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# DOMINICAN REPUBLIC

## Killings by security forces

### I. Introduction

In 1999 at least 200 people were reportedly killed by security forces in the Dominican Republic, the majority by members of the *Policía Nacional*, National Police (NP), and others by the *Fuerzas Armadas de la República Dominicana*, Armed Forces of the Dominican Republic (AFDR). Although security forces have justified the use of deadly force by claiming that many of these deaths occurred during exchanges of gunfire, their version was disputed in numerous cases by witness testimony or other evidence. The circumstances of some of the killings indicated extrajudicial execution. Amnesty International (AI) is concerned that in these instances, the security forces acted in contravention of international law prohibiting the arbitrary deprivation of life<sup>1</sup> and outside the limits set by international standards governing the use of deadly force.

The Inter-American Commission on Human Rights expressed concern about this issue in its October 1999 report on the Dominican Republic. Since the beginning of 2000 the level of killings by security forces remains high; one press source reported 84 such killings as of mid-July, 50 of them attributed by police to confrontations with armed suspects.<sup>2</sup> In May 2000 the government of the United States of America halted nearly \$1 million in aid to the NP,<sup>3</sup> reportedly due to official inaction on police killings.

Some sources indicate that the killings take place in a context of efforts to halt a perceived 'crime wave' in the country, which some attribute to the effects of cross-border drug trafficking or the influence of 'criminal deportees.'<sup>4</sup> In only a few cases have the officials implicated been investigated or sanctioned, though these efforts have been welcomed when they occur. The killings have stimulated debate within the Dominican Republic regarding on the one hand, the

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<sup>1</sup> See, among others, the International Covenant on Civil and Political Rights (ICCPR), art. 6; and the American Convention on Human Rights, art. 4.1.

<sup>2</sup> "An average of 12 people die each month at the hands of the NP," *El Siglo*, 27 July 2000.

<sup>3</sup> The funds were reportedly slated to be given under the US Justice Department's International Criminal Investigative Training Assistance Program.

<sup>4</sup> The term is used to refer to Dominican nationals deported from the USA following completion of criminal sentences.

conduct of the security forces, and on the other, the will on the part of the authorities to bring those responsible for human rights violations to justice.

During an October 1999 visit to the Dominican Republic, authorities informed AI of different measures designed to curb human rights violations, including increased cooperation between police and the representatives of the *Ministerio Público*, or Public Prosecutor's Office; purges of police officers; and discussions on the possible creation of an office of Ombudsman, which would be tasked with receiving and acting on reports of violations. AI has taken note of these measures, and has continued to urge the Dominican authorities to put their commitment to respect for human rights standards into practice by investigating allegations of violations, bringing those responsible to justice and taking steps to ensure that violations do not recur.

With regard to prosecution of those involved in human rights violations, AI has learned of efforts by some authorities to investigate specific cases and sanction the responsible parties; however, these efforts are still the exception, rather than the rule, and at times seem to be hindered by inaction on the part of other officials.<sup>5</sup> This document highlights certain key cases as examples of efforts towards accountability, and offers recommendations to the Dominican authorities on how to achieve fuller compliance with the country's human rights obligations.

## II. Violations by security forces of the right to life

Below are summaries of two sample cases of violations of the right to life committed by members of the NP or the AFDR, in clear contravention of internationally-accepted standards regulating the conduct of security forces. Both of these cases have elicited intense domestic and international pressure, and in both, investigative proceedings have been opened, though these may not fully comply with international standards (*see below*). These efforts are to be welcomed. AI notes, however, that most killings by security forces solicit little or no public outcry, and little effort is made to investigate or sanction those responsible. For the Dominican Republic to fully comply with its obligations under international human rights law, it must ensure that all killings by security forces are fully investigated and that, in cases of violations of human rights, those responsible are brought to trial before competent, independent and impartial authorities.

### Pending cases

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<sup>5</sup> One recent example, somewhat outside the parameters of the present report, has occurred in the context of an initiative begun by the Commission in Support of Judicial Reform to investigate allegations of ill-treatment and torture of adolescents by members of the NP and AFDR. According to press reports and releases, public prosecutors have asked the relevant police and military authorities to suspend the personnel implicated pending investigation, but have yet to receive confirmation of their cooperation.

On the night of 17-18 June 2000, in Guayubín, Montecristi province, **six Haitian citizens and one Dominican**<sup>6</sup> were killed after soldiers of the Department of Border Investigation Operations of the AFDR (*Departamento de Operaciones de Investigaciones Fronterizas de las Fuerzas Armadas de la República Dominicana*) fired repeatedly on the truck in which they were travelling. The driver of the truck, which had already crossed the border from Haiti, apparently did not respond to this group of soldiers' orders to stop; after a pursuit of reportedly more than twenty kilometres, during which the soldiers opened fire, the truck crashed. The bodies of five of the deceased bore signs of multiple bullet wounds, while the remaining death was believed to be a result of the crash. At least 14 of the roughly 35 Haitian passengers were wounded, either by bullets or the impact of the crash.

A commission of military officers subsequently formed to investigate the incident recommended that those involved be tried before a military court. In a letter of 3 July, AI recommended to the Dominican authorities that, as a sign of the government's commitment to respecting human rights norms, a transparent and complete investigation be carried out within the parameters of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.<sup>7</sup> AI further urged that the investigation and follow-up take place within the context of ordinary courts, with full participation of the Public Prosecutor's Office. The case reportedly remains under the jurisdiction of the military courts at this time.

In a separate incident, police claims that suspects **Víctor Matos Espinosa, Antonio Ramón Hernández and Julio Horguín** had been killed during a 13 July 1999 exchange of gunfire in the community of Cayetano Germosén, Moca, in Espaillat province, were publicly disproved when television stations broadcast footage of the three handcuffed men being loaded into a police vehicle. Later, officers reportedly admitted summarily executing them in revenge for the death of a colleague believed to have been killed by the same men following an attempted robbery earlier that evening. In the subsequent public outcry, President Leonel Fernández Reyna declared that "occurrences of this nature will not be tolerated in this country."<sup>8</sup> Two police officials and one police sergeant were arrested in connection with the incident, and a judicial enquiry was opened; however, no result has been reported to date.

### **Recent decisions**

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<sup>6</sup> Folieu Dosema, Nana Dosema, Noupady Fortilus, Yemiol Sintil, Rosalaine Therneur, Yachin Masimé and Máximo Rubén Espinal.

<sup>7</sup> Recommended by the Economic and Social Council in its resolution 1989/65 of 24 May 1989.

<sup>8</sup> "President condemns execution; requests respect for human rights," *Hoy D.R.*, 18 July 1999.

On 4 August 2000 a judge sentenced a retired AFDR general, a former air force officer and two other men to the maximum penalty of 30 years in prison, as well as fines, after they reportedly admitted to participating in the 1975 killing of journalist and outlawed Communist Party member **Orlando Martínez Howley**. At the same time, the judge refused a petition from the victim's family to bring a civil suit against then-President Joaquín Balaguer and other high-ranking military officers whom the family say bear ultimate responsibility for the killing. Former president Balaguer, 93, refused to give testimony at the trial for health reasons.

The 26 August 1998 killing of **Padre José Antonio Tineo** outside his church building by NP agents who, according to some reports, had confused him with a suspect they had been ordered to apprehend, caused a public outcry. The case was, exceptionally, referred to the ordinary courts. On 3 August 2000 the Eighth Penal Court of the National District found one of the agents guilty and sentenced him to 15 years' detention; the other was found not guilty and released.

### **III. Security Forces in the Dominican Republic**

“The President of the Republic is chief of the Public Administration and commander in chief of all of the armed forces of the Republic as well as of the police forces.”<sup>9</sup>

According to the Dominican Constitution, the President is the ultimate authority for the security forces. The armed forces are “essentially obedient and apolitical ... they were created to defend the independence and integrity of the Republic, to maintain public order and to support the Constitution and the laws.”<sup>10</sup>

The national police force was formed in 1936, and placed under the Secretary of State for the Interior, Police, War and Navy.<sup>11</sup> Subsequent legislation states that the NP is under the Secretary of State for the Armed Forces, but simultaneously notes that it is currently under the Secretary of State for the Interior and the Police;<sup>12</sup> the latter situation holds today. The current head of the police was, before his posting to the police force, a high-ranking officer of the AFDR.

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<sup>9</sup> Constitution of the Dominican Republic, article 55, unofficial translation.

<sup>10</sup> Constitution of the Dominican Republic, article 93, unofficial translation.

<sup>11</sup> Decree No. 1523 of 2 March 1936, G.O. No. 4882.

<sup>12</sup> Organic Law of the National Police No. 4587 of 19 February 1959, G.O. 8338, art. 1.

In practical terms, the National Police have primary responsibility for maintaining public order; duties of the military include border control activities and supervision of some prisons.

### **Legal frame of reference for conduct of the security forces**

... in no case may the death penalty, torture, or any other penalty or procedure which is abusive or which implies the loss or diminishing of physical integrity or health of the individual, be established, pronounced or applied.<sup>13</sup>

“In carrying out their duties, law enforcement officials will respect and protect human dignity and will maintain and defend the human rights of all persons.”<sup>14</sup>

The Dominican Republic is a party to numerous treaties which impose obligations on its conduct with regard to human rights.<sup>15</sup> Further to this, sets of guidelines, developed on specific issues, have been adopted by the United Nations (UN). In some instances Dominican lawmakers have made explicit reference to these international guidelines in domestic legislation. Such is the case, for example, with the UN Code of Conduct for Law Enforcement Officials,<sup>16</sup> referenced in Dominican domestic law No. 672 of 19 July 1982. That law, following the UN Code of Conduct, restricts the use of force to instances in which it is strictly necessary and requires that it be in proportion to the needs of the situation (article 3); in addition, it prohibits the use of torture or cruel, inhuman or degrading punishment or treatment (article 5).

Subsequent to the Code of Conduct, the UN approved even more explicit guidelines on the use of force and firearms. These guidelines, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>17</sup> stipulate that

law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent

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<sup>13</sup> Constitution of the Dominican Republic, article 8.1, unofficial translation.

<sup>14</sup> Law No. 672 of 19 July 1982, art. 2.

<sup>15</sup> These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture.

<sup>16</sup> Adopted by General Assembly resolution 34/169, U.N. Doc. A/34/46 (1979).

<sup>17</sup> Adopted by the Eighth Congress of the United Nations on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>18</sup>

#### IV. Official response to human rights violations

“The Judiciary functions through the Supreme Court of Justice and through the other judicial courts created by this Constitution and the laws. This branch will have administrative and budgetary autonomy.”<sup>19</sup>

Both the NP and AFDR have their own codes of justice; the Code of Police Justice dates from 1966, and the Code of Justice for the Armed Forces, from 1953. Both lay out the circumstances and infractions for which their members are to be tried in police or military rather than ordinary courts;<sup>20</sup> during the October 1999 visit of AI, police officials summarized the legal intent as that these courts generally cover cases involving police or military acting within the boundaries of official service.<sup>21</sup>

In practice, police or military tribunals are used in almost every case of alleged human rights violation, generally following decision to that effect by police or military authorities. In cases with a high degree of publicity, for example, the police or military hierarchy often names an investigative commission made up of its own members, to make preliminary inquiries and recommendations for follow-up through internal sanctions or by subsequent trial in police or military courts.

In cases that proceed to trial by police or military tribunal, the proceedings and outcome are not always made public, so that the alleged perpetrators are not seen to be sanctioned. There are

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<sup>18</sup> “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” para. 9. (Hereafter, “Basic Principles on the Use of Force and Firearms”.)

<sup>19</sup> Constitution of the Dominican Republic, article 63, unofficial translation.

<sup>20</sup> Code of Police Justice, ch. 3. Also Code of Justice for the Armed Forces, art. 3, as quoted in *Derechos del Acusado: tribunales ordinarios, militares y policiales*, Henry Garrido (Dominican Republic, 1996) p. 61.

<sup>21</sup> Interview, Palacio de la Policía Nacional, 7 October 1999.

questions about the impartiality and commitment of these tribunals and the extent to which their decisions comply with international standards for fair trial. Issues of concern include the independence and impartiality of judges; their freedom from interference by superiors or outside influence within the court; and whether the tribunal has the judicial capacity for the proper administration of justice.

These and other issues are referred to in the 1995 edition of the Code of Police Justice, in which the editors noted that

In recent years there has been an increasing tendency to send even cases involving police on duty to ordinary courts, arguing that wounding or killing is an abandonment of duty; that the employees and delegates of the Executive cannot be judges and parties simultaneously; that as the victim is under the jurisdiction of ordinary courts, which is wider in any case than that of the, exceptional, police court, the former should be preferred in cases of doubt.<sup>22</sup>

#### **International standards on justice and human rights violations**

*Each State Party to the present Covenant undertakes: (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.*<sup>23</sup>

*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*<sup>24</sup>

The principles of effective remedy for victims of human rights violations and fair trial by a competent, independent and impartial tribunal are laid out in the ICCPR, cited above, as well as in the American Convention on Human Rights.<sup>25</sup>

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<sup>22</sup> Comment on article 29 of Law 285, the Code of Justice of the National Police of 29 June 1966; in *Código de Justicia Policial*, edited by Dr. Diego Fco. Jáquez Ortiz and Dr. Manuel de Js. Pérez Sánchez, Dominican Republic, 1995; unofficial translation.

<sup>23</sup> International Covenant on Civil and Political Rights, article 2.3 (a).

<sup>24</sup> International Covenant on Civil and Political Rights, article 14.1.

<sup>25</sup> See articles 2, 8 and 25.



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Following these parameters, the “Basic Principles on the Use of Force and Firearms” stipulate that victims of the use of force by law enforcement officials have access to independent judicial process.<sup>26</sup> Their corollary, the UN Basic Principles on the Independence of the Judiciary, clarifies that independence of the judiciary implies impartiality, fairness and full respect for the rights of the participants.<sup>27</sup>

There is a growing recognition within the body of international law that police or military courts cannot have jurisdiction in issues of alleged human rights violations. For example, the Declaration on the Protection of all Persons from Enforced Disappearance, adopted unanimously by the UN General Assembly in a 1992 resolution, states expressly that perpetrators “shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.”<sup>28</sup> This principle has been ratified in the Inter-american Convention on Forced Disappearance of Persons, to which the Dominican Republic has yet to become a party.<sup>29</sup>

For its part, the UN Human Rights Committee, in reviewing the periodic reports submitted by states parties to the Committee, has repeatedly said that cases involving human rights violations must be tried in ordinary courts. In one example, the Committee made the following comment on the report submitted by Colombia:

The Committee also urges that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent ordinary courts and suspended from active duty during the period of investigation. To this end, the Committee recommends that the jurisdiction of the military

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<sup>26</sup> *Op. cit.*, “Basic Principles on the use of Force and Firearms,” para. 23: “persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.”

<sup>27</sup> UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 6 September 1985:

“The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” (art. 2); “the judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law” (art. 3); and “the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected” (art. 6).

<sup>28</sup> Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992, A/RES/47/133, art. 16.2.

<sup>29</sup> *See* article 9.

courts with respect to human rights violations be transferred to ordinary courts and that investigations of such cases be carried out by the Office of the Attorney-General and the Public Prosecutor.<sup>30</sup>

Similarly, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions has expressed concern about the fulfilment of international standards for fair trial by military tribunals:

the Special Rapporteur expresses his concern about reports regarding trials of members of the security forces before military courts, where, it is alleged, they evade punishment because of an ill-conceived *esprit de corps*, which generally results in impunity.<sup>31</sup>

In light of the above, AI urges that all cases of possible human rights violations in the Dominican Republic be automatically tried in ordinary courts, with full judicial guarantees, to ensure full compliance with the body of international human rights jurisprudence.

## V. Recommendations

### AI Recommendations to the Dominican authorities regarding prevention of violations by security forces

- The Dominican government and security forces should review existing rules and regulations on the use of force and firearms against persons by law enforcement officials to ensure that they are in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and should take steps to guarantee that all members of the security forces comply with them at all times.
- In keeping with articles 2-4 of these Basic Principles, the NP and the AFDR should develop a range of options for non-lethal use of force. Steps should be taken to ensure that law enforcement officials rely to the greatest extent possible on non-violent means before resorting to the use of force and firearms; and if such use is absolutely necessary, that they exercise the highest possible respect for physical security and life.

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<sup>30</sup> Concluding Observations by the UN Human Rights Committee : Consideration of reports submitted by states parties under article 40 of the covenant : Colombia, 01/04/97; CCPR/C/79/Add.76, para. 34. *See also* M/CCPR/92/18 (Colombia); CCPR/C/79/Add. 66, para. 10 (Brazil); CCPR/S1519 and CCPR/C/SR1521 (Peru); CCPR/C/79/Add.78, para. 14 (Lebanon); CCPR/C/79/Add. 104, para. 9 (Chile).

<sup>31</sup> Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, in UN document A/51/457 of 7 October 1996; para. 125.

- In accordance with para. 15 of the UN Guidelines on the Role of Prosecutors,<sup>32</sup> if these officials receive evidence against suspects that they believe on reasonable grounds was obtained through the use of torture, cruel, inhuman or degrading treatment, or other unlawful means, they must take a series of measures. These include refusing to use said evidence against the suspect; informing the Court; and taking all other steps necessary to bring those responsible for using these methods to justice.

### **AI Recommendations to the Dominican authorities regarding investigation of alleged human rights violations**

- All allegations of human rights violations must be investigated fully and immediately, in an independent and impartial manner consistent with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- As a demonstration of the commitment of the Dominican state to full respect for human rights norms, these investigations should be carried out by the relevant authorities of the ordinary courts, with full cooperation by NP and AFDR officials as requested. Those responsible for the investigations must be empowered to solicit testimony from officials of the security forces, including those implicated in the alleged violations or witnesses.
- Similarly, investigating officials must have full access to all material proofs, including autopsy and forensic evidence as required.
- With regard to witnesses to violations, all possible efforts be made to locate and interview them, with full guarantees of their security.
- Findings of the investigation must be made public to the greatest extent possible without jeopardizing the continuation of the inquiry.

### **AI Recommendations to Dominican authorities regarding prosecution of human rights violations**

- Following completion of the investigation, if sufficient grounds are found to prosecute, the case should be brought to trial under the relevant ordinary judicial authorities.

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<sup>32</sup> Adopted by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990.

Prosecutors must comply fully with the UN Guidelines on the Role of Prosecutors,<sup>33</sup> and judges with the UN Basic Principles on the Independence of the Judiciary.<sup>34</sup>

- Where applicable, superior officers must be held responsible for not preventing or for failing to report unlawful use of force or firearms or other violations of human rights.
- Full safety guarantees must be in place for witnesses or others who testify in judicial proceedings.
- Discussions of the ongoing reform of the Dominican Constitution should take into account the precedents set by the Constitutions of other Latin American countries, which mandate the use of the ordinary justice system for all human rights violations.<sup>35</sup>

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<sup>33</sup> Adopted by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990.

<sup>34</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 6 September 1985.

<sup>35</sup> Constitutions of Haiti (article 42-3); Venezuela (article 29); and Bolivia (article 34).