATIONAL REGULARISATION PLAN (PNRE)

In this section,⁹ focus is on the first legislative measure adopted as a sequel to Sentence 168-13, namely the Regularisation Plan (PNRE), decreed in November 2013. I argue that engagement with each of these three parallel, different but inter-related processes (see above graphic) on the part of concerned civil society actors, is practically non-negotiable in order to demonstrate legitimacy as willing interlocutors with the State and its functionaries, not least in the search for more durable solutions. Nevertheless, the uncertainty generated by many of the authorities as to how these processes are carried out combined with the mistrust of many of the supposed rights holders means that the net results, as of mid-2015, are paltry. After explaining the background to the PNRE, the execution of the Plan is considered from a lens of the "culture of disbelief", as a means of helping to explain its paltry results. Finally, the knock-on effects for the two processes being developed simultaneously under so-called Naturalisation Law (Law 169-14) are noted.

According to the first National Survey on Immigrants, ENI 2012, 87,7 per cent of immigrants to the DR arrive in cross-border migration from Haiti. Riveros (2013) details the principal demographic and socio-

economic characteristics of Haitian migrants derived from the National Survey (ONE 2013), especially as regards age and gender. This immigrant collective is mainly masculine (64,4 per cent) and young (with 53,9 per cent between 20 and 34 years old). That said, there has been a ten per cent increase in female migration from Haiti over the last decade. Riveros alludes to the education and labour profile which show marked differences between Haitians and migrants from elsewhere. For example, only 5,9 per cent of Haitian immigrants had been to University as against 46,9 per cent from other countries. Likewise, Haitian immigration has a greater presence in the informal sector (78.68 per cent) and agro (35,7) as compared with 2,8 per cent from other countries (Riveros 2013:58).

There is consensus between progressive and conservative sectors alike as to the need for the PNRE, recognising that DR is the only country in the Americas which has never had such a plan but has such a significant number of migrants with irregular status. Dominican civil society took a pro-active stance and approached the authorities from early 2014 with a view to cooperating and, indeed, sharing suggestions as to how to incorporate a gender perspective and best practices from other regularisation experiences in the Americas.¹⁰ For their part, the competent authorities, executives of the Ministry of Interior and Police, were initially most enthusiastic, too, especially when – in their initial schema of things – those tens of thousands of persons denationalised under the sentence 168-13 would be obliged to register as foreigners. As will be seen, because of large-scale protests, the implementation of the sentence was not carried out exactly as its architects would have wished on this latter point, due in part to Law 169-14 being adopted in May 2014.¹¹

Recognising the significance of perceiving disbelief as a culture, I consider Bourdieu's (1990) concepts of 'habitus', 'field' and 'capital', rehearsed in his book *The Logic of Practice*. Bourdieu positions culture as an object of study by examining behaviours and ways of thinking, or practices, within specific, overlapping fields. In each field, actors engage in struggles with differing levels of economic, social, symbolic and cultural capital. A habitus emerges from the field in a cyclical concert of structure and agency.¹² Bourdieu's ideas provide conceptual tools that enable us to move beyond a monolithic conception of culture. The *Gobernaciones* (local Government offices) or other places where Dominican-Haitians attempted to get their papers are sites of cultural production, in which actors with different types and levels of capital 'struggle' over the resource of recognition. This culture, or habitus,

emerges when various structures and agents, with varying capital, combine to create a 'negative decision-making environment.'

The local government offices had been open for business with many deficiencies, including under-trained staff and weak computer systems, and reflected in the low numbers of persons who are able to resolve effectively their documentary status. Originally these installations were intended to cope exclusively with Haitian immigrants but when Law 169-14 began to be implemented (see below), they were also used for a period of six months for unregistered persons of foreign ancestry. Although DR managed to establish 24 of the 32 (provincial) Registry Centres announced initially to facilitate the PNRE process, these could only attend limited quotas each day such that it was necessary to queue up from dawn to get a turn, which could often only be obtained through a pay-off.

Owing to the complexities of the requirements, the majority of the persons who applied for the Plan had to go at least five or six times to the Regularisation Centres. Other difficulties signposted were "the lack of information for a dispersed population, with little access to the media and low education levels". Also, although the process was supposedly free of charge, the immigrants "had to notarise even the receipts from electro domestic goods and in many cases pay "bribes".¹³

Different estimates coincide in showing that everybody who applied for the Plan had to have at least 8.000 Pesos (around US\$ 180) to cover the tax costs of legalisation and notarisation of documents, as well as the 'tips' in order to obtain a turn or indeed obtain certain documents.¹⁴

For its part, in support of the PNRE, Haiti initiated operations of its so-called Programme for the Identification and Documentation of Haitian Immigrants (PIDIH) with considerable delay, despite the decree to operationalise it coming out in January 2014.¹⁵ Haitian authorities only managed to set up five centres, including one in Barahona in the southwest of DR from April 2015 – a few days before the registration for the PNRE was set to finish. Some 45.000 persons managed to register but only five per cent of these received their passports before the registration process for the PNRE was finalised on June 17th 2015.

Moreover, within the space of one year, Haiti 'lost' two Haitian Ambassadors based in Santo Domingo for diametrically opposite reasons, but both, paradoxically, returned to Port au Prince because of the (mal)functioning of the PIDIH. Civil society organisations were able to positively influence the Haitian Government to reduce significantly the cost of the trio of documents they would provide (birth certificate,

identity card, and passport), but the authorities were unable to keep pace with the demand. A coalition of migrant groups and trade unions (*Coordinadora Justicia y Derechos Humanos*) kept up constant pressure as to progress with regularisation, getting considerable media coverage. Following a demonstration by migrants and unionists outside of the Haitian Embassy on International day for Social Justice (2nd February 2015), alleging that the Haitian authorities were not being sufficiently robust in consolidating the documentation programme, the Haitian Ambassador, Fritz Cinéas, was recalled.

Barely six months later, his successor, Ambassador Daniel Supplice, was forced to leave office having been undiplomatically critical about the limitations of the PIDIH, as he perceived them, believing as he did that back-up had been wanting from Port au Prince. It could be argued that a "culture of disbelief" was manifest not just in the interaction between the Dominican authorities and irregular Haitian immigrants conducive to an environment of negative decision-making but equally as evident in the interaction between undocumented Haitians and their authorities.

A total of 288.466 foreigners of 23 nationalities, mainly Haitian, registered for the PNRE and, when the programme ended, as of 17th June:

- 102.940 persons presented birth certificates from their country of origin
- 95.164 persons registered with passports
- 69.997 persons registered with identity documents
- 20.345 persons had no documents but their biometric data were taken
- 4.600 personas completed the criteria.

Persons who completed the criteria will receive their documents as residents, while those who registered with passports will be given identification as non-resident, valid for two years.

After the official close of the PNRE an initial period of 45 days was established for completing files while the authorities evaluated the documents and made status determination on non-residents. Once this period was over at the beginning of August 2015, it was announced that 82 per cent of persons would receive a one-year document or a sticker in

their passport, for a total of 239.000 immigrants. At the same time an imprecise extension was announced for files to be completed.¹⁶

However, there was a significant group who did not sign up for the Plan (approximately 150.000 persons), possibly because of mistrust and scepticism to which should be added ignorance and misinformation, both factors feeding into a "culture of disbelief". The vast majority who did sign up was unable to get residency status, thereby vindicating, to some extent, the cautious attitude of the abstainers who may not have believed that the process would be carried out in good faith.¹⁷ While the new understanding in Dominican society as to the need for a Regularisation Plan is a positive step forward, three challenges are salient. First there is the need for more flexible criteria considering the type of migrant targeted and the need for the outreach to be more all-embracing. Second, there has to be real migration control on the Dominican-Haitian border or non-regulated migration will persist. Third, there need to be mechanisms to guarantee equal conditions for labour contracts between migrants and non-migrants in full compliance to social security and social service needs. It is by no means clear that this latter has been achieved with so few applicants achieving residency status (and most of whom are probably not Haitians).

Finally, the inter-relation between regularisation and the parallel processes happening under the implementation of Law 169-14 need to be noted. On the one hand, pro-migrant support groups and their representative networks were unable to meet fully the demand for support from Haitian applicants in pursuing their claims to register in the PNRE, in part because their efforts were dispersed on behalf of equally compelling rights claims from the tens of thousands of denationalised persons whose situation will be looked at in the following two sections. On the other hand, the PNRE has singularly failed to act as a statelessness prevention tool as it might have done were significant numbers of irregular migrants to have achieved residency status whereby in the future they would have been able to register their children born in the DR as Dominicans (as per the new *ius soli* conditionality clause in the 2010 Constitution which places legal residence as a condition for foreigners being able to register their children born in the DR as Dominicans).

IV. GROUP B UNDER THE OPERATION OF LAW 169-14

This section examines what happened to Group B¹⁸ under the six months when Law 169-14, up until February 1, 2015, was operationalised on its behalf, again using the lens of the "culture of

disbelief". In addition to documenting the unfortunate overlap with the implementation of the PNRE, the interrelation of Group B with Group A is noted.

Law 169-14 approved by the Dominican Congress in May 2014 does not conceptualise persons born in the DR to foreign parents with irregular status before 2007 as Dominicans. It has a disproportionate impact on Dominicans of Haitian ancestry, given that Haitians are the single largest migrant collective in the country and overwhelmingly have an irregular migration status. This latter law targets the sons and daughters born in the DR to foreigners with an irregular migration status. The first group who, according to the preamble of the law, 'believed' they were nationals because they received official documents would obtain nationality because the State recognised its own administrative mistake, not because they were born on Dominican soil (Group A). The second group, who lacked any kind of identity document, was directly classified as foreigners in their own country of birth and obligated to follow a naturalisation process (Group B).¹⁹

Despite disagreement with the procedure in the law for those never registered of foreign parentage, civil society organisations saw the possibility of reducing the vulnerability of those people who had not obtained documents and hence were at risk of statelessness. Similarly, some activists considered that in dividing the population of the descendants of migrants born in the DR into two groups, this would indirectly give more visibility to the cause and highlight the magnitude of the phenomenon of those never registered.²⁰ In consequence, these organisations participated actively in dialogue on the rules of procedure for the new law, commenting on a draft proposal. Once the rules of procedure were enacted in July 2014, the organisations called on different sectors of the country and civil society in general to support the process actively and to ensure monitoring of its implementation.

As mentioned above, the *Gobernaciones* are sites of cultural production, in which actors with different types and levels of capital 'struggle' over the resource of recognition. This culture, or habitus, emerges when various structures and agents, with varying capital, combine to create a 'negative decision-making environment.' As we have seen, the local government offices have been open for business with many deficiencies, reflected in the low numbers of persons who are able to resolve effectively their documentary status. Originally these installations were intended to cope exclusively with Haitian immigrants but, during six months, were also being used for unregistered persons of foreign ancestry.

In the following I consider in more detail what has happened on the ground to these unregistered persons born in the DR. Theoretically, the unregistered persons of foreign ancestry were required to present only one of the following four requirements: (i) Certificate of live birth issued by the hospital; (ii) Notarised act with seven witnesses; (iii) Sworn statement by the midwife; (iv) Notarised act of Dominican family members. However, the lived experiences of applicants are that they were rejected when more than one of the requirements was routinely required and additional documentation is added to the list, especially an identity document of the mother. This last extra requirement reinforces the gender bias, salient in the migration law of 2004, as regards the disproportionate role of the mother in registering her offspring (Petrozziello 2014). Of course, the most probable reason why these applicants for the ‘naturalisation’ law 169-14 have remained unregistered in the first place may be precisely the lack of appropriate identity document on the part of his/her mother. Also, the public hospitals’ registration systems may not be able or may be unwilling to provide the live birth documentation. For their part, some public notaries report having been warned off collaborating with these processes.

Thus it was that the identity document of parents of applicants was asked for as a pre-requisite for processing applications, although this was not in the rules of procedure of Law 169-14, issued in Decree 250-14 on July 23.²¹ This requirement was first included in an instructive with "requirements for applying to register in the Foreigner's Book", disseminated by the Ministry of the Interior and Police on September 9 in the principal national newspapers.²² Despite the fact that a second publication of the instructive from the Ministry dated September 19 omitted this requirement, in practice it continued to be asked for. In those cases where the mothers of applicants did have birth certificates, these were only received if these were legalised, translated into Spanish and in some cases sealed. Where mothers sought Haitian documents to help their children in Group B, they would put themselves in competition with those who were already seeking such documents in function of requirements for the PNRE through the Haitian PIDIH programme.

In these circumstances the culture or habitus which emerges is not conducive to a positive decision-making environment. Additionally, many potential applicants may just not believe it is fair to engage in the process of having to become foreigners in the land of their birth before an eventual uncertain naturalisation process in two years’ time, even if registration could be a first step towards recognition of these “unrecognised citizens”.²³ It is unsurprising that a chief motivation for

those who did sign up was that they might be protected against deportation, given that this is a real threat for those (majority) Dominico-Haitians who have never been registered, even though technically they should not be expelled from their "own country",²⁴ given they have no proven legal link to any other country.

For whatever reason, the majority of persons in Group B who possibly might have applied for registration under the operation of Law 169-14 did not. Official figures (ONE 2013) had put the undocumented first generation born in the DR to irregular migrants at around 53.000 persons and some 8.755 persons had signed up when the finite period to do so expired on February 1, 2015. As with irregular Haitian migrants (who may be deported to Haiti), these undocumented Dominicans of Haitian ancestry may be inadvertently expatriated to Haiti, if they cannot prove their birth in the DR. Pro-migrant rights activists have had little time to strategise on continuing to advance solutions for this group, given ongoing demands on time for support to irregular migrants (completing files for the PNRE, as above) not to mention accompaniment of Group A, whose particular situation will be analysed in the next section.

V. GROUP A UNDER THE OPERATION OF LAW 169-14

There were no special rules of procedure for Group A under the operation of Law 169-14, since it was assumed that this was self-regulatory as regards this group for whom, it was understood, restoration of documents was to be expedited. This section²⁵ looks at how the audit (mandated by Sentence 168-13) was rolled out and how, prior to this, extra procedures were intercalated in ways which were less than transparent. Once again, we use the lens of the "culture of disbelief" to try to interpret fitful progress. Finally, we put into dialogue the way in which Group A is being treated with the concurrent processes for irregular migrants (PNRE) and the treatment of Group B under the operation of Law 169-14.

On September 23, 2014, in order to complement the process of the audit of the Civil Registry, the Central Electoral Board (*Junta Central Electoral*, JCE) made public a call to 13.305 persons to present themselves for interview on their documentation situation. This measure was criticised by civil society organisations, as being a new procedure which was not allowed for by Law 169-14, putting the burden of proof on affected persons and allowing inspectors the discretion on whether birth certificates would be transcribed or annulled. Moreover, criticism was levied at the fact that the call to interview was not widely

disseminated in the national press and that persons called to interview had only 7-10 days to present themselves. In consequence, some people who were unaware of the interviews or unable to take part found out subsequently that their documents had been cancelled.

The organisations who were monitoring these interrogations also expressed concern that they were carried out behind closed doors, legal representation or accompanying organisations were excluded, the presence of parents was requested for separate interrogation and comparing of testimonies and in some cases support documents were requested on their registration and the documents of their parents or even grandparents. Likewise, according to the watchdog organisations, some people were sent across to the PNRE based on the argument that they were foreigners (*Comité de Solidaridad con las Personas Desnacionalizadas* 2014), thereby conflating and confusing the processes of the PNRE and Law 169-14. This appears to demonstrate that public functionaries were not aware or did not understand the content of Law 169-14 or sought to align the 'special regime' (for Group A) with the process of naturalisation (for Group B).

We would argue that the JCE offices where Dominican-Haitians attempted to get their papers (beyond the local Government offices) are other sites of cultural production, in which actors with different types and levels of capital 'struggle' over the resource of recognition. This culture, or habitus, emerges when various structures and agents, with varying capital, combine to create a 'negative decision-making environment.' Clearly the extra-official procedure introduced arbitrarily by the Central Electoral Board took place in just such a setting where "the culture of disbelief" prevailed on the part of the competent authorities (doubting the authenticity of the rights claims of the Dominican-Haitians) as well as those subjected to the interrogations which took place (doubts that their claims should have been adjudicated in this manner).

Given sustained criticism about the slow pace with which Group A was being processed and in order to assuage criticisms as to what might happen to this group once the PNRE finished and deportations would start again, the authorities appeared to take decisive action by mid-2015. A weighty list of 55,000 persons who should get their Dominican documents restored immediately, was published on June 26, 2015, in the national press, as eleven separate newspaper inserts.²⁶ However, this list only contains some 43,000 persons of Haitian ancestry, several thousands of persons who might reasonably have supposed that they had been audited are unaccounted for on the list and

no time frame has been given for dealing with this latter group. The preamble to this list indicates that persons therein should be immediately restored their documents, but civil society organisations have observed the following difficulties to obtain when the putative beneficiaries have tried to do just that:

- Affected persons who are not to be found on the list que published by the JCE, notably key leaders of activist organisations
- Persons on the list who have requested documents but have not received them
- Persons who have received their documents but who are unable to register their children
- Persons who have received their documents but which are not then recognised by the computer system.
- Persons whose documents who have been transcribed from their original registry books who have been charged with duplicity of documents
- Persons whose names were wrongly spelled
- Changes in the number of the ID document.

Civil society organisations have been particularly challenged in following up the document status of Group A, in part because many key leaders are themselves in this group and have individual cases to be resolved (consuming energy and resources in so doing) and in part because the task of dissecting the audit list is daunting because of the number of mistakes and truncated information in it. That said, Group A is relatively more visible and vocal than Group B (which is more sizeable but relatively more invisible, because persons in it remain largely unidentified up to the present).

VI. CONCLUDING REMARKS

When it comes to upholding birthright citizenship in the DR for persons born on Dominican territory to migrants, it seems that neither the competent authorities nor the rights holders are convinced that Law 169-14 is the way to go, objecting to it from different perspectives, hence the “culture of disbelief” pervading the implementation of the migration and nationality legislation which refers.

Part of the problem is that the authorities insist on conflating two different topics, that of nationality and that of migration, treating both groups concerned, Haitians as well as persons born in the DR to Haitian parents as foreigners, independently of the persons in question having obtained their registration in the Dominican Civil Registry or having the right to obtain it. With the start-up of official deportations of irregular migrants since August 14, 2015, a major worry is that, in the absence of adequate tools to screen who is or is not 'deportable', confusion may lead to expatriations, if Dominicans of Haitian ancestry are unwittingly included in these expulsions. President Martelly's Government in Haiti has stated that it cannot receive people dealt with under Law 169, born in the DR who do not have a legal link with Haiti. Nobody questions the sovereign right of the Dominican Government to carry out deportations but there is questioning on how this is done and to whom.

The PNRE is so important because theoretically in the future it could help reduce statelessness if irregular migrants obtain documentation leading to legal residence in the DR and the consequent possibility of documenting their children born in the DR (as per the new constitutional clause on *ius soli* in the 2010 Dominican Constitution). Advocacy should focus on making the criteria of the Plan more flexible and offer a longer time frame for applicants to be fully compliant. Aside from being vigilant as to the authorities respecting the list of 55.000 persons of Group A (as well as those who were not but should have been on the list) who should be restored their documents, renewed efforts need to be made by civil society organisations to identify persons in the (bigger) Group B, so that advocacy efforts on their behalf may be scaled up and their right to Dominican nationality duly recognised. This may require alternative legislation to Law 169-14 whose limitations have been only too painfully exposed, at least in the way in which it has been operated to date.

NOTES

¹ Fragment of the testimony of a Dominican-Haitian, obtained by the Dominican sociologist Carlos Dore Cabral (1987) "Los dominicanos de origen haitiano y la segregación social en la República Dominicana." *Estudios Sociales* 20(68):62, quoted by Diógenes Abréu (2014). It reads: "The ID document is Dominican but you are Haitian".

² *The Partido Revolucionario Dominicano* (Presidencies 1978-1986, 2000-2004), *the Partido Reformista Social Cristiana* (Presidencies 1966-1978, 1986-1996) and *the Partido de la Liberación Dominicana* (Presidencies 1996-2000, 2004-2016).

³ Professor Brad K. Blitz summarises the dual problem thus: "For example, the problems of statelessness in the Dominican Republic are the result of both the denial and deprivation of citizenship and a deliberate lack of access – in this setting, requirements are imposed as a way to prevent access to nationality" (RSCPB3 Statelessness 2009:15).

⁴ A novelty of the Law was that, for the first time, it took into account Dominican emigrants but it was widely perceived not to be even handed in that many provisions as regards immigrants appeared to be anti-Haitian.

⁵ These dispositions were used to arbitrarily suspend the documents of persons who appeared to be of Haitian ancestry, allegedly while cleaning up the Dominican Civil Registry of suspected fraud.

⁶ A new conditional clause on birthright citizenship excludes for the first time the children born in the DR to immigrants who are not residing legally in the country.

⁷ See, for example, Gabinete de Comunicación de la Diputación Nacional de Guadalupe Valdez (2013).

⁸ For an exhaustive analysis of national and international reactions to Sentence 168-13, see Rodríguez (2014:124-150).

⁹ This section benefits from an ongoing systematisation which OBMICA is carrying out of the accompaniment of applicants for the Plan by the civil society platform *Mesa Nacional para las Migraciones y los Refugiados* (MENAMIRD) in five centres where registration took place.

¹⁰ See, for example, upshot of workshop between the authorities, the International Organisation for Migrations and civil society, February 2014
<http://obmica.org/index.php/publicaciones/boletines/86-boletin-marzo-2014>.

¹¹ Conservative sectors took out a legal appeal against Law 169-14, alleging that it was unconstitutional, but the Constitutional Tribunal dismissed this appeal a year later.

¹² This concept has been theorised in the context of asylum seeking in the UK, and I borrow it believing it to be useful in the context of recognition for the right to Dominican nationality for persons born of Haitian ancestry born in country, as well as for recognition of irregular migrants' claims to legal residency. See, more recently Anderson (2014).

¹³ See <http://hoy.com.do/el-gobierno-busca-salvar-su-plan-de-regularizacion/#comentarios>

¹⁴ See <http://acento.com.do/2015/opinion/8258644-pnrepidih-salvemos-el-proceso/> y <http://hoy.com.do/el-gobierno-flexibiliza-el-plan-de-regularizacion/autor/juan-bolivar-diaz/>

¹⁵ A decree was necessary because of the non-functioning Parliament in Haiti: "Arrêté accordant à toute personne dépourvue d'acte de naissance, un délai de cinq (5) ans pour faire régulariser son état civil", *Le Moniteur*, no 10, Janvier 16, 2014. Port-au-Prince, Haïti.

¹⁶ See <http://obmica.org/index.php/publicaciones/boletines/125-boletin-junio-2015>

¹⁷ This latter worry was a real concern for many, given that the only attempt at regularisation in the early nineties culminated in people losing documents and then mass deportations under President Balaguer in mid-1991.

¹⁸ This section draws on a systematisation carried out by OBMICA of the accompaniment by five civil society organisations of persons in Group B under the operation of Law 169-14.

¹⁹ Ley 169-14, Consultoría Jurídica del Poder Ejecutivo.
<http://www.consultoria.gob.do/spaw2/uploads/files/Ley No. 169-14.pdf>

²⁰ The leadership of the Movement Reconoci.do, for example.

²¹ Decree 250-14, Ministerio Público, Reglamento de aplicación de la ley 169-14:
<http://www.mip.gob.do/Portals/0/docs/PlanRegularizacion/Decreto 250-14.pdf>

²² Dominican@s por Derecho published a scanned copy of the instructive at the address below: <https://dominicanosxderecho.wordpress.com/2014/09/10/alarmante-mip-agrega-de-forma-administrativa-requisitos-a-proceso-inscripcion-grupo-b-ley-169-14/>

²³ Phrase coined by M. Gibney (2014).

²⁴ The phrase "own country" is taken from Article 12(4) of the International Covenant on Civil and Political Rights and used in line with its interpretation by the UN Human Rights Committee, as cited in the UNHCR Handbook on protection of stateless persons (2014).

²⁵ This section draws on evidence collected from the main networks accompanying affected persons, notably Dominican@s por Derecho and the Movement Reconoci.do, as well as the *Comité de Solidaridad con las Personas Desnacionalizadas*.

²⁶ See, e.g. <http://www.listindiario.com/Themes/Default/Content/img/jce.pdf>

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