

Tom Lantos Human Rights Commission

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Congressman Pitts, Congressman McGovern, thank you for the opportunity to testify and share the perspective of the Open Society Justice Initiative on this important subject.

As you know, statelessness is a serious issue no matter what the country.

Citizenship is an unwritten condition of virtually all human rights, and most economic and social opportunities. Statelessness is the deprivation of all of those things: having no rights and no opportunities.

While human rights are in principle universal, in reality, individuals cannot enjoy these rights without recognition and protection from a state. Picture the situation of undocumented immigrants: they are subject to deportation at any time to their country of citizenship. A stateless person is in a similar situation, except that no country will accept them. There is a reason why many stateless people end up in lengthy detention: their situation is incomprehensible to the authorities who wish to deport them, but the reality is that there is nowhere for them to go.

The community of nations recognized the importance of state protection when it created the system of asylum. Refugees need international protection because, by definition, they do not have protection – they are persecuted – by their country of origin. A stateless person is in a similar situation, except that the denial of protection they suffer is in some ways more serious and harder to name and fight, because it is dressed up under the color of law. Denying a person citizenship enables a country to claim that denial of protection is not persecution at all, but part of an apolitical, impartial, legal regime.

However, stifling freedom of expression is not acceptable even if national laws mandate it. Discrimination is not acceptable, even when, as under apartheid, there is an elaborate “legal” regime to enforce it. Changing religion can be criminalized, but to do so violates the freedom of conscience.

Statelessness may appear to be legal, under national laws, but its consequences are so destructive of human rights that no defense of “sovereignty” can make it acceptable. Under the Nazi regime, German citizenship was taken away from Jews and others, and we have no trouble seeing why that was wrong.

Statelessness is often linked to identity politics infecting and undermining a country's legal system. Worldwide, citizenship is conveyed according to two factors: place of birth and parents' citizenship. Neither of these is inherently "better" than the other.¹ The US, and the vast majority of countries in Americas, convey nationality based on place of birth. This is a logical system for countries that experience immigration, as the Americas always have. It ensures that all children have a citizenship when they are born, and that that citizenship will provide them rights and protection in the country they belong to.

Today, as you well know, in the Dominican Republic, hundreds of thousands of people are stateless. We do not know the exact number because the Dominican constitution says they are citizens, but the Dominican Constitutional Tribunal, "interpreting" the constitution, says they are not. International law says they are stateless if they apply for recognition of their citizenship and are rejected. Many thousands are applying, in a process that may go on for years, before the total numbers are known.

This problem became a legal one in 2013, when, thanks to the Constitutional Tribunal, an entire class of people lost their citizenship retroactively. From 1929 to 2010, the DR conveyed citizenship on the basis of place of birth. Birth registration, or possession of a national ID card, was not common for most of the 20th century, and there was always racial discrimination, but the discrimination was social, not legal. There was migration from Haiti to the DR, and discrimination against immigrants from Haiti and their children, but the citizenship law did not discriminate.

Official denial of citizenship came when birth registration and the national ID card that depended on birth registration, became more and more important in enrolling in school, getting jobs and health insurance, and registering children's births. Once, people were assumed to be citizens without identification, but new requirements meant that denial of identification amounted to denial of citizenship, and the identification wasn't easy to get. This is problem common in many countries around the world, when the requirements for documentation of identity, which are easy to impose, far outrun the capacity of the government to provide the needed documents to everyone.

In the Dominican Republic, the problem was worsened by racial discrimination by state agents. We've all felt frustration when confronting bureaucracy, a sense of powerlessness, even when we know the system isn't singling us out. Imagine the frustration of people trying to obtain identity cards, or register their children's births, being faced with local government employees who, despite the language of the Dominican Constitution, could

¹ Conveying citizenship on the basis of the citizenship of parents' citizenship is problematic when the parents are stateless, their nationality is unclear, or if they are refugees or immigrants who can't return to their country of origin.

not accept individuals of immigrant ancestry as Dominican citizens. The combination of unaccountable government bureaucracy and ethnic discrimination caused Dominicans of Haitian descent to be systematically obstructed from obtaining documentation of their Dominican citizenship. Of course, being denied documents is a serious problem. But for most who were affected—families who had come to the DR generations before—moving to another country, even if they could, was out of the question. After all, they were Dominican.

The Inter-American Court blew the whistle on this discrimination 10 years ago, but the DR's practices didn't change. Five years later, in 2010, the Dominican Republic decided that it would rather change its Constitution than grant citizenship automatically to people born in the country of immigrant parents.

In principle, this is no problem: many countries around the world grant citizenship exclusively based on parents' citizenship. Individuals of immigrant ancestry born before 2010 still had Dominican citizenship as a matter of law, so their children would be legally Dominican, if they could navigate the bureaucracy to get documentation.

Statelessness in the Dominican Republic began in September 2013 when the Dominican constitutional tribunal decided (despite language in the 2010 Constitution) that the new principle of conveying Dominican citizenship on the basis of parents' citizenship, *not* on the basis of place of birth², should apply retroactively back to 1929. This decision *took away* the citizenship of Dominicans of immigrant ancestry—hundreds of thousands of them—even if their families had been in the country for generations. It's important to note that the vast majority of these individuals do not have a right to Haitian citizenship: like Americans, Haitian citizens can pass their citizenship to their children born abroad, but not to successive generations. This is why these people are stateless rather than being Haitian citizens residing in the DR.

Dominicans of immigrant backgrounds share the same vulnerabilities, the same fates, as those in other countries covered on this panel. Without Dominican citizenship or documents, they cannot exercise any rights in the Dominican Republic. Without any other citizenship or travel documents, they cannot legally go to Haiti or any other country. There is nowhere for them to go. In reality, they will remain where they are, entirely disenfranchised.

² According to the new Constitution, a child born in the DR can get Dominican citizenship if her parents were 'legal residents of the DR' at the time the child is born. In practice, the vast majority of immigrants from Haiti, even when they were documented as working on sugar plantations, are not considered to have been 'legal residents' and thus do not qualify.

What can the United States do? First, we can lead by example, which we already do by not creating stateless people or letting children born on our territory be stateless. The United States could do even more by creating a path to US citizenship for stateless adults in the US. Second, let other countries know that making people stateless, even if it's done through laws or courts, is unacceptable. Especially where denial of citizenship affects a specific ethnic group, no legal principle or procedure can disguise that this is discrimination of the most devastating kind.

Chairman Pitts, Chairman McGovern... thank you for your time and allowing me to share my views.