

The Situation in the Dominican Republic: **A Case for Preliminary Investigation**



*Buses transporting individuals deported to Haiti by the Dominican Republic, July 13, 2015.
Photo by Dave Ali Fils-Aimé*

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The Politics of International Law: The International Criminal Court and the UN Security Council

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January 21, 2016

Since the early twentieth century, Haitian migrant workers have been an essential source of labor for the neighboring Dominican Republic.¹ From the 1920s to the 1980s, these migrant workers were mainly drawn into the Dominican Republic to serve as laborers for the country's sugarcane industry.² With the decline in sugar prices on the international market from the 1980s onwards, there was a lesser demand for sugarcane workers. Nonetheless, Haitian migrant workers continued to play a vital role in the Dominican economy, most notably in agriculture, construction, housekeeping, and tourism. They have thus become an integral part of Dominican society, and have started families in the country.³ From 1929 to 2010, the various versions of the Dominican Constitution conferred Dominican nationality to all children born in the country (*jus soli*), unless their parents were diplomats or “in transit;” traditionally, legal interpretation limited the definition of people “in transit” to those present in the country for less than 10 days.⁴ In January 2010, the Dominican Constitution was amended and under the new constitution, the definition of “in transit” was expanded to include all “irregular” migrants (migrants without proper immigration documents).⁵ As a result, the children of irregular migrants born in the Dominican Republic were therefore no longer automatically granted Dominican nationality. This decision was followed in September 2013 by a Dominican Constitutional Tribunal ruling (TC-168-13), which claimed that children born in the Dominican Republic to irregular migrants since 1929 had never been entitled to Dominican nationality.⁶ According to a survey conducted by the United Nations Population Fund (UNFPA) in 2013, an estimated 244,151 Dominicans born to irregular migrants resided in

¹ ‘The Dominican Republic’s Tortured Relationship with Its Haitian Minority,’ Human Rights Watch (2015)

² ‘Without papers, I am no one: Stateless people in the Dominican Republic,’ Amnesty International (2015)

³ ‘The Dominican Republic’s Tortured Relationship with Its Haitian Minority,’ Human Rights Watch (2015)

⁴ ‘Without papers, I am no one: Stateless people in the Dominican Republic,’ Amnesty International (2015)

⁵ ‘Dominican Republic – Haiti presentation,’ Institute for Justice and Democracy in Haiti (2015)

⁶ ‘Without papers, I am no one: Stateless people in the Dominican Republic,’ Amnesty International (2015)

the Dominican Republic.⁷ When questioned regarding the impact of the ruling on these individuals, Erika Guevara-Rosas, Amnesty International's Americas director, stated the following: "With the stroke of a pen, authorities in the Dominican Republic have effectively wiped four generations of Dominicans off the map."⁸ Furthermore, Amnesty International's 2015 report on the matter stated the following:

Judgment 168-13 constitutes a retroactive and arbitrary deprivation of nationality. It disproportionately affects Dominicans of Haitian descent and is, therefore, discriminatory. The main consequence of this judgment is that a large number of people have been left stateless who identify the Dominican Republic as their own country; it is where they were born and where they have lived all their lives. They often have no ties with Haiti, have never been there and barely speak the local language. Many are the children or grandchildren of people who were also born in the Dominican Republic. For these families the Dominican Republic has been home for generations.⁹

Amid widespread criticism at the national and international levels regarding the ruling, in 2014 President Danilo Medina's administration negotiated a law to restore the nationality of those affected, and the Dominican Congress passed the law (169-14) in May 2014.¹⁰ According to the law, the Dominican government would recognize the nationality of individuals who had previously been registered as Dominicans, and a registration process with a deadline set for June 2015 would be established for those not yet registered to allow them to receive their citizenship documents. However, according to Human Rights Watch, the law proved to be "fraught with design and implementation flaws that have thwarted the re-nationalization process."¹¹ Furthermore, Celso Perez, a Human Rights Watch Fellow from the Dominican Republic has stated that local sources informed him "that nationalist elements within the government pushed to make the bureaucratic

⁷ 'The Dominican Republic and Haiti: Shame,' Americas Quarterly (2014)

⁸ 'Dominicans of Haitian descent turned into "ghost citizens", says Amnesty,' The Guardian (2015)

⁹ 'Without papers, I am no one: Stateless people in the Dominican Republic,' Amnesty International (2015)

¹⁰ 'The Dominican Republic's Tortured Relationship with Its Haitian Minority,' Human Rights Watch (2015)

¹¹ 'We Are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic,' Human Rights Watch (2015)

process so difficult that it discourages people of Haitian descent from restoring their nationality.” Perez adds: “And it worked: Thousands of applicants are now trapped in a Kafkaesque nightmare.”¹² The combination of the law’s inadequacy and the lack of political will relegated a category of Dominicans to second-class citizens liable to be expelled at any moment. According to Human Rights Watch, even prior to the June 2015 deadline, many individuals had “already been swept up by police and troops based on racial profiling and forced over the border to Haiti.”¹³ Since the registration deadline, Dominican troops and immigration patrols have deported 14,000 people and about 70,000 have left on their own, according to the Dominican government. The latter group, as stated by writer Jonathan M. Katz, “have become voluntary migrants of the least voluntary sort, fleeing an atmosphere of fear and confusion created by ever-shifting laws, vague threats, byzantine registration programs and spasms of racial violence.” In his piece, Katz also quotes Pulitzer Prize-winning Dominican-American writer Junot Díaz who conveyed the horrific nature of the situation in the Dominican Republic by declaring that “there is a state of terror in the Dominican Republic” and that “the last time something like this happened was Nazi Germany.”¹⁴ Given the gravity of the matter and considering the Rome Statute of the International Criminal Court’s resolve to “guarantee lasting respect for and the enforcement of international justice,”¹⁵ it is being recommended that a preliminary examination be initiated by the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) on the Situation in the Dominican Republic under the proprio motu powers of the Prosecutor. In the subsequent sections, evidence will be provided to argue that a reasonable basis for proceeding with an investigation could be established on the basis of the criteria established by the Rome Statute.

¹² ‘The Dominican Republic’s Tortured Relationship with Its Haitian Minority,’ Human Rights Watch (2015)

¹³ ‘Interview: Lives on Hold for the Dominican Republic’s Haitian Minority,’ Human Rights Watch (2015)

¹⁴ ‘In Exile,’ Jonathan M. Katz. New York Times (2016)

¹⁵ The Rome Statute of the International Criminal Court (1998)

According to Article 5.1 of the Rome Statute, the ICC's jurisdiction is "limited to the most serious crimes of concern to the international community as a whole," and the court has jurisdiction over these four types of crimes: (1) the crime of genocide, (2) crimes against humanity, (3) war crimes, and (4) the crime of aggression.¹⁶ For the purposes of this paper and the arguments that will be made within, we will limit our analysis to the crime of genocide and crimes against humanity.

Although the current situation does not involve mass killings which would categorize it as a genocide, some have made comparisons between the Dominican government's actions and the denationalization of Jews in Nazi Germany, as evidenced by the aforementioned comment from Junot Díaz. When asked to explain the comparison, Cassandre Theano, a legal officer for the Open Society Foundations in New York, replied with the following: "We've called it as such because there are definitely linkages. You don't want to look a few years back and say, 'This is what was happening and I didn't call it.'"¹⁷ In an Op-Ed published in July 2015, Ruth W. Messinger, president of American Jewish World Service, writes the following regarding the situation in the Dominican Republic: "When the Nazis passed the Nuremberg Laws, they stripped Jews of all of their rights as the terrible first step of their genocidal campaign" and "I cannot help but see this crisis through Jewish eyes."¹⁸ Messinger also provides a probing analysis of the motives of this policy of hatred and its repercussions:

In the Dominican Republic, where there is a prevalent culture of racism and discrimination against Dominicans of Haitian descent, the situation is sadly reminiscent of very difficult chapters in Jewish history. For generations, politicians have used Haitians as scapegoats, blaming them for problems such as poverty and disease. Now the situation is getting worse, including a sharp increase in attacks. A February lynching of a Haitian immigrant and other recent assaults reflect a culture of violence against people of Haitian descent, and it is

¹⁶ 'The Rome Statute of the International Criminal Court' (1998)

¹⁷ 'The bloody origins of the Dominican Republic's ethnic cleansing of Haitians,' Abby Phillip. The Washington Post (2015)

¹⁸ 'Op-Ed: American Jews must speak out for Haitians in Dominican Republic,' Ruth Messinger (2015)

common to see racist depictions of Haitians in Dominican newspapers. As we have seen in the past, institutionalized hate and mass violence unfortunately feed off one another. This fear of violence is forcing thousands of Dominicans from their homes — a practice that the Dominican government has given the Orwellian name of “successful self-deportation,” but which in truth is forced migration...As Jews, the details of the persecution are intolerably familiar. We must not and cannot let history repeat itself.¹⁹

This comparison with Nazi Germany gains even more significance when one considers that the Dominican Republic did carry out a genocide against Haitians in 1937 at the behest of a dictator, Rafael Trujillo, who “was openly inspired by Hitler’s racial theories and ordered the massacre as a way of ‘whitening’ his country.”²⁰ In fact, a few weeks before the massacre, a Nazi delegation visited the Dominican Republic and was welcomed with newspaper headlines such as “Long live our illustrious leaders, the Honorable President, Doctor Trujillo, and the Führer of the German Reich, Adolf Hitler.” To show his allegiance, Trujillo publicly accepted a gift of Hitler’s *Mein Kampf*.²¹ Trujillo, who was a petty thief and sugar-plantation guard prior to becoming a military officer, rose through the ranks of the Dominican Military and seized power in 1930. Trujillo worked with Haitian elites and American businesses to bring in thousands of Haitians to the Dominican Republic to work as laborers in the country’s sugarcane industry. In 1936, Trujillo’s government signed an agreement with Haiti to firmly establish the border between the countries. A year later, in October 1937, Trujillo (who was known for wearing makeup in order to make himself look more white) ordered his soldiers to purge the newly established territory of the darker-skinned Haitians.²² In her piece “The River Massacre: The Real and Imagined Borders of Hispaniola,” Michele Wucker provides a telling account of the methodology behind the madness:

In the Book of Judges, forty thousand Ephraimites were killed at the River Jordan because their inability to pronounce “Shibboleth” identified them as foreigners. On the Dominican border, Trujillo’s men asked anyone with dark skin to identify the sprigs of parsley they

¹⁹ ‘Op-Ed: American Jews must speak out for Haitians in Dominican Republic,’ Ruth Messinger (2015)

²⁰ ‘The River Massacre: The Real and Imagined Borders of Hispaniola,’ Michele Wucker (1998)

²¹ ‘The River Massacre: The Real and Imagined Borders of Hispaniola,’ Michele Wucker (1998)

²² ‘In Exile,’ Jonathan M. Katz. New York Times (2016)

held up. Haitians, whose Kreyol uses a wide, flat “R”, could not pronounce the trilled “R” in the Spanish word for parsley, “perejil.”²³

Individuals who failed this linguistic test were condemned to die. It is estimated that between 15,000 and 35,000 Haitians were massacred during this genocide that has since become known as The Parsley Massacre.²⁴ The corpses were dumped in the Atlantic Ocean²⁵ and in the fittingly named Massacre River which serves as the northernmost part of the border between the two countries.²⁶ Although the US Ambassador to the Dominican Republic at the time referred to the massacre as “a systematic campaign of extermination” in a communiqué sent to US President Franklin Roosevelt,²⁷ the genocide went unpunished and Trujillo remained in power until his assassination in 1961 by members of his military.²⁸

As stated earlier, even though the current situation in the Dominican Republic cannot yet be considered a genocide given that there is no proof of an intent “to destroy the targeted group in whole or in part,”²⁹ preemptive action should be taken to prevent history from repeating itself. In fact, this notion of preemptive action was one of the principles that led to the establishment of the ICC in 1998 in the aftermath of atrocities such as the Rwandan genocide of 1994, in an effort to “contribute to the prevention of such crimes,” as stated in the Preamble of the Rome Statute.³⁰ Therefore, given that an act of genocide has been perpetrated by the Dominican Republic against Haitians in the past, it is recommended that a preliminary examination be initiated by the

²³ ‘The River Massacre: The Real and Imagined Borders of Hispaniola,’ Michele Wucker (1998)

²⁴ ‘A 20th-century Shibboleth Story,’ University of Pennsylvania (2003)

²⁵ ‘Why the Cocks Fight: Dominicans, Haitians and the Struggle for Hispaniola,’ Michele Wucker (1999)

²⁶ ‘Haitians, Dominicans try to move beyond Parsley Massacre’s long shadow,’ Ezra Fieser. Christian Science Monitor (2012)

²⁷ ‘The Genocide You Never Knew About,’ Cameron Combs (2013)

²⁸ ‘In Exile,’ Jonathan M. Katz. New York Times (2016)

²⁹ ‘An Introduction to the International Criminal Court,’ William A. Schabas (2004)

³⁰ ‘The Rome Statute of the International Criminal Court’ (1998)

Prosecutor of the ICC on the current situation in the Dominican Republic on the basis of this provision of the Rome Statute in order to prevent a future genocide.

As stated by George Washington University law professor Neil H. Buchanan in his article “An Avoidable Human Rights Disaster in the Dominican Republic,” “even if a situation does not (yet) involve mass killing, mass displacements are also serious human rights violations.”³¹ Therefore, in accordance with the definition of “crimes against humanity” in Article 7 of the Rome Statute, it is recommended that a preliminary examination be initiated by the Prosecutor of the ICC regarding the Situation in the Dominican Republic. As it will be demonstrated thereafter, the existing evidence validates the ICC’s intervention into the matter in conformity with the different jurisdiction criteria established by the Rome Statute.

In terms of the different crimes constituting “crimes against humanity” as delineated in Article 7.1, the evidence reveals that three of the listed acts have clearly been committed by the Dominican Republic “as part of a widespread or systematic attack”:

(d) Deportation or forcible transfer of population... (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court... (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³²

In regards to Article 7.1 (d), as stated earlier since June 2015 Dominican troops and immigration patrols have deported 14,000 individuals and about 70,000 have left on their own in fear for their lives. Both groups contain Haitian migrants and Dominicans of Haitian descent who were not able to register, though it is not known what the individual numbers are for these two categories. It should also be noted that these numbers may very well be underreported given that they have been

³¹ ‘An Avoidable Human Rights Disaster in the Dominican Republic,’ Neil H. Buchanan (2015)

³² ‘The Rome Statute of the International Criminal Court’ (1998)

provided by the Dominican government. According to Human Rights Watch's Celso Perez, while conducting research on the matter, he was told stories of "people who had been loaded onto a truck and carried off to a deportation holding center without being asked for documents." Perez adds that sometimes family members of the detained individuals were able to rush and provide their loved ones' documents before they were forced over the border, but in other cases they weren't able to do so in time.³³ Between February and May 2015, Human Rights Watch documented over 60 cases involving Dominicans of Haitian descent who were forcibly expelled to Haiti despite having proper Dominican documents.³⁴ One of these cases is recounted below:

On February 19, Wilson, 25, was detained near the town of Mao. Officers refused to let him go to his house nearby to get his Dominican birth certificate. They forced him onto a truck, took him to the border town of Dajabón, and ordered him and 32 other detainees to walk across the border into the town of Ouanaminthe, Haiti. He had never been in Haiti, and had no money, no means of communication, and no identification with him. Wilson's employers got his birth certificate and met him at the office of the General Directorate of Migration office at the border in Dajabón. The immigration official in charge claimed that despite a valid birth certificate, Wilson was Haitian and refused to give him a letter granting passage back to his home in the Valverde province.³⁵

Furthermore, there is the case of the individuals who "voluntarily" left the Dominican Republic for Haiti. Mark Phillips of the Institute for Justice and Democracy in Haiti provides the following account on this matter:

They may not have been dragged out of the country in custody in a formal deportation, but their exit — leaving their families, jobs and lives and for a country with a weak economy — was in no other way consensual. Even Haitian immigration officials later confirmed that they, too, had heard stories of people being threatened with beatings, imprisonment or having their homes burned down if they didn't leave. In their words, this was *volontè-fòse* ("forced voluntary" in Haitian Creole).³⁶

³³ 'Interview: Lives on Hold for the Dominican Republic's Haitian Minority,' Human Rights Watch (2015)

³⁴ 'Dominican Republic: Thousands at Risk of Expulsion to Haiti,' Human Rights Watch (2015)

³⁵ 'Dominican Republic: Thousands at Risk of Expulsion to Haiti,' Human Rights Watch (2015)

³⁶ 'The Dominican Republic's dubious claims about Haitian exodus,' Mark Phillips. Institute for Justice and Democracy in Haiti (2015)

As for Article 7.1(h), persecution specifically targeting Dominicans of Haitian descent and Haitian migrants on the basis of their skin color is widespread in the Dominican Republic. According to Human Rights Watch's Celso Perez, "people were detained on account of their 'Haitian' appearance, without an opportunity to present identification documents."³⁷ In a particular case, Rose Hyppolite, a 52-year-old woman residing near Santo Domingo, recounts the following experience: "I was working with three other friends, and the police came and put us in a car. I asked them what was going on, and they said, 'Haitian devil, go to your country.'"³⁸ In regards to Article 7.1(k), many acts have been committed that have caused great suffering and serious injury to mental health. Human Rights Watch has recounted many such cases, including the following:

Karina, 35, was born in the Dominican Republic to Haitian parents, and registered as Dominican. Although she obtained a valid identification card at 18, when she was 24, the government refused to issue her documents necessary to enroll in a university, allegedly because her claim to nationality was under investigation. Unable to continue her studies, Karina began working as a chambermaid in a large beach resort, where she has been for 10 years...Because Karina has been unable to renew her identification card, which expired last fall, she says she cannot use her medical insurance, and must pay out of pocket when she goes to the doctor. She no longer has full access to her bank account or her credit card, and has had trouble paying both outstanding utility bills and the mortgage on her house. And she still can't continue her studies.³⁹

As evidenced by the various examples provided above, subject matter (*ratione materiae*) jurisdiction of the ICC could be established on the basis of Article 7 of the Rome Statute.

In accordance with Article 11, the ICC also has jurisdiction *ratione temporis* given that the Dominican Republic became a signatory of the Rome Statute on 8 September 2000, with ratification being approved on 12 May 2005, and entry into force on 1 August 2005.⁴⁰ As set out in Article 12 of the Statute, territorial (*ratione loci*) jurisdiction is clearly fulfilled given that the

³⁷ 'Interview: Lives on Hold for the Dominican Republic's Haitian Minority,' Human Rights Watch (2015)

³⁸ 'Haitian Devil, Go to Your Country,' Joshua Keating. Slate (2015)

³⁹ 'Dominican Republic: Thousands at Risk of Expulsion to Haiti,' Human Rights Watch (2015)

⁴⁰ States Parties to the Rome Statute, ICC website (2016)

acts have been committed on the Dominican Republic's territory, and personal (*ratione personae*) jurisdiction is also established since the perpetrators of the acts are Dominican nationals. In terms of the admissibility of the Situation in the Dominican Republic in respect to Article 17, as stated earlier there is a lack of political will amongst the Dominican Republic's elected officials to rectify the situation. The Dominican government has failed to vigorously decry popular violence and discrimination against Dominicans of Haitian descent. Instead, there is "a widespread perception of official impunity' for such egregious acts," according to a 2013 US State Department report on the Dominican Republic.⁴¹ President Danilo Medina has himself taken some actions which support this claim. As an example, when 109 Dominican professors wrote President Medina to decry the humanitarian crisis, Medina responded with an unfavorable email to which the Deans of the professors' respective universities were in carbon copy.⁴² Moreover, in October 2015, the Dominican Consul in New York stripped Junot Díaz of an award he had been given in 2009, claiming that the author displayed "anti-Dominican" behavior for decrying the crimes against humanity being perpetrated in the Dominican Republic.⁴³ In his article "Beyond Race: The Politics Behind The Current Dominican Crisis," CUNY Queens professor Juan R. Valdez provides an insight into the politics behind the crisis, stating that "politicians' fortunes hinge on their ability to fan the flames of confusion, blind hatred, and nationalism. Playing the Haitian card is always politically profitable."⁴⁴ Certain Dominican officials have claimed that a "ruling handed down by the Constitutional Court is binding on the three branches of government," and therefore the

⁴¹ 'An Avoidable Human Rights Disaster in the Dominican Republic,' Neil H. Buchanan (2015)

⁴²'Dominican Republic – Haiti presentation,' Institute for Justice and Democracy in Haiti (2015)

⁴³ 'Dominican Republic Consul Rescinds Junot Díaz's Award for Human Rights Advocacy,' Association of Writers & Writing Programs (2015)

⁴⁴ 'Beyond Race: The Politics Behind The Current Dominican Crisis,' Juan R. Valdez. The Haitian Times (2015)

situation is out of their control. The following rebuttal has been provided by Santiago A. Canton and Wade H. McMullen, Jr. of the Robert F. Kennedy Center for Justice & Human Rights:

Under international law and the international obligations of human rights treaties ratified by the Dominican Republic, the government is not bound by a judicial ruling that violates binding commitments already signed by the state. Under the Vienna Convention on the Laws of Treaties, a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In other words, the government may still—at any point—step in to stop the widespread rights violations caused by an internationally illegal decision.⁴⁵

Therefore, since the state is unwilling to carry out a genuine investigation due to its implication in the matter, admissibility could be established in favor of the ICC.

As a concluding remark, let us remember the words of Dr. Martin Luther King, Jr. who once said: “Injustice anywhere is a threat to justice everywhere.” The international community must not allow this injustice to endure since it is indeed a threat to justice everywhere, especially when one considers the Preamble of the Rome Statute which states that “all peoples are united by common bonds, their cultures pieced together in a shared heritage,” and “that the most serious crimes of concern to the international community as a whole must not go unpunished.”⁴⁶ The Parsley Massacre has already gone unpunished; let us not allow another humanitarian crisis go unpunished. It is hoped that the Prosecutor of the International Criminal Court will initiate a preliminary investigation into this matter to prevent such an outcome. To quote Dr. King once more, “In the End, we will remember not the words of our enemies, but the silence of our friends.” Let us not allow the victims of this crisis to remember our silence.

⁴⁵ ‘The Dominican Republic and Haiti: Shame,’ *Americas Quarterly* (2014)

⁴⁶ ‘The Rome Statute of the International Criminal Court’ (1998)