

Migration and Citizenship at the Service of People: Advances and Setbacks in the Americas



Written by:

Mr. Kevin Appleby, *Director of International Policy of the Center for Migration Studies of New York (CMS) and the Scalabrini International Migration Network (SIMN)*

Dr. Diego Acosta, *Senior Lecturer in European and Migration Law, University of Bristol*

Fr. Leonir Chiarello, *Executive Director of the Scalabrini International Migration Network (SIMN)*

Gabrielle Parenteau, *MADE Americas Program Coordinator at the Scalabrini Foundation in Santiago de Chile*

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Introduction¹

The most important immigration policy to protect the rights of migrants is citizenship in a nation, conferred upon a person either at birth or through naturalization, an often lengthy legal processes. Citizenship confers certain rights upon an individual, including the protection of the laws of a State, the right to reside and raise a family and build equities without fear of deportation, the right to access certain government benefits, (in most cases) the freedom of movement within the State and outside the country, and, depending upon the nation, the right to vote and otherwise participate in the political process. Citizenship also provides individuals certain protections overseas, depending on the nation's relationship and agreements with other states.

Thus, obtaining citizenship is a primary objective for many individuals, but often the goal can be elusive, depending on the policies of a particular government. Citizenship is an important protection tool, as it provides a person with certain rights that allow him or her to fully meet his or her human potential, as it protects an individual's rights—the right to freedom of movement, the right to political participation, the right to due process of the laws, and the right to work and support their families. This is especially important for the most vulnerable persons, including low-income, migrants, and refugees.

In the framework of the activities undertaken by the Migration and Development Civil Society Network (MADE)² this paper aims to reflect on the impact of citizenship policies on access to benefits and responsibilities of a given country. The paper examines the advances and setbacks in the Americas and how each model benefits from or takes away the human rights of the individual, like it is the case for many people living in the Dominican Republic (DR), where in the application of the Migration Registration Plan (PNRE – *Plan Nacional de Regularización de Extranjeros*) left thousands of Haitian migrants and the descendants with no access to regularization or nationality. It then recommends the policies to best protect the rights and dignity of the human person, at the general level and again at the Dominican national level, as results of a National Meeting on Migration and Citizenship that took place in Santo Domingo on June 1st, 2016.

1. Policies based on Jus Soli and Jus Sanguinis and its Impacts on Migrant Rights: Birthright and Naturalization

The majority of the States of the Americas (30 out of 35) confer citizenship upon birth through *jus soli* (right of the soil) that allows the right of anyone born in the territory of a state to nationality or citizenship. The *jus soli* as an unconditional basis for citizenship is predominant in the Americas but rare in other continents. Almost all states in Europe, Asia, Africa, and Oceania grant citizenship at birth based upon the principle of *jus sanguinis* (right of blood), in which citizenship is inherited through parents and not by birthplace, or a restricted version of *jus soli* in which citizenship by birthplace is automatic only for the children of certain immigrants residing in the country. In the Americas, most countries with unconditional *jus soli* laws give birthright citizenship (and nationality) based on *jus sanguinis* rules as well, although these stipulations tend to be more restrictive than in countries that use *jus sanguinis* as the primary basis for nationality.

The United States of America (U.S.), for example, confers citizenship upon persons born on U.S. soil, persons born of a U.S. citizen abroad, or through the naturalization process. It also permits dual citizenship under certain circumstances. Under the current legislative framework, U.S. citizenship allows persons to receive the protection of the laws of their government and its States; receive due process protections under the criminal justice system

¹ We would like to express our sincere gratitude to Mr. Kevin Appleby, Director of International Policy of the Center for Migration Studies of New York (CMS) and the Scalabrini International Migration Network (SIMN), for the redaction of this paper, with the contribution of Dr. Diego Acosta, Senior Lecturer in European and Migration Law, University of Bristol, Leonir Chiarello, Executive Director of the Scalabrini International Migration Network (SIMN) and Gabrielle Parenteau, MADE Americas Program Coordinator at the Scalabrini Foundation in Santiago de Chile. We also express our gratitude to all the Dominican partners who collaborated to the organization of the National Multi Stakeholder Meeting that took place on June 1st 2016 in Santo Domingo, Dominican Republic, especially La Red Jesuita con Migrantes, ASCALA, Centro Bonó, Movimiento Reconoci.do, and all the panelists whose presentations are reflected in this paper.

² MADE Network is an initiative connecting civil society worldwide to promote policies for the well-being and protection of all migrants and communities. www.madenetwork.org

and protection from deportation, including access to counsel, freely move within the country and outside of it; access to certain government benefits; to vote in elections and participate in the political process; and to freely reside in any part of its territory and build equities, among other benefits.

As mentioned, other countries in the Americas confer citizenship by birth, with the rights associated with it akin to those conferred by the United States. In some regional frameworks, a person's birth in one nation gives them similar rights in the nations of the region or in the nations which have entered a citizenship agreement.

Perhaps the most unique characteristic of U.S. citizenship is that it is conferred upon persons born on U.S. soil, including its territories. This includes children born to foreign-born parents, regardless of their legal status. This is however also the case in most countries in the Americas.

The *jus soli* policy has been subject to some controversy in the Americas and other parts of the world as some have argued that it encourages undocumented migrants to give birth to children on national territory, thus encouraging irregular forms of migration. Attempts to limit who is eligible for the policy, in the US, for example, however, have been met with resistance from civil society organizations, including religious groups and other advocacy organizations that have argued that it would create stateless persons among the U.S. population and punish innocent children. Legal scholars also argue that altering the policy would require a constitutional revision, as it is entrenched in the U.S. constitution's 14th amendment.

A second path for obtaining citizenship in the Americas is through the naturalization process, whereby an individual who obtains legal permanent residency through various means may apply for citizenship years later. The naturalization process also has become politicized in the Americas, as some in the public arena have argued that it is too easy for foreign-born persons to access it, either by entering the country already eligible for permanent residency or qualifying for it through marriage or employment sponsorship once in the country.

In the U.S. immigration reform debate, for example, the idea of undocumented immigrants accessing citizenship through a "path to citizenship" is a controversial one. Some proposals would require undocumented immigrants to meet certain criteria to apply for a green card and citizenship, such as the payment of back taxes and fines, achieving English proficiency early in the process, ongoing employment, and a lengthy wait of at least 10 years or more. A second proposal would not provide a "path to citizenship" but would instead offer legal status to beneficiaries and allow them to obtain a green card and citizenship through existing avenues. A final option would be to grant legal status to undocumented migrants but forbid them from obtaining citizenship. The last two proposals, especially the last one, have been criticized for encouraging the creation of a permanent underclass in the United States, with certain persons not having the full rights in society that others enjoy.

In the debate over citizenship, civil society organizations protecting the human rights of migrants opposes the repeal of birthright citizenship and supports a "path to citizenship" for undocumented persons who have built equities in the country. Revoking birthright citizenship would create a group of stateless children who may not access citizenship and not be eligible for citizenship in their parent's place of birth. It would also deny innocent children basic benefits, which would allow them to access the advantages of citizenship and build equities in society.

Immigrant visas—which allow persons to become permanent residents—are more favorable to protect the rights of migrants rather than non-immigrant visa programs, which in the past have led and in the present are leading to the abuse of low-skilled, low wage workers. Attempts to shift the U.S. immigration system from an immigrant to a nonimmigrant system, for example, would also create a permanent underclass of workers without sufficient legal protections.

Another path for citizenship in the Americas is based on marriage and employment. These two legal ways to citizenship should be maintained.

2. Citizenship and Free Movement: A Regional Approach

Different regions in the world are moving in the direction of allowing citizens of their nations to travel and reside freely in the region. The most developed model is the European Union where nationals of all 28 Member States are also EU citizens with an individual and subjective right to move and reside in the territory of any of those countries. South America is moving in a similar direction, notably with the adoption of the 2002 MERCOSUR (Southern Common Market) Residence Agreement, which was finally implemented by 2009. The Agreement's main objective is dealing with the situation of intra-regional migrants and it has transformed the migration regime for South Americans. It provides that any national of a MERCOSUR or Associate Member State may reside and work for a period of two years in a host State. After two years, the temporary residence permit may be transformed into a permanent one if the person proves legitimate means of living for his or herself and any family members. It also lays down a number of rights including the right to work and equal treatment in working conditions, family reunion or access to education for children. All countries in South America (i.e., not just MERCOSUR countries) have ratified the agreement and apply it with the exception of Venezuela, where it is currently in discussion and Surinam and Guyana where it is yet to be adopted. There are current discussions at the level of the Migration Forum on the possible adoption of an instrument consolidating all legislation on mobility in MERCOSUR.

Similar developments are also taking place at the level of the Community of Andean Nations (CAN) Decision 545 is the most important instrument and provides different entitlements and procedures for certain categories of workers: intra-corporate transferees, frontier, seasonal and those taking a job offer in another Member State. The principle of equal treatment is recognized and such workers are granted a number of rights including family reunion. By 2015 all four Member States except for Bolivia, had transposed the Decision into national law. CAN Decisions are however capable of direct effect and thus can be directly relied on by individuals in front of domestic courts even when not completely implemented at national level. The Andean Community is currently discussing the adoption of an Andean Migration Statute, which would consolidate in one instrument and expand further on the rights of regional citizens.

Both MERCOSUR and the Andean Community have been discussing the prospects of creating a supra regional citizenship. This has also been the case at the level of the UNASUR (Union of South American Nations). Several questions remain open as to the scope of this citizenship (e.g. whether it would include non-regional citizens residing in South America); its content (notably with regard to social rights); and the actors or tribunals in charge of interpreting its provisions (e.g. whether a supranational court such as the Andean Court of Justice or whether a more intergovernmental approach such as that currently present at the level of MERCOSUR). Discussions continue and will proceed for the coming years, also at the level of the South American Conference on Migration, which has acted as an important forum adopting non-legally binding resolutions which have facilitated the achievement of consensus on these issues.

There has been a gap between the agreement and the adoption of conforming legislation in member states, thus making the residency agreement non-binding in certain countries. In states where legislation has been adopted, implementation has been slow.

Moreover, a remaining question is how nationals of non-member states are treated, including their entry and opportunity for residency. Member states can treat these populations according to their laws, leaving the region with a set on incongruent policies which may burden nations with more favorable migration laws and policies, as we have seen in the recent crisis in Europe.

In conclusion, the right of the individual to migrate and the equality of rights regardless of nationality and migratory status should be a centerpiece of any regional citizenship system, including those at MERCOSUR, Andean Community or UNASUR level. However, the cases of thousands of Haitian migrants and descendants of Haitian migrants remain in condition of high vulnerability in Dominican Republic, due to irregularities in the application of the Migration Registration Plan and the Naturalization Law (169-14) in May 2014 by the Dominican State.

3. Dominican Republic: the Denationalization Process and its Effects

The Dominican Republic (DR) also employs a birthright citizenship through a *ius soli* system, but in recent years has denationalized citizenship from Dominicans of Haitian descent. Up until 2010, the DR granted automatic citizenship to anyone born on DR soil, except for children of diplomats are of those “in transit.”

Citizenship was narrowed that year to children who were born to at least one parent of Dominican blood or whose foreign-born parents were legal residents. In 2013, the Constitutional Court of the DR ruled that anyone born of foreign descendents after 1929 were “in transit” and not DR citizens. The court ruled that the majority of this group was brought into the DR to work on the sugar cane farms, and thus they and their descendants did not qualify for birthright citizenship because of their transitory nature. The Court also ordered the government to regularize “foreigners living in the country illegally,” changing their legal status from DR citizens to foreigners³.

In response to the Court but also to international pressure, the government passed law 169-14 and adopted a National Registration Plan for Foreigners (NRPF), whereby those affected by the ruling could follow a process to regain legal residency. However, the law and the plan have been criticized as only allowing a small number of Dominican-born out of Haitian ancestors to qualify.

What are the practical effects of these decisions? Dominicans of Haitian descent will not receive the same benefits of Dominicans recognized by birth. Specifically, it would deny them the right to vote, participation in government and freedom of movement, and could deprive them of a number of social, economic, and cultural rights: the right to health, to social security, to work, and the right to education.

As part of the MADE Americas’ advocacy efforts in the region, under the topic “Migration and Citizenship: Reality and Challenges”, a multi stakeholders gathering between government agencies and civil society organizations, was held on June 1st 2016 in Santo Domingo, Dominican Republic, to consider the challenges and opportunities of collaboration in advocacy and in the design and implementation of policies and programs for the protection of the migrant people and their descendants threatened in their rights.

During the above-mentioned national meeting, the Vice Minister of Interior and Police of the Dominican Republic, stated that the PNRE’s objective was to register the foreign population with irregular migration status in the DR, what would lead to positive results in the labor market, the health and education systems, the economy, the security, people trafficking and smuggling and human rights. According to the Vice Minister, the deportations were suspended during the PNRE process and people born before April 2007 in the Dominican Republic from Haitian parents who register in the process will be allowed to apply for nationalization in a simplified process after 2 years of having registered.⁴

On the other hand, civil society organizations sustained during the meeting that, even if the Central Electoral Committee (JCE - *Junta Central Electoral*) claimed that they provided 55,000 birth certificates to Haitian descendants whose documents were administratively cancelled from 2007, as a result of the Ruling 168-13, they are still facing problems to access to their identity documents. The process of recuperation of the certificates faced important obstacles and those who could not get them are victims of litigations and accusations due to their undocumented status.

People who obtained their documents (only a part of the group) had to go through the same painful procedures that existed before the Law 169: inspections, investigations, home visits, requests of the parent’s documents, family pictures, family members’ birth certificates and same interviews and inspections than before the Law

³ For more details of the effects of the denationalization process in Dominican Republic, see section 6 of the MADE Americas Regional Report “*Migración, Desarrollo y Derechos Humanos: la articulación como base para transformar la realidad social en América Latina y el Caribe*”, http://madenetwork.org/sites/default/files/Informe%20Regional%20LAC%202015_final.pdf

⁴ Presentation of Washington González, Vice-Minister of Interior and Police, National Meeting “*Migration and Citizenship: Reality and Challenges*”, Santo Domingo, June 1st 2016.

169. The Law in question was supposed to provide documents to all of the 55,000 registered people, what it failed to do. Some people remain without documents and are subject of investigation.

This situation shows obvious discrepancies between the Vice Minister statements and the reality presented by civil society organizations. During the meeting, civil society organizations reported that no registration center accepted to register a person without documents and deportations in fact did not stop during the process of registration. In addition, there was no sufficient information and sensitization campaign on the PNRE. Consequently, many people are late in their registration because they did not know about the procedures.⁵

From this perspective, civil society organizations recognize the urgent need for the Dominican Republic State to provide to migrant people better access to an efficient registration plan that applies a fair and appropriate migration policy, given the important contribution of the migrant people to the social and economic development of the country. Migrant people have the full right to benefit from a fair treatment from the States.

“The fact of not having identity documents excludes you from the society, it does not allow you to be someone neither in the country nor on the society in which you were born and have lived your whole life. During many years, the right to declare their children was denied to my parents, despite all the people and civil society organization who tried to help them. From elementary school, I always had to fight for the right of education. They would not allow school registration to those who did not have identity documents, but finally, thanks to the intervention of a teacher, I got access to school. I was a victim of bullying and discrimination until the end of high school. I want to study clinical psychology but I still cannot access university because I still have the same problems. I have a daughter who is suffering from the same problems for not having documents. I feel Dominican because that is what I feel in my heart and because the law allows me to. In this process, I had some moments in which I thought about killing myself because I could not stand not having an identity recognized by the State, and today I am suffering again because the same is happening with my daughter. Now that this whole process has still not been resolved with the coming into effect of the Law 169, all I have left is my faith in God and the hope that someday, our rights they violated will finally be respected.” – Testimony of A.T., Santo Domingo, June 1st 2016.

The above testimony reveals one of the many concrete cases of people who were born in the DR and could never access their rights because of irregularities in the registration process of migrants’ children. This procedure goes against the *Jus Soli*, the juridical principle that the country of citizenship of a child is determined by the country of birth.

4. Recommendations

In summary, this paper supports a model of citizenship which ensures the human rights of all persons and the universality and equality of all people. We thus offer the following policy positions on three models set forth in this advocacy paper.

4.1. General recommendations

- Birthright citizenship through *ius soli* should be maintained as a central principle in citizenship acquisition, as it ensures that children do not become stateless, that families are not divided, and that children are not penalized by their birth.

⁵ Presentation of Noemí Méndez, Lawyer and Assessor of Reconoci.do Movement, National Meeting “*Migration and Citizenship: Reality and Challenges*”, Santo Domingo, June 1st 2016.

- Nations should encourage the naturalization of legal residents by providing a fair and equitable process for achieving citizenship and the rights it provides. Family unity should be a central principle in this process.
- Nations should not implicitly or explicitly create a two-tiered legal immigration system, whereby one group is unable to obtain citizenship and does not enjoy full rights in society.
- Removing citizenship from persons based on ethnicity or race undermines human rights and is blatantly discriminatory. We urge the Dominican Republic to reverse the decision of the Constitutional Court in withdrawing citizenship from Dominicans of Haitian descent born after 1929.
- Regional citizenship initiatives, such as MERCOSUR, CAN and UNASUR, should ensure that migrants of non-member states are not discriminated against with regard to their movement possibilities and rights. They should also make sure that all members of the agreement continue to correctly apply their asylum legislation. Mechanisms must be established to ensure responsibility sharing for migrant flows in emergency situations.

4.2. Recommendations to the Dominican Republic State

Some clear recommendations were formulated as a results of the MADE Americas National Meeting on Migration and Citizenship realized in Santo Domingo on June 1st 2016. On behalf of the Dominican civil society organizations and people affected by the Denationalization and Registration Plan failures, they claimed for:

- the attribution of the Dominican nationality to people born on the Dominican territory, according to the principle of non-discrimination and the juridical rulings of the Inter American Commission on Human Rights (IACHR);
- the guarantee of access to birth registry to prevent and eradicate statelessness, given that the right to a name and nationality is a fundamental rights;
- the signature of a treaty for the elimination of statelessness by the DR;
- the attribution of nationality for all foreigners' children born in the DR before 2010, because they are Dominican;
- the design of a communication strategy to efficiently disseminate all the information related to the PNRE;
- the regularization of the deportation procedures;
- the access to registration for children of mixed couples;
- a better effort to increase relations and networking within the government members and civil society organizations in Haiti for the implementation of documentation and development policies, so that Haitian people are not obliged to emigrate because of extreme poverty conditions;
- the prevention of family separation and guarantee of the private property of migrant people;
- the concrete implementation of the C189 Convention on Domestic Workers of the International Labour Organization (ILO);
- the application of the rulings pronounced by the IACHR;
- a constitutional reform to implement the *Jus Solis*.

Conclusion

Citizenship policy is a key component in ensuring that basic human rights of safety and freedom are met, especially for migrants.

Acknowledging the right of nations to control their borders and determine their citizenry, we respectfully support citizenship policies which are fair and do not discriminate against any groups based on nationality, ethnicity, or race. We also believe that citizenship policies should be structured so that families remain together, particularly spouses and their children.

Regional citizenship initiatives, such as the European Union, MERCOSUR, CAN or UNASUR, are welcome, as they permit the free movement of persons within a region and guarantee human, social, and political rights.

However, such regional agreements should not be used to turn away or not offer protection to migrants from other parts of the hemisphere or world who may seek refuge or residency.

Despite the Law 285 and the National Registration Plan, migrants and their descendants in the Dominican Republic are still facing discrimination and are suffering from the remaining irregularities that are preventing them from documentation and violate some basic rights such as access to education, health, private property and, one overall, nationality. There is an urgent need for the Dominican government to work and collaborate with the civil society on the definition of new laws and on the monitoring and improvement of the PNRE procedures.

We look forward to working with governments in the Americas to create citizenship policies that meet these criteria, so that all may enjoy the rights guaranteed to all human beings.