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### Dominican Republic

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## **1. Methodology and consultation process**

1. The Dominican Republic regards the report submitted to the Human Rights Council for the universal periodic review as a basic tool for monitoring the human rights situation in the country. It has therefore ensured the transparency of the consultation process leading up to the report's preparation and accords all due weight to the commitments it assumes as part of this process.

2. This report is the outgrowth of lengthy consultations. The consultation process included a national summit meeting<sup>1</sup> attended by a very broad range of Dominican civil society organizations, the nationwide dialogue concerning the revision of the Constitution,<sup>2</sup> and the deliberations that took place in the course of a national seminar on workers' rights<sup>3</sup> and an international seminar held to learn from the experiences of other societies and countries in connection with measures for regularizing the status of migrant workers and their dependents.<sup>4</sup>

3. All those inputs have been analysed and incorporated into this report thanks to a systematic four-year effort on the part of the Inter-Agency Commission on Human Rights, which is coordinated by the Ministry of Foreign Affairs and is composed of 15 government agencies and human rights NGOs.<sup>5</sup> This process culminated in a workshop held in Santo Domingo by the Office of the United Nations High Commissioner for Human Rights to review and discuss the work that had gone into the report's preparation.<sup>6</sup>

4. All of these discussions served as the basis for the preparation of a draft report which the Ministry of Foreign Affairs then submitted to the Government for its consideration and approval. Thus, although the report does put forward the views and concerns of civil society,<sup>7</sup> it nonetheless expresses the official position of the Government of the Dominican Republic regarding implementation and the steps taken to accomplish that end. Its status as an official report notwithstanding, it is clear that the authorities and civil society must pool their efforts if they are to implement the national human rights agenda more fully.

5. Given the format of this report, it was not possible to include all of the supporting material. Its contents have therefore been confined to the subjects and issues having the most decisive impact on the country in terms of the progress it has made and its accountability to the national and international community.<sup>8</sup>

## **2. Normative and institutional framework for the promotion and protection of human rights**

### **2.1 The 2009 Constitution, the development of domestic legislation and the incorporation of human rights treaties**

6. The Dominican Republic is a representative democracy that operates under the rule of law. Its territory covers an area of 48,670.82 square kilometres, has few natural resources, and is home to a population of 9.2 million, in addition to an estimated 900,000–1.2 million undocumented immigrants, mostly from neighbouring Haiti.

7. As a State that upholds the rule of law, the will of the people is expressed in the Dominican Constitution, whose text is now in the process of being approved. The Constitution safeguards fundamental rights, including civil and political rights,<sup>9</sup> human dignity,<sup>10</sup> equality and non-discrimination,<sup>11</sup> legal personality,<sup>12</sup> physical, intellectual and

social communication,<sup>13</sup> economic, social and cultural rights,<sup>14</sup> and collective and environmental rights.<sup>15</sup>

8. With the support of these constitutional provisions, the Dominican Republic looks forward to further improving its record in defending such rights, particularly with respect to such crucial matters as violations of the right to life, beatings and other abuse committed against suspects, detainees and prisoners; prison conditions; the arrest and detention of suspects; corruption; violence and discrimination against women; forced labour and child prostitution; discrimination against undocumented persons and the protection of fundamental labour rights; trafficking in persons and the smuggling of undocumented migrants.

9. Since the fall of the dictatorship in 1961, the Dominican Republic has ratified the major international human rights conventions and has embarked on a determined effort to overhaul its laws and regulations on the subject.<sup>16</sup> This democratic effort reflects the sweeping changes that are being made in order to place human rights issues on the national agenda.

## **2.2 Institutional framework for the promotion and protection of human rights**

10. The consolidation of democratic institutions since 1961 has entailed the creation of participatory mechanisms for the development, follow-up and assessment of public policies, as well as the creation of the machinery required by the executive, legislative and judicial branches of government to enforce those rights.

11. The development of methods for involving society in overseeing and evaluating public policies in the Dominican Republic has made considerable headway over the past five years. Between 2003 and 2009, the central government alone has sponsored 49 international conferences and seminars on social, economic and cultural issues. These expanding opportunities for social dialogue have also taken the form of numerous open human rights forums and national and provincial human rights councils.

12. Initiatives taken by the executive in 2003–2008 include the promulgation of laws in 1999 creating the Ministry for Women, the Ministry for Cultural Affairs and the Ministry for Youth. It has also set up the Economic, Social and Institutional Council to advise it on major social and economic policies<sup>17</sup> and instituted the Democratic Security Plan to ensure the safety and security of each and every citizen. In line with these efforts, through the introduction of Act No. 498-06 on the National Planning and Public Investment System, the Ministry of Economic Affairs is facilitating a series of consultations with a view to assigning a high priority to medium- and long-term social investment in the country.

13. Within the executive branch, the Office of the Attorney-General has opened up neighbourhood prosecutors' offices to help safeguard the rights of women, minors and the general public and provide greater access to the justice system.<sup>18</sup> The Ministry of Labour has trained 222 inspectors to help enforce the Labour Code throughout the country.

14. The General Directorate on Migration has begun to apply a zero-tolerance policy in all cases where inspectors mistreat illegal migrants or violate their rights. In 2008 alone, 92 inspectors were dismissed. In 2008, official identity papers were also issued to between 16,000 and 20,000 Haitian farm workers authorizing them to work on Dominican farms.

15. In 2003–2008, the legislature passed Act No. 137-03 on migrant-smuggling and human trafficking, which affords special protection for the rights of women, children and young people. Act No. 136-03 contains the Code for the Protection of the Fundamental Rights of Children and Young Persons. Along the same lines, the implementing regulations

for Migration Act No. 258-04 are now being considered for approval.<sup>19</sup> In 2006, the country ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocols).<sup>20</sup>

16. The judiciary has created new mechanisms within the Offices of the Ombudsmen and Dispute Mediation Centres for protecting fundamental rights and settling disputes. This initiative has been carried out in cooperation with the Office of the Attorney-General, the NGO Participación Ciudadana (citizen participation) and other civil society organizations.<sup>21</sup>

17. In order to ensure that both nationals and foreigners in the Dominican Republic have the required documents, in 2005 the Central Elections Board (Junta Central Electoral (JCE)) embarked on a series of concurrent projects aimed at automating the Civil Registry Office and eliminating errors from its records in order to enhance its credibility and functionality, registering late statements and declarations, registering foreign newborns in the Immigration Registry, and preparing the proper documents for Dominicans and foreigners using biometric data.

18. The greatest ally of the Government and Dominican society in their institution-building efforts has been and continues to be the media in its unfettered exercise of freedom of the press and of expression throughout the country. In every single case of suspected intimidation or outright physical assault, there has been an immediate investigation, the facts of the matter have been clarified, and the corresponding punishments have been meted out, as appropriate. National and international NGOs are also at full liberty to pursue their work in the country.

### **2.3 Cooperation with international human rights mechanisms**

19. The Dominican Republic is unconditionally committed to United Nations reform in the area of human rights, and it ascribes an institutional priority to this issue that is in accordance with the Charter of the United Nations.

20. The Government responds positively to requests for invitations to come to the country to see how special thematic procedures and existing treaty bodies are operating on the ground, especially when such visits involve monitoring its fulfilment of its international human rights commitments.<sup>22</sup>

21. In 2003, the Supreme Court established, by its decision No. 1920, that the Dominican Republic's constitutional system is composed of provisions of equal rank deriving from two sources of law: domestic laws in the form of the Constitution and constitutional jurisprudence, and international laws in the form of international conventions and covenants, advisory opinions and the decisions of the Inter-American Court of Human Rights.<sup>23</sup>

22. Within the framework of the Organization of American States, the country maintains an ongoing dialogue with the Inter-American System and contributes to its components' institutional consolidation.<sup>24</sup>

23. Under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the International Labour Organization (ILO) monitors a range of human rights and environmental variables on a biannual basis as part of the "White Book" verification project.<sup>25</sup>

### 3. Achievements and challenges in the promotion and protection of human rights in the Dominican Republic

24. The major strides made since efforts to conduct national affairs within a democratic framework began in the 1960s have helped the country to address human rights violations. Such violations are being eliminated as the country's institutionalization process moves forward and as it improves its performance and adopts best practices in the protection of human rights. These efforts are taking place against a structural backdrop of long-standing poverty and immigration. Immigration is a factor because the Dominican population is being joined by a growing influx of unskilled labourers (equivalent to 12 per cent of the country's population) who are seeking a better life.<sup>26</sup> Poverty is a factor because, even as the country struggles day after day to improve its human rights record, the Dominican Republic is not a wealthy enclave; in fact, 54.5 per cent of its population lives below the poverty line, according to statistics compiled by the Economic Commission for Latin America and the Caribbean (ECLAC).<sup>27</sup>

#### 3.1 Right to documentation of vital records and nationality

25. A person living in a State governed by the rule of law who does not have proper documentation is a "non-person". People are entitled to have their births registered so that they will have a recognized identity that endows them with juridical personality and its associated attributes (a name, heritage, domicile, nationality, records of vital statistics). The Central Elections Board (JCE), which is in charge of the Civil Registry Office, is working hard to make sure that everyone is registered, as well as to modernize the institution and to increase its reliability and efficiency.

26. In April 2007, in accordance with Migration Act No. 258-04, JCE issued ruling No. 02-2007, which established a birth registration system, known as the Immigration Registry, for children born in the Dominican Republic to non-resident women. This means that children born to foreign parents in the country now have official identity papers and can be registered by their parents in the corresponding registry office.<sup>28</sup>

27. Information on a newborn child or minor whose nationality is unknown is not entered in the Immigration Registry. Instead, in view of the fact that every person has the right to a nationality, in such cases the Dominican Republic confers Dominican nationality upon that person in accordance with the Convention on the Reduction of Statelessness, adopted by the United Nations in 1961.

28. In order to rectify the situation of the some 600,000 nationals whom the Government found to be lacking a birth certificate and/or identity card in 2004, JCE signed an inter-agency agreement with the Office of Social Policy Coordination to strengthen and relaunch the Late Registration Unit (Unidad de Declaraciones Tardías). Between 2004 and 2008, a total of 363,967 people's previously unreported births were registered; 81,680 of these people were over the age of 16 and the other 282,287 were under 16 years of age.<sup>29</sup> In August 2007, Congress passed Act No. 218-07, which established a three-year amnesty for late birth registrations for nationals below the age of 16.

29. In order to expedite the collection of the biometric data that is embedded in the new identity cards, the number of Documentation Centres was increased from 13 to 49 between 2006 and 2008. By late 2008, six service centres, in addition to the existing offices, had been put in place so that citizens can obtain their vital statistics records in digital form quickly and efficiently.

30. Two misunderstandings that have arisen in this connection should be clarified. The first concerns the allegation that when JCE performed its data cleansing operations and

automated the Civil Registry,<sup>30</sup> its true intention (for arbitrary and secret reasons) was to take away people's identity papers, particularly if those people were Haitians or Haitian descendants. This is not the case. Given the large number of incomplete, substitute, altered and duplicate records and files in the Civil Registry, JCE instructed its staff to refrain from issuing, signing or copying the birth certificates of individuals whose parents were foreigners unless their documents and residency status had been legally validated by the JCE Administrative Chamber.

31. It is true that this administrative measure has resulted in the cancellation of identity cards and birth certificates in a number of cases, but it is equally true that the principle of the rule of law cannot be allowed to succumb to fraud and illegality. The sole purpose of this instruction has been to detect cases of fraud in the Civil Registry. As of July 2008, JCE had reported the discovery of 2,416 identity cards that had been improperly issued to foreigners between 1994 and 1997. Only 72 (3 per cent) of these cards were held by Haitian immigrants, and it therefore cannot be credibly argued that this was a discriminatory measure aimed at Haitian nationals. On the contrary, its only objective has been to ensure the reliability of an instrument that is vital to society in any State governed by the rule of law.<sup>31</sup>

32. The second misunderstanding has to do with the interpretation of the principle of *jus soli* as it relates to the Dominican Constitution. In some quarters, the Government's decision to not confer Dominican nationality on children of Haitian parents who are born in the Dominican Republic is tantamount to making them stateless persons. Yet it is not correct to talk about statelessness under these circumstances.

33. Haiti's constitutional law is based on the principle of *jus sanguinis*, and a child born to Haitian nationals is therefore Haitian whether he or she is born in Haiti or elsewhere.<sup>32</sup> Consequently, if a descendant of a Haitian national is born on Dominican territory, that person is not stateless. The introduction of entries on such persons in the Immigration Registry, far from depriving them of nationality, is ensuring that they have the proper documentation so that their parents can register their name and nationality at the time of their birth.

34. On a reciprocal basis, under the Dominican Republic's constitutional law as interpreted in the Supreme Court ruling of 14 December 2005, since the time that the Constitution of 1929 entered into force, the principle of *jus solis* applies only to immigrants whose parents were not diplomats or in transit and were legal residents of the country.<sup>33</sup> The question as to whether or not a child of Haitian parents who are legal residents of the Dominican Republic can be classified as being of Dominican origin is also a moot point, since the Constitution of Haiti does not recognize dual nationality.<sup>34</sup>

## **3.2 Right to racial equality and non-discrimination**

35. As a former American colony of a European nation, the Dominican Republic inherited a culture with a history of slavery and State policies condoning racial discrimination, especially against black Africans and their descendants. The failure of a long line of Dominican Administrations to remedy the damage caused by that legacy apparently permitted the continuing exclusion of some members of society from the mainstream and opened the way for the proliferation of racism (on the part of some private individuals, rather than as a policy of State). The State and Government of the Dominican Republic now realize that any form of discrimination is unjust and are continuing to take steps to eliminate it by applying the full force of the law and best practices in combating discrimination and xenophobia.

36. Examples of the efforts being made in this area include the affirmative action measures that have been adopted as a matter of public policy. Under these measures, at least one third of elective posts must go to women,<sup>35</sup> and any person who, for whatever reason, feels that he or she has been discriminated against or that his or her rights have been violated has preferential access to the courts. The 1997 amended Criminal Code also makes discrimination or attacks against another person a criminal offence.<sup>36</sup>

37. Furthermore, in order to guarantee that everyone will have access to the justice system, without discrimination, and in accordance with principles IV and VII of the Labour Code, the Supreme Court has ruled that article 16 of the Civil Code is discriminatory and is therefore unconstitutional.<sup>37</sup> It has also provided further backing for this decision by ruling that a foreign worker who does not have the proper permits still has the same right as anyone else to take legal action to claim his or her employment benefits.

38. The Dominican Republic therefore remains resolutely committed to bringing the full force of the law to bear, without exception, together with all the institutional means at its command to prevent and avert any further incidents of racial discrimination by private individuals and to ensure that, if any such incidents nevertheless do occur, that they will be duly punished by the courts.

### **3.3 The rights to public security, to personal security and to due process before the law**

39. The Dominican Republic abolished the death penalty in 1924. The right to life and security is inalienable and inherent to all human beings,<sup>38</sup> as is, in the event of a dispute, the right to due process. The country's democratic Administrations have made satisfactory headway in this regard, inasmuch as there have been no reports of political crimes or disappearances in the period between 2003 and 2008. Progress in other areas has been slower than expected, however. During that same period, there have been reports of private individuals' and groups of neighbours' involvement in summary executions. There have also been reports that members of the police and armed forces have physically abused detainees and have even boasted of making excessive use of force.

40. In the midst of these inroads and setbacks, two promising trends and one pledge are to be noted. The first of these trends is the ongoing institutionalization and growing credibility of the justice system.<sup>39</sup> One of the first steps taken by the authorities in 1997, in consultation with representatives of Dominican society, was the selection of members of the Supreme Court on an independent basis. This was followed up with a series of measures designed to professionalize the judicial system. The main thrust of this process has been to ensure the independence of the judicial branch of government<sup>40</sup> and thereby reinforce legal certainty in the country.<sup>41</sup> To this end, the Supreme Court has issued regulations, decisions and rulings to strengthen guarantees and ensure the proper application of the law in judicial proceedings.<sup>42</sup>

41. The new model being used in the prison system is one of the core elements of this reform and institutionalization process. The new system protects prisoners' dignity, and prison facilities are being upgraded in order to reduce overcrowding. Over the past five years a remodelling plan has been in place; 11 "model" prisons have been set up, and 5 new centres are being built. The social reintegration rate for men and women entering the system under this new model is over 97 per cent, and the rate of recidivism is 2.7 per cent, all of which increases public security. The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) plans to recognize the Dominican Republic for its best practices in the operation of the prison system.

42. The second trend is the ongoing screening and training of all law enforcement personnel and national security forces, including the national police force, the National Drug Control Directorate, and the armed forces and their various elite corps. The directors of these various bodies and forces have launched investigations and are screening their staff to forestall any acts of collusion or corruption, influence-peddling or the commission of any crimes or other offences. When an irregularity is detected and substantiated, the guilty party is dismissed and remanded to the regular court system.

43. In August 2007, the national police force announced it was introducing a zero-tolerance policy on impunity and on human rights abuses and violations. Under the new Administration, the Internal Affairs Unit opened investigations into serious charges of physical assaults, death threats, improper use of firearms, verbal attacks, robbery and theft. As of November 2008, 117 discharged police officers are serving prison sentences, and a total of 1,820 investigations had resulted in 312 dismissals and 563 disciplinary sanctions.<sup>43</sup>

44. The Government has also made a determined effort to provide skills training and human rights instruction to the members of the armed forces and police corps. Advances in this area within the armed forces include the establishment of the Military Institute for Human Rights in 2000 and its later conversion into the Graduate School of Human Rights and International Humanitarian Law. A total of 13,578 military and civilian personnel have received training and have graduated from that institution.<sup>44</sup> The National Police Institute for Human Dignity has offered courses and workshops to 37,000 police officers, recruits and members of the general public.

45. The effort to reform the judicial system and to fight corruption in the nation's police and security forces is helping to put a stop to violations and to enhance respect for human rights and the integrity of each and every human being in the Dominican Republic.

46. The pledge referred to in paragraph 40 concerns the problem posed by corruption in national affairs. The moral, economic and institutional roots of this problem jeopardize the proper administration of justice, the successful performance of the day-to-day affairs of the nation's citizens, public order, democratic governance and the effort to combat poverty on an ongoing basis. In the World Bank's index based on its Worldwide Governance Indicators,<sup>45</sup> the Dominican Republic was ranked among the 10 countries in the Americas that were least effective in combating corruption in 1996.<sup>46</sup> This challenge has been taken up by the National Ethics and Anti-Corruption Commission, which was created in that same year. Other initiatives along these lines include the Government's zero-tolerance policy on corruption, which has been reaffirmed by the executive branch; the Dominican Republic's Strategic Plan for Transparency, Ethics and the Prevention of Corruption 2009–2012; and the efforts being made by the nation's courts.<sup>47</sup>

### **3.4 Trafficking in persons and people-smuggling**

47. Trafficking in persons, including women and minors, and the smuggling of persons who lack proper papers or permits is prohibited by the Constitution.<sup>48</sup> Nevertheless, violations of this constitutional provision and the country's laws on the subject continue to be reported. This problem is of great concern to Dominican society and its authorities.<sup>49</sup>

48. Accordingly, in October 2007 the Government established the National Commission to Combat Human Trafficking and People-Smuggling and tasked it with developing a national strategy for combating trafficking and improving victim protection mechanisms. A unit of the Office of the Attorney-General that specializes in combating human trafficking coordinates the investigation and prosecution of all such cases.<sup>50</sup> Special units of the police force, Immigration Directorate and Office of the Attorney-General focus on people-smuggling, as has the Inter-Agency Committee for the Protection of Women Migrants. At



the international level, the Ministry of Foreign Affairs has developed a global network of consular officials who have been trained to identify and assist Dominican victims of human trafficking.<sup>51</sup>

49. The sexual exploitation of minors represents a very particular type of trafficking in human beings. The Inter-Agency Commission to Combat Abuse and Sexual Exploitation for Commercial Purposes<sup>52</sup> is headed up jointly by the Ministry of Labour and the National Child and Youth Council (CONANI), with support from the ILO International Programme on the Elimination of Child Labour. The Commission joins forces with the Public Prosecutor's Office and the Special Prosecutor for Children and Youth in combating the sexual exploitation of adolescents in tourist spots such as Boca Chica, Sosúa and Las Terrenas.<sup>53</sup>

50. A clarification is called for in respect of these efforts, however. The entry into the Dominican Republic of children and adolescents from Haiti is not necessarily yet another case of trafficking in minors. In 2004, UNICEF<sup>54</sup> explained that most of the estimated 2,000 Haitian minors entering the country each year are not victims of human trafficking but are instead either joining their families or are coming because someone has agreed to take charge of them in order to help give them access to better opportunities and life prospects.

51. The authorities are also dealing with the traffic in girls and women, particularly when it is for purposes of sexual exploitation. Networks of traffickers in women that are operating in the country are reported and pursued by a wide array of government and civil society organizations.<sup>55</sup> No reported human rights violation of this type has been met with indifference or complacency, as attested to, for example, by the drastic measures that have been taken to pinpoint and halt the traffic in women to South and Central America.

52. Illegal immigrants are voluntarily entering the Dominican labour market, either on their own or their families' initiative, rather than being induced, forced or tricked into doing so by "buscones" (literally "searchers" or scouts).<sup>56</sup> The most reliable estimates indicate that there are between 900,000 and 1.2 million illegal migrants in the Dominican Republic, most of whom are of Haitian nationality. It can be categorically stated that the Dominican Government does not encourage, benefit from or remain indifferent to this migratory flow, whose ultimate consequences are unknown.<sup>57</sup>

53. The authorities have taken a number of steps to staunch and regulate this migratory flow. These steps have included the passage of Act No. 137-03 on human trafficking and migrant-smuggling and of Migration Act No. 285-04, as well as the promulgation of Decree No. 575-07 of 2007, which established the National Commission to Combat Human Trafficking and People-Smuggling. The Commission is now in the process of vetting the National Action Plan to Combat Human Trafficking and People-Smuggling, 2009–2014. Between 2004 and late 2008, over 400 immigration inspectors and police, military and civilian authorities have been suspended, dismissed and/or prosecuted for participating in the commission of human trafficking or migrant-smuggling offences.<sup>58</sup>

54. The start-up of a special corps trained in border control operations in 2006 — the Specialized Border Security Corps (CESFRONT) — has been another major step towards curbing the traffic in undocumented migrants across the Haitian-Dominican border. The idea is to secure the Dominican side of the border, not only through the establishment of a military presence in the area, but also through the implementation of preventive actions by a corps that has been specifically trained to maintain order and enforce the Migration Act and relevant international agreements.

55. Few issues have sparked more criticism of the country in relation to the problem of trafficking in persons than the entry of temporary labourers to work in the sugar cane industry. Until 1986, these workers entered the country legally under a labour recruitment agreement between Haiti and the Dominican Republic and, later, a similar agreement

between Haiti and the State Sugar Council of the Dominican Republic. They came to cut sugar cane during the harvest and then returned to their own country when it was finished. This was a legal migratory flow which was supervised by international agencies such as the Pan American Health Organization/World Health Organization (PAHO/WHO) and ILO.

56. When these intergovernmental and institutional agreements expired, scouts began to seek out temporary fieldworkers, and it was they who supplied the Dominican Republic's sugar industry with workers at the start of each harvest throughout the 1990s. They have since ceased to operate, however, as they were systematically rooted out and punished by the Dominican Government. Since the start of the 2000s, no trace of these intermediaries remain in the sugar industry.<sup>59</sup>

### **3.5 Women's rights**

57. The entire Dominican nation strives daily to give women the equality before the law that they so much need, thereby making women's rights a reality. Where political rights are concerned, the major advances are that the Electoral Act No. 12-2000 raised the quota of female candidates for elected posts to 33 per cent, and Act No. 13-2000 established that applicants for positions such as commissioner and deputy commissioner should be of alternating sexes.<sup>60</sup>

58. Against the background of those efforts, sexual, gender-based and domestic violence has continued to be underreported since victims often omit to report incidents that would attract criminal penalties, fearing the social stigma or believing that the judicial system will not provide appropriate redress.<sup>61</sup>

59. To remedy this situation, the Government has put forward the National Gender Equity and Equality Plan as a means of applying policies permitting gender-based State intervention. To ensure that the Plan is followed up, it has also, through Decree No. 974-01, established gender equity and development offices in all government branches.<sup>62</sup>

60. The ministries of labour and of women are running programmes to ensure that women enjoy the same legal status as men, and to safeguard women against any and all violations of family law; a female procurator has been appointed to ensure follow-up at the national level, and comprehensive units for preventing and dealing with gender-based violence have been established in 13 provinces. These are staffed by psychological counsellors, forensic gynaecologists, medical examiners, paralegal staff and a police presence trained to look after battered women without making them victims all over again.

### **3.6 Rights of the child**

61. Act No. 136-03 emphasizes intersectoral coordination, planning, supervision, monitoring, civil participation and civil enlistment mechanisms through the National System for the Protection of Children's Rights: CONANI is the governing body. The Labour Code and subsequent regulations issued by the Ministry of Labour prohibit the employment of children aged under 14 years, restrict the employment of children under 16 and protect children under 18 from the worst forms of child labour.<sup>63</sup> Still, despite a gradual decline over the period 2003–2008, breaches of the law have given the Dominican authorities and various civil society organizations concerned no respite.<sup>64</sup> Child labour occurs principally in the informal, not formal, sector, in small businesses, domestic labour and agriculture.<sup>65</sup>

62. To counteract and stamp out this undesirable practice, the national steering committee on action to combat child labour, chaired by the Ministry of Labour, has 31

municipal and 3 local committees which in turn have set up watchdog networks bringing together institutions from the government sector, business, trade union and civil society.<sup>66</sup> The steering committee is running the national strategic plan for the eradication of the worst forms of child labour, 2006–2016, under which 27,300 children have already been removed from dangerous situations and work exploitation; another 5,574 children have benefited under the programme of educational initiatives to eradicate child labour.

63. In response to recommendations by the steering committee, the authorities have launched an extra programme seeking an ultimate end to child labour and, meanwhile, the withdrawal of 8,500 minors from labour exploitation.<sup>67</sup> One result has been an appreciable reduction in the number of children and teenagers exposed and subjected to the worst forms of child labour, falling from 9.3 per cent in 2004 to 6.4 per cent in 2008. In conjunction with civil society organizations, the Ministry of Labour has continued to cooperate with the ILO International Programme on the Elimination of Child Labour.<sup>68</sup> It conducts systematic checks to ensure that minors are not employed.<sup>69</sup>

64. In support of the campaign against child labour, the Ministry of Education, acting alone and in consort with a variety of private businesses and civil society organizations, has been improving its services so as to ensure that all minors are at school, not at work. In 2003 it gave permission for undocumented school-aged children to attend the compulsory basic years of education:<sup>70</sup> this benefits both Dominican nationals and foreigners lacking proper identity papers.

65. Besides the efforts being made by the Ministry of Education itself to improve school coverage, prevent dropouts and improve teaching quality, the Cabinet has launched a programme of subsidies for needy families in exchange for acceptance that their school-age children will attend school and leave jobs. The “school subsidies” programme benefited more than 208,000 families in 2008, on condition that the children in those families attended more than 85 per cent of the classes they were supposed to.

66. A conglomerate of private-sector businesses and civil society institutions are working, in conjunction with the United States Department of Labor, on a project entitled “Teaching to avoid child labour exploitation”; the project is being run by EDUCA, a Dominican NGO.<sup>71</sup> There are 14 “Spaces to Grow In” at just one sugar plantation in the San Pedro de Macoris region, functioning with assistance from Save the Children and other local NGOs such as the Instituto Dominicano para el Desarrollo Integral (Dominican Institute for All-Round Development).<sup>72</sup>

67. Although not everything is within the Government’s scope,<sup>73</sup> the authorities keep producing incontrovertible proof of their commitment to the rights and well-being of all the children in the country.<sup>74</sup>

### 3.7 Right to work

68. The Labour Code — Act No. 16-92 — allows organization into trade unions, and all workers except members of the armed forces and the police are free to organize and join the unions of their choice in urban and rural areas. At present, some 8 per cent of the workforce is unionized. The Labour Code also establishes a system of labour tribunals to handle disputes.

69. The latest study by the Fundación para la Institucionalidad y Justicia (Foundation for Institutionality and Justice), an NGO, indicates that it takes 15.3 months on average to settle a case at first instance, and 16.4 months to settle one on appeal. Nonetheless, practice shows that non-binding mediation facilitated by the Ministry of Labour has been the most effective way of settling disputes between workers and employers.

70. A number of NGOs report that over the five years from 2003 to 2008, most of the undocumented Haitian workers employed in various farming and construction ventures did not assert their rights for fear of being sacked or deported. This is not the whole story. For every reported case there are dozens of counter-examples, such as the right exercised by over 500 undocumented Haitian workers at a sugar plantation who sued their employer and won, at first instance, the right to written contracts and employment benefits.<sup>75</sup>

71. The Ministry of Labour has 203 inspectors to oversee the employment system. These carried out 80,000 inspections in 2007 and 85,000 in 2008.<sup>76</sup> Over those two years they also made 55 ad hoc visits to the farming regions of San Pedro de Macoris, La Romana, Barahona, San Cristobal and Independencia. In no instance did the labour irregularities discovered or reported to them go unpunished. Neither during these inspections, moreover, nor in the individual incidents reported by national and international NGOs, were reports of harassment or intimidation of the organized trade union movement by employers left uninvestigated and/or unpunished.

72. A typical case during that period was that of the Federación Dominicana de Trabajadores de Zonas Francas (Dominican Federation of Free-Zone Workers). This announced that anti-union incidents were still taking place at the TOS Dominicana plant in Bonao. The Ministry of Labour facilitated talks between the plant owners and employees. After nearly a year of negotiation, the parties signed a three-year collective bargaining agreement in August 2008. This signal example does not mean that the Dominican Republic has no labour disagreements, but rather that the Ministry of Labour is constantly seeking to uphold the Labour Code and the rights of both national and foreign workers throughout the country.

73. Government policy to promote and give effect to the right to work is based on the “decent work” concept propounded by ILO in 2003. A variety of activities under regional ILO coordination were used to put it into practice in 2006 and 2007, familiarizing people with the concept and establishing priorities, strategies and expected outcomes in consultation with workers’ and employers’ organizations. Government priorities in giving effect to the right to work are: the creation of more and better jobs; the eradication of forced labour and child labour; and the promotion of dialogue between labour and management. These are the main challenges facing the national authorities at the moment.

74. As regards the first 10 years of the new century, during the national financial crisis of 2003 which cost 24 per cent of the Dominican economy, the absolute unemployment figure rose, on the official figures, to a little over 24 per cent of the economically active population, then dropped to about 14 per cent by late 2008.<sup>77</sup> Such high absolute unemployment, coupled with the increase in the informal sector’s share of all economic activity to 54 per cent and continual arrivals of undocumented immigrants over the land border with Haiti, constitutes the severest of the socio-economic challenges confronting the national authorities and Dominican society.

75. One basic way beyond social assistance of combating poverty is to exercise the right to work. Figures from the Central Bank indicate that, at the end of the financial crisis of 2003, some 345,777 new jobs were created between August 2004 and April 2007; 59,141 jobs were created between October 2006 and April 2007.<sup>78</sup> The employment rate in 2006 was 62.3 per cent among men and 31.9 per cent among women.

### **3.8 Action to combat poverty**

76. One feature of the Dominican development model, according to UNDP Human Development Reports, is that despite high growth in per capita GDP over long periods, the country has been unable to reduce poverty, inequality or social marginalization.<sup>79</sup>

According to UNDP, this is due to the high concentration of national income and the emphasis on aid that was coming to dominate social policy. Most of the population is highly vulnerable as a result, as can be seen in the fact that a single year of national banking crisis, in 2003, sufficed to increase the number of poor people in the country by 1.5 million.

77. The Dominican Republic is tackling this problem by pursuing, within its financial capabilities, new, unified income-supplementing policies and by investing in universal health and education services, its aim being to direct economic growth towards a form of social inclusion that will gradually bring down extreme poverty.<sup>80</sup>

78. In mid-2004 the Government launched the “Eating comes First” programme with the objective of reducing hunger and helping families living in extreme poverty. Thanks to a more all-encompassing design, “Eating comes First” is, today, an integral part of the Solidarity Programme. By means of its electronic debit card, the Solidarity Programme ensures that citizens living in extreme poverty will have their education, health and transport needs met, that the aging will be cared for and that people will enjoy nutritional and food security. Between its launch in the last quarter of 2004 and the end of 2008, the Dominican Government has, through the Solidarity Programme, given RD\$ 11,013.1 million (US\$ 324.8 million approximately) to 796,957 beneficiaries.<sup>81</sup>

79. In early 2009, a total of 461,580 households had Solidarity cards. Each household received a subsidy of RD\$ 700 (US\$ 21 approximately) per month for food under the “Eating comes First” programme. Some 208,000 of the beneficiary households receive an extra RD\$ 150 (US\$ 4.50 approximately) per month for every child in school and attending at least 85 per cent of his or her classes. To protect poor and lower-middle class families affected by the rise in fuel prices in mid-2008, the Government gives 800,000 households a monthly subsidy of RD\$ 228 (US\$ 6.90 approximately) under the Bono Gas Programme, which is intended to ease the burden of buying gas for cooking and gas for transport.<sup>82</sup> Additionally, over the period 2004–2008, Solidarity has paid out RD\$ 473.1 million (US\$ 14.3 million approximately) — including medications — to aging persons, and RD\$ 137 million (US\$ 4.2 million approximately) in incentives for higher education.

80. Some 300,000 families living in extreme poverty are benefiting from the Progresando social and educational programme operating under the Office of the First Lady, and the National Housing Institute has handed over 228,789 dwellings between 2003 and 2009 to counteract the housing shortage.<sup>83</sup>

### 3.9 Right to health and social security

81. The Dominican Republic regards health as one of the cornerstones of social rights, and this explains the relative improvement in public investment in the health sector. The Ministry of Public Health and Social Assistance is working to decentralize its services. Its main activities targeting the most vulnerable population groups include programmes on maternal health, HIV/AIDS, tuberculosis, the extended programme of immunization (vaccination), an early-detection campaign for chronic illness (cancer) and policies designed to encourage breastfeeding and nutrition, and to offer easier access to prenatal consultations and family-planning talks. The main challenge is still to secure enough resources to run, build and equip the national hospital network.

82. The system has seen notable advances since the adoption of the Social Security Act, No. 87-01. Coverage under the subsidized family health insurance scheme for the poor has risen from 65,000 beneficiaries in mid-2004 to 1,224,643 people nationwide. Beneficiaries can have medical services, outpatient treatment and surgery at no cost in public hospitals throughout the country; they can obtain payments towards expensive procedures. The contributory family health insurance scheme for employers and for public- and private-

sector workers, which barely started up in September 2007, already covered 1,729,671 wage earners and dependants — 51 per cent of the target figure — at the end of 2008.

83. The shift from an aid-based approach to civic responsibility will in the long term have a very favourable effect on the health system. At present the balance is positive. This does not mean, however, that there are no obstacles left to overcome, such as the evident weakness of the regulatory and supervisory authorities which still allows responsibilities to be avoided or evaded.

84. It is appropriate, to put paid to recurrent unfounded allegations, to emphasize that the undocumented Haitian population in the country can indeed receive medical care under the Social Security System. Last year alone the Ministry of Public Health and Social Security devoted RD\$ 576 million (US\$ 16 million approx.), or more than 13 per cent of its budget, to caring for Haitians in the country who were in need of health services.<sup>84</sup>

85. Any worker, irrespective of sex and nationality, can — even without contributing — receive medical care under the social security system. So, for example, sugar plantations may well be classic sites of poverty and social exclusion but in the San Pedro de Macoris area, some 900 cane-cutters and their dependants living on the site of the only sugar company in operation there are provided, under the contributory health insurance scheme, with health services through a contract with a health-care provider; the system also runs 14 primary health-care centres for the same population of Dominicans, Haitians and their offspring.

86. The right to health, in the context of the Dominican social security system, encompasses a string of initiatives for dealing with particular issues such as Ministry of Public Health and Social Security preventive-care and therapeutic programmes for kidney-transplant, tuberculosis, HIV/AIDS, chemotherapy and dialysis patients under which drugs are supplied free of charge. RD\$ 1,500 million (US\$ 45.3 million approx.) are earmarked for the purpose every year.

87. Mention should be made here of the efforts by Ministry of Labour authorities to defend women's and HIV/AIDS patients' rights whenever underhand attempts are made to make them undergo pregnancy or HIV/AIDS testing at labour centres. The authorities will not tolerate any instance of pregnant women being turned away or HIV carriers being stigmatized; rather, they will take corrective action under Act No. 55-93 on AIDS.<sup>85</sup>

88. Besides medical insurance, the Dominican social security system includes a pension scheme. This guarantees that any Dominican worker can, on reaching old age, receive a pension wherever he or she may have worked; those who do not meet the requirements for a pension may be granted income support. The size of pension payable is independent of the recipient's sex, race, or religion.

### **3.10 Right to education**

89. Both the Government and Dominican society recognize that education alone can supply the scientific, technical, humanistic and ethical knowledge needed to bring about genuine, major change and true economic and social advance, vanquishing poverty and affording the country a sustainable future. The great challenge facing education in the country is to improve quality, since the Dominican Republic has the second-highest school enrolment rate in Latin America, at 91.1 per cent of children between the ages of 6 and 18. The gross enrolment rate in the final (compulsory) year of preschool education in 2005–2006 was 83.7 per cent; the rate in primary education was 104 per cent, and the rate in secondary education, 71 per cent.<sup>86</sup>

90. Hence, having gone ahead in 2006–2007 with a national consultation on excellence in education and drawn up a 10-year plan for all levels of education in the country, the Government is now committed to putting the plan into operation over the period to 2008–2018 at all levels: preschool, primary, secondary, technical and university education.<sup>87</sup> This is why the education budget for the year 2009 has been raised to RD\$ 4,090 million (US\$ 113.4 approx.), as a way of moving gradually towards the target of 4 per cent of GDP invested in the national education sector.

91. The budget figure does not include the annual amounts invested in bursaries for deserving graduate and postgraduate students at the most prestigious universities in America, Europe and Asia: 2,500 students were in university education at the end of 2008, at an average investment per student of US\$ 12,500. Neither does the figure cover the series of projects that the Government is executing with international bilateral cooperation funds,<sup>88</sup> nor yet a national scholarship fund which the Government and universities in the Dominican Republic use to meet the expenses of more than 4,000 Haitian university students studying in the country and sponsored, thanks to these funds, as though they were Dominican students.

92. There is a problem with undocumented minors, whether Dominican or foreign: in theory they should not, without proper identification, be allowed to attend school but, in order not to deprive them of their right to education, the Ministry of Education has since 2002 allowed them to attend the basic level of schooling while their situation is regularized. There has been an agreement between the Ministry of Education and the Central Electoral Board since 2005. The Ministry identifies undeclared children; the Board, being responsible for the civil registry, facilitates the process of arranging for each student to be supplied by his or her parents with a birth certificate. Since the academic year 2004/05, thousands of children have been provided with birth certificates. Sources in the General Schools Inspectorate indicate that between September and December of the school year 2008/09, a total of 31,979 children without birth certificates were found to be enrolled at schools and other educational facilities operated by the various regional education departments; altogether 21,152 of them (66.14 per cent) were given birth certificates during or at the end of the school year.

93. In summary, the commitment to education is a commitment to the young people of the country, and hence a national undertaking in the interests of a better future in which risks will be better distributed and poverty will give way to social well-being.

### 3.11 Cultural rights

94. The Dominican nation is a multiracial and multicultural society. It is striving to guarantee the right of all to take part in social activities and development and to preserve and promote their tangible and intangible heritage from a history full of interactions between highly diverse cultural groups: indigenous peoples, Africans, Europeans, Asians and Americans. These characteristics and conditions have given rise to a cultural policy which began to be shaped at the State level with the establishment of the Ministry of Culture, and to a set of standards<sup>89</sup> which has been building up since the nineteenth century.

95. The range of programmes in operation over the period 2003–2008 range from the renovation of the country's cultural infrastructure to the staging of book fairs, provincial and national carnivals, the relaunching of art education, the establishment of a system of free schools offering cultural training in the community, the book and reading promotion scheme, theatre and dance festivals, and mural-painting campaigns in the country's provinces and towns. The objective of these programmes<sup>90</sup> is to extend the reach and impact of cultural activities: the distinctive spiritual, physical, intellectual and emotional traits which together characterize groups of humans, including expressions of popular and

indigenous culture such as the Brotherhood of the Congos of the Holy Spirit, proclaimed by UNESCO as a Masterpiece of the Oral and Intangible Heritage of Humanity.

96. As regards the rights of the population at large, the great challenge facing the Government and people of the Dominican Republic and their organizations continues to be the construction of a diverse, democratic cultural polity.

### **3.12 Vulnerable groups**

97. No social group is more vulnerable to unequal distribution of opportunities and wealth in the Dominican Republic than rural dwellers. Efforts over the past 40 years to promote the benefits of agrarian reform, and commercial lending through the Banco Agrícola and technical assistance, have not sufficed to overcome the concentration of poverty in the Dominican countryside.

98. The extremity of the situation can be seen in two convergent indicators: the loss of relevance of the farming sector, and food insecurity in the country.<sup>91</sup> In macroeconomic terms, the farming sector has fallen from representing 12 per cent of GDP in the 1990s to only 8 per cent of GDP during the current decade; the output of export produce is down from 21 per cent in 1996 to 15 per cent in 2007. As regards food security, not even the second part of the first of the eight Millennium Development Goals — halving the proportion of people suffering from hunger in the country, from 27 per cent in 1990–1992 to 13.5 per cent — will be met: the forecast figure is only 21.7 per cent.<sup>92</sup>

99. The statistics do not, however, show how hard the country has striven to remedy this situation. There are successful programmes in operation, such as the school breakfast programme which, by the end of 2008, was reaching 1.6 million pupils in the public education system irrespective of whether they were Dominican or not. The Ministry of Education invests RD\$ 17 million (US\$ 501,327 approx.) per day in this programme, thereby providing between 20 and 25 per cent of children's daily energy requirements for proper physical and intellectual development.<sup>93</sup>

### **3.13 Rights of migrants**

100. The Dominican Republic is among the countries that have sacrificed most, being both a country of origin and a receiving country, to protect and uphold migrants' rights. There is nothing in its Constitution or the law which contradicts those rights, and it is thus now considering accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

101. This is all the more true when one considers the twin changes that the Dominican nation is undergoing. On the one hand, a predominantly rural society (80 per cent in 1960, when the country had barely 4 million inhabitants) has become an urban one (75 per cent) in the decade since 2000, with 9.2 million inhabitants. In this setting, public services are proving inadequate and incapable of offering coverage and high-quality service to the general public. On the other hand, the demographic facts on the ground have led approximately 1.5 million Dominicans to emigrate, a movement offset by the immigration of unqualified labour chiefly, though not exclusively, from Haiti.

102. The charge is levelled against the Dominican Republic that it ought to be able to absorb the Haitian workers and guarantee them a dignified, or at least decent, status, giving them the benefits of housing, a health system, an education system, transport, pensions and better wage levels. In fact, however, the country cannot offer even one of these benefits satisfactorily: it cannot do so properly even for Dominicans.<sup>94</sup> It is not a question of keeping



people out of violating rights for the sake of doing so, but rather of the economic impossibility of sharing out what does not exist in a developing country, where 54.5 per cent of the population live below the poverty line.<sup>95</sup>

103. Despite these limitations, the Dominican Republic does not defend, practise or condone any systematic violation of human rights in its territory. Any foreigner in the country, whether there legally or illegally:

- (i) Enters voluntarily, not under duress, and can leave the country if he or she so decides;
- (ii) If employed, always receives a wage established by common accord and consistent with the regulations in force;
- (iii) Earns the same rate of pay for a given type of work, irrespective of his or her race, gender or nationality;
- (iv) Is free to form or join a trade union and enjoys freedom of association;
- (v) Receives equal treatment for the work he or she legally performs, as laid down in the Labour Code;
- (vi) Can and indeed does exercise his or her labour rights through the Ministry of Labour;
- (vii) Has guaranteed access to the national courts and thus to the media and to institutional, church-based, national and international forums without being subject to punishment or reprisal;
- (viii) Has free access to, and can count on the backing and protection of, various services offered by churches, many NGOs and bilateral institutions, and the national and international media;
- (ix) Enjoys freedom of movement throughout the country and freedom to move from one sector of the economy to another and one business or workplace to another;
- (x) Is entitled to the same level and quality of services as Dominican nationals since at no time will he or she be assigned or forced to live apart, segregated or isolated from the rest of the Dominican population;
- (xi) Is distinguished exclusively by his or her economic status, having equal access to the opportunities and services available in the country;
- (xii) The most recent arrivals, possessing no labour skills and having entered the country illegally, do not necessarily have immediate access to the best options and living conditions available and may thus remain in the less favoured strata of society; nevertheless, there are ever more frequent reports of upward social mobility in the commercial, academic, business and political fields;
- (xiii) Does not live daily life in segregation but interacting fluidly with different social groups in the countryside or in urban settlements.

104. There will, as a result, be instances when people are excluded on dubious economic grounds, but not because of their nationality or the colour of their skin.<sup>96</sup> On this point, the Dominican Republic is emphatic: it is firmly and resolutely opposed to do any kind of shady arrangement or abuse at the expense of migrant workers, illegal ones in particular.<sup>97</sup> Inasmuch as Haitian immigrants work in all sectors of the economy, the challenge facing the authorities is to regulate and administer migration so that migrant workers are legal, do not exceed the need or demand for labour, contribute positively and do not become an instrument of unfair business practice or an unsustainable burden on society.<sup>98</sup>

105. A sensitive topic in this connection is the allegation that the migration authorities indulge in abuses and excesses, violating the rights of Haitian nationals whenever they set out to repatriate them. It must be repeated, and above all shown in practice, that the General Directorate on Migration has laid down the terms under which illegal Haitians can be repatriated in the protocol on the subject which Haiti and the Dominican Republic signed in 1999.<sup>99</sup>

106. Two other recurrent topics having to do with the vulnerability of the Haitians in the Dominican Republic are those of health and education. National and international public opinion hears reports that the Haitian population do not receive health services, whether because they are undocumented or for other reasons. Proof that these allegations are false can be seen in the 23 per cent of the Ministry of Health budget which pays for the health services they receive,<sup>100</sup> in the special permits given to school-age children and in the facilities offered to Haitian university students in the country.<sup>101</sup>

#### **4. Two major challenges and a formal commitment**

107. The democratic transition in the Dominican Republic has reached the stage where all civil procedures are becoming institutionalized. This brings with it two main challenges:<sup>102</sup> first, making available to all, equally, despite economic difficulties, equality of opportunity and services in urban, rural and semi-urban areas, irrespective of gender, nationality, race, age and other variables; and second, to check and regulate the continuing influx of undocumented immigrant workers so as to be able to cope with the socio-economic, institutional and cultural weight on the Dominican nation that comes with an immigrant population already amounting to 12 per cent of the total.

108. Taken together, the achievements of the past few decades show that progress in overcoming the obstacles that prevent men and women of all ages, social classes, races and nationalities from living together in dignity and hope depends directly on an active undertaking by the Government and society to protect and promote basic rights.

109. Inequality is a historical feature of the socio-economic situation in the Dominican Republic, and is responsible for unsustainable tendencies to exclude both nationals and foreigners. Reducing inequality will require both policies that meet the requirement of promoting human rights across the board, and action that takes into account the claims of those who are traditionally affected by exclusion.

110. Hence the formal commitment made by the Dominican Republic is to continue to put into effect each and every initiative designed to foster faithful, unrestricted compliance with all its national and international human rights commitments.

111. The basis for this unflagging effort by the Government comes, first, from the frame of reference that its own Constitution and laws offer; second, from policies designed to improve teaching, extend social security coverage and ensure the expansion of the Dominican labour market while ensuring that national wage levels, including the minimum wage, can support a decent standard of living for wage earners and their families.

112. For all the above reasons, the Dominican Republic sets particular store by the evaluation of human rights at the international level as a means of learning about best practices and, in particular, of paying attention to the comments and recommendations made in response to this universal periodic report so as to improve its performance on its human rights agenda.

## Notes

- <sup>1</sup> La Cumbre de las Fuerzas Vivas consensuó, durante los meses de enero-marzo 2009, una serie de propuestas relativas a migración, derechos laborales, servicios de salud y de educación, empleo seguro, seguridad ciudadana y de ciudadanía. Las conclusiones y la lista de las instituciones y de las personas asistentes aparece en <http://www.cumbre2009.com.do/>.
- <sup>2</sup> La reforma a la Constitución en 2009 culminó un amplio proceso de consultas efectuado durante los años 2004–2008.
- <sup>3</sup> La Secretaría de Estado de Trabajo (SET) celebró en mayo el “Foro de Actualización Laboral” que congregó a dependencias gubernamentales, así como la OIT y las principales ONGs del país y empresas del sector privado, en varios paneles para exponer y discutir la problemática de los derechos humanos en contextos tales como la crisis económica en el empleo de la mujer y posibles acciones a implementar para contrarrestar la pérdida de empleos, la generación de empleos, la conciliación en el Código Laboral, jueces e inspectores laborales, avances y perspectivas de la seguridad y la salud en el trabajo en el país, el seguro de riesgos laborales, y el trabajador migrante en la industria azucarera.
- <sup>4</sup> La Secretaría de Estado de Interior y Policía celebró en junio 2009 el “Seminario Internacional sobre Políticas Migratorias y Experiencias en procesos de Regularización”, que contó con la presencia de 42 ministros de Interior de igual número de países.
- <sup>5</sup> La Comisión Interinstitucional de Derechos Humanos fue creada por el Decreto 408-04, del 5 de mayo 2004, en cumplimiento del Programa y Plan de Acción de Viena de 1992. La Comisión agrupa a las Secretarías de Estado de Relaciones Exteriores, de Interior y Policía, de Trabajo, de Salud, de Educación, de las Fuerzas Armadas, de la Mujer, de Cultura, Procuraduría General de la República; también, la Suprema Corte de Justicia, el Congreso Nacional, la Junta Central Electoral, la Comisión de los Derechos Humanos, el Consejo Nacional para la Niñez y la Adolescencia, la Dirección General de Prisiones, la Dirección General de Bienes Nacionales, el Instituto Nacional del Azúcar y el Consejo Nacional de Lucha contra la Pobreza.
- <sup>6</sup> El Taller se celebró el primer trimestre de 2009 y al mismo asistieron los miembros de la Comisión Interinstitucional de Derechos Humanos y representantes de las principales ONGs del país ligadas al sector.
- <sup>7</sup> Ver, <http://www.cumbre2009.com.do/>.
- <sup>8</sup> Por esa razón temas de tanta relevancia como el medio ambiente, los derechos de las personas mayores y las discapacitadas, así como la libertad de religión, no aparecen reflejados en este documento.
- <sup>9</sup> Constitution of the Dominican Republic 2009: Art. 28.
- <sup>10</sup> Constitution of the Dominican Republic 2009: subsección 1, Art. 29.
- <sup>11</sup> Constitution of the Dominican Republic 2009: Art. 29.
- <sup>12</sup> Constitution of the Dominican Republic 2009: Art. 30–36.
- <sup>13</sup> Constitution of the Dominican Republic 2009: Art. 37–40.
- <sup>14</sup> Constitution of the Dominican Republic 2009: Art. 41–54.
- <sup>15</sup> Constitution of the Dominican Republic 2009: Art. 55–57.
- <sup>16</sup> A modo de ejemplo: Ley 87-01 sobre Seguridad Social; Ley 258-04 sobre Migración; Código Procesal Penal de 2004. También, las resoluciones No. 1920-2003 y del 14 December 2005 de la Suprema Corte de Justicia relativas al acceso a la justicia de los extranjeros y a la ciudadanía.
- <sup>17</sup> El Consejo Económico, Social e Institucional, CESI, creado mediante el Decreto 13-05, está integrado por asociaciones empresariales, organizaciones sindicales y representante de la sociedad civil.
- <sup>18</sup> En el período 2007–2008, se han abierto en la ciudad capital de Santo Domingo 15 Fiscalías, que han recibido un total superior a los 30,000 expedientes.
- <sup>19</sup> La Secretaría de Estado de Interior y Policía celebró a mediados del mes de junio 2009, con la presencia de 25 ministros de Interior de diversos países un taller de tres días sobre “Políticas Migratorias y Experiencias en Procesos de Regulación”.
- <sup>20</sup> También fue aprobada por el Congreso y promulgada por el Poder Ejecutivo la Ley de Función Pública número 41-08, que garantiza la igualdad de acceso a la función pública y establece como causa de despedido el acoso sexual. Con anterioridad aprobó la Ley 19-01 del Defensor del Pueblo, cuya implementación ha tardado mientras se llega a un consenso relativo a la persona que ocupará dicha posición. También la Ley Municipal 176-07, que incluye a las mujeres en los espacios de

participación ciudadana de los ayuntamientos y especializa un cuatro por ciento (4 por ciento) de los fondos del presupuesto exclusivos para el tema de género.

- <sup>21</sup> Ver, <http://www.pciudadana.com/proyectos.htm>.
- <sup>22</sup> Dominican Republic es parte de la Carta Internacional de Derechos Humanos de Naciones Unidas, del cuerpo de tratados de Derechos Humanos de Naciones Unidas, y de otros instrumentos tanto del Sistema Universal como del Regional de la OEA. Con relación a los mecanismos convencionales, el Estado ha aceptado la competencia de los Comités establecidos en virtud de Tratado que poseen el mecanismo de denuncias individuales para que conozcan casos en contra del Estado. El Estado tiene en fase de aprobación la Convención sobre Trabajadores Migrantes y la Convención sobre Desapariciones Forzadas. Dominican Republic ha cumplido con el Plan Nacional de Educación en materia de Derechos Humanos, del cual se publicaron dos ejemplares: Hacia un Plan Nacional de Educación en Derechos Humanos: Diagnóstico (volumen I), y Hacia un Plan Nacional de Educación en Derechos Humanos: Lineamientos Estratégicos (volumen II). En el ámbito regional, Dominican Republic es parte de la Convención Interamericana de Derechos Humanos y ha reconocido la competencia contenciosa de la Corte Interamericana de Derechos Humanos, así como la Convención contra la tortura, y Belén do Pará: Convención Interamericana Para Prevenir, Sancionar y Erradicar la Violencia Contra la Mujer. Del 30 de marzo al 4 April 2009, previa invitación del país, la Corte Interamericana de Derechos Humanos, celebró su XXXVIII Período Extraordinario. En dicha sesión se celebraron audiencias públicas y un seminario sobre la recepción de la jurisprudencia de la Corte Interamericana en las decisiones de los tribunales nacionales.
- <sup>23</sup> En sentencia del 9 de febrero de 2005, núm. 4, el Pleno de la Suprema Corte de Justicia dispuso: "... Lo que es hoy reconocido por nuestro derecho positivo al consagrar el artículo 1 de la Ley No. 76-02 (Código Procesal Penal), al referirse a la primacía de la Constitución y los tratados en el sentido de que estos 'prevalecen siempre sobre la ley', de lo que se infiere que si bien forman parte del derecho interno el conjunto de garantías reconocidas por la Constitución y la jurisprudencia constitucional, así como las normas supranacionales integradas por los tratados, pactos y convenciones internacionales suscritos y ratificados por el país, las opiniones consultivas y las decisiones emanadas de la Corte Interamericana de Derechos Humanos, lo que se ha dado en denominar **bloque de constitucionalidad**, que reconoce igual rango a las normas que lo componen".
- <sup>24</sup> Ningún hecho evidencia mejor ese espíritu de apertura de la agenda de derechos humanos que haber iniciado el cumplimiento del fallo del 8 September 2005 de la Corte Interamericana de Derechos Humanos, relativo al caso de las niñas Yean y Bosico, incluso en aquellas partes del fallo en que la misma Corte estableció que los hechos que involucran el análisis de ciertas garantías tuvieron lugar con anterioridad a que Dominican Republic reconociera la competencia contenciosa de ese tribunal. Ver, Comisión Interamericana de Derechos Humanos: OEA/Ser.L/V/II.129. Doc. 4; "El acceso a la Justicia como garantía de los derechos económicos, sociales y culturales"; 7 septiembre 2007: párrafos 165–166, 190–191, 198–201 y nota 81. A propósito de dicho fallo, la Corte no declaró la vulneración del Artículo 8 de la Convención, sino que sostuvo que los hechos que involucran el análisis de esta garantía tuvieron lugar con anterioridad a que Dominican Republic reconociera la competencia contenciosa de ese tribunal. Lo que la Corte sí recomendó fue, en lo que aquí concierne, recortar la amplia discrecionalidad de los funcionarios, que es precisamente lo que las autoridades dominicanas acaban de hacer en orden a salvaguardar la validez del Artículo 8 de la referida Convención.
- <sup>25</sup> Cada 6 meses el denominado Libro Blanco da seguimiento sistemático a la libertad de asociación, los sindicatos y relaciones laborales; los tribunales laborales; igualdad de género y formas de discriminación; las peores formas de trabajo infantil; el derecho ambiental; la promoción de una cultura de cumplimiento y el compromiso político general.
- <sup>26</sup> Con una población de 8.4 millones de habitantes, a Haití le corresponde el Índice de Desarrollo Humano más bajo de América: 0.529, de acuerdo al UNDP en 2007. Del 54.4 por ciento de la PEA que quiere y que legalmente puede trabajar sólo el 49,6 por ciento está ocupado, y de este porcentaje el 82 por ciento es trabajador independiente en el sector informal. Desde 2003, las condiciones han mejorado, aunque no de manera suficiente: ese año el PIB per cápita se estimaba en \$EE.UU.1,700, en 2006 el Fondo Monetario Internacional lo promedió en \$EE.UU.1,840, y para 2007 y 2008 estimó su crecimiento en \$EE.UU.1,914 y en \$EE.UU.1,994, respectivamente.
- <sup>27</sup> Comisión Económica para América Latina (CEPAL): *Panorama Social de América Latina, 2006*. Por otro lado, de acuerdo al Informe sobre Desarrollo Humano, del UNDP, en 2008, el 45 por ciento de la

- población dominicana (4 millones 486 mil dominicanos) son pobres. De éstos, 1 millón 64 mil personas, padecen condiciones de pobreza extrema. La pobreza tuvo un pico de crecimiento significativo en 2003 y comienza a reducirse, pasando de 43.1 por ciento en 2004 a 36.3 por ciento en 2006, de acuerdo a cifras del Banco Mundial.
- <sup>28</sup> En 2007 se registraron 51 niños de diferentes nacionalidades, 483 en el 2008 y January a marzo del año en curso 122.
- <sup>29</sup> A ese logro contribuye el establecimiento de 54 Delegaciones de Oficialías del Registro Civil en los hospitales públicos para expedir actas de nacimiento a los recién nacidos. También, la puesta en funcionamiento de 6 Unidades Móviles para Declaraciones Tardías de Nacimiento que deambulan por todo el territorio nacional para atender los expedientes de declaración tardía de nacimiento y proporcionando asistencia a ciudadanos que estando registrados, no posee cédula de identidad.
- <sup>30</sup> La situación del Registro del Estado Civil en Dominican Republic alcanzó niveles extremos de desorganización, ya que las oficialías del Estado Civil eran manejadas por particulares sin conocimiento ni criterio alguno de lo que su desempeño representaba. Como correctivo, en el año 1992, fue promulgada la Ley 8-92, debido a la cual la Oficina Central del Estado Civil y las Oficialías del Estado Civil pasaron a depender de la Junta Central Electoral.
- <sup>31</sup> Ver <http://www.jce.do/web/>.
- <sup>32</sup> Constitution of the República de Haití de 1987, Art. 11.
- <sup>33</sup> La constitución dominicana de 2009 reafirma el requisito de residencia legal en el país para conceder la ciudadanía dominicana en función del *Jus Solis*: “Article 16. *Son dominicanas y dominicanos: ... c) Los nacidos en el territorio nacional, con excepción de los que fueron hijos de extranjeros miembros de legaciones diplomáticas y consulares o de extranjeros que se hallen en tránsito o residan ilegalmente en territorio dominicano.*”
- <sup>34</sup> Constitution of the República de Haití de 1987, Art. 15
- <sup>35</sup> Ver, Art. 68 de la Ley Electoral 275–97 y sus Modificaciones.
- <sup>36</sup> Las personas que por robos menores y por ocasionales dificultades, pleitos y malentendidos individuales, matrimoniales, familiares, laborales o entre grupos locales de tipo informales, se ven afectadas por casos de agresión o de exclusión cuentan con el Article 9 de la Ley No. 24–97 que modifica el Article 336 del Criminal Code.
- <sup>37</sup> El Article 16 del Código Civil establece que en todas las materias y en todas las jurisdicciones, un extranjero transeúnte que sea demandante principal o interviniente forzoso está obligado a dar fianza para el pago de las costas y de los daños y perjuicios resultantes de la litis, a menos que posea en Dominican Republic inmuebles de un valor suficiente para asegurar ese pago. Por eso, para garantizar a toda persona y sin discrimen el acceso a la justicia, la Suprema Corte de Justicia declaró como inaplicable, en tanto que el discriminatorio, el article de referencia.
- <sup>38</sup> Ver, Sentencia del 17 February 2006; Resolución 1920 del 13 November 2003. Las violaciones al derecho a la vida y a la dignidad de las personas son, en todo caso, pasibles de sanción judicial.
- <sup>39</sup> La población y representantes de las fuerzas del orden podrán tomarse la justicia en sus manos por razones que van, desde la falta de acceso a ella y la desconfianza ante las autoridades nacionales, hasta la creencia falaz de que las leyes no sirven para nada, que las sentencias están compradas o que los centros de detención son antros de perdición. Sin embargo, no por ello las autoridades nacionales dejan de hacer todo lo posible por contener y superar esas ilegalidades.
- <sup>40</sup> En agosto de 2004 se modificó el Código Procesal Penal (Ley 76-02) que agiliza los procedimientos, salvaguarda los derechos de las partes, restringe el tiempo de la prisión preventiva, modifica la responsabilidad instrumental del Ministerio Público y la de la Policía en la investigación de delitos, sustituye el antiguo sistema de convicción íntima del juez por uno de pruebas y evidencias objetivas, y salvaguarda la presunción de inocencia del inculpaado.
- <sup>41</sup> Incluso tradicionales delitos de cuello blanco han sido juzgados y condenados en estricto apego a las leyes, y tanto la impunidad ante la ley, como la parcialidad en la administración de la justicia, se encuentran en retroceso.
- <sup>42</sup> Ejemplo, la sentencia del 24 February 1999 sobre el Recurso de Amparo y su reglamentación.
- <sup>43</sup> Desde la entrada en vigor en agosto del año 2004 de la Ley 76-02 del nuevo Código Procesal Penal, la institución policial se esmera por cumplir de manera rigurosa los procedimientos del debido proceso y garantías fundamentales tales como el derecho a la vida, la dignidad de la persona, la libertad y la seguridad, considerándolo. En récord consta que todos los procesos de muertes violentas a manos de las fuerzas policiales que se siguen son tratados e investigados por el Ministerio Público y la

- Dirección de Asuntos Internos de la Policía Nacional, quienes luego apoderan a los tribunales ordinarios competentes para que sean juzgados. Cualquier ejecución sumaria –mal denominada extrajudicial puesto que la pena de muerte no existe en Dominican Republic–, es tratada como un homicidio y el compromiso ya verificado es el de aplicar las normas internas jurídicas de protección y garantía de acuerdo al Art. 6 del Pacto de los Derechos Civiles y Políticos.
- <sup>44</sup> Las Fuerzas Armadas han logrado la disminución de violación a los derechos humanos por parte de sus miembros, comprometiéndose a seguir capacitando en derechos humanos y derecho internacional humanitario para el próximo quinquenio al 50 por ciento de sus 50,000 miembros.
- <sup>45</sup> Estadísticas del Banco Mundial: <http://www.worldbank.org/wbi/governance>. Ver también, Latinobarómetro, Informe 2008, que promedia la percepción de los ciudadanos respecto al número de funcionarios dominicanos corruptos en 75.7 por ciento para el período 2001-2008: <http://www.latinobarometro.org>.
- <sup>46</sup> No obstante esos resultados, la encuesta “Cultura política de la democracia en la Dominican Republic, 2008”, de Barómetro de las Américas, afirma que “aunque en la opinión pública predomina la idea de que en la Dominican Republic la corrupción es un problema generalizado, el porcentaje que reporta haber sido víctima de algún acto de corrupción ha declinado en los últimos cuatro años, de 21.2 por ciento en el 2004 a 16.3 por ciento en el 2008. Sin embargo, mientras el declive entre el año 2004 y 2006 es estadísticamente significativo, no así entre 2006 y 2008”.
- <sup>47</sup> Ver <http://www.cnecc.gob.do>.
- <sup>48</sup> Constitution of the Dominican Republic 2009: Art. 32.
- <sup>49</sup> La NGO Centro para la Orientación e Investigación Integral (COIN) estimó que de 17,000 a 33,000 mujeres dominicanas en el extranjero son víctimas de la trata. Los países principales de destino están en Europa Occidental, Argentina, Brasil, Centroamérica y el Caribe, y la mayoría de las víctimas eran madres solteras sin educación, en busca de mejorar las condiciones de vida de sus hijos. En el país, las víctimas son típicamente mujeres o adolescentes traficadas para la explotación sexual en áreas urbanas o turísticas. De acuerdo al COIN y a la Organización Internacional para las Migraciones (OIM), las organizaciones de trata son típicamente grupos pequeños que conocen a las futuras víctimas mujeres por medio de amigos y familiares.
- <sup>50</sup> La Procuraduría General instituyó en 2004 el Departamento contra el Tráfico Ilícito de Migrantes y Trata de Personas, de conformidad con la Ley 137-03. Ese departamento mantiene activos los esfuerzos contra el Tráfico y Trata de Personas, por medio de: reconocimiento e investigación en zonas de alto riesgo efectuando el cierre de locaciones y persecución de personas involucradas, labor de cooperación y seguimiento con organismos relacionados y la realización de campañas de información pública, así como realización de talleres y seminarios a nivel nacional.
- <sup>51</sup> La Unidad de Prevención del Departamento Contra el Tráfico Ilícito y Trata de Personas de la Procuraduría General, en coordinación con las Secretarías de Trabajo y de Educación, continuó sus entrenamientos de concienciación en las escuelas del país. Por su lado, el COIN administró el Centro de Salud e Información Migratoria para la Mujer Migrante, desde donde efectuó campañas comunitarias de educación en las zonas de alto riesgo.
- <sup>52</sup> La Comisión Interinstitucional Contra el Abuso y la Explotación Sexual Comercial está integrada por las siguientes instituciones gubernamentales y no gubernamentales: Secretaría de Estado de Trabajo; Consejo Nacional para la Niñez y Adolescencia; Secretaría de Estado de Educación; Secretaría de Estado de Relaciones Exteriores; Policía Nacional; Secretaría de Estado de Salud Pública; Secretaría de Estado de la Mujer; Suprema Corte de Justicia; Procuraduría General de la República; Fiscalía del Distrito Nacional; Instituto de la Familia; Secretaría de Estado de Turismo; Policía Turística; Dirección General de Migración; Instituto Interamericano del Niño (IIN); Muchachos con Don Bosco, Visión Mundial-RD; Proyecto MAIS; Proyecto Caminante; Coalición NGO; Fondo de las Naciones Unidas para la Infancia (UNICEF); y el Programa Internacional para la Erradicación del Trabajo Infantil de la Organización Internacional del Trabajo (IPEC/OIT).
- <sup>53</sup> La Procuraduría General de la República, por medio de la Unidad de Educación y Prevención, aúna esfuerzos con organizaciones comunitarias para ofrecer cursos de prevención y de capacitación en las escuelas del área metropolitana de Santo Domingo en tráfico de personas y de ilegales, así como de explotación sexual con fines comerciales. A febrero 2008, ha beneficiado a 2,130 adolescentes incluyendo 200 en la Escuela Liceo Evangélico en Villa Juana, 600 en el Liceo Estados Unidos de América en Gazcue, 430 en la Escuela Socorro Sánchez en Villa Duarte, 250 en el Liceo Ramón Emilio Jiménez en Santo Domingo, 300 en el Liceo Ramón Matías Mella y 350 en el Politécnico Pilar

- Constanzo de Villa Duarte.
- <sup>54</sup> UNICEF: “Trafficking of Boys, Girls and Young People from Haiti to the Dominican Republic” (2004). Ver también: [www.unicef.org/republicadominicana/english/protection\\_12467](http://www.unicef.org/republicadominicana/english/protection_12467).
- <sup>55</sup> Entre las campañas gubernamentales en contra del abuso sexual de las mujeres con fines comerciales tenemos, mediante la Procuraduría General y la Dirección de Migración, y de diversas ONGs y medios de comunicación social dominicana: “La Ley Pega Fuerte”, “No al Comercio Humano”. También, incluyendo la colaboración de la Secretaría de Estado de la Mujer y la NGO FINJUS: Impresión Popular de la Ley 137-03 (“Comprendiendo la Ley 137-03”) y “Mujer conoce tus derechos”, con guiones de radio escritos por profesionales de la psicología, educación y leyes.
- <sup>56</sup> Los “buscones” o intermediarios, comenzando a partir de 1986, operaron principalmente en el pasado con la complicidad de empleadores y de funcionarios medios que reclutaban o recibían a migrantes ilegales con la promesa de procurarles puestos de trabajo entre diferentes patrones urbanos y rurales.
- <sup>57</sup> Dominican Republic poco puede hacer por mejorar las condiciones económicas, políticas e institucionales en aquellos países que expulsan a sus nacionales y los convierte en trabajadores migrantes ilegales al entrar de manera voluntaria y clandestina a su territorio.
- <sup>58</sup> Desde 2004, la Dirección General de Migración, con la asistencia de la OIM, ha entrenado por iniciativa propia a 829 de sus inspectores en 12 cursos de capacitación en técnicas migratorias y asuntos haitianos; y ha impartido, con el respaldo de las embajadas de Estados Unidos y de Francia, otros 8 cursos. También, el Gobierno Dominicano participa en el Proyecto Fortalecimiento de la Prevención Regional y Nacional y Combate del Tráfico de Personas en América Latina, de la Oficina de Naciones Unidas para el Combate Contra las Drogas y el Crimen.
- <sup>59</sup> Tres razones concurrentes avalan dicha afirmación: primera, en el país existe exceso de mano de obra no calificada, razón suficiente para que no se traiga e incremente el número de mano de obra adicional. Segunda, dado que se progresa satisfactoriamente en el proceso de mecanización de la zafra azucarera, no se requiere de nuevos e inexpertos trabajadores. Y tercera, las autoridades nacionales perfeccionan sus sistemas de combate de cualquier modalidad de trata y de tráfico de indocumentados, razón ésta por la cuál no son indiferentes a ese fenómeno.
- <sup>60</sup> El número de mujeres en la Cámara de Diputados se ha incrementado, pasando del 16 por ciento (en 2002-2006) a un 20 por ciento (en 2006-2010). A nivel de sindicatura, para los años 2006-2010, se registró un incremento de un 4.7 por ciento en relación el período anterior: se cuenta con 18 síndicas de un total de 151 para alcanzar un 11.9 por ciento del universo total.
- <sup>61</sup> Durante los años 2006-2008, se registraron 500 muertes de mujeres y 204 feminicidios. Para contrarrestar esa realidad, las mujeres cuentan ya con servicios estatales de protección y usan facilidades como las Fiscalías Barriales y las casas de acogida.
- <sup>62</sup> Las autoridades gubernamentales también fundaron la Procuraduría Adjunta de la Mujer con funciones de investigación sobre asuntos de discriminación contra las mujeres; impulsaron la Red de Actores/as Relevantes en el Sistema de Prevención, Atención Integral y Sanción de la Violencia de Género e Intrafamiliar; e igualmente pusieron en marcha el Modelo Nacional para la Prevención y Atención de la Violencia Intrafamiliar y la institucionalización de las Unidades de Atención Integral a Mujeres Víctimas de Violencia basada en Género.
- <sup>63</sup> Ver, Secretaría de Estado de Trabajo: Resolución 52/2004 Sobre Trabajos Peligrosos e Insalubres para Personas Menores de 18 Años.
- <sup>64</sup> Un estudio reciente de la OIT, que cuenta con el aval de la Secretaría de Estado de Trabajo, estableció que en el país existen 430,000 menores expuestos al trabajo infantil y que de esos los más perjudicadas son las niñas por motivos de explotación sexual. De ahí que la referida Secretaría iniciara, en junio de 2009, al proyecto “Demos una oportunidad a las niñas, erradiquemos el trabajo infantil”, con el objetivo específico de prevenir y de erradicar las peores formas de trabajo infantil.
- <sup>65</sup> Un alto número de casos ocurren en el sector agrícola: los menores de edad acompañaban a sus padres al trabajo en los campos agrícolas, en parte porque los padres no tienen donde dejar a sus hijos o bien porque las escuelas rurales sesionan sólo unas pocas horas al día.
- <sup>66</sup> El Comité Directivo Nacional de Lucha Contra El Trabajo Infantil, bajo la presidencia de la Secretaría de Estado de Trabajo, está conformado además por las secretarías de Estado de Educación, de Deportes, de Salud Pública y Asistencia Social, de la Mujer, de la Juventud, de Economía, Planificación y Desarrollo, de Agricultura y por el Consejo Nacional para la Niñez y la Adolescencia, el Despacho de la Primera Dama, la Liga Municipal Dominicana, el Programa Solidaridad, Muchachos y Muchachas con Don Bosco, Visión Mundial-RD, Consejo Nacional de Unidad Sindical,

Consejo Nacional de la Empresa Privada, Confederación Nacional de Trabajadores Dominicanos, Instituto de la Familia, Confederación Patronal de la Rep. Dom., DEVTECH SYSTEM DOMINICANA, UNICEF y OIT.

- <sup>67</sup> El Comité Directivo Nacional de Lucha Contra el Trabajo Infantil ha impulsado otra serie de acciones, entre los que se podrían destacar como logros puntuales: la conformación de la Unidad de Trabajo Infantil con capacidad autónoma de gestión; la ejecución del Plan Estratégico Nacional para la Erradicación de las Peores Formas del Trabajo Infantil 2006-2016 como respuesta a la problemática desde un abordaje integral; las Resoluciones 29-1993: sobre trabajo ligero, la 31-1993 sobre trabajo nocturno de los menores de edad en conciertos o espectáculos, la 52-2004 sobre trabajo peligroso e insalubre de personas menores de 18 años, la 37-2005 que crea los Comités Directivos Locales para la Prevención y Erradicación del Trabajo Infantil.
- <sup>68</sup> Ese programa tiene como objetivo el retiro de 2,900 menores de edad de la explotación laboral e impedir que otros los reemplacen o que ingresen al mercado laboral. Su ámbito de incidencia es el sector agrícola, en particular el arrocero.
- <sup>69</sup> A modo de ejemplo, la Secretaría de Trabajo también verifica de manera sistemática que no se empleen menores de edad en ninguna de las tareas relacionadas con la siembra, el corte, el alza y el transporte de la caña. En sus labores de supervisión empleó a 203 inspectores, todos los cuales recibieron entrenamiento especial para localizar y eliminar las peores prácticas de trabajo infantil. Y en alianza con la ONG Visión Mundial, ha iniciado el programa de “Acción en el Trabajo Infantil”, para beneficiar a los menores de edad que habitan en los bateyes azucareros de Barahona, Bahoruco e Independencia.
- <sup>70</sup> El Ciclo Básico incluye del primero al cuarto curso de la educación primaria.
- <sup>71</sup> El proyecto en cuestión está dirigido a prevenir los riesgos de exposición al mercado laboral y a la explotación sexual de los menores de edad. Administrado por EDUCA, con el aval del Gobierno Dominicano y del Departamento del Trabajo estadounidense, pretende alcanzar una población de 10,000 menores de edad por medio de los Espacios para crecer y programas de microcrédito vocacional.
- <sup>72</sup> Igualmente, el Instituto Nacional de Formación Técnico Profesional, INFOTEP, acordó en 2008 implementar un programa que provee entrenamiento técnico-vocacional a 2,500 jóvenes en circunstancias económicas vulnerables.
- <sup>73</sup> Ejemplo, asignar el 2 por ciento del presupuesto nacional al Consejo Nacional de la Niñez, debido a la crisis financiera de 2003 y a la situación internacional manifiesta a partir de 2008.
- <sup>74</sup> Otros ejemplo de tal compromiso son los programas y servicios de protección que ejecuta el CONANI: la Línea 700 y la Línea Vida para la atención y prevención del abuso infantil, a través de la cual se han atendido 209,189 llamadas; los proyectos de prevención y control del VIH/SIDA; el fortalecimiento del Programa Nacional de Reducción de la Transmisión Vertical, en 2004, el de prevención de Tuberculosis y la Malaria, en 2006, y dos campañas publicitarias de sensibilización a la opinión pública sobre el tema de niñez y discapacidad; 56 Centros Infantiles de Atención Integral y 51 Estancias Infantiles para el desarrollo integral de los menores de 5 años y, en adición a 10 Hogares de Acogidas para la protección y atención de los menores de edad, se cuenta con 312 ONGs que desarrollan programas de protección y atención dirigidos los niños, niñas y adolescentes.
- <sup>75</sup> El caso está en apelación en estos momentos. Por demás, la Suprema Corte de Justicia dispuso, en sentencia del 14 de mayo de 2008 en materia laboral, que el empleador es responsable de registrar a todos sus trabajadores en el Sistema Dominicano de Seguridad Social.
- <sup>76</sup> En 2007, se realizaron 58,000 visitas de inspección regulares y 21,000 especiales; y en 2008, 60,000 y 25,000, respectivamente.
- <sup>77</sup> Datos periódicos del Banco Central de la República Dominicana sobre tasa de desempleo; ver, <http://www.bancentral.gov.do/>.
- <sup>78</sup> Talón de Aquiles del desarrollo nacional es el hecho histórico de que la relación producto-empleo es baja en República Dominicana: por cada punto de incremento en el PIB, el desempleo se reduce solamente en .67 puntos.
- <sup>79</sup> Ver, Supra 27-37 y Nota 23. El modelo económico dominicano demuestra que a pesar de que el PIB real se multiplicó por 7.2 veces entre 1960 y 2000, mientras que el de América Latina lo hizo sólo 4.7 veces, ese crecimiento económico es necesario pero insuficiente para mejorar el bienestar ciudadano y el disfrute de sus derechos. Ver, Sistema de las Naciones Unidas en República Dominicana: *Objetivos de Desarrollo del Milenio. Informe Nacional, 2004.*



- <sup>80</sup> Sistema de las Naciones Unidas en República Dominicana: *Objetivos de Desarrollo del Milenio. Informe Nacional, 2004.*
- <sup>81</sup> Del total general entregado desde el año 2004 hasta la fecha, se invirtieron en el programa Comer es Primero \$RD7,818.1 millones ( $\pm$  \$EE.UU.236.2 millones) y en incentivo a la asistencia escolar unos \$RD1,039.3 millones ( $\pm$  \$EE.UU.31.4).
- <sup>82</sup> En 2008, el Bono Gas para los hogares representó una erogación de \$RD685.1 millones ( $\pm$  \$EE.UU. 20.7 millones) y el Bono Gas Chofer para el transporte público de \$RD113.3 millones ( $\pm$  \$EE.UU.3.4 millones).
- <sup>83</sup> Entre 2003 y 2008, el Gobierno Dominicano ha entregado a través del Instituto Nacional de la Vivienda, y otras Instituciones, 228,789 facilidades habitacionales en comunidades barriales y rurales en todo el territorio nacional. En ese período, se han construido 14,434 viviendas nuevas, todas estas dotadas de infraestructura y de servicios tales como: agua potable, electricidad, drenajes pluviales y sanitarios, calles, aceras, contenes, y áreas verdes. El déficit habitacional acumulado, tanto cualitativo como cuantitativo, se estima entre las 800,000 a 900,000 viviendas, debido a lo cual cada año hace falta construir alrededor de 50 a 55 mil unidades habitacionales. De este déficit aproximadamente más del 70 por ciento está dentro de un alto riesgo debido a los fenómenos naturales.
- <sup>84</sup> Entre los servicios médicos más frecuentes se encuentran partos, cesáreas, cirugías, suministro de medicamentos e internamiento en los centros asistenciales del Estado en todo el territorio nacional. Tan sólo en la zona fronteriza, un 42 por ciento de las consultas realizadas benefició a extranjeros, independiente de su estatus legal en el país.
- <sup>85</sup> Una encuesta realizada por la ONG Profamilia a 1,000 personas que viven con VIH reveló que el 43.2 por ciento se encuentra desempleada y un 20 por ciento de ellas atribuyó la pérdida de su trabajo o fuente de ingresos a su condición serológica.
- <sup>86</sup> República Dominicana efectuó grandes avances en lo referente al acceso durante los años 1990. Desde 1991-1992 hasta 2001-2002, la tasa bruta de matrícula (TBM) en el primer ciclo del nivel básico (grados 1-4) aumentó de 91 por ciento a 138 por ciento y la tasa bruta de matrícula para el segundo ciclo (grados 5-8) aumentó de 42 por ciento al 90 por ciento. El incremento en ese mismo período fue mucho mayor para el nivel medio: de 23 por ciento a 62 por ciento. Este aumento se debió no sólo al gran número de estudiantes procedentes del nivel básico, sino también a la disminución de la deserción y al regreso de estudiantes de mayor edad para completar la educación media. En un informe para el Banco Interamericano de Desarrollo, Álvarez (2004, p.10) se refiere a políticas para incrementar la flexibilidad de la educación y fomentar el reingreso de los estudiantes a las escuelas como principal explicación del incremento en el acceso (Fuente: Informe sobre las Políticas Nacionales de Educación. República Dominicana. OCDE, 2008, pp. 156-157).
- <sup>87</sup> El Gobierno Dominicano se propone impulsar la plena aplicación del derecho humano a la educación, con los siguientes fines: i) ampliar la cobertura, la calidad y los resultados de la educación; ii) ampliar la educación sobre los derechos humanos, con garantías de educación para las poblaciones tradicionalmente excluidas, las personas con discapacidades y las personas con necesidades educativas especiales; iii) consolidar los sistemas públicos de educación, a nivel estatal y municipal, para las comunidades urbanas, semi urbanas y rurales; y iv) atender las vulnerabilidades del sistema de educación para jóvenes profesionales y adultos a nivel nacional.
- <sup>88</sup> Entre otras muchas iniciativas, sobresalen a modo de ejemplo, el proyecto de educación inicial con el Banco Mundial por \$EE.UU.42 millones, y el Proyecto de Desarrollo de la Juventud por \$EE.UU.25 millones.
- <sup>89</sup> El cuerpo de referencia normativo incluye: la Ley 41-00 Orgánica que crea la Secretaría de Estado de Cultura, la Ley 65-00 sobre Derecho de Autor y su Reglamento de Aplicación No. 362-01, la Ley 502-08 del Libro y Bibliotecas, la Ley 481-08 General de Archivos de la República Dominicana y la Ley122-05 de Regulación y Fomento de las Instituciones sin Fines de Lucros. A su vez, durante los últimos cuatro años se han elaborado los siguientes ante proyectos de ley: a saber, Ley General de Cine, Ley del Patrimonio Cultural Material e Inmaterial de la Nación, Ley de Artesanía de la República Dominicana y en la Constitución se incluyó el Artículo 53 relativo a los derechos culturales. En otro orden de ideas, se han producido las siguientes adhesiones a las siguientes resoluciones de Organismos Internacionales: adhesión a la Convención para la Protección del Patrimonio Inmaterial en fecha 11 de septiembre de 2006, mediante la Resolución No. 309-06 del Congreso de la República Dominicana, de fecha 14 de marzo de 2006; a la Carta Cultural Iberoamericana-Organización de Estados Iberoamericanos- 2005; a la Resolución Santo Domingo,

2006. Grupos de Estados África, Caribe y Pacífico (ACP); a la Declaración de Cartagena de Indias y al Pacto Internacional de Derechos Civiles y Políticos.

- <sup>90</sup> En cuanto a la aplicación de estos derechos, la Suprema Corte dijo, en sentencia del 18 de julio de 2007, que los Espectáculos artísticos folklóricos, se encuentran exentos del pago del impuesto sobre la renta.
- <sup>91</sup> Ver, PNUD: *Implicaciones del alza de precios de los alimentos en la economía dominicana. Análisis del impacto en la población vulnerable*. Santo Domingo, septiembre 2008.
- <sup>92</sup> Ver, Sistema de las Naciones Unidas en República Dominicana: *Objetivos de Desarrollo del Milenio. Informe Nacional, 2004*. Dadas las condiciones nutricionales y de hambre representan en el país, se han tomado toda una serie de medidas que van, desde los subsidios focalizados por medio de la tarjeta del Programa Solidaridad y el Desayuno Escolar, hasta el Programa Nacional de Fortificación de Alimentos, ejecutado con fondos de la Alianza Global para la Mejora de la Nutrición. Estos programas benefician por igual a la población vulnerable, sea ésta nacional o extranjera.
- <sup>93</sup> Adicionalmente, en estos momentos se estudia la factibilidad de diversas modalidades financieras de dirigir una línea de crédito al sector agrícola y de garantizarla con fondos de reaseguro.
- <sup>94</sup> Las condiciones de pobreza y de desempleo en República Dominicana muestran, ante todo, que faltan puestos de trabajo incluso para los dominicanos. También, que los salarios son bajos, por ejemplo, un jornalero apenas gana \$RD150 por día (\$EE.UU.4.40) y el sueldo mínimo mensual para los empleados privados oscila entre \$RD4,485 (± \$EE.UU. 132) y \$RD7,360 (± \$EE.UU. 217). La consideración de las limitaciones que República Dominicana encuentra para albergar a unos inmigrantes que llegan en masa, que representan ya un 12 por ciento de la población dominicana, una cantidad significativa de la población, reviste una importancia fundamental para la política migratoria que el Estado dominicano está obligado a trazar.
- <sup>95</sup> Ver, Supra párrafos 28 y 95-96.
- <sup>96</sup> Prueba de lo cual es el cruce interracial e internacional que existen en la sociedad dominicana e incluso el desarrollo social, político y económico de los connotados bateyes que han llegado a ser municipios. Entre otros ejemplos: Consuelo, Quisqueya, Santa Fe, Gautier, Güaimate, Boca Chica, Guerra, San Luis, Villa Mella, Pedro Brand, Los Alcarrizos, Los Bajos de Haina, Villa Altigracia, entre otros más. Existen incluso antiguos bateyes, como Bayona, que se han convertidos en amplias zonas urbanas que trascienden el nivel de municipio.
- <sup>97</sup> La migración voluntaria ha llegado a ser un elemento principal del mundo globalizado. Como fenómeno social, trae consigo la necesidad de ajustes legales e institucionales a nivel de la sociedad y, en particular, en el mercado del trabajo. El lado oscuro, problemático, de la migración masiva queda expuesto en los trabajadores migrantes ilegales. La contratación de éstos, en tanto que indocumentados, ocasiona una competencia desleal a todo aquel negocio o empresa que mantenga a migrantes nacionales y extranjeros en condiciones de legalidad. Ante todos yace el reto de promover la integración del trabajador migrante y de su familia, así como la institucionalización de un trato justo e igualitario, en un marco de referencia de Estado de derecho. Al mismo tiempo, dado que ni República Dominicana ni ninguna nación contemporánea por sí sola puede hacerle frente al flujo migratoria que se padece hoy día, se requieren esfuerzos conjuntos –binacionales y multilaterales–, en conformidad con el marco de referencia de los derechos humanos en el campo de Naciones Unidas, para instaurar canales flexibles y eficientes para lograr una migración legal, la cual significa una adecuada coordinación entre las naciones originarias y las receptoras de la migración.
- <sup>98</sup> Por el lado del sector privado, éste también se supera. Por ejemplo, ya desde antes de comenzar el quinquenio 2003-2008 se ejecutan diversos programas de modernización y de reorganización social en los bateyes de la industria azucarera del sector privado –la única que opera en el país–, a un costo superior a los \$EE.UU.25 millones durante los años 2007-2008. Ese monto incluye la construcción de escuelas primarias y secundarias, clínicas rurales, comunidades modelo enteras y otras obras de infraestructura, de transporte y de bienestar social. Esta inversión social beneficia sin discrimen a los 10,000 obreros de campo de toda la agroindustria azucarera –sean éstos dominicanos, haitianos o sus descendientes– en la medida en que residen y laboran en los bateyes azucareros.
- <sup>99</sup> Las reglamentación aplicada por la Dirección de Migración consta de las siguientes pautas normativas:
- Evitar a toda costa la separación de las familias nucleares, es decir, padres y menores de edad, aun a costa de no ejecutar la repatriación.

- Dar la oportunidad al afectado de demostrar y presentar cualquier documentación migratoria que avale su estada. Una vez confirmado con los archivos de la Junta Central Electoral la validez de la cédula (de nacional o de extranjero, si es este el documento presentado), inmediatamente se suspende el proceso de repatriación. Esta verificación está justificada en la altísima tasa de suplantación de identidad en las cédulas y en las falsificaciones de documentos migratorios.
- Otorgar la oportunidad para demostrar vínculos familiares establecidos en República Dominicana, aún no se posea un documento migratorio o de identidad.
- Registrar cualquier bien material que demuestren ser de su propiedad, ejecutando las instrucciones de su propietario, sobre si dejarla en el territorio nacional o llevarla consigo.
- Permitir que se realicen llamadas telefónicas o avisos a los familiares.
- Levantar un registro de cada individuo a ser repatriado, incluyendo su foto para mejor identificación.
- Devolver intacto cualquier documento personal que no esté viciado de falsedad, sea éste una cédula, un carnet de trabajo, un acta de nacimiento u otro.
- Enviar una lista de sujetos de repatriación a la Embajada de Haití de aquellos de sus nacionales que serán repatriados de forma que en Haití existe una persona que los recibe.
- Realizar deportaciones los días no feriados o en horario nocturno.
- En las intervenciones migratorias no participan militares, sino personal de la Dirección General de Migración debidamente identificado.
- Transportar a las personas repatriadas en autobuses, conforme lo establece el Protocolo del 1999.
- En el marco laboral, no realizar redadas en los lugares de trabajo. Y suspender las repatriaciones los viernes, día tradicional de pago, para impedir pactos secretos entre patronos y funcionarios particulares o para evitar que aquéllos abonen salarios adeudados.
- Por ultimo, prohibir de manera terminante la repatriación de menores detenidos mendigando en la vía pública, debido a lo cual se les recoge de las calles donde practican la mendicidad y se les entrega a sus padres o a las autoridades que trabajan con niños niñas y adolescentes.

Debe subrayarse, además, que las cifras sobre la cantidad de repatriados se ve abultada por la acción en la frontera binacional del CESFRONT. Éste retorna a los nacionales haitianos sin documentos migratorios desde las propias ciudades fronterizas –debido a la avalancha de inmigrantes que a diario cruzan la frontera con fines de establecerse o permanecer de forma ilegal en el país al terminar los días de mercado autorizados en algunas de las poblaciones fronterizas.

<sup>100</sup> Ver, Supra 84 y 85.

<sup>101</sup> Ver, Supra 91 y 93.

<sup>102</sup> Ver, Supra 24 y Nota 27.