
Racism, Racial Discrimination, Xenophobia and Related Intolerance in Education

The Case of Children of Haitian Descent in the Dominican Republic

Education in Durban

The Durban Declaration and Programme of Action, adopted by consensus at the 2001 World Conference against Racism in Durban, South Africa, made key recommendations in the sphere of education: (1) the need to guarantee access and inclusion of all children and adults to a quality education, eliminating intra-school and outside-school factors that hinder access, attendance and success in learning experiences; (2) full, precise and objective teaching and communication of the history, culture and contributions of all the different populations; (3) the guarantee of opportunities for indigenous populations to learn in their mother tongue and (4) Human Rights education.

Seven years later, these recommendations remain largely unattended. Racism, Racial Discrimination, Xenophobia and Related Intolerance are still endemic to the education system in many contexts, leading to severe inequalities in access and retention of schooling, and to the perseverance of intra-school processes that directly violate the principles of human rights and dignity.

The violation of children of Haitian descent's right to education in the Dominican Republic

The discriminatory application of Dominican Migration Law (Law 285-04) denies the right to nationality to Dominican children of Haitian descent, by defining all "non residents" as people "in transit" and creating a 'special' registration system to declare the birth of those children of

undocumented mothers. This happens in direct contradiction to Article 11 of the Dominican Republic Constitution that establishes that all born in the country are citizens, besides those children of diplomats and people "in transit" and retroactively as reported by UN Independent Rapporteurs on their visit to the Dominican Republic in 2007. The 2008 shadow report submitted to the Committee on the Elimination of Racial Discrimination, confirmed discriminatory effects of government policies, finding that Dominican children of Haitian descent do not receive proper birth certificates, proper identification cards, nor can they enrol in schools. Thus, without proper documentation, "Haitian communities and their descendants [in the Dominican Republic] have virtually no access to ...education."

The Committee on the Elimination of Racial Discrimination (CERD) "strongly recommends that the State take appropriate measures to guarantee respect for the principle of non-discrimination in children's access to nationality"¹ and "birth certificates"², emphasising "the existing link between the registration of births and the ability of children to enjoy [...] [other] rights, in particular education and health"³. At the regional level, the Inter-American Court of Human Rights Case *Yean and Bosico v. the Dominican Republic* determined that the Dominican government had violated Articles 3 (right to juridical personality), 5 (right to humane treatment), 18 (right to a name), 19 (rights of the child), 20 (right to nationality), and 24 (right to equal protection) of the American Convention on Human Rights and should ensure equal access to birth certificates and school enrolment for all children in the country.⁴

The Dominican Republic government is thus violating Dominican children's of Haitian descent right to education, by not making it **available** on a basis of equal opportunity; by not making it **accessible**, when discriminating on the basis of descent; by not making it **acceptable**, when offering a discriminatory and inferior education to Dominican children of Haitian descent; and by not making it **adaptable**, when failing to respect, protect and fulfil the rights of children and minorities.

International Law

The principle of equal treatment and non-discrimination is enshrined in all international Human Rights legislation. "Education must be accessible to all in law and fact, without discrimination. The prohibition against discrimination is subject to neither progressive realization nor the availability of resources", says General Comment 13 of the Committee on Economic, Social and Cultural Rights. According to international human rights law on education and non-discrimination (CERD, art. 5; ICESCR art. 13 and 14; CRC art. 28 and 29; art. 26 of the American Convention on Human Rights; and art. 13 of the Protocol of San Salvador) government obligations related to the right to education can be framed according to "four As": Availability, Accessibility, Acceptability and Adaptability.

Recommendations

- The Durban declaration and plan of action must be reaffirmed and states must guarantee its immediate implementation;
- States must acknowledge the persistence of racism and multiple discrimination within the education system and must therefore put in place appropriate legislation and affirmative action policies to tackle the problem;
- National and local laws, policies and programmes must put in place a curriculum that is based on the acknowledgement and appreciation of difference and on the principles of human rights education, as well as the central role education can play in combating racism and discrimination must be recognized;
- States must immediately ratify international agreements related to the fight against racism and discrimination in education. We underline the importance of universal ratification of the International Covenant on Economic, Social and Cultural Rights (1966) as well as its Optional Protocol, approved in December 2007 by the United Nations General Assembly. We also call on states for universal ratification of the UNESCO Convention against Discrimination in Education (1960).

References

¹ CERD/C/DOM/CO/12 at § 14. 16 May 2008

² CERD/C/DOM/CO/12 at § 15. 16 May 2008

³ *Id.*

⁴ Yean & Bosico Case, 2005 Inter-Am. Ct. H.R. (ser.C) No. 130, (Sept. 8, 2005).