

Race, Nationality and Anti-Haitianism in the Dominican Republic

Valerie D. Comenencia Ortiz

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Institute for the Study of Human Rights
Columbia University

ABSTRACT

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Valerie D. Comenencia Ortiz

Judgment TC/0168, along with other anti-Haitian policies undertaken by the Dominican Republic, constitute racial discrimination, and this aspect has severe implications in the process of effectively employing human rights advocacy for change. Human rights violations, when rooted on deeply ingrained racial discrimination, present a set of unique challenges. These violations cannot be effectively addressed with legislation or other negative prescriptions alone. Denouncing or condemning the Dominican government, or demanding changes in legislation are not enough to effectively combat anti-Haitian racial discrimination in the Dominican Republic. Rather, mechanisms to effectively tackle these human rights violations must address the root causes of racial discrimination, a hefty goal that requires measures in the fields of education, culture and information (among other areas), with special attention to the country's context and historical background.

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I. Introduction

With the stroke of a pen, on 23 September 2013, the Constitutional Tribunal of the Dominican Republic revoked the citizenship rights of hundreds of thousands of Dominicans of Haitian descent born as far back as 1929, affecting more than three generations. This controversial decision is a codification of widespread discriminatory anti-Haitian practices affecting Haitian immigrants and Dominicans of Haitian descent, including arbitrary deportations and the denial of identity documents. These, in turn, have their roots in complex historical, social and cultural factors, chief among which are race and national identity.

The international community and civil society groups, which have long expressed great concern over the Dominican Republic's treatment of Haitians and Dominicans of Haitian descent, have widely condemned this decision as a violation of human rights, and as yet another instance of state-sponsored racial discrimination against Haitians and Dominicans of Haitian descent. The Dominican government denies that this or any of its policies constitute racial discrimination. However, this paper will argue that Dominican policies are racially discriminatory, and that this aspect has severe implications in the process of effectively employing human rights advocacy for change.

Human rights and international law may indeed serve as a powerful pathway to denounce anti-Haitian policies, present possible solutions, and offer a deeper understanding of how we arrived at the current state of affairs. However, human rights violations, when rooted on deeply ingrained racial discrimination, present a set of unique challenges. These violations cannot be effectively addressed with legislation or other negative prescriptions alone. Denouncing or condemning the Dominican government, or demanding changes in legislation are not enough to

effectively address anti-Haitian racial discrimination in the Dominican Republic. Rather, mechanisms to effectively tackle these human rights violations must address the root causes of racial discrimination, a hefty goal that requires measures in the fields of education, culture and information (among other areas), with special attention to the country's context and historical background. This paper will consider anti-Haitianism from the framework of racial discrimination in human rights, starting with a review of racial discrimination in the international human rights framework, assessing how anti-Haitian racial discrimination fits within this framework, identifying the challenges that its racially discriminatory nature poses, and finally, proposing some new directions for human rights advocacy to respond to these challenges.

II. Racial Discrimination in the Human Rights Framework

1. Definition of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (1965), to which the Dominican Republic acceded in 25 May 1983,¹ is the premier international human rights treaty concerning racial discrimination. ICERD defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” with the purpose or effect of affecting the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal footing.² This definition is not limited to objective physical characteristics, but rather, it includes subjective and socio-economic variables.³ The “Guidance Note of the Secretary-General On Racial Discrimination and Protection of Minorities” (March 2013) calls for the UN approach to racial discrimination to reflect this definition of racial discrimination.⁴

In General Recommendation 29, “Discrimination Based on Descent,” the Committee on the Elimination of Racial Discrimination provides clarification on the concept of “descent” in the context of the ICERD. The Committee states that communities who suffer descent-based discrimination may be identified on the basis of various factors, which are mostly aimed at castes

¹ Accession, which usually occurs after a treaty enters into force, has the same legal effect as ratification.

² International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX) A, U.N. Doc. A/RES/2106 (XX) (Dec. 21, 1965).

³ Kevin Boyle and Anneliese Baldaccini, “A Critical Evaluation of International Human Rights Approaches to Racism,” in *Discrimination and Human Rights: The Case of Racism*, ed. Sandra Fredman (Oxford University Press, 2001), 153.

⁴ U.N. Secretary-General, *Guidance Note of the Secretary-General On Racial Discrimination and Protection of Minorities*, March 2013, Accessed November 2, 2014, <http://www.un.org/en/events/racialdiscriminationday/2013/pdf/SG%20Guidance%20Note%20on%20Racial%20Discrimination%20and%20Protection%20of%20Minorities%20final%20PDF.pdf>.

and analogous systems of inherited status.⁵ Although Judgment TC/0168 and other circumstances may render the marginalized status of Haitian immigrants an inherited status, there is broader consensus that the Dominican Republic's policies are racially discriminatory against Dominicans of Haitian descent on the basis of colour and national origin, and this paper will argue that Dominican laws and policies constitute racial discrimination on these grounds.

The Durban Declaration and Programme of Action (2001) is the most comprehensive declaration by the international community on the subject of racial discrimination.⁶ While the ICERD, which the Durban Declaration establishes as “the principal international instrument to eliminate racism, racial discrimination, xenophobia, and related intolerance,” will be employed as the main legal framework in this paper, the Durban Declaration will be used farther on in order to assess methods and strategies to combat racial discrimination.⁷

2. The ICERD: Exceptions in Application

The Convention lists an important exception in its application: it does not apply to the States' “distinctions, exclusions, restrictions or preferences” between citizens and non-citizens (Art. 1). However, General Recommendation 11 establishes that this should not be interpreted as detracting the rights and freedoms recognized in other instruments, such as the UDHR, the ICCPR and the ICESCR.⁸ Even more, in General Recommendation 20, the Committee establishes that although some of the rights and freedoms recognized in Article 5 may be reserved for citizens, such as the right to vote, many rights shall be enjoyed by every person in

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation 29: Discrimination Based on Descent, U.N. Doc. A/57/18 (111) (2002).

⁶ Katarina Tomasevski, “Racism and Education,” in *Dimensions of Racism*, (Geneva: OHCHR and UNESCO, 2003), Accessed February 2, 2014, <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf>, 39.

⁷ Durban Declaration and Programme of Action, Conf. 189 (XXII) A, U.N. Doc. A/CONF/189 (XXII) (Sept. 8, 2001).

⁸ Committee on the Elimination of Racial Discrimination, General Recommendation 11: On Non-citizens, U.N. Doc. A/48/18 (112) (1994).

the State.⁹ Therefore, while it may seem that the protections set forth in the ICERD do not apply to non-citizens, the Committee clarifies that this exception only applies to certain rights that are reserved for citizens, and that it does not exempt States from respecting and protecting the rights of non-citizens, who are often at the greatest risk of racial discrimination.

Furthermore, Article 1 of the ICERD also establishes that nothing in the Convention may affect the legal provisions of the States concerning issues of nationality, citizenship or naturalization, as long as these provisions do not discriminate against any particular nationality, and that they don't undermine the ICERD's basic prohibition of racial discrimination. These distinctions are very important, as while the Convention respects the national sovereignty of states, it does not exempt them from their responsibility to respect the right to non-discrimination of specific groups. This point is very relevant in the case of anti-Haitianism in the Dominican Republic, since despite the State's claims of sovereignty, the denial of identity documents for Dominicans of Haitian descent target a particular nationality on the basis of colour and national origin, undermining the prohibition of racial discrimination.

3. Beyond the ICERD: Principles of Equality and Non-Discrimination

While the ICERD is the most comprehensive treaty on racial discrimination, other human rights documents have provisions that can be directly applied to instances of racial discrimination. In addition to the ICERD, international instruments such as the United Nations Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and

⁹ Committee on the Elimination of Racial Discrimination, General Recommendation 20: The guarantee of human rights free from discrimination, U.N. Doc. A/51/18 (124) (1996).

Cultural Rights (ICESCR) include safeguards against racial discrimination rooted in the principles of equality and non-discrimination.

Starting with Article 1(3), the UN Charter established that the UN would promote and encourage respect for human rights and fundamental freedoms “for all without distinction as to race, sex, language or religion.”¹⁰ The principles of equality and non-discrimination can also be found throughout the UDHR, starting with Article 1, which establishes that “all human beings are born free and equal in dignity and rights.”¹¹ However, the UDHR enlarged the grounds of discrimination, adding additional categories to the ones found in the Charter: “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²

Article 26 of the International Covenant on Civil and Political Rights establishes that everyone is equal before the law and entitled to equal protection, and that the law should provide equal and effective protection against discrimination on any ground, employing the same categories as the UDHR.¹³ In turn, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights establishes that States Parties shall guarantee that the rights listed in the Covenant “will be exercised without discrimination of any kind” as to the same categories listed in the ICCPR and the UDHR.

In addition, Article 1 of the American Convention on Human Rights, of which the Dominican Republic is a party (and which is the basis of the Inter-American Court of Human Rights and the Inter-American Commission of Human Rights), establishes the entitlement of all persons subject to State Parties’ jurisdiction to the rights and freedoms listed in the Convention

¹⁰United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

¹¹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹² Ibid.

¹³ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/RES/2200 (XXI) (Dec. 16 1966).

without discrimination on the basis of “race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”¹⁴

¹⁴ Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, accessed January 11, 2014, available at: <http://www.refworld.org/docid/3ae6b36510.html>.

III. Anti-Haitianism: Racial Discrimination in the Dominican Republic

1. Judgment TC/0618

In Judgment TC/0168 from September 23, 2013, the Dominican Republic's highest court determined that anyone born in the country to noncitizens after 1929 would be stripped of their citizenship. Up until the 1990s, the government usually granted citizenship to anyone born in the country, with the exception of children of diplomats or foreigners "in transit." However, in 2010, the Dominican Constitution was amended to define undocumented immigrants as being "in transit," codifying what had for decades been a growing practice by civil registries of identifying all undocumented Haitians as individuals "in transit," regardless of their time in the country. The recent Judgment retroactively applied this definition of "in transit" to all undocumented parents of children born in the country since 1929, effectively stripping these children (and their children) of their right to Dominican citizenship.

This decision applies to more than 200,000 people, most of them Dominicans of Haitian descent, and may render many of them stateless. Statelessness, with its crippling effect on individuals' capacity to function within their own countries, puts individuals at an extremely vulnerable position.¹⁵ Statelessness creates significant barriers for Dominicans of Haitian descent to basic rights and freedoms, such as access to health care, education, property, employment, marriage, birth registration, travel, voting, and many others.¹⁶

In "Análisis de la Sentencia" (or "Analysis of the Sentence"), Dominican constitutional lawyer Nassef Perdomo argues that Judgment TC/0168 is illegitimate under both international and domestic law, as the retroactive application of the Judgment is impermissible in accordance

¹⁵ Stacie Kosinski, "State of Uncertainty: Citizenship, Statelessness and Discrimination in the Dominican Republic," *Boston College International and Comparative Law Review* 32, no. 2 (2009): 378, <http://lawdigitalcommons.bc.edu/iclr/vol32/iss2/13>.

¹⁶ *Ibid.*, 382.

with the Dominican Constitution. Perdomo also stresses the importance of international treaties, as he explains that the constitutional system of the Dominican Republic emanates from two normative sources, which are on equal hierarchical standing: national law (composed of the constitution and domestic jurisprudence), and international law (composed of international and regional treaties and conventions of which the Dominican Republic is a party).¹⁷ This means that international treaties have constitutional standing, and that violations to these obligations may be interpreted as violations to the Dominican constitution.

Judgment TC/0168 is a human rights violation. This decision is a violation of the right to nationality set forth in a variety of international and regional human rights treaties. Article 15 of the Universal Declaration of Human Rights establishes that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality.”¹⁸ This right is echoed by Article 20 of the American Convention on Human Rights, which establishes the right to a nationality, and gives each individual “the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.”¹⁹ Judgment TC/0168 is also a violation of Article 1 and 2 of the UDHR, Article 26 of the ICCPR, Article 2(2) of the ICESCR, and Article 1 of the American Convention on Human Rights, as described in section II of this paper.

Judgment TC/0168 also goes against decisions of the Inter-American Court on Human Rights, particularly in the 2005 Case of the Girls Dilcia Yean and Violeta Bosico v. Dominican Republic, in which the Court established that “the migratory status of a person is not transmitted to the children, and the fact that a person has been born on the territory of a State is the only fact

¹⁷ Nassef Perdomo Cordero, “Análisis de la Sentencia TC/0168/13,” *Acento*, December 16, 2013, accessed January 15, 2014, <http://www.acento.com.do/index.php/blog/11983/78/Análisis-de-la-sentencia-TC-0168-13.html>.

¹⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Article 15, <http://www.refworld.org/docid/3ae6b3712c.html>.

¹⁹ Organization of American States (OAS), *American Convention on Human Rights*.

that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born.”²⁰ The Court also recommended that the Dominican government modify its immigration laws and practices in accordance with the American Convention on Human Rights.²¹ Clearly, with Judgment TC/0168, as well as other policies discussed below, the Dominican Republic has not abided by this decision. Furthermore, the Inter-American Commission on Human Rights notes that Judgment TC/0168 disproportionately harms individuals of Haitian origin, and that this constitutes a form of discrimination that goes against the Dominican Republic’s international obligations and violates the right to equal protection and nondiscrimination of Dominicans of Haitian descent.²²

2. Judgment TC/0618: Racial Discrimination

In addition to being a violation of the rights to nationality, equality and non-discrimination, by denying Dominicans of Haitian descent their right to Dominican nationality (as well as other human rights) on the basis of their colour and their national origin, Judgment TC/0168 constitutes racial discrimination, and it is a clear violation of the ICERD.

Judgment TC/0168 clearly establishes a racially discriminatory definition of citizenship: “Generally, nationality is considered a legal and political bond between a person and the State, but ... it is also sociological and political, the conditions of which are defined and established by the State... It is a sociological bond because it entails the existence of a set of historical, linguistic, *racial* and geopolitical traits, among others, that shape and support a particular

²⁰ “IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic,” Organization of American States (OAS) press release, October 8, 2013, accessed December 2, 2013, http://www.oas.org/en/iachr/media_center/PReleases/2013/073.asp.

²¹ “IACHR Expresses Deep Concern,”

²² Ibid.

idiosyncrasy and collective aspirations.”²³ Judgment TC/0168 also proposes a racially discriminatory implementation mechanism, since, as the Open Society Justice Initiative summarizes, it proposes that all citizens of “foreign origin” found in the Dominican Civil Registry are identified and listed, creating a list of people who, according to the criteria established in Judgment TC/0168, are rendered mistakenly registered as Dominicans. The names on this list would then be transferred to foreigners’ books and notified to the foreign ministry, which would then inform the individuals and their apparent embassy.²⁴

Alluding to *racial* traits in demarcating citizenship, as well as the process of identifying Dominicans “of foreign origin” and stripping them of their citizenship, are indeed violations of the Dominican Republic’s obligations as a signatory of the ICERD, particularly of Article 5, which establishes that States should guarantee the equal enjoyment of the right to nationality (d,iii).²⁵ However, in Judgment TC/0168, the Constitutional Tribunal argues that this ruling is not a violation of the right to nationality of the children of foreigners, but rather, a legitimate act of a sovereign country: “the denial to grant the Dominican nationality to the children of foreigners in transit or their parents does not constitute an arbitrary deprivation of the right to nationality, but rather, it constitutes a legitimate act of sovereignty founded on the relevant constitutional law.”²⁶ The ruling subsequently mentions irregularities in the attainment of identity documents as possible rights violations, but dismisses this possibility by claiming that

²³ Sentence TC/0168/13, Constitutional Tribunal of the Dominican Republic, September 23, 2013, accessed November 13, 2013, <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>, 24. Translated by Valerie Comenencia Ortiz.

²⁴ “Dominican Republic Court Ruling Raises Mass Statelessness Threat,” Open Society Justice Initiative press release, October 2, 2013, accessed February 10, 2014, <http://www.opensocietyfoundations.org/press-releases/dominican-republic-court-ruling-raises-mass-statelessness-threat>.

²⁵ International Convention on the Elimination of All Forms of Racial Discrimination.

²⁶ Sentence TC/0168/13, 89. Translated by Valerie Comenencia Ortiz.

this is a symptom of deficiencies in the system that affect Dominicans as well, rather than discriminatory policies.²⁷

However, as noted in Section II, Article 1 of the ICERD establishes that the Convention accepts States' jurisdiction concerning nationality, as long as their provisions are not discriminatory against any particular nationality and that they don't undermine the basic prohibition of racial discrimination. Furthermore, the Committee on the CERD addresses access to citizenship with more detail in General Recommendation 30, "Discrimination Against Non-citizens." In this Recommendation, the Committee calls for States to, among other things, ensure that there is no discrimination against "particular groups of non-citizens" in access to citizenship or naturalization, paying attention to barriers to naturalization for "long-term or permanent residents;" to acknowledge that depriving citizenship "on the basis of race, colour, descent, or national or ethnic origin" is a violation of the State's obligations to ensure the right to nationality without discrimination; and to consider that denying the citizenship rights of long-term or permanent residents may result in their disadvantage in access to employment and social benefits, which is a violation of the ICERD's anti-discrimination principles.²⁸ The Inter-American Commission on Human Rights also notes that while the determination of who are nationals usually falls under States' domestic jurisdiction, the States' authority is limited by its obligation to provide equal protection of the law without discrimination for all individuals.²⁹

²⁷ Ibid., 89.

²⁸ Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination Against Non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004).

²⁹ "Preliminary Observations from the IACHR's Visit to the Dominican Republic," Inter-American Commission on Human Rights annex to press release, December 6, 2013, accessed January 12, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp, 6.

The process established by Judgment TC/0168 disproportionately affects Dominicans of Haitian descent.³⁰ Long before Judgment TC/0168, Dominicans of Haitian descent have been denied identity documents (and citizenship rights) explicitly due to their national background, despite having been born in the Dominican Republic and/or lived in the country for a long period of time. Civil registry officials have admitted using skin color, accents, racial features, and “Haitian-sounding names” to make determinations of citizenship documents. Moreover, the systematic denial of citizenship of Dominicans of Haitian descent has created serious disadvantages that have severely hindered their right to education, health, and work.³¹ Therefore, the ICERD’s exception does not apply in this case, and the denationalization of Dominicans of Haitian descent mandated by Judgment TC/0168 is certainly an instance of racial discrimination under the ICERD’s definition. Despite the government’s and the Tribunal’s denial, in its language, application, and implications, Judgment TC/0168 is racially discriminatory, and this has severe implications in efforts to address it using the international human rights framework.

3. Other Human Rights Violations

“The most important passport is skin colour... If you are black, you are Haitian”

- Unidentified community member³²

The human rights violations that Dominicans of Haitian descent and Haitian immigrants face in the Dominican Republic, many of which constitute racial discrimination, are not limited

³⁰ Open Society Justice Initiative and CEJIL, “Submission to the Committee on the Elimination of Racial Discrimination: Review of the Dominican Republic” (Report presented at the Committee on the Elimination of Racial Discrimination’s review of the Dominican Republic during its 82nd session, January 2013), accessed on February 16, 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fDOM%2f13708&Lang=en.

³¹ Ibid., 6.

³² UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall: addendum : mission to Dominican Republic*, 18 March 2008, A/HRC/7/19/Add.5; A/HRC/7/23/Add.3, accessed December 2, 2013, available at: <http://www.refworld.org/docid/47e23b252.html>, 15.

to Judgment TC/0168. In fact, this decision is a codification of long-standing practices, which extend from arbitrary detentions and deportations, to denial of education and health services, police brutality, exploitative labor and many other situations that, much like the Tribunal's decision, fall short of the Dominican Republic's obligations under the ICERD and other legally binding human rights treaties.

Several different instances of discrimination against Dominicans of Haitian descent on the basis of their colour and descent have been documented by civil society, non-governmental organizations, and international and regional bodies. Denial of identity documents, limits on access to economic and social rights, arbitrary detentions, and arbitrary deportation are among the most prominent human rights violations.

In its "Concluding Observations" on the 2012 periodic reports of the Dominican Republic, the Committee on the Elimination of Racial Discrimination identifies a set of violations to the ICERD. Among the most prominent issues, the Committee denounces the lack of public planning tools to combat racial discrimination (Art. 2), the widespread, structural racism based on color and national origin found in Dominican society, which translates into barriers to access to public places and social services (Arts. 2, 4 and 5); the State's refusal to issue birth certificates and identity cards to Dominicans of Haitian descent and their children, which leads to a situation of statelessness (Art. 5); and the mass, indiscriminate and arbitrary deportations of individuals of Haitian origin (which include Dominicans of Haitian descent) (Arts. 5 and 6).³³

³³ Committee on the Elimination of Racial Discrimination, *Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February–1 March 2012)*, 19 April 2013, CERD/C/DOM/CO/13-14, accessed December 2, 2013, <file:///C:/Users/vdc2106/Desktop/G1342844.pdf>.

In the 2008 Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance after its Mission to the Dominican Republic, experts found that there is a deeply entrenched problem of racism and racial discrimination in the Dominican Republic, with the greatest impact on black Dominicans, Dominicans of Haitian descent, and Haitian immigrants.³⁴ This report claims that racism was also manifested in the framework of expulsions and deportation, as these procedures particularly targeted those presumed to be Haitian, a determination made on the basis of skin color, and without regards for distinguishing between Haitians, Dominicans of Haitian descent and black Dominicans.³⁵ According to a community member's statement, "The most important passport is skin colour... If you are black, you are Haitian."³⁶ As additional evidence that many cases of detentions and deportations rely on discrimination based on colour, the experts received reports of cases in which black foreigners who were on the border area were threatened with deportation to Haiti, demonstrating Dominican officials' reliance on color to make determinations on citizenship status.³⁷ Arbitrary detentions and deportations based on skin color fall under the ICERD's definition of racial discrimination (based on color), and are a clear violation of Articles 2 and 5 of the Convention.

"Illegal People," a 2002 Human Rights Watch Report on Dominicans of Haitian descent in the Dominican Republic, also presents evidence of arbitrary detentions and deportations of Dominicans of Haitian descent, or "Haitian-looking" (meaning black) Dominicans, as well as systematic denials of identity documents, obstacles to registering births, and barriers to education, long before Judgment TC/0168 or the 2010 Constitutional amendment. While arguing

³⁴ UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 2.

³⁵ *Ibid.*, 14.

³⁶ *Ibid.*, 15.

³⁷ *Ibid.*, 15.

that many of these human rights violations, particularly the arbitrary detentions and deportations, were based on discrimination due to skin color, Human Rights Watch presents the testimony of Rómulo de los Santos, the subdirector for Haitian affairs of the Dominican government's Migration Department: when asked about how undocumented Haitians are identified, he claimed that they can be recognized "by their way of living," "they're poorer than we are," "they have terrible homes," "they have much rougher skin," "they're much blacker than we are. They're easy to recognize."³⁸ While certainly extreme, these statements go hand in hand with many documented cases of detentions and deportations from the country, with darker skin color and failure to produce identification as the only bases.

During a December 2013 visit to the Dominican Republic following the uproar over Judgment TC/0168, the Inter American Commission also reported to have received testimonials that suggested the persistence of racial discrimination in the Dominican society and in access to public services.³⁹ During its visit, the Commission also identified that people without identity papers did not have access to justice or protection under the law, as they were unable to file claims or participate in judicial proceedings without identity cards.⁴⁰ These are violations of Articles 5 and 6 of the ICERD. The Commission also noted an atmosphere of hostility against journalists, lawyers, human rights defenders, public figures, and other people who have criticized the ruling, with threats and disparaging remarks targeting them, many of which could constitute incitements to violence.⁴¹ The State's inaction before such acts constitutes a violation of Article 4 of the ICERD.

³⁸ Human Rights Watch, "Illegal People," *Human Rights Watch* 14 (2002): 3. Accessed October 10, 2013, <http://www.hrw.org/reports/2002/domrep/domrep0402.pdf>.

³⁹ "Preliminary Observations from the IACHR's Visit to the Dominican Republic," 13.

⁴⁰ *Ibid.*, 14.

⁴¹ *Ibid.*, 15.

The broad range of human rights violations in the Dominican Republic independent of Judgment TC/0168 demonstrate the complexity of effectively tackling racial discrimination, making clear that racial discrimination in the Dominican Republic does not start or end with this Judgment. While this law has surely deteriorated the situation of Dominicans of Haitian descent in the country, effective measures to combat racial discrimination in the country require taking into consideration the deep roots and manifestations of anti-Haitian racial discrimination that preceded and led to this Judgment. However, efforts to address these roots are complicated by the Dominican government's stance on racial discrimination in the country.

4. A State in Denial

"We all have a black person behind the ears"

-Unidentified Dominican government officials⁴²

The Dominican State's consistent denial of any racial discrimination within its borders is well documented. In its 2013 "Concluding observations," the Committee on the Elimination of Racial Discrimination expresses concern about the Dominican State's firm denial that racial discrimination exists in the country, which represents an obstacle to the State's commitment to combat racism and racial discrimination.⁴³ The Committee also noted that, not only is racial discrimination denied, but there is also a denial and invisibility of the dark-skinned population of African descent in the country through, among other mechanisms, the misrepresentation of the ethnic situation in the Dominican Republic through employing the terms *indio-claro* (light-

⁴² UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 10. Statement by unidentified Dominican Government officials to argue that, because of the presence of African roots in all Dominicans, racial discrimination does not exist in the Dominican Republic.

⁴³ Committee on the Elimination of Racial Discrimination, *Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February–1 March 2012)*, 2.

skinned Indian) and indio-oscuro (dark-skinned Indian), which reject African heritage.⁴⁴ Furthermore, in the Summary Record of the 2223rd meeting of the Committee on the Elimination of Racial Discrimination, Mr. Taveras, a representative from the Dominican government, claimed that the reports of racial discrimination presented by NGOs were incomprehensible to Dominicans, since racism was not an issue in the Dominican Republic.⁴⁵

In addition, in the Report of the Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, this concern is once again emphasized, as State officials rejected claims of the existence of racial discrimination in the Dominican Republic as an international conspiracy against the State.⁴⁶ In order to support this supposed lack of racism and racial discrimination, State officials claimed that the Dominican Republic's domestic legal framework provides a strong basis to prohibit racial discrimination and promote equality, that there has been no single complaint on the grounds of racism or racial discrimination filed before a Dominican tribunal, and there are close to one million Haitians voluntarily in the country "in a climate of harmonious and peaceful coexistence."⁴⁷ According to the report, in expressing this position, the officials made constant reference to the presence of African Roots in all Dominicans, with the popular saying "We all have a black person behind the ears," as a fact that rules out the existence of racism in the country.⁴⁸

The Dominican government's denial of any racial discrimination in the country (whether against Dominicans of Haitian descent or dark-skinned Dominicans) points at the fundamental

⁴⁴ Ibid., 2.

⁴⁵ Ibid., 2.

⁴⁶ UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 10.

⁴⁷ Ibid., 10.

⁴⁸ Ibid., 10.

challenges in tackling racial discrimination in the Dominican Republic, since, as the next section will detail, effective measures have to be undertaken by States in order to tackle discrimination.

IV. Combating the Roots of Discrimination

“It seems ‘natural’ to ascribe negative meanings to differences, to associate difference with the supposedly inferior or superior or the dangerous. It is not, however, natural. It is something we learn and is therefore something we can unlearn.”

- Kevin Boyle⁴⁹

1. Lessons Learned?

There is a long history of human rights advocacy in defense of the rights of Haitians and Dominicans of Haitian descent in the Dominican Republic, as this country has come under constant international criticism for its treatment of Haitian immigrants and Dominicans of Haitian descent. The Dominican government has usually reacted to this criticism with defiance, and at times, with hostility.

For instance, in 1991, international pressure built on the Dominican government to improve its treatment of Haitian workers (particularly cane cutters), and to stop the practice of forced labor.⁵⁰ This worldwide “anti-slavery” campaign publicized the Dominican Republic’s abusive labor practices, even leading the U.S. Congress to hold hearings on this issue.⁵¹ However, in response to international pressure and the threat of U.S. sanctions, President Joaquín Balaguer ordered a mass expulsion campaign. The army rounded up and expelled thousands of arbitrarily suspected Haitians, and in three months, 35,000 suspected Haitians were deported or fled the country fearing deportation.⁵²

Even more, in 1999 after the publication of a critical report on the treatment of Haitians and Dominicans of Haitian descent by the Inter-American Commission on Human Rights, the Dominican government ordered the mass expulsion of an estimated 20,000 suspected Haitians in

⁴⁹ Kevin Boyle, “Introduction,” *Dimensions of Racism*, 7.

⁵⁰ Human Rights Watch, *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*, 16.

⁵¹ *Ibid.*, 16.

⁵² Human Rights Watch, *Illegal People: Haitians and Dominico-Haitians in the Dominican Republic*, 16.

another apparent backlash against international criticism.⁵³ In June 2000, Danilo Díaz, head of the Department of Migration (and current President of the Dominican Republic), argued that “rather than condemning alleged labour abuses, NGOs should commend the Dominican Republic for allowing large numbers of Haitians to work there, for offering free health services to Haitian migrants, and for allowing informal commerce, such as markets, along the border.”⁵⁴ In general, the Dominican government resents criticism from abroad regarding its treatment of Haitians and Dominicans of Haitian descent, and this has had a tendency to result in harmful policies against this group.

2. Tackling the Roots of Discrimination

As the previous section demonstrates, combating racial discrimination is no simple task. In fact, racial discrimination exists everywhere, suggesting that an effective solution to this global problem has not yet been identified. This section will address the importance of measures to address the roots of racial discrimination, while also accounting for the challenges that these efforts present.

Context: Culture and History

In “Eliminating racism in a changing world: arguments for a new strategy,” Doudou Diene argues that the battle against racial discrimination requires us to devise a strategy that can “get at the cultural roots of racism and discrimination that, deep down, determine attitudes and behavior.”⁵⁵ Diene adds that this understanding of the cultural roots of racism and discrimination

⁵³ Ibid., 16.

⁵⁴ James Ferguson, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond* (United Kingdom: Minority Rights International, 2003), 21.

⁵⁵ Doudou Diene, “Eliminating racism in a changing world: arguments for a new strategy,” *Dimensions of Racism*, 20.

“must inform and provide the basis for the laws and legal machinery directed at eliminating racism.”⁵⁶

In the process of understanding the cultural roots of racism and discrimination, Diene highlights the importance of its historical origins. History, Diene argues, is the stage in which “cultures, civilizations and peoples” forge their identities, and where “all misunderstandings, conflicts, friendships and enmities” have their origin.⁵⁷ By taking a long view of history, it is possible to uncover “the processes, mechanisms and forms of expression” of racial discrimination and identify their remotest origins.⁵⁸ Therefore, it is necessary to conduct a review of the accounts given by history, and the lessons that can be learned from it, in order to identify the most efficient way to tackle the roots of racial discrimination.⁵⁹

In “Discrimination and Human Rights: The Case of Racism,” Sandra Feldman also stresses the importance of assessing historical context in the process of combating racism. Feldman argues that race in itself is a social construct, significantly based on social and cultural context. She adds that racism operates along three axes, at the least: “denigratory stereotyping, hatred, and violence,” “a cycle of disadvantage,” and “the negation and even obliteration of culture, religion, or language.” Anti-discrimination measures should therefore address all three axes, being sensitive to context and history.⁶⁰

Education

Education is also fundamental in any efforts to combat racial discrimination. Diodene certainly believes so, as he claims that “education and the education system are, in the long term,

⁵⁶ Ibid., 20.

⁵⁷ Diene, 23.

⁵⁸ Diene, 23.

⁵⁹ Diene, 23.

⁶⁰ Feldman, “Discrimination and Human Rights: The Case of Racism,” 3.

the royal road to generate a change in attitudes.”⁶¹ As the educational system is the source of knowledge, learning and values, and where perception and images take root, this is where the principles of pluralism and dialogue must be inculcated.⁶² In “Racism and Education,” author Katarina Tomasevski also assesses in detail the role of education (particularly in schools) in combating racial discrimination. She argues that education can have a powerful role in both perpetuating and challenging racial discrimination, and that it can be a means to retain or eliminate inequality.⁶³ That is because schools are reflections of their surroundings, and education may be entrenched in existing values, reinforcing prejudices. Children learn through observation and imitation, and can internalize prejudices. This way, prejudice is handed down from generation to generation through social usage.⁶⁴ However, education can also contribute to the creation of new values and attitudes, an opportunity that can be taken advantage of in order to challenge discrimination and foster change.⁶⁵

By offering a pathway to challenge existing values and attitudes and create new ones, Tomasevski argues that education is of fundamental importance in preventing discrimination in ways in which legislation and other measures cannot. Citing the first United Nations report on discrimination (1947), Tomasevski notes that “the whole field of action to prevent discrimination requires a vast programme of education,” as legislation “cannot be effective, and may be counterproductive, unless it enjoys support from those whom it addresses.”⁶⁶ In “Citizen or Subordinate: Permutations of Belonging in the United States and the Dominican Republic,”

⁶¹ Diodene, “Eliminating racism in a changing world: arguments for a new strategy,” 23.

⁶² *Ibid.*, 23.

⁶³ Katarina Tomasevski, “Racism and Education,” *Dimensions of Racism*, 45.

⁶⁴ *Ibid.*, 48.

⁶⁵ *Ibid.*, 55.

⁶⁶ Tomasevski, “Racism and Education,” 55.

authors Shain Aber and Mary Small explore a different perspective: when efforts focus on repealing legislation that is supported by the majority of those whom it addresses.

Legislation and Bias

Placing this discussion in the Dominican Republic, Aber and Small explore the historical and current debates surrounding ‘jus soli’ citizenship in the country. Small and Aber define ‘jus soli’ citizenship as citizenship by soil, or place of birth, with ‘jus soli’ systems conferring citizenship to children born in the country.⁶⁷ As the Dominican Republic has experienced conflicts due to great migratory flows from its poorer neighbor, the challenges regarding citizenship shows how citizenship may operate as both “a formal legal status and as a social identity.”⁶⁸

In the case of the Dominican Republic, the authors claim that the construction of a national identity that excludes Haitians, as well as the prevalence of an anti-Haitian discourse, have led to an evolution in Dominican law that has increasingly codified ethnocentric discriminatory practices and denied the citizenship of Dominicans of Haitian descent.⁶⁹ The Constitutional Tribunal’s decision was the latest instance of this phenomenon. Referring to 2010 amendments to constitutional provisions for Dominican citizenship, the authors claim that the implementation of a new citizenship regime that aims to exclude Dominicans of Haitian descent, and its retroactive application, “exacerbate income inequality, illiteracy, family instability, and public health threats, in addition to violating internationally recognized rights.”⁷⁰

Despite these negative consequences, Aber and Small add that, alarmingly, denial and revocation of citizenship has been widely accepted by the public. In this context, it is challenging

⁶⁷ Shaina Aber and Mary Small, “Citizen or Subordinate: Permutations of Belonging in the United States and the Dominican Republic,” *Journal on Migration and Human Security* 1, no. 3 (2013): 77.

⁶⁸ *Ibid.*, 77.

⁶⁹ Aber and Small, “Citizen or Subordinate,” 91

⁷⁰ Aber and Small, “Citizen or Subordinate,” 91.

for the Dominican government to “operationalize citizenship regimes independent of nationalistic, ethnocentric, and racial biases.”⁷¹ Consequently, in order to successfully challenge these citizenship regimes, it is necessary to identify and challenge the nationalistic, ethnocentric and racial biases at their core.

While Judgment TC/0168 and other changes in legislation have come about at least partially as a result of anti-Haitian sentiments, Aber and Smalls demonstrate that as legislation is not independent of “nationalistic, ethnocentric, and racial biases,” addressing those nationalistic, ethnocentric, and racial biases will likely result in changes in legislation, or at least result in better acceptance of and adherence to anti-discrimination legislation.

3. Existing Approaches to Combating Racial Discrimination

Article 7

The ICERD accounts for the importance of culture and education in Article 7. Article 7 of the ICERD calls on states adopt “immediate and effective measures, particularly in the fields of teaching, education, culture and information” in order to combat the prejudices that lead to racial discrimination and to promote understanding, tolerance and friendship.⁷² In this article, the Convention recognizes that States have to take positive steps in order to eradicate discrimination and intolerance, as deeply ingrained racial discrimination cannot be effectively addressed through legislation and negative prescriptions alone. This argument is not unique to racial discrimination. Other discrimination instruments feature some idea that mechanisms must go beyond legislation and into education and culture in order to tackle the roots of discrimination. For instance, Article 5(a) of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) establishes that States shall take measures “To modify the social and

⁷¹ Ibid., 91.

⁷² International Convention on the Elimination of All Forms of Racial Discrimination.

cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁷³ While the ICERD does not go as far as expressing this need to modify social and cultural patterns, this is suggested by its proposed measures.

In “Comprehensive Examination of Thematic Issues Relating to the Elimination of Racial Discrimination: Joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination,” authors José Bengoa et al. assess the significance and impact of Article 7. Bengoa et al. argue Article 7 is formulated in obligatory language, as are Articles 2 and 5. General Recommendation V (1977), which was meant to highlight these objectives, contends that the obligations under Article 7 are binding to all State parties, including those that deny the existence of racial discrimination under their jurisdiction.

Article 7 is certainly not the only expression of the importance of combating the prejudices that lead to racial discrimination in the human rights framework. The 2001 Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance also establishes the importance of combating the roots of discrimination. The Declaration suggests measures for prevention, education and protection aimed at eradicating racism, racial discrimination, xenophobia and related intolerance. Moreover, the Declaration establishes that the barriers to overcoming racial discrimination are mainly due to a “lack of political will, weak legislation and lack of implementation strategies and concrete action by States, as well as the prevalence of racist attitudes and negative stereotyping.”⁷⁴ However, as argued below, implementation mechanisms have largely focused on the political will and weak legislation, but

⁷³ Convention on the Elimination of All forms of Discrimination against Women.

⁷⁴ Durban Declaration, 15.

have paid little attention to tackling the racist attitudes and negative stereotyping that give rise to and perpetuate racial discrimination.

Among the strategies that the Declaration suggests, there is strong support for Article 7's targets. The Declaration establishes that "education, development and the faithful implementation of all international human rights norms and obligations," which includes the enacting the relevant legislation and political, social and economic policies, are crucial to combating racial discrimination.⁷⁵ With further emphasis on the value of education in this process, the Declaration establishes that education, particularly human rights education, is critical in any efforts to change attitudes and behavior based on racial discrimination, and to promote respect for diversity.⁷⁶ The Declaration also establishes the importance of understanding the historical context of the specific country in order to effectively combat racial discrimination.⁷⁷

The importance of combating prejudice through education, information and other mechanisms established in Article 7 and in the Durban Declaration has been validated and accepted broadly in the international human rights system, particularly in the UN. The 2013 "Guidance Note of the Secretary-General: On Racial Discrimination and Protection of Minorities" establishes the commitment of the UN to combat racial discrimination, as well as guidelines for its approach. In this note, the author argues for the consistent integration of efforts to combat racial discrimination and protect minorities into the work of the UN at the global, regional and country levels.⁷⁸ Recognizing the multiple and intersecting forms of discrimination,

⁷⁵ Durban Declaration, 15.

⁷⁶ Durban Declaration, 17.

⁷⁷ Durban Declaration, 17.

⁷⁸ United Nations Secretary-General, "Guidance Note of the Secretary-General: On Racial Discrimination and Protection of Minorities," March 2013, accessed March 15, 2014, <http://www.un.org/en/events/racialdiscriminationday/2013/pdf/SG%20Guidance%20Note%20on%20Racial%20Discrimination%20and%20Protection%20of%20Minorities%20final%20PDF.pdf> 5.

the author claims that addressing these require a holistic approach to understand the way in which societies are organized and the differential impacts of discrimination across various groups.⁷⁹

Legislation to prohibit racial discrimination, to support those discriminated against, and to promote non-discrimination and equality is undoubtedly an important component of any efforts to combat racial discrimination.⁸⁰ However, in referring to the protection of minorities, the Guidance Note recognizes that countries' specific contexts present challenges that cannot be addressed by one-size-fits-all laws and policies, as each country has a unique set of "historical and contemporary power dynamics" that result in different conditions and opportunities.⁸¹ The Guidance Note proposes that the UN pursue and support "mapping and analysis exercises" to determine the situation of the marginalized groups, the impacts caused by marginalization and exclusion, the root causes of this exclusion and inequality, and the contributions of civil society organizations that articulate their concerns.⁸² This emphasizes that, while legislation is indeed important, it has to be accompanied by a look into the historical and contemporary context of the country, which necessitates positive actions by the State and other relevant actors.

In clear support of the ICERD's Article 7, the Guidance Note also establishes the importance of spreading information and supporting human rights education in order to combat racial discrimination. In order to strengthen advocacy against racial discrimination, outreach campaigns and activities carried out by and directed at all relevant stakeholders (such as government institutions, civil society groups, society, and the victims of racial discrimination

⁷⁹ United Nations Secretary-General, "Guidance Note," 5.

⁸⁰ *Ibid.*, 9-10.

⁸¹ *Ibid.*, 11.

⁸² United Nations Secretary-General, "Guidance Note," 11.

themselves) are necessary.⁸³ Moreover, this document calls the UN to reinforce rights-based education curricula that support diversity and promote the history, traditions, language and culture of minorities.⁸⁴

4. Challenges in the Implementation of the Approach to Combat Racial Discrimination

As the previous section suggests, there is broad recognition in the international community of the importance of combating the prejudices that lead to and perpetuate discrimination. There is also a broad understanding that, in order to fulfill this goal, States have to undertake positive measures in the fields of education, culture and information. However, while the theoretical support for the principles in Article 7 is robust, in practice, their promotion and implementation have been dismal.

In “A Critical Evaluation of International Human Rights Approaches to Human Rights,” authors Kevin Boyle and Anneliese Baldaccini argue that while Article 7 is a key mechanism to effectively combat racial discrimination, it is poorly enforced, as the focus in the recommendations and conclusions of the Committee on the CERD relies on the “duty of states to *legislate* to combat racial discrimination,” neglecting the importance of this Article.⁸⁵ While the goal of Article 7 is tackling the roots of racial discrimination and promoting understanding, the importance of this provision for the long-term success of the principles of the ICERD is constantly underestimated.⁸⁶

Boyle and Baldaccini claim that legislation to suppress propaganda, the dissemination of racist ideas, and organizations that advocate violence and intolerance have been prioritized under

⁸³ Ibid., 14.

⁸⁴ Ibid., 14.

⁸⁵ Boyle and Baldaccini, “A Critical Evaluation,” 155.

⁸⁶ Ibid., 166.

the Convention. However, while legislation is certainly an essential foundation in the efforts to combat racial discrimination, “law alone cannot address the problem of racism at its roots.”⁸⁷ Ideas about race and racial discrimination are deeply ingrained in all sectors of society, and unless these ideas are challenged at their source, they will be handed down from generation to generation.⁸⁸

Furthermore, according to Boyle and Baldaccini, most of the already limited information that States have reported on the implementation of Article 7 has focused on the education of schoolchildren. However, Article 7 is not limited to educational measures in the school setting, but it also includes “broader education and training such as training of teachers, law enforcement officials, judges, and other public figures,” as well as an emphasis on culture and information, which address “persons, associations and institutions that shape opinions.”⁸⁹ Article 7, then, deserves a deeper attention and a more holistic approach from States and the CERD.

Katarina Tomasevski adds to this discussion. She argues that, while “the prohibition of discrimination has been attained almost all over the world,” this is not the case with the obligations to *eliminate* discrimination.⁹⁰ In other words, while establishing negative prescriptions over discrimination (through, for instance, anti-discrimination legislation) may have been successful around the world, the positive steps necessary to combat discrimination have not. That is because obligations to eliminate discrimination extend over the individual level and the structural level, “and they necessarily trigger controversy.”⁹¹

Furthermore, as mentioned above, while Tomasevski does limit her analysis of education to education in schools (as opposed to what Boyle and Baldaccini suggest), she goes beyond

⁸⁷ Ibid., 165.

⁸⁸ Ibid., 166.

⁸⁹ Boyle and Baldaccini, “A Critical Evaluation,” 166.

⁹⁰ Tomasevski, “Racism and Education,” 45.

⁹¹ Ibid., 45.

access to education, but also focuses on protecting human rights *in* education and the instrumentalization of education to promote human rights.⁹² She suggests that States' obligations "encompass making education available, accessible, acceptable and adaptable," as the principle of indivisibility of human rights entails "conformity of the right to education with the entirety of human rights law."⁹³

Finally, placing an emphasis on economic and social rights, William F. Felice provides an additional insight into some of the challenges in the implementation of measures to combat racial discrimination in "The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, Economic and Social Human Rights." Felice notes that there are significant difficulties in the implementation of the ICERD in general. Felice mentions that the CERD has more "late" reports than any other treaty bodies.⁹⁴ Also, racial discrimination is not a clear-cut issue, and it is hard to define and prove.⁹⁵ Furthermore, oftentimes, States are not willing to address issues of racial discrimination, and in these cases, the CERD Committee's capacity is limited, as in cases of "ongoing, systematic abuse and structural factors" which require positive measures, public pressure and shaming have a limited effectiveness.⁹⁶

Despite these challenges, Felice also argues that there are flaws in the Committee's implementation of the CERD, which he analyzes through the lens of their approach to economic and social rights of racial minorities. Economic and social rights present particular challenges, as they require States' positive states for protection and fulfillment, and their successful protection must take into consideration the historical record of racial bias. Felice claims that a review of the

⁹² Ibid., 46.

⁹³ Ibid., 46.

⁹⁴ William F. Felice, "The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Rights," *Human Rights Quarterly* 24.1 (2002): 214. Accessed February 10, 2014, http://muse.jhu.edu/journals/human_rights_quarterly/v024/24.1felice.html.

⁹⁵ Felice, "The UN Committee," 213.

⁹⁶ Ibid., 214.

concluding observations of the CERD's Committee from 1996-2001 revealed "a glaring meekness in their approach to the economic and social rights of minority racial groups," with mild language and limited pressure on changing policies. Using the CERD Committee's recommendations to Panama as an example, the author claims that the Committee's comments were of little help, with superficial and safe recommendations (such as investigating and monitoring activities), but no recommendations that actually contributed to the development of the necessary policies to protect the economic and social rights of minorities. Felice asserts that, while the CERD Committee often helps to expose critical issues within the states, it is weak in helping to find solutions, and its recommendations tend to be unsubstantial.⁹⁷

5. Combating Racial Discrimination in the Dominican Republic

Reports before the Committee on the CERD

The application of Boyle and Baldaccini's, Tomasevski's and Felice's arguments may indeed vary on a country-by-country and case-by-case basis. However, in the case of the Dominican Republic, their claims are very valid. While the racial discrimination framework recognizes that efforts to combat racial discrimination have to extend beyond legislation and include States' effective measures under Article 7 in their reports, the Dominican government places great emphasis on legislation, but very little emphasis on its efforts to address the roots of discrimination. While this may be expected from a government that denies the existence of racial discrimination in the country and has frequently ignored its obligations under international law in regards to racial discrimination, the Committee on the CERD has also failed to properly address the importance of measures that identify and address the root causes of racial discrimination in the case of the Dominican Republic.

⁹⁷ Ibid., 223.

In the Dominican Republic's periodic report submitted in 1998 (which encompasses five reports from 1990, 1992, 1994, and 1996 and 1998 in one document), the progress on Article 7 reported is largely limited to clarifying that there is no progress on this article because there is no racial discrimination in the Dominican Republic. Regarding Article 7, the report claims that "racial discrimination between Dominicans, if it ever existed occasionally and selectively, has disappeared from the country as a form of social pathology."⁹⁸ The State reported that its new Education Act guaranteed the right education to all inhabitants of the country, and mentioned the proposed idea of a wide-ranging social security scheme. In regards to information, the Dominican Republic claimed that no information transmitted in State-owned or private television or radio conveyed any messages with racist leanings, and neither did the national press. The government's stance seems clear: why should the State take active measures to combat the prejudices that lead to racial discrimination, when there is no racial discrimination in the country?

In its subsequent periodic report submitted in 2006, the Dominican Republic went slightly farther in its claims of progress. While still claiming that there was no racial discrimination in the country (and hence, no need for Article 7), the Dominican Republic reported its progress on the field of education. This report claimed that it guaranteed the right to education to all children regardless of their nationality. In addition to guaranteeing access, the Dominican Republic claimed to have incorporated "elements focusing on equity and non-discrimination on the grounds of race or sex" in Spanish language and history textbooks, and added language to its General Education Act to establish education as a human right and ensure

⁹⁸ Committee on the Elimination of Racial Discrimination, *Reports Submitted by States Parties under Article 9 of the Convention: Dominican Republic*, November 4, 1998, CERD/C/331/Add.1, Accessed March 2, 2014, file:///C:/Users/vdc2106/Desktop/G9940536.pdf.

its enjoyment without discrimination.⁹⁹ However, as Boyle and Baldaccini criticize, this ‘progress’ was superficial at most: it focused solely on the education of school children, and, as Tomasevski criticizes, emphasized mostly access to school, with limited information on measures to address discrimination within the schools.

However, as limited as this report was, it was still far better supported than the Dominican government’s attention to Article 7 in its latest periodic report, submitted to the Committee on 2013. In this report, the Dominican Republic provides a thorough overview of the different developments in its laws and institutions that are relevant to its commitment to equality and non-discrimination. However, when discussing its progress on Article 7, the Dominican Republic provides a vague claim, mentioning its commitment to fulfilling its obligations under Article 7 to adopt immediate and effective measures to combat prejudices, but with no mention of any measures devised or undertaken with this aim.¹⁰⁰ While, considering the State’s denial of any racial discrimination, these responses may be expected, the Committee’s similar neglect of Article 7 aligns with the criticisms on the previous section.

In the Committee’s “Concluding Observations” of 1998, the Committee recommends “that the State party take all the appropriate measures to give effect to the provisions of Article 7,” and recommends the training of law enforcement officials in “matters pertaining to the

⁹⁹ Committee on the Elimination of Racial Discrimination, *Reports Submitted by States Parties under Article 9 of the Convention: Dominican Republic*, December 5, 2006, CERD/C/DOM/12, Accessed March 2, 2014, [file:///C:/Users/vdc2106/Desktop/G0742348%20\(1\).pdf](file:///C:/Users/vdc2106/Desktop/G0742348%20(1).pdf).

¹⁰⁰ Committee on the Elimination of Racial Discrimination, *Reports Submitted by States Parties under Article 9 of the Convention: Dominican Republic*, March 7, 2012, CERD/C/DOM/13-14, Accessed March 2, 2014, <file:///C:/Users/vdc2106/Desktop/G1241252.pdf>.

Convention.”¹⁰¹ These recommendations make up the entirety of its focus on measures to combat racial discrimination at its roots.

In its subsequent 2008 “Concluding Observations,” the Committee recommends awareness-raising training programs for public officials, national human rights campaigns, and the inclusion of intercultural curricula in schools. While this is certainly a step forward from the 1998 “Concluding Observations,” this limited emphasis on effective measures to combat racial discrimination at its roots is highly disproportionate with the dozens of recommendations offered in regards to legislative reforms and other issues.¹⁰² This shows that, as Boyle and Felice claim, the Committee places low priority on Article 7 and its significance, and its recommendations are generalized and weak, with unlikely positive outcome.

Along the same lines, in the Committee’s 2013 “Concluding Observations,” the Committee recommends the appointment of an Ombudsman, a specific law on racial discrimination, a national human rights plan, stepping up of the efforts to guarantee access to education, health and other rights for its population, among other mechanisms. These are all very valid and important recommendations. However, as in its previous reports, on the most part, these measures treat the symptoms, rather than the illness - they address the manifestations of racial discrimination, but do little to address the roots of racial discrimination.

Among its limited recommendations regarding Article 7, the Committee recommends public information campaigns and calls on the state to take into consideration the Durban Declaration and Programme of Action in its implementation of Articles 2 and 7. Moreover, the

¹⁰¹ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, April 12, 2001, CERD/C/304/Add.74, Accessed March 2, 2014, <file:///C:/Users/vdc2106/Desktop/G0141272.pdf>.

¹⁰² Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, May 16, 2008, CERD/C/DOM/CO/12, Accessed March 2, 2014, <file:///C:/Users/vdc2106/Desktop/G0841922.pdf>.

Committee invites the Dominican Republic to “Implement the policy of the Ministry of Culture designed to vindicate the African contribution to the country and encourage intercultural education in schools.”¹⁰³ Furthermore, the Committee does attempt to understand the historical roots of discrimination. However, this seems to be a generalized recommendation limited to the consequences of the transatlantic slave trade, and pays no attention to the specific context of the relations between Haiti and the Dominican Republic, Haitian migration to the Dominican Republic, and other specific factors.

The Committee’s limited attention to the importance of tackling the roots of discrimination fails to take into account the fundamental role of culture, history, and education that Diene, Feldman and Tomsevski so eloquently articulate. The prohibition of discrimination is crucial step in ensuring the rights of Dominicans of Haitian descent. However, as mentioned in the previous sections, serious systematic racial discrimination against Dominicans of Haitian descent have taken place long before Judgment TC/0168 or the 2010 Constitutional Amendment. These long-standing violations, which have taken place regardless of discriminatory legislation, cannot be eliminated with legislation (whether by including anti-discrimination laws, or abrogating discriminatory laws). For the reasons described by Diene, Feldman, Tomasevski, and other authors in this section, efforts to eliminate racial discriminate have to account for its deep roots, *in addition* to legislation and negative measures. Pertaining racial discrimination in the Dominican Republic, the Committee still has a long way to go to effectively promote the principles of the ICERD and the Durban Declaration and Programme of Action.

¹⁰³ Committee on the Elimination of Racial Discrimination, *Concluding observations on the thirteenth and fourteenth periodic reports of the Dominican Republic, adopted by the Committee at its eighty-second session (11 February–1 March 2012)*, 3.

V. Human Rights Advocacy: New Directions

“In all societies structures of inequality, including economic inequalities, have been laid down in the past. In a number of cases these structures have been based on or influenced by racist assumptions that, transmitted over time have continuing effects today.”

- Kevin Boyle¹⁰⁴

Racial discrimination cannot be eliminated with prohibitions or legislation alone. As Diene and Feldman assert, racial discrimination is rooted on deeply ingrained cultural values that are often reinforced by societal structures and institutions, and passed down from generation to generation. This aspect of racial discrimination complicates its elimination, as any efforts to combat it must challenge these deeply ingrained roots, with sensitivity to specific historical and social contexts. While this is a well-known fact in the international community, the difficulty of carrying out this process in practice has made the elimination of racial discrimination a formidable, so far unsuccessful challenge.

The Dominican Republic presents a fascinating case study for this challenge. This nation is one of the few countries that denies the existence of racial discrimination in its borders, but it also has State-sponsored, codified racial discrimination against Dominicans of Haitian descent in measures such as Judgment TC/0168. Racial discrimination in the Dominican Republic is deeply rooted in Dominican society, rendering its elimination a formidable challenge that can only begin to be addressed with an understanding of the country’s social and historical context.

The Dominican Republic has long been plagued with claims of state-sponsored racial discrimination against Dominicans of Haitian descent. This attention was exacerbated by Judgment TC/0168. However, recommendations from the Committee on the CERD and other stakeholders have largely focused on setting up legislation and institutions to prohibit racial discrimination (or take down legislation and institutions that promote racial discrimination), but

¹⁰⁴ Boyle, “Introduction,” *Dimensions of Racism*, 8.

they have paid little attention to identifying and addressing the roots of racial discrimination against Dominicans of Haitian descent. Recommendations and human rights advocacy responses have also paid little attention to the historical context at the root of anti-Haitian sentiments (which have translated into actions), and the mechanisms that have served to perpetuate these. The codification of racial discrimination in the Dominican Republic has led to the erroneous assumption that with the abrogation of discriminatory laws, the Dominican government will cease to be in violation of its obligations under the ICERD and other human rights instruments. While this certainly would contribute to this process, the effective responses to racial discrimination against Dominicans of Haitian descent have to get at the roots of this discrimination that have supported and allowed for its codification in the first place.

The new directions set forth on this paper will focus largely on identifying some of the roots of racial discrimination against Dominicans of Haitian descent, with heavy reliance on local context and history. However, by no means does this paper aim to offer solutions to racial discrimination in the Dominican Republic. Rather, this paper aspires to identify key issues and gaps in the efforts to combat racial discrimination, particularly in the Dominican Republic, with the hopes that identifying these may contribute to improved advocacy strategies.

1. Looking Back at History: A National Conversation on Anti-Haitianism in the Dominican Republic

In line with Feldman's and Diene's claims, it is necessary to take a long view of history in order to uncover and understand the roots of racial discrimination and its manifestations. The following brief look into the complex history of Dominico-Haitian relations will reveal some of the roots of racial discrimination against Dominicans of Haitian descent, as well as some of the

mechanisms that have served to instill and perpetuate racial discrimination, such as education and outreach campaigns, long before Judgment TC/0168.

Historical Assessment

In *Race and Politics in the Dominican Republic* (2000), author Ernesto Sagás presents a groundbreaking examination of the historical roots of *antihaitianismo* (or anti-Haitianism) ideologies, and how they have shaped Dominican society and politics. He argues that *antihaitianismo*, which he defines as “a set of socially reproduced anti-Haitian prejudices, myths, and stereotypes prevalent in the cultural makeup of the Dominican Republic,” are rooted on presumed racial, economic, social, and national-cultural differences between Haitians and Dominicans.¹⁰⁵ Sagás traces the roots of *antihaitianismo* from its beginnings in racist Spanish colonial mentalities, to discriminatory racial theories prevalent in the nineteenth century, to twentieth-century “cultural neoracism.”¹⁰⁶ He claims that *antihaitianismo* did not arise spontaneously, but rather, this ideology was devised by the elites, who used race to “construct national myths” and later employ these as political tools to thwart challenges to their status.¹⁰⁷

According to Sagás, while certainly the origins of *antihaitianismo* can be traced back to the Spanish colonialists, it did not become an official state-sponsored ideology until General Rafael Trujillo’s rise to power. The thirty-one-year-long dictatorship of General Trujillo (1930–1961) represented a turn of the tide in the relations between Haiti and the Dominican Republic. In 1937, Trujillo took a radical decision – he ordered the killing of Haitians living in the Dominican Republic with the purpose of eliminating what he understood to be their “pernicious

¹⁰⁵ Ernesto Sagás, *Race and Politics in the Dominican Republic* (Gainesville, FL: University Press of Florida, 2000), 3.

¹⁰⁶ *Ibid.*, ix.

¹⁰⁷ *Ibid.*, 3.

influence on the Dominican nation.”¹⁰⁸ After this massacre, which resulted in up to 35,000 deaths, relations between the Dominican Republic and Haiti were severely strained, and Trujillo’s Haitian policy forever changed.¹⁰⁹

At the national level, Trujillo began a ‘Dominicanization policy’ with the massacre as the starting point, aimed at securing, developing and transforming “the Dominican borderlands into a national showcase,” as well as controlling the national territory and “building Dominican nationalism into a cultural shield against ‘foreign’ (that is, Haitian) influences.”¹¹⁰ During this process, Trujillo recruited some of the best-known local intellectuals, such as Manuel A. Batlle and Joaquín Balaguer, who would create the ideological background to his nationalist, anti-Haitian policies.

La isla al revés: Haití y el destino dominicano (or literally, The Island Upside Down: Haiti and the Dominican Destiny), by Joaquín Balaguer, had a major role in advancing said discourse. In this book, Balaguer, who would later become President of the Dominican Republic, described Haiti as a threat to Dominican progress and civilization. Balaguer reinforced views of Haitians as foreign, poor and black, in complete contrast to Dominicans. With the help of Balaguer and other intellectuals, Trujillo established Hispanic culture and Catholicism “as the core of the Dominican nation,” excluding Haitians and denoting them as “inferior beings and enemies of the Dominican nation,” an “alien and pernicious presence.”¹¹¹ Trujillo employed this state-sponsored ideology to build a national identity and obtain political support.

While Trujillo and these intellectuals did not invent *antihaitianismo* (it was already an integral part of Dominican culture), they “transformed popular anti-Haitian prejudices, and the

¹⁰⁸ Ibid., 46.

¹⁰⁹ Ibid., 46.

¹¹⁰ Ibid., 46.

¹¹¹ Ibid., 44.

elite's Hispanophile ideas, into a complex, yet historically flawed, dominant ideology," which was propagated through a massive propaganda program.¹¹² While *antihaitianismo* receded from the official discourse in the 1950s and the Trujillo regime started to restore relations with Haiti, this ideology remained deeply entrenched in most Dominican institutions and practices. *Antihaitianismo* took new forms, particularly with new *antihaitianismo* literature and theoretical constructions, the reproduction of this *antihaitianismo* ideology through socialization, education and the media, and the prevalence of anti-Haitian attitudes among the general public. *Antihaitianismo* further developed from the Dominican Republic's and Haiti's tense and conflictive relationship, their unequal levels of development, and the continuous "manipulation of anti-Haitian feelings by Dominican elites for the achievement of political ends."¹¹³

In *Coloring the Nation: Race and Ethnicity in the Dominican Republic* (2001), David Howard explores more in detail the role of race and ethnicity in the formation of a national Dominican identity that excludes anything Haitian. Howard examines the importance of racial legacies in Dominican society, where Spanish and indigenous heritage are celebrated at the expense of African heritage, which is excluded from any definition of Dominican identity.¹¹⁴

According to Howard, *la raza dominicana* (translated literally as Dominican race, but contextually as Dominican ethnicity) represents whiteness, Catholicism and a Hispanic heritage, vis-à-vis the Haitian race, which represents blackness, voodoo and African heritage. These definitions mark an alleged disparity between civilization and savagery, which Howard claims is expressed in everyday language and media. Historical conceptions of *la raza dominicana* have intertwined overt racism and nationalism.¹¹⁵

¹¹² Ibid., 46.

¹¹³ Ibid., 126.

¹¹⁴ David Howard, *Race and Ethnicity in the Dominican Republic* (Colorado: Lynne Rienner Publishers, 2001), 1.

¹¹⁵ Ibid., 17.

According to Howard, framing the fears of the presence of Haitians in the country and protecting *Dominicanidad* as a “race problem” has been common in Dominican literature and discourse. Howard describes how these fears in the form of anti-Haitianism were instituted in Dominican schools, particularly throughout the Trujillo regime. He offers striking evidence of this institutionalization in the following excerpt from a textbook used during the Trujillo era: “Haiti is inhabited by a mob of Africans. We Dominicans should be in debt to our blood. The Haitian is an enemy. Haitians should be transferred to French Guyana or Africa. The Dominican race and civilization are superior to that of Haiti. Haiti has no importance in the world. The poorest sectors of the Haitian population are an ethnic group incapable of evolution and progress.”¹¹⁶ While certainly extreme, this excerpt presents a clear picture of not only the overtly racist attitudes prevalent in anti-Haitian Dominican discourse (at its peak during the Trujillo regime), but also, how these became deeply entrenched in Dominican society through education and propaganda so that they would outlive the Trujillo regime and remain present until today.

Looking Back at History

In this historical assessment of anti-Haitian racial discrimination, it seems clear that the formation of a Dominican nationality that excludes Haitian (or African) contributions, information, and education were employed as the means to formulate, instill and perpetuate prejudices against Haitians (and their descendants). It is remarkable that the fields that Article 7 of the ICERD establishes as the grounds to challenge racial discrimination were employed throughout Dominican history to fulfill the opposite goal. Certainly, as Tomasevski argues, education (as well as information and culture) can be employed to both perpetuate and challenge racial discrimination. This realization renders the implementation of the State’s obligations under

¹¹⁶ Ibid., 38.

Article 7 all the more urgent and relevant, since if education, culture, information and training have been historically used to perpetuate discrimination, these are the very fields that ought to be addressed in order to effectively combat racial discrimination.

Information

The importance of information, as well as of looking back at history, in efforts to combat racial discrimination in the Dominican Republic is further supported by Edward Paulino in “Anti-Haitianism, Historical Memory, and the Potential for Genocidal Violence in the Dominican Republic.” In this article, Paulino recounts that following the 2005 murder of Maritza Núñez, a Dominican woman, in a border town by several Haitian suspects, relentless nationwide media describing the murder fed on Dominico-Haitian animosities, and led to other violent attacks against Haitians through the country. Subsequently, the Dominican military carried out mass deportations of Haitians and Dominico-Haitians in the Dominican Republic.¹¹⁷ With this violent and unprecedented civilian backlash in mind, Paulino identifies social indicators that suggest a potential for future anti-Haitian genocidal violence (similar to the 1937 massacre, which he identifies as a genocide). Although the possibility of genocide might seem distant and extreme, Paulino’s analysis of the real-life consequences of the advancing information that promotes prejudice and racial discrimination is very relevant. Paulino also offers some recommendations targeting information to ensure that anti-Haitian Dominican policies, such as deportations and denial of citizenship to Haitians and Dominicans of Haitian descent, do not intensify later on.¹¹⁸ Among required changes, Paulino suggests that Dominican immigration policy should not depict Haitians as the historic enemy, and that the state should challenge

¹¹⁷ Edward Paulino, “Anti-Haitianism, Historical Memory, and the Potential for Genocidal Violence in the Dominican Republic,” *Genocide Studies and Prevention* 1, no. 3 (December 2006): 267.

¹¹⁸ *Ibid.*, 278.

popular anti-Haitian discourse. Paulino also suggests that the portrayal of Haiti as an important partner, rather than as a grave threat to the Dominican Republic with absent institutions and political turmoil, is also crucial in preventing further large-scale violence.¹¹⁹ Even more, emphasizing the importance of taking a long view of history in order to combat discrimination, Paulino also suggests having a national discussion on the 1937 massacre of Haitians, focusing on the responsibility of Dominicans, not just Trujillo. He adds that Dominicans should explore a collective shame in relation to this massacre, as well as to human rights violations against Haitians and Dominicans of Haitian descent that continue today.

Paulino's cautionary tale reveals that, while Sagás' and Howard's examinations of the roots of anti-Haitianismo are profound and expansive, their analysis of anti-Haitianismo might serve to essentialize it and create the impression that it is a transhistorical phenomenon. Indeed, things have changed since Spanish colonial times, and the Dominican Republic exists in a significantly different economic and political context.

The murder of Mrs. Nunez and the Trujillo massacre, but also the 2010 earthquake in Haiti, are some events and historical moments that have exacerbated or reduced animosities between Dominicans and Haitians, challenging or building up anti-Haitian attitudes. The effect of these events on popular anti-Haitian sentiments and governmental policies in the Dominican Republic suggests that anti-Haitianismo is not a transhistorical phenomenon, but rather, it is largely influenced by a set of circumstances that can be changed. Anti-Haitian ideas, as deeply-rooted as they may be, can also be challenged and changed, but historical moments like these have to be identified and assessed in order to recreate or avoid the circumstances that lead up to these.

¹¹⁹ Ibid., 279.

Education

Sagás and Howard illustrate the prominent use of education in the process of building and perpetuating prejudices against anything Haitian. Due to poor efforts to challenge this process, education still remains a field that instills and perpetuates racial discrimination in the Dominican Republic. In “Violencia en la escuela” (or “Violence at school”), a 2008-2009 qualitative study by Tahira Vargas, the author describes her findings of widespread discrimination against Dominicans of Haitian descent at schools carried out by teachers, school guards, and students.¹²⁰ Vargas found that students of Haitian descent suffered mistreatment and violence by the police guards and verbal violence and rejection from their classmates on the basis of having Haitian descent; and that there were many reports of discrimination against black Dominicans without Haitian descent, who were assumed to be Haitian because of their skin color.¹²¹ Vargas also documented several instances of discrimination against Dominicans of Haitian descent carried out by teachers: poor explanation and tutoring to children of Haitian descent; verbal aggression; indifference and inaction during situations of discrimination; and blaming the Haitian population for discipline problems in the classroom. This study certainly supports CLADEM’s claims in its 2013 shadow report to the Committee on the CERD that in the Dominican Republic “the school is one of the fundamental sources of transmission of racist ideas” in the country.¹²² CLADEM asserts that racism and discrimination is prominent in schools, where ideas to reject African identity are reproduced by teachers and students. While the Dominican Republic may be past the

¹²⁰ Tahira Vargas, *Violencia en la escuela* (Dominican Republic: Plan Republica Dominicana, 2011), accessed April 1, 2014,

http://www.coalicioninfanciard.org/index.php?option=com_zoo&task=item&item_id=316&Itemid=99&lang=es.

¹²¹ Ibid., 88.

¹²² CLADEM, “Shadow Report presented to the United Nations Committee for the Elimination of Racial Discrimination (CERD)” (Report presented at the Committee on the Elimination of Racial Discrimination’s review of the Dominican Republic during its 82nd session, January 2013), accessed on February 16, 2014,

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DOM/INT_CERD_NGO_DOM_13706_E.pdf, 14.

explicit institutionalization of racial discrimination in textbooks from the Trujillo era, racial discrimination within schools still remains a reality. Although efforts to address racial discrimination often focus on ensuring children's access to school, the mechanisms that perpetuate discrimination within the schools are often neglected.

2. Empowering the Dominican Diaspora

The Dominican State is in denial. There is no racial discrimination in the Dominican Republic, and all claims that there is are an international conspiracy against the State.¹²³ This is also the sentiment of large sectors of the Dominican population, for whom anti-Haitian prejudices and discrimination have become normalized. The denial of the State and the population of racial discrimination, and their view that efforts to combat it are an incursion on the Dominican Republic's sovereignty pose significant challenges for any efforts to prevent and combat this issue.

A possible alternative to minimize feelings of foreign imposition and increase recognition of the manifestations of racial discrimination against Dominicans of Haitian descent is focusing on Dominican ownership over human rights advocacy efforts. This alternative is supported by the Secretary-General's Guidance Note, which establishes that it is necessary to ensure wide local ownership in order to ensure the sustainable impact of measures to address racial discrimination, engaging the government, minorities and majorities through civil society participation.¹²⁴

The Dominican Diaspora has had a fundamental role in denouncing Judgment TC/0168 and holding the Dominican government accountable for its failure to live up to its obligations under the ICERD and other international human rights instruments. In "The Tribulations of

¹²³ UN Human Rights Council, *Report of the Special Rapporteur*, 10.

¹²⁴ United Nations Secretary-General, "Guidance Note," 7.

Blackness: Stages in the Dominican Racial Identity,” Silvio Torres Saillant explores the potential role of the Dominican Diaspora in challenging anti-Haitian ideas. Torres-Saillant argues that the Dominican diaspora in the United States will have a pivotal role in configuring an inclusive conceptualization of racial identity in the Dominican Republic that can transcend anti-Haitian prejudices.¹²⁵ This is due to Dominicans’ experiences with racial discrimination and racial distinctions in the United States. According to Torres-Saillant, in the diaspora, Dominicans come into a society that “knows only black and white,” and regardless of Dominicans’ racial self-representation, in the eyes of others, they share racial kinship with Haitians. The larger US society does not distinguish between Dominicans and Haitians “as they grapple for access to jobs, education, housing, and health services in an atmosphere of ever-scarcer resources and ever-increasing anti-immigrant feeling.”¹²⁶ Therefore, “anti-Haitianism is rendered impractical,” as necessity forces Dominicans and Haitians to become allies. Indeed, the Dominican diaspora in the United States had a crucial role in bringing attention to Judgement TC/0168 and to the human rights violations that Haitians and Dominico-Haitians face in their home country, framing these in the context of their own experiences as immigrants in the US.

According to Torres-Saillant, the experiences of Dominicans with racism and anti-immigrant feelings in the United States allow them to learn to “see themselves more fully and more fairly, particularly in matters of race.”¹²⁷ These experiences help them to overcome the anti-Haitian negrophobic discourse, and discover their “black roots,” a discovery that they can then bring to the Dominican Republic.¹²⁸ This contribution can have many shapes. For instance, the Dominican diaspora in the United States has great political power and influence over the

¹²⁵ Silvio Torres-Saillant, “The Tribulations of Blackness,” 141.

¹²⁶ *Ibid.*, 141.

¹²⁷ Silvio Torres-Saillant, “The Tribulations of Blackness,”- 143.

¹²⁸ *Ibid.*, 142.

Dominican Republic. As of 2001, an estimated half million Dominicans in New York City represented the third largest concentration of Dominican voters, only after the cities of Santo Domingo and Santiago in the Dominican Republic.¹²⁹

Whether it be through political pressure, education, or any other measures, “the diaspora will render an inestimable service to the Dominican people if it can help to rid the country of white supremacist thought and negrophobic discourse in the extent to which those aberrations survive there.”¹³⁰ No law or recommendation can have the immediate effect of a concerted effort by the diaspora to help challenge racial prejudices in the Dominican Republic at their core. Any measure to combat racial discrimination must harness the enthusiasm and power of the Dominican diaspora, facilitating Dominican ownership over these responses.

¹²⁹ Pamela Graham, “Political Incorporation and Re-Incorporation: Simultaneity in the Dominican Migrant Experience,” in *Migration, Transnationalization, and Race in a Changing New York*, ed. Héctor Cordero-Guzmán, Robert C. Smith and Ramón Grosfoguel (Temple University, 2001), 87-88.

¹³⁰ *Ibid.*, 143.

VI. Conclusion

Racial discrimination is present everywhere, so much so that a State's claims that there is no racial discrimination within its borders raises red flags. The global nature of this problem may be the result of the harrowing fact that we still don't know enough about how best to combat it. However, there is broad agreement in the international human rights framework that combating racial discrimination requires positive steps that tackle the roots of this discrimination, which are highly dependent on social, cultural and historical context. These steps cannot be achieved by the prohibition of racial discrimination alone.

Legislation does have a fundamental role in combating or promoting racial discrimination. This is illustrated by Judgment TC/0168 and its possible catastrophic consequences for Dominicans of Haitian descent. However, racial discrimination in the human rights framework has established a disproportionate emphasis on legislation and negative prescriptions in addressing racial discrimination, ignoring the roots of the prejudice that lead to and perpetuate racial discrimination. Responses to racial discrimination against Dominicans of Haitian descent in the Dominican Republic have not been the exception. This paper provides an argument for a more balanced approach to racial discrimination in the Dominican Republic that incorporates efforts to annul Judgment TC/0168 and all forms of government-sponsored racial discrimination, but also incorporates efforts to identify and tackle the deeply seated roots of anti-Haitianism. The Committee on the Elimination of All forms of Racial Discrimination, in upholding the principal international instrument to combat racial discrimination, should take a leading role in these efforts to eliminate, rather than simply prohibit, racial discrimination until the implausible day when any country's assurance of lack of racial discrimination is a source of recognition, rather than suspicion and rebuke.

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