



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the 2223rd meeting

Held at the Palais Wilson, Geneva, on Friday, 22 February 2013, at 3 p.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined thirteenth and fourteenth periodic reports of the Dominican Republic (CERD/C/DOM/13-14; CERD/C/DOM/Q/13-14)

1. *At the invitation of the Chairperson, the delegation of the Dominican Republic took places at the Committee table.*

2. **Ms. Abreu de Polanco** (Dominican Republic) said that the equality of all citizens of the State party was guaranteed under article 39 of the Constitution. That included equality between men and women. The population was not divided into specific ethnic groups, a fact which rendered it impossible for the Government to promote policies based on any form of racial distinction. The State had put into effect a series of measures to prevent racial discrimination, and offences of a racially discriminatory nature were punishable under article 336 of the Criminal Code. Confrontations between Dominicans and Haitians tended to be localized and were promptly terminated by the police.

3. All persons living in the State party, whether Dominicans or foreign nationals, had the same rights to education, health care, transport, the justice system, freedom of movement and freedom of expression, and to form and join trade unions. Dominicans and foreign nationals were free to intermarry. Foreign nationals living in the State party could not be said to constitute ethnic minorities. The 2010 census had shown that, of almost 400,000 foreign nationals legally resident in the State party, 312,000 were Haitians; the total population was nearly 9,050,000. All legal residents had the right to work in whatever sector they chose. The quality of labour opportunities open to immigrants in an irregular situation was clearly more limited.

4. It was untrue that sugar plantations were inhabited exclusively by Haitian nationals. Other foreign nationals and Dominicans also lived on the plantations and there was no form of segregation. Of the approximately 75,000 Dominicans, Haitians and other nationalities living on the plantations, no more than 14,500 worked there at peak harvesting times. Those labourers and their families, regardless of their nationality or origins, had benefited from recent investment to improve infrastructure, and health and education services. The exploitation and discrimination associated with life on the plantations under the dictatorship of Rafael Trujillo were a thing of the past. Currently, the majority of immigrants from Haiti came of their own accord and did not work in the sugar industry, whose role in the national economy had declined significantly. Rather, contemporary immigration was essentially urban and migrant workers found employment in construction, public works, tourism and the informal economy. Only a limited number worked in agriculture.

5. No country had done more than the Dominican Republic to demonstrate its solidarity with, and support for, nationals of Haiti, particularly since the disastrous earthquake of 2010 in that country. Relations between the two States had improved greatly over the previous 20 years since the disappearance of dictatorships on both sides of the border.

6. **Mr. Taveras** (Dominican Republic) said that his Government was committed to fulfilling its obligations under the international instruments it had ratified. Reports of racial discrimination made by certain NGOs in their alternative reports were incomprehensible to Dominicans because racism was simply not an issue in the State party. The Dominican Republic had long been a neglected colonial and post-colonial backwater until Mr. Trujillo had come to power. Under his regime labour had been imported on a massive scale for the first time in the country's history in order to provide workers for the burgeoning sugar industry.

7. As early as the first years of the twentieth century, a criollo population resulting from the integration of Europeans, blacks and indigenous peoples had emerged in the State party. The Dominican Republic was a melting pot of mixed-race families and there was no significant expression of racism in the media or the justice system. Indeed, it could be said that all Dominicans were of African descent to some degree. It should, however, be noted that, during the Second World War, the State party had welcomed Jews fleeing Europe. The Constitution, in fact, expressly prohibited racial discrimination.

8. Foreign nationals legally resident in the State party were guaranteed full equality before the law with Dominican nationals.

9. **Mr. Murillo Martínez** (Country Rapporteur) said that the Government should consider appointing a temporary cross-sectoral commission, with the participation of civil society, to address the matter of Dominican identity and to discuss whether or not the African component of national identity was systematically denied or not. Such a commission should also pinpoint hindrances to the full integration of various ethnic groups, in particular persons of African descent. A nationwide survey on self-perception, including ethnicity and race, should be conducted. A permanent working group, including representatives of civil society, should be created with a view to drafting a national plan to combat racism, racial discrimination, xenophobia and related forms of intolerance. An ombudsman should be appointed, perhaps together with a delegate on racism and racial discrimination, whose presence would ensure that the office of the ombudsman was in conformity with the Paris Principles. The State party should also request accreditation for the office from the International Coordinating Committee of National Human Rights Institutions. The Inter-Agency Commission on Human Rights could be the appropriate body to promote action on some of those matters, although it did not include civil society groups in its activities.

10. Latin America was a region characterized by race-based social systems inherited from the colonial and slave era that had survived long thereafter in a form of “pigmentocracy”, under which participation in decision-making was largely determined by the colour of one’s skin. The darker the skin colour, the lower one’s position in society. Happily, in recent decades, States and the different population groups of the region had begun to work towards mutual recognition and self-recognition. By way of example, half of the population of Brazil currently identified itself officially as being of African descent. The Dominican Republic, however, appeared to constitute an exception to that trend.

11. According to one report before the Committee, the majority of the population of the State party were of African descent and 12.6 per cent were of Haitian origin. The State party itself conceded that 10 per cent of the population lived in extreme poverty and 34 per cent below the poverty line, and that it would fail to meet even the first of the Millennium Development Goals, to end poverty and hunger. At the same time, the State party’s neighbour, Haiti, with which it shared a border of around 300 kilometres, was the poorest country in the Americas.

12. During the Trujillo dictatorship, strong nationalist sentiment had been fostered and racist “anti-Haitianism” had been developed as a means of strengthening Dominican culture. Racial discrimination and the experiences of the past had resulted in widespread social resistance to a Haitian presence, which impeded an inclusive policy to regularize the situation of migrants, especially minors. One of the legacies of that time was that Dominicans continued to define themselves as “light Indians” or “dark Indians” in a vain attempt to deny their African origins. The identity crisis of the Dominican Republic was exacerbated by the structural problems of the country’s civil registration system and low levels of birth registration. There was a large number of undocumented adults in the Dominican Republic, amounting to up to 25 per cent among the poorest population groups;

although many were foreigners, mostly Haitians, there were also Dominicans in special situations, including prisoners. It was therefore not merely a question of migration.

13. The constitutional reform of 2010 had strengthened the process of denationalization to which Dominicans of Haitian descent had been subjected since the adoption of the Migration Act by restricting the right to acquire nationality by birth, in clear violation of various international human rights instruments, including the Convention on the Rights of the Child.

14. The Dominican Republic had been the first country to provide solidarity and financial support to its neighbour Haiti in the aftermath of the devastating earthquake of January 2010. Turning to the positive aspects of the report, he drew attention to the constitutional reform of 2010, under which human rights had been given constitutional status, and to the incorporation of the concept of non-discrimination into the Constitution, the Criminal Code, the Code of Criminal Procedure and the Civil Code. The establishment of the Inter-Agency Commission on Human Rights and the Human Rights Unit within the Attorney-General's Office were also to be commended. He welcomed the publication of a children's version of the Constitution, the entry into operation of the Constitutional Court, the adoption of the national development plan and the gender equality plan, the initiative to amend the electoral law to allow Dominicans to identify themselves as "black, mulatto", and the fact that some State reports recognized the existence of a population of African descent.

15. Noting that the Dominican Republic had accepted the recommendation of the universal periodic review (UPR) to recognize Africans and persons of African descent as part of Dominican society, he wished to know what the State party had done to promote the cultural integration of those groups. He asked whether there was racial segregation in the Dominican Republic and whether the inhabitants of the sugar plantations received the same State subsidies as other groups and what mechanisms were in place to access those benefits. Were identity documents a prerequisite for access to social benefits, including social security and education, for example?

16. He would be interested to know what measures the State party was taking to avert incitement to hatred and violence against Haitians and Dominicans of Haitian descent in the media. Which legislation prohibited racial discrimination? What measures were envisaged to expedite amendment of the Criminal Code, and had discriminatory provisions been removed from the amended draft Code? How many convictions for discrimination had there been in the State party, what sanctions had been imposed, and what compensation had been provided to the victims? What penalties had been imposed on the persons who had attacked Haitians during the cholera outbreak at the end of 2010?

17. He asked whether Haitian workers had the right to demand a written contract. What were the Government's views on the application of article 52 of the Migration Act to individually regularize employment contracts for Haitian workers? Given that, under that Act, workers were not permitted to leave their place of work, he wondered how their freedom of movement was guaranteed. Did temporary contracts that had been successively renewed become permanent contracts?

18. He wished to know how the Dominican authorities evaluated the right to nationality of persons with Haitian parents who had been born and registered prior to the 2010 Constitution. Why were provisions on nationality being applied retroactively to persons born before the entry into force of that Constitution, even though article 18.2 of the Constitution and article 150 of the Migration Act established the contrary? Did individuals have access to the official civil registers in the Dominican Republic, and were they entitled to amend the contents? In cases of suspected fraud, had any officials been sanctioned?

19. He would be interested to know how, for example, a birth, which should give rise to the right to nationality, could be recorded in the Immigration Registry without establishing the foreign nationality of the individual in question. What happened to children recorded in the Immigration Registry who grew up in the Dominican Republic?

20. He wished to know the State party's views on the 2005 ruling of the Inter-American Court of Human Rights to the effect that the parents' status as migrants could not be transferred to the children for the application of *jus soli*. What measures had the State party adopted on the basis of the Yean and Bosico ruling to improve conditions for the civil registration for Dominicans of Haitian descent? What was the State party doing to ensure that the violations found in the Yean and Bosico case were not repeated? Why was the Government refusing to make copies of or renew the identity cards of Dominicans of Haitian descent? Which criteria were being applied in decisions on the investigation of identity documents? What were the guarantees of due process to protect the right to nationality without discrimination?

21. What measures had been taken to implement article 151 of the Migration Act, which provided for the development of a national plan for the regularization of foreigners illegally present in the country? What was the State party doing to establish the office of the ombudsman in accordance with the Paris Principles and when was that expected to happen? Why were birth certificates required for all administrative formalities? What regulations governed the application of Act No. 258-04 on deportations? Had the tripartite committee to follow up the recommendations of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance been set up? He would welcome an explanation of the bill on the registration of births to foreign mothers not resident in the Dominican Republic.

22. Lastly, he asked what punishment had been imposed on the police officers involved in the murder of the young student Jonathan Báez. What was the situation of young people in the criminal justice system and what were the statistics for murders of young people, including by the police?

23. **Mr. Kemal** noted that the Committee's previous concluding observations (CERD/C/DOM/CO/12) were still relevant and that considerable progress could be made if they were implemented in full. Referring to the follow-up to paragraph 8 of those concluding observations, he noted that the State party had incorporated in its Constitution a provision excluding all forms of discrimination, updated its legislation and unconditionally rejected any form of discrimination as part of State policy. He would be interested to hear how those measures were put into practice.

24. On the follow-up to paragraph 10 of the concluding observations, he noted that the Inter-Agency Commission on Human Rights that had been established complied with the Vienna Declaration and Programme of Action, and asked whether there were any plans to create a truly independent body that complied with the Paris Principles.

25. With respect to paragraph 12 on reported racial discrimination in access to places or services and facilities, he noted that the State party had taken appropriate measures to overcome those situations, and would be interested to hear some specific examples.

26. Concerning the follow-up to paragraph 13 on the detention and deportation of migrants of Haitian origin, he asked whether the State party carried out any monitoring of the activities of officials to ensure that they did not act with excessive zeal. He expressed concern that migrant workers, many of whom were very poor, were personally liable for deportation expenses and often returned destitute to their countries of origin. He would be interested to hear whether any measures were envisaged to improve the situation and avoid unnecessary hardship.

27. With regard to the concerns expressed by the Committee in paragraphs 14–16 of the concluding observations, it was not its intention to make a recommendation that would detract from the sovereignty of the State party; it simply wished to see the implementation of the provisions of the Convention which the State party itself had accepted.

28. Concerning the alleged confiscation and destruction of the identity documents of Dominicans of Haitian descent, he suggested that if there was evidence of that practice, the State party should consider adopting a more lenient attitude and introducing a procedure whereby restitution could be made.

29. He requested specific examples of the State party's efforts to combat human trafficking. He would also be interested to hear more about the measures taken to address the dire living conditions of undocumented Haitian migrants.

30. **Mr. Lindgren Alves** said that he understood the State party's reluctance to categorize people based on their ethnicity and therefore wondered why there was a reference to colour on national identity cards.

31. **Ms. Abreu de Polanco** (Dominican Republic) explained that there was no longer any mention of colour on identity cards.

32. **Mr. Vázquez** said that, although he had observed that all Dominicans were to some degree of African descent, the Committee was concerned with discrimination on the basis of colour as well as national or ethnic origin. While noting that any discrimination that existed was not State policy, he stressed that the Convention also obliged States parties to eradicate discrimination in society. Evidence of discrimination based on colour in some parts of Dominican society had been brought to the Committee's attention. For instance, in a Dominican television report investigating discrimination in nightclubs in Santo Domingo, dark-skinned actors had been refused entry for various reasons, while lighter-skinned actors had been allowed in without question. Such instances might be indicative of a broader problem. He would be interested to know what remedies were available to victims of such discrimination. The Committee had also received troubling reports that job advertisements in newspapers often included "good presence" among the requirements, which was generally understood to mean "light-skinned". If that was the case, it would be indicative of discrimination in employment.

33. In the light of NGO reports about the expulsion of Haitians without due process, he requested further information on the mass deportation of Haitian migrants in 2011 following the cholera outbreak and asked what was being done to remedy that situation.

34. **Mr. Diaconu** noted that there were differences in the views expressed by the State party in its report, by the delegation and by a number of United Nations bodies on the situation in the Dominican Republic; one United Nations report to the Human Rights Council had referred to the historical exclusion of a large number of nationals, while another had referred to stereotypes and racial prejudice against Haitians and persons of Haitian descent. The State party report had referred to the inheritance of a culture of slavery that allowed racial discrimination, the legacy of which probably encouraged social exclusion and racist expression; it had also said that the Dominican Republic was a poor country with inadequate resources to provide further advantages for its own nationals, let alone Haitians. Could nothing be done about the inherited situation, as the report appeared to indicate? That point was arguable; every Government should seek the means of upholding human rights.

35. Turning to legislative matters, he emphasized, with reference to paragraph 19 of the report, that international human rights instruments must take precedence over national legislation. In connection with paragraph 27, which indicated that if a person did not object to racial discrimination their consent was presumed, he stressed that racial discrimination

must be eliminated. In addition, he noted that the information provided in paragraph 90 did not encompass all concerns and elements under article 4 of the Convention; the State party should therefore review its legislation in that respect. Furthermore, there was no general legislation on non-discrimination. Lastly, the report indicated that under Act No. 285-04, the civil rights of non-nationals living in the Dominican Republic were recognized on a reciprocal basis; however, the principle of reciprocity could not be applied to human rights.

36. Ways to improve the situation of migrant workers and their children were needed, particularly in the case of those in irregular situations. According to other treaty body reports, 22 per cent of children under 5 were not registered and had no identity papers, a fact which had adverse consequences for human rights, including the right to education and health care.

37. Under Act No. 285-05, the civil registration certificates and nationalities of some people had been revoked. Although nationality obtained by fraud should be withdrawn, the revocation of birth certificates was not in line with human rights and was not acceptable.

38. He asked why the State party had not established a national human rights institution and had not appointed an ombudsman since the adoption of the relevant legislation 10 years previously. Were there no suitable candidates? In addition, he wished to know whether the State party had implemented the decisions handed down by the Inter-American Court of Human Rights, in particular those pertaining to children of Haitian descent.

39. The procedure to determine the status of refugees and asylum seekers appeared not to be working; although recognized by the Office of the United Nations High Commissioner for Refugees, they did not receive permits allowing them to stay but remained in the country for many years. Their situation needed to be settled and their status resolved.

40. Both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights had referred to the quality and provision of education for the children of Haitian migrants, among whom there was a very high dropout and repetition rate. What measures could the State party take to ensure the right to education for those children? Perhaps it should ratify the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961.

41. **The Chairperson** said the fact that the delegation consisted of representatives of the executive, the legislature and the judiciary was of great importance as it enabled the Committee to engage in dialogue with the three branches.

42. **Mr. de Gouttes** noted that in the periodic report the Government had recognized frankly that much remained to be done to eliminate discrimination. NGOs played a significant role in that regard. The State party had identified the main challenges as being the colonial inheritance and issues relating to slavery; poverty; unemployment; mass immigration, and the lack of services and means to meet the requirements of immigration; corruption; trafficking in persons; and the situation of undocumented migrants. However, the State party's analysis had identified poverty as the primary problem, rather than racism.

43. He asked the delegation to indicate precisely how racism was defined and criminalized in the Criminal Code and whether the current provisions were in line with article 4 of the Convention. He noted that although no cases of racial discrimination or racism had been brought before the courts, an absence of such cases was not necessarily a positive factor and could be indicative of, inter alia, fear of reprisals, difficulties in establishing proof, a lack of trust in the justice system or a lack of awareness of such offences. He would appreciate the delegation's response on that point.

44. He asked what measures the Government had taken to avoid discrimination against Haitians in terms of civil registration and requested further information in connection with

the reported confiscation and destruction of identity documents in some cases. That issue was of particular importance as such acts could lead to statelessness in children.

45. According to the report, the situation of workers in the sugar cane industry had changed. However, conditions would appear to remain difficult. He asked the delegation to provide further information on the situation of workers in that industry.

46. He also requested further information on the reference made in the report to the possibility of forming a political party that would bring together Dominicans of Haitian origin to defend their rights and interests.

47. Lastly, since an ombudsman remained to be appointed, he asked what the State party envisaged doing to strengthen the status of that institution and bring it into conformity with the Paris Principles.

48. **Mr. Calí Tzay** said he had found the picture that had emerged from the report and from the statements by the delegation to be of great interest. With reference to paragraph 39 of the report, he said that a situation in which a person did not have proper identity documents made him or her vulnerable to the effects of racial discrimination as a “non-person”, condemned to anonymity and exclusion. He cited the case of one Dominican of Haitian origin who, in order to update his identity card under the new system, had had to request a birth certificate; when he had done so, he had been told his name was not on the civil register. Although he was a fourth-generation Dominican, he had been listed as a foreigner. The situation was complicated and should be made clear particularly since, as Mr. de Gouttes had indicated, it could lead to children being stateless.

49. Paragraph 77 of the report referred to stateless minors; all children needed to have their names registered and to be given nationality as soon as they were born. Although Haiti might apply *jus sanguinis* and not *jus soli* in granting citizenship, the discussion was about persons born in the Dominican Republic and about persons legally resident there. Even persons born in the Dominican Republic illegally should be registered.

50. While racism in the Dominican Republic had historic roots, it was associated with Haitians. The latter had been blamed and persecuted in connection with various incidents, including the cholera outbreak following the earthquake; numerous Haitians had been deported as a result and even Haitians legally present in the country had reportedly fled, leaving their belongings behind. The delegation would appreciate further information on that question.

51. The term “mixed race” in the State party generally referred to people of Indian and Spanish origin but seldom to those of Indian and African origin. In that context, he had found the pride expressed by the head of delegation in her black grandparents heartening. Were children in primary and secondary school taught about the rich cultural heritage of people of African descent?

52. He asked the delegation to provide further information on the so-called “pink book” birth registration system, the register that distinguished between ordinary Dominicans and “foreign Dominicans”, and the register for children of Haitians known as “HH” (Hijos de Haitianos).

53. **Ms. Dah** said that the State party’s report represented an improvement on its previous report in terms of length and quality; it was in conformity with the Committee’s guidelines.

54. The State party had entered into a number of commitments during the UPR with regard to the establishment of a national human rights institution, the ratification of certain conventions and core human rights texts, and certain actions to be taken at the national level to promote racial discrimination policies based on the Committee’s conclusions. She

asked the delegation to indicate which of those commitments it had implemented since that time.

55. The Committee welcomed the opportunity to hold a constructive dialogue with States parties and hoped that delegations had equal respect for the Committee. However, in view of the previous positive exchanges with the Dominican Republic, she had been surprised to read paragraph 228 of the report, which she considered excessive. The Committee had never considered the Dominican Republic to be a country practising apartheid or one where Nazism was rife. In cases where it did observe such situations, it had the courage to say so. After 30 years of dialogue, she hoped that there was a relationship of trust between the Committee and the State party; human rights was a marathon, not a sprint.

56. **Mr. Kut** said that he wished to underscore the point raised by Mr. de Gouttes concerning the absence of complaints of racial discrimination. The Committee would like to know whether the Human Rights Unit within the Attorney-General's Office or any other entity had received complaints of racial discrimination; if it was to help the State party develop policies to fight racial discrimination, it needed to identify vulnerable groups, targets, outputs and outcomes even if those needs were not widely publicized. Was there a political will to tackle the problem?

57. **Mr. Saidou** said that he had noted in paragraph 9 of the report that the State party did not ignore the existence of violations but had made a commitment to taking national measures to eradicate them and introducing legislative reforms. In that connection, he asked the delegation to provide further information on the Code of Criminal Procedure and the burden of proof in discrimination cases.

58. With reference to paragraph 34 of the report, he asked why article 16 of the Civil Code could not be repealed since the Supreme Court had ruled it to be discriminatory, and therefore inapplicable. Lastly, did the State party intend to make a declaration in connection with article 14 of the Convention?

59. **The Chairperson** associated himself with the latter question and asked the delegation for information on the Government's position concerning ratification of the amendment to article 8 of the Convention.

The meeting rose at 6.05 p.m.