



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

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**Committee on the Elimination of Racial Discrimination**

**Reports submitted by States parties under  
article 9 of the Convention**

**Thirteenth and fourteenth periodic reports due in 2010**

**Dominican Republic\*, \*\***

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\* This document contains the thirteenth and fourteenth periodic reports of the Dominican Republic, due on 24 June 2010. For the ninth to twelfth periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/DOM/12/and CERD/C/SR.1863 and 1864.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation service.

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## I. Introduction

1. The Government of the Dominican Republic submits to the Committee on the Elimination of Racial Discrimination its thirteenth and fourteenth periodic reports<sup>1</sup> for the period April 2008 to September 2011, as required under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. This report was prepared in accordance with the Committee's guidelines for the CERD-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention, and its concluding observations on the ninth to twelfth periodic reports of the Dominican Republic, formulated at its 72nd session held from 18 February to 7 March 2008.<sup>2</sup>

3. This report is divided into four sections:

(a) Methodological questions and the procedure by which the report was drawn up;

(b) Review of articles 1 to 7 of the Convention, providing new information for the period April 2008 to August 2011;

(c) Consideration of the Committee's concerns and the extent to which its recommendations have been implemented, in light of the information provided in the review undertaken in the previous section;

(d) Conclusion.

4. The Dominican authorities take the opportunity to acknowledge that much remains to be done to transform the Dominican Republic into a country of zero tolerance with regard to racial discrimination. It likewise recognizes that that this new accountability exercise will be very useful in monitoring the development efforts of the authorities and society in general for the benefit of all the country's inhabitants and in assembling and pondering the recommendations and suggestions of civil society organizations that have contributed to the drafting of this report, together with those of the international community.

## II. Methodology and consultation process

5. The preparation of this report was preceded by a lengthy consultation process, including a national summit<sup>3</sup> attended by a very broad range of Dominican civil society organizations, a nationwide review of the Constitution<sup>4</sup> and the discussion and drafting of the National Development Plan for 2010–2030.<sup>5</sup> This Plan, based on over two years of

<sup>1</sup> This report supplements or updates the ninth to twelfth periodic reports. It covers the period from April 2008 to September 2011. For the fourth, fifth, sixth, seventh and eighth periodic reports of the Dominican Republic and the summary records of the meetings at which the Committee examined those reports, see documents CERD/C/331/Add.1 and CERD/C/SR/1364 and 1365.

<sup>2</sup> CERD/C/DOM/CO/12.

<sup>3</sup> The Cumbre de las Fuerzas Vivas (Prime Movers Summit), which met from January to March 2009, agreed on a series of proposals concerning migration, workers' rights, health and education services, secure employment, public safety and citizenship. The conclusions and list of participating institutions and individuals is be found at: [www.cumbre2009.com.do/](http://www.cumbre2009.com.do/).

<sup>4</sup> The reform of the Constitution, finally promulgated in 2010, was the culmination of wide-ranging consultations in the period 2004–2008.

<sup>5</sup> The National Development Strategy, representing a joint effort by the nation as whole, is aimed at achieving over a twenty-year period protection of the basic rights affirmed in the International

consultations among all sections of the population throughout the country, is currently under examination by the Congress of the Republic. Two seminars were also held—a national one on workers' rights<sup>6</sup> and an international one held to learn from the experience of other societies and countries concerning measures for regularizing the status of migrant workers and their dependants.

6. This report incorporates all these inputs and supplements them with the result of over three years' work by 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>7</sup>

7. Although this final document embodies the views and concerns of individuals and civil society,<sup>8</sup> it nonetheless expresses the official position of the Government of the Dominican Republic regarding implementation and the measures necessary to that end.

### III. Implementation of the articles of Convention

#### A. Article 1

8. The Dominican Republic subscribes unconditionally to the International Convention on the Elimination of All Forms of Racial Discrimination and for this reason does not practise, promote or tolerate, by action or omission, any "distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."<sup>9</sup>

9. This national decision is not intended to conceal or gloss over the fact that violations on the part of individuals practising discrimination continue to be reported, nor that there are continued shortcomings in the institutional practice of the Dominican State, a situation calling for more effective coordination to ensure the complete elimination of all forms of

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Convention and a significant improvement in the levels and quality of social welfare, while ensuring the competitiveness of the production system, environmental sustainability and the prosperity of all citizens and their dependants in a context of freedom, equality, social justice and labour rights. Ministry of the Economy, Planning and Development: National Development Strategy, 2010–2030; [www.end.gov.do/download/Anteproyecto\\_de\\_Ley\\_de\\_END\\_RD\\_2010\\_2030.pdf](http://www.end.gov.do/download/Anteproyecto_de_Ley_de_END_RD_2010_2030.pdf).

<sup>6</sup> The Secretariat of State for Labour, today the Ministry of Labour, organized in May (2009) the Workforce Updating Forum (Foro de Actualización Laboral), which brought together government agencies, the International Labour Organization (ILO), the main national NGOs and private-sector firms for presentations and panel discussions on the problem of human rights with reference to such topics as the economic crisis in women's employment and possible measures to combat job loss, employment creation, conciliation under the Labour Code, judges and labour inspectors, national progress and prospects with regard to health and safety at work, insurance against work risks and migrant workers in the sugar industry.

<sup>7</sup> The Inter-Agency Commission on Human Rights was set up under Decree No. 408–04 of 5 May 2004 in keeping with the 1992 Vienna Declaration and Programme of Action. The Commission is composed of the Ministry of Foreign Affairs, the Ministry of the Interior and Police, the Ministry of Labour, the Ministry of Health, the Ministry of Education, the Ministry of the Armed Forces, the Ministry for Women, the Ministry of Culture and the Office of the Attorney General of the Republic as well as the Supreme Court of Justice, the National Congress, the Central Electoral Board, the Commission on Human Rights, the National Child and Youth Council, the Prisons Department, the Directorate of National Assets, the National Sugar Institute and the National Council to Combat Poverty.

<sup>8</sup> See [www.cumbre2009.com.do/](http://www.cumbre2009.com.do/).

<sup>9</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, para 1.

exclusion on grounds of race. Within the present context, however, formal adherence to the Convention proclaims that discrimination, in any of its form, is not state policy. Individual human rights have right of citizenship in the Dominican Republic, in contrast to impunity or indifference.

10. The Dominican Republic is a social and democratic state governed by the rule of law, organized in the form of a unitary republic and founded on respect for human dignity, fundamental rights, work, popular sovereignty and the separation of powers.

11. Its territory covers 48,670.82 square kilometers and is home to a population of 9.4 million.<sup>10</sup>

12. The process of institution-building, involving the systematic adoption of the best human rights practices, and the uncompromising elimination of any shortcoming or violation in that regard, is taking place against a structural backdrop of poverty and immigration.

13. With regard to immigration, the Dominican population is living alongside a growing influx of unskilled immigrant labour (equivalent to 12.6 per cent of the country's population) in search better living conditions.<sup>11</sup>

14. With regard to poverty, 10 per cent of Dominican nationals are currently living in conditions of extreme poverty<sup>12</sup> and 34 per cent below the poverty line,<sup>13</sup> according to the World Bank methodology.<sup>14</sup> It is a hard fact that, for a variety of reasons, unemployment remains at 14.09 per cent<sup>15</sup> and the country will be unable to attain even the first of the

<sup>10</sup> National Statistics Office, 2010 National Population and Housing Census, preliminary results, [censo2010.one.gob.do/resultadospreliminares/Informe\\_Resultados\\_Preliminares.pdf](http://censo2010.one.gob.do/resultadospreliminares/Informe_Resultados_Preliminares.pdf).

<sup>11</sup> This unskilled and undocumented immigrant workforce comes mostly from the Republic of Haiti. With a population of 9.4 million inhabitants, Haiti has the lowest rating in the Americas in the Human Development Index: 0.529 in 2007 according to the United Nations Development Programme (UNDP). Of the 54.4 per cent of the economically active population wishing and legally entitled to work only 49.6 per cent are actually employed, and 82 per cent of these are independent workers in the informal sector. Since 2003 conditions have improved although not sufficiently: in that year, per capita GDP was estimated at US\$1,700, in 2006 the International Monetary Fund (IMF) put the average at \$1840, while the corresponding figures for 2007 and 2008 were at \$1914 and \$1994 respectively. The 2010 earthquake reversed this trend, with a very high cost in human life and damage to property.

<sup>12</sup> Estimates of income poverty and inequality of family incomes from the Central Bank's Workforce Enquiry, updated to October 2010, Ministry of Economic Planning and Development ([www.economia.gob.do/UploadPDF/Evolucion\\_pobreza\\_monetaria\\_octubre\\_2010.pdf](http://www.economia.gob.do/UploadPDF/Evolucion_pobreza_monetaria_octubre_2010.pdf)), table A.8.

<sup>13</sup> *Ibid.*, table A.1.

<sup>14</sup> The figures vary, as do methodologies. For example, according to the 2008 UNDP Human Development Report, 45 per cent of the Dominican population (4,486,000 Dominicans) were poor. Of those, 1,064,000 were subject to extreme poverty. On the other hand, according to the World Bank, the growth in poverty peaked in 2003 and began to decrease, declining from 43.1 per cent in 2004 to 36.3 per cent in 2006 to the present. In the context of the MDG progress report, the Ministry of the Economy and Planning and agencies of the United Nations in the Dominican Republic recognize in their most recent report that the proportion of the population living in extreme poverty went from 10.8 per cent in 1992 to 9 per cent in 2000 and to 10.4 per cent in 2009, whilst the percentage of general poverty went from 33.9 per cent in 1992 to 27.7 per cent in 2000 and 34 per cent in 2009 (see *Objetivos de Desarrollo del Milenio: Informe de Seguimiento 2010 — República Dominicana*, Ministry of Economic Affairs, Planning and Development, 2010). Moreover, as evidence of the country's severe difficulties, projections by the same Ministry indicate that in 2015 the extreme poverty rate will be 7.4 per cent, namely significantly above the Millennium Development Goal of 5.4 per cent. For further details, see progress towards the MDGs in the Dominican Republic ([www.pnud.org.do/avancedelosobjetivosdesarrollodelmilenioenrepublicadominicana](http://www.pnud.org.do/avancedelosobjetivosdesarrollodelmilenioenrepublicadominicana)).

<sup>15</sup> *Source*: Dominican Labour Market Observatory, Ministry of Labour, Native Population Unemployment, based on the 2011 National Workforce Survey (ENFT). *Source*: Dominican Labour Market Observatory (OMLAD), labour statistics.

Millennium Development Goals: the proportion of the population in extreme poverty went from 10.8 per cent in 1992 to 9 per cent in 2002 and to 10.4 per cent in 2009, while the general poverty rate went from 33.9 per cent in 1992 to 27.7 per cent in 2002 and to 34 per cent in 2009.<sup>16</sup>

15. It is in this context that the Dominican nation is facing one of its main challenges with regard to discrimination, namely that opportunities and services in the country are limited. This situation is compounded by the fact that the Dominican Republic is home to an estimated 900,000 to 1.2 million immigrants, mostly from the Republic of Haiti, who together exert even greater pressure on the precarious service and opportunities base available to Dominicans.

16. Despite the fact that these immigrants are for the most part undocumented and illegal in status, the Dominican Government offers protection "on an equal footing"<sup>17</sup> to all individuals in its territory within the limits of its resources, systematically respecting their human rights and avoiding hatred and xenophobia towards foreigners, particularly undocumented ones.

17. Hence the importance of the reshaping of the Constitution that took place in the Dominican Republic in the period covered by this report (2008-2011). Apart from its obligations with regard to racial discrimination (see para 14 and notes), the Dominican State guarantees equal opportunities to all those living in the country, as though all enjoyed equal legal status, thereby exceeding the requirements of article 1 of the Convention for the Elimination of All Forms of Racial Discrimination. The same generous response was displayed spontaneously in January 2010, providing irrefutable proof of the absence of xenophobia and racism towards Haitian nationals, on the occasion of the earthquake that caused such damage to human life and property in the south of Haiti.<sup>18</sup>

## **1. The 2010 Constitution**

18. The Constitution of the Republic, promulgated on 26 January 2010, upholds human rights in general and the elimination of all forms of racial discrimination in particular, which is why it recognizes and raises those rights to constitutional status in Dominican territory.<sup>19</sup>

19. The Dominican Republic also recognizes and incorporates international legal standards. In particular, the Supreme Court ruled in 2003, by Decision No. 1920, that the constitutional system of the Dominican Republic 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

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<sup>16</sup> See the Millennium Development Goals: Monitoring Report 2010 (note 13 above).

<sup>17</sup> International Convention on the Elimination of All Forms of Racial Discrimination, article 1, paragraph 1.

<sup>18</sup> It is clearly one thing to apply the law and recognize that the rights of undocumented foreigners are restricted by their illegal status and another to infringe their inalienable human rights or, worse still, display a lack of solidarity and xenophobia with regard to foreign nationals in particular. However, this is not the case with the Dominican Republic. By way of example, in the first two weeks following the Haiti earthquake of 12 January 2010, the Dominican Government spent 558 million pesos (some \$15 million) in providing emergency support to the victims, representing some 3 per cent of the estimated tax revenue for the month of January. About 80 per cent of this expenditure was allocated by the Ministry of Public Health to assist 19,641 Haitian victims of the earthquake. To date, government and private humanitarian help by the Dominican nation has totaled over \$350 million, and \$50 million has been promised for the construction of a university and other similar projects.

<sup>19</sup> See the 2010 Constitution of the Dominican Republic: political and civil rights (arts 37 to 49); economic and social rights (arts 50 to 63); and cultural and sporting rights (arts 64 and 65). Also includes collective and environmental rights (arts 66 and 67).

and covenants, advisory opinions and decisions of the Inter-American Court of Human Rights ratified by the competent authorities.<sup>20</sup>

20. With regard to other international commitments, under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the International Labour Organization (ILO) monitors a range of racial discrimination variables on a biannual basis as part of the "White Book" verification project.<sup>21</sup>

21. Under the Dominican Constitution, the Dominican people are free and sovereign.<sup>22</sup> All persons conduct their daily lives on the basis and in the exercise of individual liberty, equality of opportunity and freedom from any form of servitude.<sup>23</sup>

22. Insofar as racism, racial discrimination, xenophobia and forms of intolerance are closely related to the marginalization and social exclusion of underprivileged and vulnerable groups, the Constitution of the Dominican Republic guarantees the absolute right to equality:

"Right to equality. All persons are born free and equal before the law, shall receive equal protection and treatment by institutions, authorities and other persons and shall enjoy the same rights, freedoms and opportunities without any discrimination based on gender, skin colour, age, disability, national origin, family ties, language, religion, political opinion or philosophy, and social or personal status. Accordingly:

(1) The Republic proscribes any privileges and any situation intended to undermine the equality of all Dominicans, among whom no differences shall be recognized other than those resulting from talents or virtues;

(2) No entity of the Republic may grant titles of nobility or hereditary distinctions;

(3) The State shall promote the legal and administrative conditions to ensure that equality is real and effective and shall adopt measures to prevent and combat discrimination, marginalization, vulnerability and exclusion;

(4) Women and men are equal before the law. Any act that has as its aim or effect the denial or impairment of the recognition, enjoyment or exercise, in conditions of equality, of the fundamental rights of men and women is prohibited. The necessary measures shall be taken to ensure the eradication of gender inequalities and discrimination (...)."<sup>24</sup>

23. In this respect, the Dominican Constitution of 2010 represents an advance with regard to recognition of individual human rights. Among other things, it confers

<sup>20</sup> In its ruling of 9 February 2005, No. 4, the plenary session of the Supreme Court held that: "...this is today recognized by our positive law with respect to article 1 of Act No. 76-02 (Code of Criminal Procedure), when it refers to the primacy of the Constitution and treaty provisions, in the sense that the latter "always prevail over the law", from which it is to be inferred that domestic law effectively incorporates the set of guarantees recognized by the Constitution and constitutional rulings as well as supranational provisions constituted by international treaties, covenants and conventions signed and ratified by the country concerned and by the advisory opinions and decisions of the Inter-American Court of Human Rights, these being known as the body of constitutional law, which ascribes equal rank to the provisions it embodies."

<sup>21</sup> Every six months the White Book systematically monitors freedom of association, trade unions and labour relations, gender equality and forms of discrimination, the worst forms of child labour, environmental rights, the promotion of a culture of compliance and overall political commitment.

<sup>22</sup> See the Constitution of the Republic, arts 2 to 4.

<sup>23</sup> *Ibid.*, arts 37 and 40 to 42.

<sup>24</sup> *Ibid.*, art. 39. See also article 8.

constitutional status on the remedy of *amparo* and establishes the Constitutional Court to ensure the protection of fundamental rights.

24. Thus the Constitution, together with its subsidiary legislation, categorically provides for the equality of all, irrespective of gender, race, belief and economic or national status, with regard to the right to work, trade union rights, guarantees of security for the family and individuals, stability and welfare in all aspects of moral, religious and cultural life, protection of motherhood, freedom of expression, movement, health and education, the right to basic education, etc.<sup>25</sup>

25. These and other rights are guaranteed nationwide, as shown by the criminalization of discrimination in the Dominican Republic.

## 2. Criminal Code

26. Under articles 336, 336-1 and 337 of the Criminal Code of the Dominican Republic, any "distinction" between natural persons on the basis of origin, age, sex, family circumstances, state of health, disabilities, customs, political opinion, trade union activities or membership or non-membership of a specific organization, ethnic group, race or religion "constitutes discrimination" and is punishable by a fine and imprisonment. "Discrimination as defined in the above article when committed against a physical or moral person is punishable by two years' imprisonment and a fine of 50,000 pesos".<sup>26</sup>

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<sup>25</sup> *Ibid.*, arts 49 (free expression), 60 and 61 (social security and health), 62 (work and freedom to form trade unions) and 63 (education). It should be added that the demand by citizens in the Dominican Republic for access to justice is today universal, entailing the wish and entitlement of individuals to receive legal advice in keeping with the new social order. With the support of the Spanish Agency for International Cooperation (AECI), the judiciary has finalized the project "Improved access to criminal justice in the Dominican Republic", aimed at ensuring greater efficiency in judicial management, improved public access to justice and the modernization of administrative management. The project offers real possibilities for gaining access to and receiving a rapid, efficient and timely response from justice system. Moreover, the plenary of the Supreme Court approved the document "Gender Equality Policy of the Judiciary" by Decision No. 3041-2007 of 1 November 2007. Subsequently, the Commission for Gender Equality was established by Supreme Court Decision No. 1924-2008 of 19 June 2008.

<sup>26</sup> Criminal Code of the Dominican Republic:

"Art. 336.- Any distinction on the part of natural persons based on the origin, age, sex, family circumstances, state of health, disabilities, customs, political opinions, trade union activities, occupation or membership or non-membership, actual or supposed, of a specific ethnic group, nation, race or religion, constitutes discrimination. Any distinction on the part of legal persons based on the origin, age, sex, family circumstances, state of health, disabilities, customs, political opinions, trade union activities, occupation or membership or non-membership, actual or supposed, of a specific ethnic group, nation, race or religion of members or one of the members of the legal person constitutes discrimination.

Art. 336-1.- Discrimination, as defined in the foregoing article, committed in respect of a natural or legal person, shall be punished by two years' imprisonment and a fine of 50,000 pesos, when it consists of: 1. Refusing to provide goods or services; 2. Hampering the normal exercise of any economic activity; 3. Refusing to hire, penalizing or dismissing a person; 4. Making provision of goods or services conditional upon one of the elements referred to in the foregoing article.; 5. Making an offer of employment conditional upon one of the elements referred to in the foregoing article.

Art. 337.- The person or persons responsible for a deliberate invasion of privacy by any of the following means: 1.- Capturing, recording or transmitting, without the individual's consent, words spoken in private or confidentially; 2.- Capturing, recording or transmitting, without the individual's consent, the image of a person situated in a private place, shall be punished by a term of imprisonment of six months to one year and by a fine of 20,000 to 50,000 pesos. When the acts mentioned in this article have been performed with the knowledge of those concerned, without their having opposed them, and consent is presumed."



27. Moreover, the presumption of discrimination is also penalized in article 337: "When the acts mentioned in this article have been performed with the knowledge of those concerned, without their having objected to them, and consent is presumed", in which case the same penalties apply.

28. Article 11 of the Code of Criminal Procedure for its part provides that: "All persons are equal before the law and should be treated according to the same rules. Judges and the public prosecutor should take account of the particular circumstances of the persons concerned and of the case but should not base their decisions on nationality, gender, race, belief or religion, political ideas, sexual orientation, economic or social situation or any other status with discriminatory implications."

29. In the subsidiary legislation, article 13 of the Dominican Civil Code provides that foreigners in the Dominican Republic shall enjoy the same civil rights as those granted to Dominicans under treaties of the nation represented by the foreigner concerned. In the case of economic, social and cultural rights, no distinction whatever shall be made, in law or in practice, conducive to discrimination between a Dominican and a foreigner, particularly with regard to racial status.

### **3. State Policy**

30. It follows that no State policy exists—in law or in practice—whereby economic, social and cultural rights are restricted or nullified on the grounds of membership of a particular social, religious or racial group. In the quest for full exercise of the rights prescribed in the Constitution and the Convention, any limitation is due solely to the availability of resources at the present stage of the country's economic and institutional development. Nevertheless, given the importance that the Dominican State attaches to non-discrimination despite budgetary constraints, the Attorney-General's Office has recently instituted the Human Rights Unit, financed under the 2011 budget. It is aimed at promoting awareness nationally of the scope of human rights, investigating cases of human rights violations, particularly when committed by civilian or military authorities, and monitoring and investigating cases of human rights violations, particularly involving discrimination and exclusion.

### **4. Racial equality and non-discrimination**

31. As a former American colony of a European nation, the Dominican Republic inherited a culture with a history of slavery and racially discriminatory practices 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).

32. However, 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. Moreover, the whole legal system is currently being revised to bring it into line with the 2010 Constitution, under which equality of opportunity and racial non-discrimination are absolutes.<sup>27</sup>

33. For example, anyone who feels for whatever reason that he or she has been the victim of discrimination or that his or her rights have been violated has preferential access

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<sup>27</sup> Constitution of the Dominican Republic, art. 39, Right to equality.

to the courts. The 1997 reform of the Criminal Code likewise makes discrimination or attacks against another person a criminal offence.<sup>28</sup>

34. Indeed, to guarantee access to the justice system by all without discrimination, in accordance with principles IV and VII of the Labour Code, the Supreme Court has ruled in its judgements that article 16 of the Civil Code is inapplicable in that it is discriminatory.<sup>29</sup> Reinforcing this provision, it has likewise ruled that an undocumented foreign worker has the right to bring legal proceedings, as regularly occurs, to secure his or her employment entitlements.

## **B. Article 2**

35. As a State party to the Convention, the Dominican Republic condemns racial discrimination in practice and in law and is committed to pursuing, by all appropriate means and without undue delay, a policy aimed at eliminating all forms of racial discrimination and at promoting understanding among all races.

36. In accordance with article 2 of the Constitution, this means that the Dominican Government, as well as the authorities representing it, undertakes not to engage in any act or practice of racial discrimination against persons, groups of persons or institutions.

37. In a world in which the ideal is distinct from the real, the Dominican Republic is doing its utmost to ensure that all those living in its territory, irrespective of nationality, race, belief, gender, age and social or economic situation, enjoy the same rights and privileges, in order to guarantee equality of opportunity and thereby reduce the wide disparities between its inhabitants

38. Efforts to ensure equality of status and opportunity are dependent on the proper documentation of individuals and on combating all forms of discrimination.

### **1. Right to identity papers**

39. A person living in a State governed by the rule of law who does not have proper identity papers is a "non-person"; and if, as well as lacking official documents, the person is subject to racial discrimination, he or she becomes not only deprived of legal capacity but non-existent, perpetually condemned to anonymity and exclusion.

40. Since people are entitled to have their births registered so that they will have a recognized identity that endows them with legal personality and its attributes (a name, family name, domicile, nationality, civil status), the Central Electoral Board (JCE) responsible for the Civil Registry is working hard to document every individual, irrespective of race and nationality, as well as to modernize the institution to make it more reliable and efficient.

41. To put an end to the growing situation in which 364,220 undocumented nationals of various racial origins living in impoverished areas were found by the Government in 2002

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<sup>28</sup> Persons who are affected by cases of aggression or exclusion resulting from minor thefts and occasional difficulties, disputes and misunderstandings between individuals, married couples, family members and work colleagues or among informal local groups are covered by article 9 of Act No. 24-97 modifying article 336 of the Criminal Code.

<sup>29</sup> Article 16 of the Civil Code stipulates that in all proceedings and in all courts, a transient alien who is a principal plaintiff or involuntary added party shall be required to post a bond for the payment of the costs and damages arising from the proceedings, unless the party possesses in the Dominican Republic real property of sufficient value to guarantee payment. To guarantee everyone access to the justice system the Supreme Court accordingly declared the article concerned to be inapplicable, because discriminatory.

to lack a birth certificate and/or identity card, the Central Electoral Board signed an inter-agency agreement on 22 June 2007 with the Office of Social Policy Coordination to strengthen and relaunch the Late Registration Unit.

42. Between 2007 and September 2011, a total of 315,400 persons submitting late applications were permitted to register, of whom 118,897 were under 16 years of age.<sup>30</sup> In addition, Congress passed Act No. 218-07 in August 2007 establishing a three-year amnesty for late birth registrations of nationals below the age of 16, an amnesty that is still in force.<sup>31</sup>

## 2. Screening of the Civil Registry

43. It is also claimed that this documentation process masks another, openly discriminatory, process targeting black Dominicans and Haitian nationals and depriving them of their Dominican identity papers.

44. Hence the concern expressed by the Committee Against Racial Discrimination to the effect that the Dominican Republic is taking advantage of the screening of the civil registry<sup>32</sup> to cancel the identity cards of Dominicans of Haitian origin and Haitian nationals settled in the country on fundamentally discriminatory grounds. However, this assertion is without foundation, as described below.

45. The operations carried out by the Central Electoral Board have revealed numerous cases of foreigners, specifically Haitian nationals, requesting late birth certificates, supported by Haitian birth certificates, Haitian identity cards, cards issued by the Haitian Embassy, Haitian passports and/or foreigners' identity cards issued by the Immigration Department in order to regularize their legal status in the Dominican Republic.<sup>33</sup>

46. A case in point—which will serve as an example of a wider practice in the country—is that of the Caxito Nelson and/or Calixte Pierre-Paul families, in which both parents were of Haitian nationality and all the children possessed Haitian birth certificates. Following their arrival in the Dominican Republic, the children applied to the Civil Registry Office for Dominican birth certificates using false declarations by the supposedly Dominican parents. The documentation process to which these procedures gave rise was clearly illegal and fraudulent.

<sup>30</sup> This figure on minors relates solely to the period 2009–2011, when information began to be recorded by age group. The establishment in public hospitals of 54 civil registry offices responsible for issuing birth certificates to newborn children helped to make these figures generally available. Another factor was the introduction of 10 mobile units circulating throughout the country, processing late birth declarations and providing assistance to citizens registered but lacking an identity card.

<sup>31</sup> To facilitate collection of the biometric data incorporated in the new personal identity cards, the number of centres issuing the cards was increased from 13 to 59 between 2006 and 2009. In addition to the traditional offices, seven service centres came into operation at the end of 2009 to expedite the issuing of official birth certificates in digital form.

<sup>32</sup> CERD/C/DOM/CO/12, para. 14. The Civil Registry in the Dominican Republic had become extremely disorganized since its offices were staffed by persons with no knowledge or conception of what their work entailed. To remedy this situation, Act No. 8-92 was adopted in 1992, placing the Civil Registry Central Office and other offices under the authority of the Central Electoral Board.

<sup>33</sup> This statement coincides with the findings reported in 2010 by UNDP's Office of Human Development (OHD), namely that it emerges from the Haitian Immigrant Survey (IH) that the lack of identity documents is not as widespread as generally supposed: almost 90 per cent of immigrants reported having Haitian birth certificates, 66 per cent baptism certificates, 63 per cent Haitian identity cards and 33 per cent reported having a Haitian birth certificate. Another study carried out in 2008 on the basis of some 498 interviews with Haitian immigrant construction workers found that 66 per cent of immigrant workers had a Haitian birth certificate, "which means that the workers concerned are not completely undocumented" but rather lack legal working documents issued by the Dominican Republic. OHD, *Política social: capacidades y derechos*, 2010, vol. III, p 89.

47. When in the process of screening the civil registry cases of falsified data and identity theft are discovered, the authorities are bound to correct the fraud by registering it and withdrawing the false documents. File by file, for as long as it takes, withdrawal of the fraudulent Dominican identity documents proceeds, for the reason that the documents are fraudulent and for no other reason.

48. While it is the case that this administrative measure begun in 2006 has resulted in the cancellation of identity cards and birth certificates, it is also the case that the rule of law cannot be subordinated to fraud and illegality.

49. The Central Electoral Board's statistics on cancelled or disqualified identity cards, and the reasons for the measure, show that the main cause of cancellation and disqualification, corresponding to 63.18 per cent of the 496,669 registered cases, was death; the second cause, corresponding to 25.24 per cent of cases, involved cards that had been printed but not collected from the relevant centre by their holders; and the third cause concerned the 6.73 per cent of cardholders whose names figured two or more times in the registry.

50. Thus the sole purpose of the screening measure has been to detect irregularities and fraud, not to prejudice anyone in particular on the basis of their racial and/or national origin. It should also be borne in mind, as proof of the foregoing, that from the start of the year under way, in accordance with Circular No. 32/2011 concerning the application of Decision No. 12/2007, instructions were given to Civil Registry officials to continue issuing birth certificates freely to the children of foreign citizens under investigation until the plenary of the Central Electoral Board had decided whether the certificates were valid or not, on the basis of the relevant investigation, and had either suspended them provisionally and requested a court to nullify them, or recognized their validity.<sup>34</sup>

51. Focusing on the case of Haiti, in July 2009 the Board reported the discovery of 2,416 identity cards "wrongfully issued" to foreigners between 1994 and 1997. Only 72, or 3 per cent, of these were issued to Haitian immigrants. The charges that the screening of the civil registry masked a discriminatory measure against Haitian nationals and/or their descendants are not therefore borne out by the available data.

52. Furthermore, the statistics on the screening of the civil registry entries in which at least one of the parents was of Haitian nationality support this conclusion. On 23 March 2011, 90 per cent (of 7,797 cases) were approved and duly registered under one of the following headings: immigration, amnesty, late registration or sundry.<sup>35</sup>

### **3. Right to nationality: status of statelessness**

53. A second misunderstanding concerns the interpretation of the right to Dominican nationality through *jus soli* and, by extension, the real purpose of the Immigration Registry. To clarify the situation, we shall start with the topic of stateless persons and the absence in the Dominican Republic of an equivalent category of national or foreign citizens.

54. Haitian constitutional law is based on the principle of *jus sanguinis*, and a child born to Haitian nationals is therefore Haitian, whether he or she was born in Haiti or elsewhere.<sup>36</sup> Consequently, if a descendant of a Haitian national is born on Dominican territory or in any other country the person is not of unknown nationality but a national of the Republic of Haiti.

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<sup>34</sup> The only persons affected by this measure are those whose identity documents are found to be falsified or to have been wrongfully issued, following the appropriate investigations and checks.

<sup>35</sup> See [www.jce.do/web/](http://www.jce.do/web/).

<sup>36</sup> Constitution of the Republic of 1987, art. 11.

55. On a reciprocal basis, under the constitutional law of the Dominican Republic, the Supreme Court ruling of 14 December 2005 confirmed that, since the Constitution of 1928, the principle of *jus soli* principle governing the Dominican State applies only to immigrants whose parents, excluding diplomats and persons in transit, are legally resident in the country.<sup>37</sup> Article 18 of the Dominican Constitution of 2010 reaffirms the same right and the same principle.<sup>38</sup>

56. With regard to the assertion that stateless minors are to be found in the Dominican Republic, this must likewise be rejected as untenable. It is untenable both because of the principle of *jus sanguinis* ('right of blood') that governs the granting of nationality in Haiti and also because the Haitian Constitution does not recognize dual nationality. Thus, even when born in the Dominican Republic with one parent of Dominican nationality, or with one or both parents of Haitian nationality but legally resident in the country (i.e. with the right to acquire Dominican nationality by birth in accordance with article 18 of the Constitution of 2010), a minor remains Haitian under the Haitian Constitution since the Republic of Haiti does not recognize dual nationality.<sup>39</sup>

57. Moreover, it is a rare occurrence to find stateless minors in the country in the case of newborn children or minors whose nationality is unknown. In such cases, since everyone has the right to a nationality, the Dominican Republic grants the person Dominican nationality in accordance with the Convention on the Reduction of Statelessness, adopted in 1961.

#### 4. Immigration Registry

58. The same applies to a newborn child entered in the Immigration Registry, which is not designed to confer Dominican nationality (through *jus soli*) but rather with registering a vital fact such as a person's birth.<sup>40</sup>

59. In the case of minors both of whose parents are foreigners,<sup>41</sup> whether Haitian or otherwise, residing illegally on Dominican territory, the Central Electoral Board, in accordance with Migration Act No. 285-04, issued Decision No. 02-2007 establishing the

<sup>37</sup> The Supreme Court, with respect to an action impugning the constitutionality of articles 28, 36, 49, 56, 58, 62, 100, 101, 103, 138 and 139 of Migration Act No. 285-04 of 27 August 2004, emphasized that "when the Constitution (prior to the current one of 2010) in paragraph 1 of article 11 excludes the legitimate children of foreigners resident in the country as diplomatic representatives or foreigners in transit through the country from acquiring Dominican nationality through *jus soli*, this supposes that the latter—those in transit—have been somehow authorized to enter and remain for a fixed period in the country; that if, in these circumstances, obviously legitimate, a foreign woman gives birth in Dominican territory, her child under the Constitution is not Dominican by birth; that, a fortiori, the child of a foreign mother who at the moment giving birth is in an irregular situation and, therefore, cannot justify her entry and stay in the Dominican Republic cannot be Dominican. It follows that the situation of children of foreigners born in the country in the circumstances specified in the first part of article 11 of the Constitution is not the result of considerations of race, colour, belief or origin, but of an express provision that since the constitutional revision of 1929 excludes from Dominican nationality not only the children of those in transit in the country but also foreign residents belonging to a diplomatic mission".

<sup>38</sup> The 2010 Constitution grants Dominican nationality to "Any person born within the territory of the Dominican Republic, except those born to members of foreign diplomatic and consular missions, and foreigners who are "in transit" or reside illegally in Dominican territory. A foreigner "in transit" is any person defined as such by the laws of the Dominican Republic".

<sup>39</sup> Haitian Constitution of 1987, art. 15.

<sup>40</sup> A foreigner wishing to opt for Dominican nationality, whether or not born in the Dominican Republic, must follow the naturalization procedure specified in Act No. 1683 on Naturalization, dated 16 April 1948.

<sup>41</sup> If either parent is Dominican or legally resident in the Dominican Republic, the newborn child is registered in the national registry irrespective of the migratory status of the other parent.

Immigration Registry for children born in the Dominican Republic to non-resident women. This means that all children born to foreign parents in the country can have official identity papers to enable them to be registered by their parents in the appropriate registry office.<sup>42</sup>

60. This procedure, far from being a bureaucratic obstacle, is one adopted internationally in a wide variety of countries to provide official certification of the birth abroad of nationals from other countries.

### **C. Article 3**

61. The Dominican Republic subscribes fully to the terms of article 3 of the Convention. This is why it does not possess any ghettos, slums, back alleys, housing estates, public and/or private sites, geographical zones or other kinds of rural or urban settlement designed or employed as a way of segregating people on the basis of their race and/or nationality.

62. Any urban neighbourhood, rural community, back alley, city, town or sector nationwide will testify to the peaceful coexistence between Dominicans of all races and foreigners, whether legal residents or otherwise. No area is exclusively reserved to members of a particular group, to the deliberate exclusion of others.

#### **1. Workers**

63. Workers—whether Dominican or foreign, whether working in the sugar industry or any other sector of the economy, such as construction or farming ventures—are drawn from all the racial groups living in the country and enjoy basic freedoms on an equal footing.

64. All concerned work under contract with their free consent and have a right to form and belong to trade unions and to participate in and benefit from the wage negotiations taking place periodically in the country.

65. The places and regions where these workers and their dependants live are freely chosen, since they are not obliged or forced to live in a site specially or exclusively reserved for them. Subject to their financial and other limitations, they enjoy the same services (health, education, transport, water, electricity, security, access to the courts, communication) as the rest of the inhabitants in the country.

66. At this point, in view of the widespread misapprehensions in written accounts of almost everything relating to the country's foreign inhabitants, largely those of Haitian origin, there is a need to pause and analyse the question in greater detail, particularly as regards the prevailing situation in the sugar plantations, these being the traditional focus of allegations of discrimination in the country.<sup>43</sup>

67. The Dominican Republic is one of the countries making the greatest sacrifices, as both a country of origin and a receiving country, to safeguard and uphold migrants' rights. This is all the more true when one considers the twin challenges facing the Dominican nation, namely, the increase in population growth, from 4.5 million in 1962 to 9.4 million in 2010, and the transition from a predominantly rural to an urban society.

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<sup>42</sup> In 2007, 51 children of different nationalities were registered, 483 in 2008 and 122 from January to March of the current year.

<sup>43</sup> Including those of the Department of Labor in 2009, which are the basis for retaining the Dominican Republic on the list of countries subject to sanctions, and those of the Department of State concerning human and labour rights in the country. The charges relate, for the most part, to supposed violations of ILO labour conventions, the Covenant on Economic, Political, Social and Cultural Rights and the Convention on Racial Discrimination.

68. In this context, the country is making increasing efforts with regard to the provision of public services (health, education, housing, transport, electricity, drinking water, security, leisure) even if these remain somewhat limited.

69. The second challenge has been the emigration of some 1.2 million Dominicans, which has been matched by the immigration of an almost equal number of unskilled labourers coming mainly, though not exclusively, from Haiti.

70. The charge is levelled against the Dominican Republic that it ought to absorb the Haitian workers and guarantee them a dignified, or at least decent, status by giving them the benefits of better housing, health, education, transport, pension, work, salary and leisure conditions. However, the fact is that the country cannot offer even one of these facilities satisfactorily; it cannot do so properly even for Dominicans.<sup>44</sup> It is not a question of excluding people or 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 44 per cent of the population lives below the poverty line.<sup>45</sup>

71. Despite these problems, the Dominican Republic does not defend, practise or promote any systematic violation of human rights in its territory. All foreigners residing legally or illegally in the country, whether from Haiti or elsewhere:

- (a) Enter the country voluntarily, not under duress, and can leave when they decide to do so;
- (b) If employed, always receive a jointly agreed wage in keeping with the regulations in force;
- (c) Earn equal pay for equal work, irrespective of race, gender or nationality;
- (d) Are free to form or join trade unions and enjoy freedom of association;
- (e) Receive equal treatment with regard to legally prescribed work benefits, in accordance with the Labour Code
- (f) Can and in practice do exercise their labour rights through the Ministry of Labour; and are guaranteed access to national courts as well as to the media and to institutional and church bodies, both national and international, without being subject to punishment or reprisal;
- (g) Have free access to, and can count on the support and protection of, various church bodies, many NGOs and bilateral institutions as well as national and international media;
- (h) Enjoy freedom to circulate throughout the country and freedom to move from one sector of the economy to another and from one firm or workplace to another;
- (i) Enjoy social mobility;

<sup>44</sup> The levels of poverty and unemployment in the Dominican Republic point, above all, to the lack of jobs, even for Dominicans. Salaries are low too: for example, a day labourer earns little more than 150 pesos (\$4.4) and the minimum monthly wage for private-sector workers ranges from 4,485 to 7,360 pesos (between 132 and 217 \$US). The problems faced by the Dominican Republic in accommodating the mass arrivals of immigrants, who already represent a significant proportion—some 12 per cent—of the Dominican population, must be seen as a key factor in the migration policy that the Dominican State is obliged to pursue.

<sup>45</sup> See para. 14 above and notes. According to the most conservative figures cited in recent studies conducted by the Economic Commission for Latin America and the Caribbean (ECLAC), the country's poverty rate is 44.3 per cent; see the newspaper *Hoy* of 22 September 2010, p. 14A ([www.hoy.com.do](http://www.hoy.com.do)).

(j) Are entitled to the same level and quality of services as Dominican nationals at the same socio-economic level, since they are at no time subject to restrictions not in keeping with those levels;

(k) Are distinguished only by their economic status, having equal access to the opportunities and services available nationally;

(l) The most recent arrivals, lacking work qualifications and having entered the country illegally, do not necessarily have immediate access to the best opportunities and living conditions available, and therefore remain in the least favoured strata of society; but this does not prevent them from increasingly achieving social advancement in the commercial, academic, business and political spheres.

#### *Sugar plantations*

72. Daily life is not lived in segregation but in close interaction with different Dominican groups, in the countryside or in urban and semi-urban communities.

73. The situation prevailing in sugar plantations—reputedly places of confinement—attests to a similar regard for the country's international commitments and for the rights of all human beings, irrespective of race, nationality or any other characteristic.

74. According to the most recent study by the United States Department of Labor and the NGO Verité, whose fieldwork was carried out by the Dominican NGO CIPAF between 2009 and 2011:<sup>46</sup>

(a) There is no significant incidence of forced labour among workers in the sugar industry since the traditionally denounced coercive practices in the industry have been practically completely overcome;

(b) There is no evidence of youngsters under 18 years of age<sup>47</sup> performing paid work: according to the study, "no incidence of child labour was detected";

(c) Freedom of movement exists in all the sugar cane plantations. Generally speaking, there are no coercive or supervisory arrangement in the plantations. The supervisors are not usually armed, and there are no physical barriers that prevent the workers from leaving the plantations at any moment, even during harvesting;

(d) Currently there are no forced recruitment or contracting arrangements under the direct or indirect responsibility of the Dominican sugar cane industry;

(e) Nor are there any signs of a system of illegal trafficking involving scouts hired by the sugar cane companies, as occurred until the start of the last decade. The sugarcane workers are likewise not tricked by scouts concerning the work they are to carry out;

(f) 79 per cent of the sugarcane workers interviewed (out of an estimated total of 14,500 nationwide) seem content with the treatment received;

(g) 96.2 per cent stated that they were free to quit their work during the harvest and not return, and there were no signs of any violence. Furthermore, 99.3 per cent of the workers showed no sign of fear;

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<sup>46</sup> USDOL/VERITE/CIPAF: "*El bracero azucarero en RD: más allá de los mitos*", Santo Domingo, 2011.

<sup>47</sup> Decision No. 52-2005 considers sowing and harvesting to be dangerous work for youngsters under 18 years of age. The exceptional cases of minors aged 15 to 17 reported in the CIPAF study were observed at the CEA plantation (6 cases), the Central Romana (3) and the CAC (1).



(h) 70.4 per cent of the workers interviewed had received a work identity slip or number, providing them with the necessary documents for obtaining a work permit in the country;

(i) 45 per cent (of the 730 rural workers interviewed) stated that they sent money "frequently" to their families in Haiti;

(j) Housing in a plantation is made available on an optional basis and if workers choose to live there, it is supplied free of charge, as are the services available at the workplace, according to almost all the workers (98 per cent), who preferred it that way;

(k) The practice in sugar companies such as the Central Sugar Consortium (Consortio Azucarero Central—CAC) and the Sugar Cane Consortium of Industrial Enterprises (Consortio Azucarero de Empresas Industriales—CAEI) of providing food during working hours has become widespread and, in some cases such as the CAEI, cash incentives are offered for Sunday work and a water container.

(l) During the off-season, 90 per cent engage in sowing and weeding tasks, 28 per cent tend the farming plot bordering the sugar plantation and 14.5 per cent emigrate outside the sugar plantation and undertake construction work and coffee, rice and similar harvesting activities. Their limited leisure time is spent thus: 48 per cent of those interviewed pass the time with friends, 45 per cent play dominoes, 20 per cent rest and 17 per cent go to church.

(m) Working conditions are inspected and checked regularly and periodically by the Ministry of Labour as well as by international institutions and bodies that monitor working and salary conditions, such as ILO, the Inter-American Commission on Human Rights, the United States Embassy in the country, the United States Congress and non-governmental organizations from various countries.

75. Finally, lay-offs can occur because of economics restrictions but not as a result of prejudice and discrimination against Haitian nationals, skin colour and, less still, a deliberate and formal policy of the Dominican State.<sup>48</sup>

76. On this point, the Dominican Republic wishes to be absolutely clear: it is firmly and resolutely opposed to any kind of shady deal or abuse at the expense of migrant workers, particularly illegal ones.<sup>49</sup> Given that immigrants work in all sectors of the economy, the challenge facing and taken up by the authorities is that of regulating and administering

<sup>48</sup> Proof of this is to be found in the interracial and international crossbreeding in Dominican society; it is also demonstrated by the number of Presidents of the Republic and holders of high positions in government and other institutions who are of Haitian descent. Another aspect that should not be overlooked is the social, political and economic development of the plantations concerned, many of which have become towns, such as Consuelo, Quisqueya, Santa Fe, Gautier, Güaimate, Boca Chica, Guerra, San Luis, Villa Mella, Pedro Brand, Los Alcarrizos, Los Bajos de Haina and Villa Altigracia. There is also the case of former plantations, such as Bayona, that have become urban areas extending beyond towns.

<sup>49</sup> Voluntary migration has become a key factor in a globalized world. As a social phenomenon, it entails the need for legal and institutional adjustments by society, with particular regard to the labour market. The dark, problematic side of massive migration is highlighted by the case of illegal migrant workers. The hiring of this undocumented labour is a source of unfair competition for all those businesses and firms employing national and foreign migrants on a legal basis. The common challenge is that of promoting the integration of the migrant worker and his family, as well as the mainstreaming of fair and equal treatment in a state governed by the rule of law. At the same time, given that neither the Dominican Republic nor any other contemporary nation can by itself cope with the migratory flows confronting today's world, there is a need for joint efforts—bilateral and multilateral—within the United Nations human rights framework to establish flexible and efficient channels to ensure legal migration, which implies adequate coordination between the sending and receiving nations.

migratory flows to ensure that migrant workers are legal, do not exceed the need and demand for manual labour, make a positive contribution to the country and do not make for unfair competition among firms or become an unsustainable burden on society.

77. However, the challenge is not confined to the public sector. The private sector is also overcoming old practices. For example, to ensure better living conditions in the sugar mill camps, various modernization and social reorganization programmes were carried out in the period 2007–2010 in CAEI communities, the only sugar industry operating in the San Pedro de Macorís area, at a cost in excess of US\$25 million. This sum included the construction and equipping of primary and secondary schools, primary health-care centres, the rehabilitation of sugar mill camps, the design and construction of complete model communities and other infrastructure, transport and social welfare undertakings, all of them inaugurated in 2009 and 2010.

78. More generally, between 2007 and the second half of 2010, 88 schools were built in the country's sugar plantations, which together with the 20 constructed in 2011 brought the total to 108. Public investment in the construction of these educational centres totalled \$2.1 million and benefited the 10,000 or so students attending them at no cost to themselves, serving the sugar plantations and adjacent areas.<sup>50</sup>

79. To this educational investment must be added the contribution of the private sector. For example, two schools ranging from preschool to the end of secondary education and equipped with all the latest teaching and computer resources, were inaugurated respectively in 2008 and 2010 at a cost of over \$5.5 million. Within the space of five years, both will also serve as vocational polytechnics or community colleges to train the local population to meet the demands of the labour market in their catchment area, i.e. in the provinces of San Pedro de Macorís and the eastern region of Santo Domingo.

80. In order to appreciate this educational investment, as well as that reported below in the health sector, it should be pointed out that the total estimated population of the sugar plantations currently operating in the Dominican Republic—consisting mainly of Dominican and Haitian nationals of all races and creeds—does not exceed 75,000 individuals of all ages, the number of field labourers not exceeding 14,500 during the peak harvesting period from 2010 to 2011.

81. Concerning health provision, the sugar plantations in question have over 25 large and medium-sized centres with doctors and paramedical staff, as well as 16 primary health-care centres. There is also a modern hospital with 47 doctors, 82 beds, operating rooms, a laboratory and x-ray equipment<sup>51</sup> as well as ultrasound equipment and delivery and newborn baby rooms. In 2009, 39,601 outpatient consultations took place and 36,183 emergency cases were treated, making a total of 75,844 medical procedures. These procedures and those reported below do not discriminate between patients in terms of racial, national or socio-economic status.

82. Last year 140,398 free medical consultations took place under the health programme, with an allocated budget of over \$1 million. Various campaigns take place annually in the medical centres in coordination with various foreign foundations such as Project HOPE, which bring with them well-known medical specialists who perform

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<sup>50</sup> These buildings included one that was taken as an educational model by the Ministry of Education, which dubbed it a school of "educational excellence" in 2010.

<sup>51</sup> The new hospital built by the Central Romana will shortly come into operation in a large and modern hospital building with 84 beds, doubling the patient care capacity of the Central Romana Medical Centre. The new hospital includes four new operating rooms, with magnetic resonance imaging and Doppler ultrasound. It will also have a heliport, three ambulances equipped with automated external defibrillators (AED) and a new emergency room for traumas and clinical cases. To date, a total of 30 million dollars has been invested in the new medical centre.

surgical, general and paediatric operations free of charge in areas including ophthalmology, ENT, urology and plastic surgery.<sup>52</sup>

83. It should be added that the large regional and provincial state hospitals, coming under the Ministry of Public Health and Social Welfare and the Ministry of Social Security, provide services to all workers in the sugar industry whether or not they have identity cards.

84. These services include those provided through the health subcentres and various health and dental (*Fundación Sonrisas*) mobile medical units, which operate throughout the sugarcane communities. From 2009 to January-April 2011 these subcentres and units carried out a total of 156,839 medical procedures of various kinds for the inhabitants of the sugar plantations and neighbouring areas.

85. In conclusion, this social investment in health, as in education and infrastructure, benefits the 14,500 field workers throughout the sugar agro-industry without discrimination of race or nationality—whether they be Dominicans, Haitians or their descendants ("*rayanos*")—to the extent that they work and live with their dependents in the sugar holdings and plantations.

#### D. Article 4

86. In the Dominican Republic, "Everyone has the right to express his thoughts, ideas and opinions by any means without prior censorship".<sup>53</sup> Equally, "Everyone has the right of reply and rectification when he considers himself harmed by the information circulated. This right shall be exercised in accordance with the law", this being the guarantee of fair and plural access by all social and political sectors to State-owned media.

87. This constitutional right is also granted to foreigners, who have access to written, radio, television and Internet media in Haitian Creole, Spanish and French. Since 2005 media of this kind have emerged with the aim of making Haitian immigrants more conscious of their rights in the country and as a way of providing them with information and communication resources.<sup>54</sup>

88. In 2008, the Ministry of Culture defined a cultural policy highlighting the African contribution to the country and supporting all initiatives to that end by civil society. It has done so by endorsing the establishment of the Casa de Africa; by supporting research on the African roots of the Dominican people, with the backing of the Sebastián Lemba Institute of African Studies; and by highlighting the value of a series of African traditions that have become an essential part of our culture.

89. Freedom of thought is guaranteed under article 35, paragraph 2, of Act No. 6132 on freedom and dissemination of thought, which lays down penalties for the defamation of persons belonging to a particular race or religion. These penalties range from one month's to one year's imprisonment together with cash fines, depending on the seriousness of the offence, when designed to provoke feelings of hatred in the community.

<sup>52</sup> Exceptionally, during 2010 and in the course of 2011, in response to the cholera epidemic that broke out in Haiti and spread, albeit in mild form, to the Dominican Republic given the number of Haitian citizens living in the country; it was necessary to increase preventive medical services in the form of checks and analysis of all the inhabitants of the sugar plantations in order to detect the bacteria in good time. From the moment that residents in the sugar area showed any symptom of influenza, vomiting and/or fever the person concerned was taken immediately to one of the health centres in the community concerned to be checked by the doctors and medical staff on duty.

<sup>53</sup> Constitution of the Republic, art. 49.

<sup>54</sup> In support of this statement, see paras 96 et seq.

90. With reference finally to article 4, it should be noted that in the period covered by this report not a single case of propaganda, promotion of racial or group superiority, racial hatred or any similar manifestation directed against any section of the population living legally or illegally in the Dominican Republic has been brought before the courts. The explanation for this absence of extremism has to do with the prevailing freedom of intellectual discussion and the climate of fraternal coexistence and non-discrimination that predominates in the country.

## **E. Article 5**

### **1. Equal treatment before the law**

91. The Dominican State is committed to prohibiting and eliminating racial discrimination in all its forms. Anyone in its territory who feels him or herself discriminated against on racial or other grounds is completely free to appeal to the courts and to demand and receive equal treatment before the law.

92. A clear and undeniable example of free and equal access by all to the justice system is provided by the case of some 500 undocumented Haitian workers in the sugar area of San Pedro de Macorís.

93. A number of NGOs have reported that over the five years from 2003 to 2008 most of the undocumented Haitian workers employed in the farming and construction sectors did not assert their rights for fear of being fired or deported. In this regard, over 500 undocumented Haitian workers at a sugar plantation sued their employer and won, in the lower court, the right to written contracts and employment benefits. The case went to the court of appeal and was finally settled by the Supreme Court in 2011 when it dismissed the appeal.<sup>55</sup>

94. This single case in which a group of Haitian nationals and descendants were able to assert their employment rights right throughout the Haitian judicial process is indicative of the hundreds of cases that are settled daily in the courts of the Republic and, in particular, in the labour courts. In the course of 2010, these courts alone heard and delivered judgements in over 2,570 employment cases in which foreign citizens, most of them of Haitian origin, were asserting one or other of their rights.

### **2. Reform of the justice system**

95. A promising trend is emerging with regard to the practical observance of constitutional and legal provisions, namely the reform of the justice system marked by the growing institutionalization and credibility of judicial procedures.<sup>56</sup>

96. One of the first measures 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, which was followed by a review of the penal and procedural codes<sup>57</sup> and measures to professionalize the Dominican judicial system. The main thrust of

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<sup>55</sup> Judgement issued on 23 March 2011 by the Third Chamber of the Supreme Court in the case of Clody Pie and co-plaintiffs versus the Cristóbal Colón refinery. See, in addition, the legal commentary of the NGO Foundation for Institutionalization and Justice (Fundación para la Institucionalidad y Justicia), published in all organs of the national press on 20 April 2011.

<sup>56</sup> Law enforcement officers and representatives can on occasion take justice into their own hands, for reasons ranging from lack of access to justice and lack of confidence in the authorities to the fallacious belief that laws are pointless, that sentences are bought or that detention centres are dens of iniquity. Yet this does not prevent the national authorities from doing everything possible to check and eliminate these illegalities.

<sup>57</sup> In August 2004 the Code of Criminal Procedure (Act No. 76-02) was amended, speeding up

this process has been to ensure the independence of the judicial branch of Government leading to greater legal security in the country.<sup>58</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>59</sup>

97. One of the key elements in this reform and institutionalization process is the new model of the prison system, which is applicable to all detainees, irrespective of race or other characteristics. This system protects prisoners' dignity and involves the upgrading of prison facilities to reduce overcrowding. Over the past five years, a remodelling plan has been put in place, involving the establishment of 11 "model" prisons and the construction of five new centres. The social reintegration rate for men and woman entering this new model establishment is over 97 per cent and the reoffending rate is 2.7 per cent, which is reflected in better public security. As a result, the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders plans to recognize the Dominican Republic as the country implementing the best prison practices.

### 3. Personal security and state protection

98. The Dominican Republic abolished the death penalty by Act No. 64 of 1924. The right to life and personal integrity is inalienable and inherent to every individual,<sup>60</sup> irrespective of race or other considerations. Between 2003 and 2009, there were no reports of politically motivated crimes or disappearances. In other respects, however, the rate of progress has not been as rapid as expected. In this period, there were reports of individuals and neighbourhood groups being involved in summary executions, as well as complaints of excesses by the security forces. All these cases were investigated and considered by the courts without it being shown in any instance that they were motivated by racial prejudice or hatred.<sup>61</sup>

99. A promising trend in this regard is the continuous screening and training of all members of law enforcement and national security bodies, ranging from the National Police Force and the Drugs Control Department to the Armed Forces and their various specialized units.

100. The National Police Force, whose members are drawn from all the country's racial groups as well as from a variety of national backgrounds, announced in August 2007 and confirmed in September 2010 the adoption of a policy of zero tolerance on impunity and human rights abuses and violations. The Internal Affairs Unit duly investigated serious

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procedures, safeguarding the rights of all parties, restricting the time limits for preventive detention, modifying the instrumental responsibility of the Office of Public Prosecutor and the Police in the investigation of offences, replacing the old system based on the personal conviction of the judge by one based on objective proof and evidence, and safeguarding the presumption of innocence of the accused.

<sup>58</sup> Traditional white-collar crimes have also been tried and sentenced in strict application of the law, and legal impunity, such as partiality in the administration of justice, is on the decline.

<sup>59</sup> See, for example, the ruling of 24 February 1999 on *amparo* proceedings and the corresponding regulations.

<sup>60</sup> See the ruling of 17 February 2006, Decision No. 1920, dated 30 November 2003. Violations of the right to life and personal dignity are in any case subject to legal sanction.

<sup>61</sup> There have been spontaneous community demonstrations against Haitian nationals, mainly in areas of marked poverty as regards both victims and aggressors. However, these individual actions figure in the records of the Public Prosecutor. Whenever rural communities (such as Guayubín) and semi-rural communities (such as the Santiago district) have taken it upon themselves to expel Haitian nationals from their places of residence, or have taken justice into their own hands, the authorities have acted to restore law and order and have brought to justice those responsible for disturbing it. This occurred in the seven reported cases, all condemned by public opinion, in the period 2007–2010, both in the Línea Noroeste and in the semi-urban districts of Santiago de los Caballeros.

charges of physical aggression, death threats, improper use of firearms, verbal aggression, physical attacks and robbery. As of November 2010, 257 discharged police officers found themselves serving prison sentences and 3,970 investigations had resulted in 935 dismissals and 1,573 disciplinary measures.<sup>62</sup>

101. The Government has also made a determined effort to provide skills training and human rights instruction to members of the Armed Forces and the Police Force, with particular reference to non-discrimination on grounds of race or nationality. The achievements of the Armed Forces in this area include the establishment in 2000 of the Military Institute of Human Rights, today the Graduate School of Human Rights and International Humanitarian Law, from which 13,578 trainees have graduated, including military personnel and civilians.<sup>63</sup> The National Police's Institute for Human Dignity has also provided training courses and workshops. From 2006 to 2010, it organized 304 courses and workshops for members of the security forces and citizens interested in community-related topics; these were attended by 3,025 participants in 2006, 3,056 in 2007, 2,169 in 2008, 3,019 in 2009 and 3,053 in 2010. In addition, police officers were given courses in Haitian Creole. This will provide the officials concerned with sufficient linguistic knowledge, depending on their abilities, to be trained as translator-interpreters in the dialect of their national neighbours from Haiti for service in the criminal justice system or as intercultural links in the area of public safety.

102. These efforts and commitments do not mean that the situation in the Dominican Republic is ideal. Equality of opportunity and equal status for all are seriously compromised and undermined by the corruption in national affairs. The moral, economic and institutional roots of this problem jeopardize the proper functioning of the justice system, civic life, public order, democratic governance and efforts to combat poverty and discrimination.

103. The corruption control component in the World Bank's Governance Indicators<sup>64</sup> and the recent data in the World Economic Forum's Competitiveness Index<sup>65</sup> place the Dominican Republic among the nations with the worst rating in terms of combating corruption.<sup>66</sup> This is the challenge facing the National Ethics and Anticorruption

<sup>62</sup> Following the entry into force in August 2004 of Act No. 76-02 embodying the new Code of Criminal Procedure, the police have endeavoured to comply strictly with due process procedures and fundamental rights such as the right to life, dignity of the individual, freedom and security. The records show that all cases of violent death at the hands of the police that are followed up are processed and investigated by the Office of the Public Prosecutor and the National Police's Internal Affairs Unit, which then refer them for judgement to the relevant ordinary court. Any summary execution—mistakenly dubbed extrajudicial since the death penalty does not exist in the Dominican Republic—is treated as a homicide and the commitment already honoured is to apply the domestic legal standards of protection and safeguard in accordance with article 6 of the International Covenant on Civil and Political Rights.

<sup>63</sup> The Armed Forces have managed to reduce human rights violations by its members and are committed to continue providing training in human rights and international humanitarian law to 50 per cent of its 50,000 members over the next five-year period.

<sup>64</sup> World Bank Statistics: [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance). See also *Latinobarómetro*, Report 2008, which situates the number of corrupt Dominican officials in the view of the average citizen at 75.7 per cent for the period 2001–2008: [www.latinobarometro.org](http://www.latinobarometro.org).

<sup>65</sup> World Economic Forum, *The Global Competitiveness Report 2010–2011*: [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2010-11.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf).

<sup>66</sup> Despite these results, the enquiry "Cultura política de la democracia en la República Dominicana, 2008", part of the Latin American Public Opinion Project, states that "while the predominant conception among the general public is that corruption is a widespread problem in the Dominican Republic, the percentage of those reporting that they have been the victims of some form of corruption has declined over the last four years, from 21.2 per cent in 2004 to 16.3 per cent in 2008. However while the decrease between 2004 and 2006 is statistically significant, this is not the case between 2006 and 2008."

Commission set up in 1996 and its public policy of "zero tolerance" of corruption in public administration, reiterated by the Executive Branch and reaffirmed in the Strategic Plan for Transparency, Ethics and the Prevention of Corruption 2009-2012 and by the courts of the Dominican Republic.<sup>67</sup>

#### 4. Political rights

104. All the positions and public posts in the country, beginning with the Presidency of the Republic, are open to nationals of all races and national origin. This is demonstrated by the history of the Dominican Presidency, which has been occupied by descendants of Haitians and black and mulatto citizens. Since 1884, much the same is true of the other public positions.

105. No political party, grouping or institution is excluded on grounds of race, national origin or socio-economic or cultural situation, either in terms of its doctrine or its membership. The idea has also been broached of forming a political party with the main purpose of bringing together Dominicans of Haitian origin, as a special way of defending their rights and interests, something that has not yet materialized.

106. In other words, political rights—in particular the right to participate in elections, to elect and to be elected by universal suffrage, as well as that of participating in central and municipal Government and in the conduct of public affairs at any administrative level on the basis of equality—is guaranteed in practice and in law to all nationals living in the Dominican Republic.

#### 5. Civil rights

107. With regard to the civil rights covered in article 5, we shall confine ourselves to reviewing those that the Committee sees as giving "grounds for concern" and on which it makes recommendations, leaving a detailed accountability exercise to another document.<sup>68</sup>

##### *Freedom of movement*

108. Any national and any foreigner with legal status in the country enjoys the right of free transit and movement in Dominican territory. This movement is not restricted, neither in the act of entering or leaving the country; nor in that of choosing and changing one's place of residence.

109. It should be underlined to avoid misplaced concerns that, due in part to the porous nature of the land frontier with the Haitian Republic, this right is enjoyed even by Haitian nationals illegally present in the country, as previously described.<sup>69</sup>

##### *Right to nationality*

110. Something that should be added to what has already been said about the recognition of nationality<sup>70</sup> is that one can be Dominican by birth or by naturalization. In the first case,

<sup>67</sup> See <http://www.cnecc.gob.do>.

<sup>68</sup> For a detailed account of the achievements and difficulties of the Dominican Republic regarding the civil rights prescribed in article 5 of the Convention, see the third periodic report of the Dominican Republic on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/DOM/3).

<sup>69</sup> See para. 76 above. This mainly concerns Haitian nationals who, having entered the country illegally, are returning to their country of origin for family reasons or on holiday before re-entering Dominican territory, thereby creating a two-way flow of benefit to all, although it stretches the immigration laws of the country affected by this situation.

<sup>70</sup> See above, paras 55 et seq.

*jus sanguinis* and *jus soli* are applicable, in accordance with articles 18 and 19 of the Constitution.

111. Article 18<sup>71</sup> recognizes as Dominican any child of a Dominican parent, whether born in or outside the national territory (*jus sanguinis*); likewise, anyone born within Dominican territory, except those born to members of foreign diplomatic and consular missions and foreigners who are "in transit" or reside "illegally" in Dominican territory (*jus soli*).

112. Any foreigner always has the option of initiating the naturalization procedure if he or she wishes to acquire Dominican nationality. This procedure, provided for in article 18 of the Constitution and in Act No. 1683 on Naturalization, has not been labelled or charged with being discriminatory or exclusionary by any individual or national and/or foreign organization.

113. Anyone meeting these requirements, irrespective of national origin, race, socio-economic status and political opinion, is fully entitled to enjoy Dominican nationality—including in the case of dual nationality, as recognized by article 20 of the Constitution; therefore, as previously noted, the Central Electoral Board is in the process of screening its files to ensure that this privilege is not abused through fraud or by any other means.<sup>72</sup>

#### *The right to work and to fair working conditions*

114. The Dominican Republic, conscious that access to job opportunities is one of the main ways of ensuring that a person can develop in dignity and exercise many of the social, cultural and economic rights, provides in its Constitution and Labour Code (Act No. 16–92) for mechanisms that guarantee not only free access to work but also the right to remain in work, submit claims, obtain improvements, change work freely and enjoy the best possible conditions to perform the task or tasks assigned to him.

115. The provisions relating to the right to work and the accompanying regulations govern nationals and foreigners in the same way, without making any distinction. Moreover, the inequality of status between national workers and illegal foreign workers does not apply in everyday practice. In theory and practice, both enjoy exactly the same rights and privileges.

116. The Ministry of Labour supervises the labour sector to avoid any form of violation, abuse and discrimination with the help of a team of 203 inspectors, who in 2010 alone benefited from 41 training workshops. The effectiveness and frequency of the inspection visits is increasing: for example, almost 80,000 inspections were carried out in 2007, compared with 85,000 in 2008, 89,300 in 2009 and a total of 92,825 at the end of 2010. The inspector-to-worker ratio increased from 18,000 in 2002 to 18,417 in July 2010, and the percentage of the working population covered by the inspectors during 2009 and 2010 was 8.1 per cent, representing respectively a total of 295,939 and 302,960 workers in the firms inspected.

117. Over this two-year period, they also made 79 ad hoc visits to the farming regions of San Pedro de Macorís, La Romana, Barahona, San Cristóbal and Independencia. In no instance did the labour irregularities discovered and/or reported go unpunished. Neither during these inspections, 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.

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<sup>71</sup> Article 18 grants Dominican nationality to "Any person born within the territory of the Dominican Republic, except those born to members of foreign diplomatic and consular missions, and foreigners who are "in transit" or reside illegally in Dominican territory. A foreigner "in transit" is any person defined as such by the laws of the Dominican Republic."

<sup>72</sup> See above, paras 45 et seq.



118. A typical case during that period was that of the Dominican Federation of Free Trade Zone Workers, which announced that anti-union incidents were continuing to take place at the TOS Dominicana plant in Bonao. The Ministry of Labour facilitated talks between the plant owners and employees, and after nearly a year of negotiation the parties signed a three-year collective bargaining agreement in August 2008.

119. This exemplary case does not mean that there are no labour disputes in the country, but rather that the Ministry of Labour is constantly seeking to uphold the Labour Code and the rights of national and foreign workers nationwide. In every case, the Ministry of Labour and its courts are impartial in their treatment of all workers, without regard to their national origin and racial status.

#### *Employment as a priority*

120. The Government's priorities in giving effect to the right to work are: the creation of more and better jobs;<sup>73</sup> the uncompromising eradication of forced labour and child labour;<sup>74</sup> and the promotion of social dialogue. These are the main challenges standing to benefit nationals and foreigners equally.

121. During the national financial crisis of 2003, which brought about a 24 per cent decline in the Dominican GDP, the absolute unemployment rate—according to official figures—rose to just over 24 per cent of the economically active population, falling subsequently to 14 per cent by the end of 2008 and currently standing at 14.09 per cent.<sup>75</sup>

122. Such a high level of absolute unemployment, coupled with an 56 per cent relative increase in the economic activity of the informal sector and the continued arrival of undocumented immigrants over the land border with Haiti, both before and after the earthquake of January 2010, constitutes the severest of the socio-economic challenges confronting the authorities and Dominican society.

123. Yet the fact that the rate of unemployment in the country is higher, by a factor of 4 to 1, among Dominicans than among Haitian nationals shows that the foreign immigrant is not discriminated against on grounds of nationality and/or racial status. This is despite the fact that the Labour Code stipulates that the proportion in any firm or business should be 70 nationals to 30 foreigners (legal residence).

#### *Salaries and salary readjustments*

124. A tripartite meeting of the National Wage Committee takes place every three years to enable workers and employers to discuss and agree on minimum wages by sector, no

<sup>73</sup> From October 2004 to April 2010, 645,764 new jobs were created. In this period, improved job creation was experienced in the following activities: manufacturing industries, electricity, gas and water, construction, commerce, hotels, bars and restaurants, transport and communications, financial brokerage and services. Further evidence that there is no discrimination in the country is shown by the fact that, in all these cases, the figures reveal no difference between nationals and foreigners, whether legal or illegal.

<sup>74</sup> According to the National Multi-Purpose Household Survey (Enhogar 2009–2010), the Dominican Republic has taken 59,000 children and adolescents out of child labour, representing a reduction of 14 per cent of the total identified in the country. Despite this, the 380,000 minors still engaged in economic work represent a percentage 1.6 higher than the average for the Latin America, where it is 13.4 per cent.

<sup>75</sup> A more fundamental way than social assistance of combating poverty is exercise of the right to work. Central Bank data indicate that, following the financial crisis of 2003, 345,777 new jobs were created between August 2004 and April 2007, including 59,141 from October 2006 to April 2007. The size of the working population increased from 3,653,946 in 2009 to 3,738,594 in July 2010, with the employment rate among men currently standing at 62.3 per cent and among women 31.9 per cent.

distinction being made in the agreements between nationals and foreigners or in terms of factors such as race or nationality.

125. The last two reviews took place in 2008, when there was an average real increase of 15 per cent (whereas from October 2004 to April 2007, because of the low levels of inflation during this period, the increase was 22.3 per cent); and in April 2011, when agreement was reached on a general increase of 10 per cent in the minimum wage, higher than the accumulated inflation rate of close on 8 per cent.

#### *The case of women*

126. In the labour market, the case of women is significant, both because of possible gender discrimination and also because of discrimination based on race or nationality. For statistical purposes, concerning access to work, in 1990 the percentage of working women in the non-agricultural sector was 35 per cent; it rose to 39.2 per cent in 2009, and it is estimated that, if the trend continues, it will reach 42 per cent in 2015.

127. With regard to the protection of women workers, the Labour Code (Principal X) establishes the equality of rights and duties between men and women, the only exceptions being the provisions relating to maternity protection.<sup>76</sup>

128. In any case, as a result of ILO Convention No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, no difference is permitted, in law or practice, in the remuneration of men and women for work of equal value.

129. With regard to conditions of equality and work satisfaction, the Ministry of Labour pays particular attention to ensuring that pregnancy testing is not practised; that the right to equal pay for equal work between men and women is respected; that campaigns are organized in favour of measures to reduce stigma, discrimination and violation of the rights of persons living with HIV and AIDS in the workplace; that persons with disabilities are integrated in the labour market, that their rights are respected and that employers are sensitized to their inclusion in the workforce.

#### *Rural population*

130. The guidelines designed to ensure non-discrimination in the full exercise of labour rights come up against three vulnerable groups, namely, the rural population, rural workers in sugar plantations and the victims of human trafficking and undocumented individuals. These are the focus of the concerns of the Committee for the Elimination of All Forms of Racial Discrimination, according to paragraph 17 of its concluding observations on its ninth through twelfth periodic reports.

131. No group of workers is more exposed to the unequal distribution of opportunities and wealth in the Dominican Republic than its rural inhabitants. Migration from the countryside to the city—which has seen a rural population representing 85 per cent of a total population of 4.2 million in 1960 fall to less than 30 per cent of a total of 9.4 million, according to preliminary data in the 2010 census—reflects the poverty and difficult

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<sup>76</sup> With regard to the protection of working women, the Labour Code provides for equality of rights and duties between women and men, with no exceptions other than those intended to protect motherhood. During pregnancy and after childbirth, working women enjoy job stability for up to three months after the delivery, in cases of termination "without cause" of the labour contract, and for up to six months after the delivery, in cases where the employer tries to put an end to the labour contract on the grounds of fault by the worker. In the latter case, the employer must have an explicit authorization from the Department of Labour or the local labour authority. Another form of protection of motherhood is the fact that it is prohibited by law for a woman worker to be assigned work during pregnancy requiring a physical effort that is incompatible with her condition.

circumstances currently confronting the population, due to the poor working conditions in the agricultural world and the persistent inability of the formal Dominican economy to accommodate the immigrant influx.

132. This extreme situation is reflected in two convergent indicators: a decline in the relative size of the farming sector and food insecurity in the country. At the macroeconomic level, the participation of the farming sector has declined from 12 per cent of GDP in the 1990s to just 8 per cent at the midpoint of the current decade and its export production fell from 21 per cent in 1996 to 13 per cent in 2010.

133. As regards food security, not even the second target of the first of the eight Millennium Development Goals has been achieved, namely halving the proportion of people suffering from hunger in the country. Specifically, those suffering from overall malnutrition, irrespective of factors such as race and nationality, decreased from 10.4 per cent in 1991 to 3.1 per cent in 2007, whereas chronic malnutrition increased between 2002 and 2007 from 8.9 per cent to 9.8 per cent.

*Temporary labour in the sugar industry*

134. The topic of discrimination in this sector of the population has already been analysed (paras 72 ff).

135. The important thing to bear in mind here by way of conclusion is that the sugarcane workers and their places of work and residence are not areas for the exclusive and discriminatory segregation of Dominican and/or Haitian nationals, nor their respective descendants, on grounds including race, national origin, lack of identity documents and socio-economic status. The sugar-mill camps have their own growth and development dynamic, as shown by the former camps that have become municipal districts such as Haina, Duquesa, Porvenir, Consuelo and many others.<sup>77</sup>

*Victims of human trafficking and the smuggling of undocumented persons*

136. Here the important thing to note is that this practice in all its forms (including the trafficking of women and minors, whether Dominican or foreign, of working age or not), although it is regarded by some as a form of income generation, is prohibited under the Dominican Constitution. Despite this prohibition, violations of this constitutional provision and the country's laws on the subject continue to be reported,<sup>78</sup> which are a source of great concern to Dominican society and its authorities.

137. Since 2003, the Dominican State has a law on the subject, namely Act No. 137-03 on the Trafficking in Persons and the Smuggling of Undocumented Migrants. This incorporates the definitions laid down in the United Nations Convention against Transnational Organized Crime and its two Protocols, covering the said criminal offences.

138. This law has various essential features, namely, it is designed to prevent the commission of such offences and provides for the prosecution of offenders and for victim assistance and imposes punishments ranging from 10 to 25 years' imprisonment as well as punishments involving the forfeiture of rights.

139. Other supplementary laws were approved by the Congress, for example Act No. 136-03 establishing the Code for the Protection and Fundamental Rights of Children and Adolescents; as well as Act No. 53-07 on High Technology Crimes and Offences, under which the mere possession of child pornography is sufficient to warrant conviction in Dominican courts.

<sup>77</sup> See note 52.

<sup>78</sup> Constitution of 2010, arts 38 and 41.

140. In light of the above, the Dominican Government took steps in October 2007 to establish the National Commission to Combat Human Trafficking and People-Smuggling with responsibility for developing a national strategy to combat trafficking and offer improved protection and assistance to its victims, who in the case of adults are mostly tricked by fraudulent offers of work contracts<sup>79</sup> or through other methods.

141. The Office of the Attorney General of the Republic coordinated the investigation and prosecution nationwide of all cases of trafficking in persons originating from Haiti and abroad. Special units of the Police, the Department of Migration and the Office of the Attorney General in focused on human trafficking, together with the Inter-Agency Committee for the Protection of Migrant Women. At the international level, the Ministry of Foreign Affairs has developed a global network of consular officials trained to identify and assist Dominican victims of human trafficking.

142. As a result of this inter-agency effort, the Migration Department alone intervened in 57,119 cases in 2010 with regard to the monitoring of undocumented persons and the prosecution and monitoring of human trafficking. In 91 of these cases, one or more persons were brought to trial on charges of human trafficking: 22 per cent of these involved trafficking networks and the rest concerned individuals. In 70 per cent of the 91 cases, those charged were found guilty and given prison sentences, while the remainder are still before the courts.

143. Since the commercial sexual exploitation of minors is a special case of human trafficking, the Inter-Agency Commission on Abuse and Commercial Sexual Exploitation of Children<sup>80</sup> is working with the Office of the Prosecutor General and the Office of the Procurator for Children and Adolescents to combat the sexual exploitation of adolescents in tourist destinations such as Boca Chica, Sosúa, and Las Terrenas.

144. 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>81</sup> made clear that most of the estimated 2,000 Haitian minors entering the country each year are not victims of human trafficking but are 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. It is in no case a matter of the abuse of victims motivated by racial discrimination in any of its forms or variants.

145. Another situation with which the authorities are dealing and which is giving rise to publicity campaigns<sup>82</sup> is the trafficking in children and women, particularly when practised for the purpose of sexual exploitation.<sup>83</sup> The networks of trafficking in women that are

<sup>79</sup> In the most common cases involving women, the dealers offer their victims work contracts that are mostly not approved by the Ministry of Labour, being written in languages such as Arabic and French. This makes the contracts difficult to understand properly, so that when the women arrive in countries such as Lebanon and Turkey or Turks and Caicos, San Martin, Jamaica and other islands the victims find themselves obliged to prostitute themselves or to become exotic dancers, when they thought they had signed contracts as home helps, beauticians or children's nurses.

<sup>80</sup> The Commission is co-chaired by the Ministry of Labour and the National Council for Children and Adolescents (CONANI), with the support of the ILO's International Programme for the Elimination of Child Labour (IPEC).

<sup>81</sup> UNICEF, "El tráfico de niños, niñas y adolescentes desde Haití hacia la República Dominicana" (2004). See also: [http://www.unicef.org/republicadominicana/protection\\_3775.htm](http://www.unicef.org/republicadominicana/protection_3775.htm).

<sup>82</sup> Government campaigns against the sexual abuse of women and minors for commercial purposes include: "The Law Cracks Down" and "No to Human Trafficking". Also, with the cooperation of the Secretary of State for Women and the NGO FINJUS: the public distribution of Act No. 137-03 ("Understanding Act No. 137-03") and "Women know your rights", with radio scripts written by professionals in the fields of psychology, education and law.

<sup>83</sup> The NGO Centre for Overall Guidance and Research (COIN) estimated that between 17,000 and

operating in the country are reported and tracked by a wide array of Government and civil society organizations. No reported human rights violation of this kind has been met with indifference or complacency, as evidenced by the drastic measures taken to confront and halt the trafficking of women towards Europe, South America and Central America.

146. Currently, illegal immigrants enter the Dominican labour market voluntarily, that is to say, they are not trapped, forced or enticed by the so-called "scouts". Given the existence of these individuals and the way in which they operated in the past, it must be stated categorically that the Dominican Government does not encourage, benefit from or remain indifferent to the illegal activities of persons furthering the illegal entry of immigrants into the country.

147. On the contrary, the Dominican authorities have taken a series of steps to counter and regulate this migratory flow and to prevent the mistreatment and exploitation of workers: the promulgation of Act No. 137-03 on the Unlawful Trafficking in Migrants and Trafficking in Persons, and the Migration Act No. 285-04; Decree 575-07 of 2007 establishing the Inter-Agency Commission on the Unlawful Trafficking in Migrants and Trafficking in Persons, which drew up the National Action Plan on the Unlawful Trafficking in Migrants and Trafficking in Persons (2009-2014). Between 2004 and late 2009, over 490 immigration inspectors and a total of 16 police officers, military personnel and civilians were suspended, dismissed or prosecuted for their participation in human trafficking or migrant smuggling offences.

148. Another major step towards curbing the traffic in undocumented migrants across the Haitian-Dominican border has been the establishment in 2006 of a specially trained border control corps—the Special Border Security Force (CESFRONT). The idea is to secure the Dominican side of the border, not simply through the establishment of a military presence but through preventive action by a body specially trained to maintain order and enforce the Migration Act and relevant international agreements.

149. Few issues have sparked such familiar criticism of the country, with regard to human trafficking, as the influx of seasonal labourers to work in the sugar cane industry. Up to 1986, these cane cutters entered the country illegally under a contracting agreement between Haiti and the Dominican Republic and subsequently between Haiti and the Dominican State Sugar Council. They came to cut cane during the harvesting period and returned when it ended. It was a legal activity supervised by international bodies such as the Pan American Health Organization (PAHO), the World Health Organization (WHO) and ILO.

150. When these interstate and institutional agreements lapsed, a new method was introduced: the search for temporary workers through the intermediaries or "scouts" already mentioned. Throughout the 1990s, they supplied the Dominican sugarcane industry with temporary workers at the start of every harvest. These scouts have ceased to operate, however, as they were systematically rooted out and punished by the Dominican Government. By the start of the new century, nothing remained of the intermediaries in the sugarcane industry, which is testimony to the serious and systematic efforts by all branches of the Dominican Government to eliminate any vestige of discrimination and human rights violations in the Dominican Republic.

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33,000 Dominican women abroad are the victims of trafficking. The main destinations are the countries of Western Europe, Argentina, Brazil, Central America and Caribbean, and most of the victims were unmarried mothers lacking education and seeking better living conditions for their children. Within the country, the victims are typically women or adolescents trafficked for sexual exploitation in urban and tourist areas. According to COIN and IOM, the trafficking organizations are typically small groups known to the future women victims through friends and family.

*Repatriation of Haitian nationals*

151. Recognizing that there may have been excesses in the implementation of the Migration Act, the Dominican Government places on record that repatriations of foreign nationals in an irregular situation on national territory were carried out because of their illegal status and not, as has been suggested, on grounds of race or the nationality of those subject to such administrative measures. Under the Migration Act, any foreigner must have proper legal status to remain in the country. So, like any self-respecting state that respects its own laws, the Dominican Republic exercises its rights in the case of any foreigner, irrespective of national origin, who remains on its territory illegally. This right is fundamental and inalienable.

152. However, national sovereignty and the responsibility for fulfilling obligations does not mean that the authorities can repatriate arbitrarily, at a whim, a foreigner who is residing legally or illegally in Dominican territory. Such an action would be irregular, reprehensible and punishable.

153. So, in accordance with the legal statutes of the Dominican State, and interstate agreements between the Haitian and Dominican Republics, the process of repatriating Haitian nationals illegally present on Dominican territory has been properly regulated since 1999. Its implementation by the Migration Department is therefore subject, particularly since 2007, to the following criteria:

(a) The separation of nuclear families, that is, of parents and minors, is to be avoided at all costs, even if it means not carrying out the repatriation;

(b) Individuals are to be given the opportunity to show and submit any migration-related documentation which provides grounds for their stay. Once the validity of the identity card (whether national or foreign, if this is the document presented) has been verified by the Central Elections Board, the repatriation process is immediately suspended. This verification procedure is necessary because of the frequent use of counterfeit identity cards and falsified migration documents;

(c) An opportunity is to be given to demonstrate established family ties in the Dominican Republic, even when those concerned do not have a migration or identity document;

(d) All material goods which individuals can demonstrate they own are to be registered, and the instructions of the owners are to be followed as to whether they wish to leave the goods in Dominican territory or take them with them;

(e) Permission is to be given to make phone calls or notify family members;

(f) A record is to be kept of each individual who is to be repatriated, which includes an identity photo;

(g) Any personal document that has not been falsified is to be returned intact, whether it be an identity card, a work permit, a birth certificate, etc.;

(h) A list is to be sent to the Haitian Embassy with the names of the Haitians to be repatriated so that there will be someone in Haiti to greet them;

(i) Deportations are not to be carried out on holidays or at night;

(j) Migration raids are not to be carried out by the military but rather by clearly identified personnel of the Office of Migration;

(k) Persons who are repatriated are to be transported in buses in accordance with the protocol of 1999;

(l) Raids are not to be carried out in the workplace. Repatriations on Fridays, the traditional pay day, are suspended to prevent secret agreements between employers and individual civil servants enabling the former to avoid paying back wages;

(m) The repatriation of minors caught begging on the streets is categorically prohibited. Rather, they are taken off the streets and returned to their parents or to the authorities who work with children and adolescents.

154. It should be emphasized that the Dominican Republic, like the Committee for the Elimination of Racial Discrimination, is concerned at any flouting and violation within its administrative jurisdiction of human rights in general and, in particular, at all forms of racial discrimination in the context of repatriations. While there may be breaches of the Haitian-Dominican Republic agreement on repatriations in terms of a few procedural details, such breaches—albeit exceptions—are subject to disciplinary sanctions; however, this does not mean that the return of illegals to their countries of origin should be suspended whenever infringements of the immigration provisions of the Dominican Republic occur.<sup>84</sup>

*Equality of access to basic social services*

155. One of the strongest recommendation in the Committee's Report is that the Dominican Republic, eschewing racial prejudice or exclusion, should guarantee "access of migrants of Haitian origin to basic social services", having regard to "the dire living conditions of undocumented Haitian migrants and their children, and their limited access to health services, housing, sanitation, drinking water and education, including university studies."<sup>85</sup>

156. There can be no doubt that the conditions experienced by the migrant population of Haitian origin in Haiti, and those it encounters in the Dominican Republic, are very difficult. The reality is therefore not always encouraging. There are two main reasons for this:

(a) Firstly, as stressed previously, the Dominican Republic, where 10 per cent of its population were living in conditions of extreme poverty in 2009 and 2010 and 34 per cent were below the poverty line, is far from being a promised land for those entering the country illegally and exercising upward pressure on a labour market already suffering from 14 per cent unemployment and 56 per cent informal economic activity;<sup>86</sup>

(b) Secondly, because migrants of Haitian origin in the Dominican Republic are "on an equal footing"<sup>87</sup> with the Dominican population as regards the conditions to which they are subject. We are dealing here with a social phenomenon, not with racism but with poverty and a scarcity of economic resources and public services. Just as they did during the tragic earthquake of 2010, Dominicans in their everyday lives share with the Haitians

<sup>84</sup> It should also be pointed out that the repatriation figures are inflated by the activities of the Special Border Security Force (CESFRONT), which returns undocumented Haitian nationals from border towns, in response to the avalanche of immigrants who cross the frontier every day with the aim of settling or remaining illegally in the country at the end of the market-day visits authorized in some of those towns.

<sup>85</sup> See CERD/C/DOM/C/DOM/12, paras 17 and 18.

<sup>86</sup> See para. 13 above.

<sup>87</sup> International Convention on the Elimination of All Forms of Racial Discrimination; art. 1, para. 1. Enjoyment or exercise on an equal footing, that is, non-exclusion, is the condition *sine qua non* for determining whether or not there is discrimination against a particular group or race. This condition is doubly relevant in the case of the Dominican Republic: first and foremost, nationals and illegals are not on an equal footing and therefore do not enjoy equality of opportunity. Secondly, despite this formal situation, as analysed in the main body of the text, Dominicans and Haitian nationals entering the country voluntarily in an illegal manner live together on an equal footing in sugar plantations, working-class districts and semiurban districts nationwide.

living alongside them, legally and illegally, those same resources—neither more nor less—to which they themselves have access.

157. It would therefore be untrue to say that undocumented Haitian migrants are marginalized. Above all, because a very high percentage of Haitian migrants, those entering and remaining illegally on Dominican soil, do not have the same official status as those living legally in the country. It should thus be stressed, although it is not yet a matter for self-congratulation, that despite the fact that those concerned are not on the same legal footing, they are treated "as if" they enjoyed equal status, in which regard the State party proceeds with greater respect than that required by international agreements. In fact, Dominican nationals, foreigners legally resident and undocumented immigrants of whatever origin share exactly the same services, subject only to the exclusions reflecting their respective purchasing power. A few examples from the health and education sectors should serve to illustrate the point.

*Right to health*

158. No Dominican citizen, irrespective of race and socio-economic status, in the same way as no resident, irrespective of race, socio-economic status and national origin, is excluded on any of these grounds from public health services in the Dominican Republic. All have equal access to the public services provided by Dominican tax payers without distinction of gender, race, wealth, social position, nationality or legal status. No one is turned away or discriminated against when requesting such public services.

159. Act No. 87-01, which established the Dominican Social Security System, guarantees every inhabitant in the country, Dominican or otherwise, proper health care through the following schemes:

(a) A contributory scheme, which includes public and private salaried workers and employers, funded by the workers and employers, including the State as an employer;

(b) A subsidized scheme, which protects self-employed workers with irregular earnings below the national minimum wage, as well as the unemployed, disabled and indigent, funded mainly by the State;

(c) A subsidized contributory scheme, which protects independent professional and technical workers and self-employed workers with average salaries equal to or above the national minimum wage, with contributions from the worker and a State subsidy in lieu of one by an employer.

160. Under this system, any person may apply to the institution where he works to have his social security card processed, or persons who do not work and who cannot afford to meet their medical needs may request their social security card from the office of the Superintendent of Social Security (SISALRIL).

161. The Dominican Social Security System established by this law has seen notable advances. Coverage under the subsidized family health insurance scheme for the poor rose from 65,000 beneficiaries in mid-2004 to 1,531,735 people nationwide by July 2010. Beneficiaries receive medical services, outpatient treatment and surgery free of charge in public hospitals throughout the country; they also receive allowances towards expensive procedures.

162. The contributory family health insurance scheme for public- and private-sector employers and workers, launched as recently as September 2007, covered 2,309,913 wage earners and dependants (over 55 per cent of the target figure) as of July 2010.

163. Finally, there is the case of the unemployed, those who though employed do not contribute because they work in the informal sector and those who, whether employed or



unemployed, are not legally resident. In this connection, the complaint is made that a large majority of the Haitian population in the Dominican Republic do not receive health care because, even if they work, they are exploited because of their illegal status. The lie to these charges is given by the emergency and in-patient wards in Dominican hospitals and by the 23 per cent of the Ministry of Public Health's regular budget<sup>88</sup> that pays for the health services that those concerned seek and receive free of charge.<sup>89</sup>

164. Thus every person, and every worker in particular, irrespective of race, gender and nationality, including those who do not contribute to the social security scheme because they work in the informal sector or are unemployed, receives medical care under the Dominican Republic's Public Health System in any of hospitals under the Ministry of Public Health and Social Welfare or the Dominican Institute of Social Security (IDSS), in the same way as any Dominican of equivalent socio-economic and working status.

165. The right to health care under the Dominican Social Security System is thus inclusive, not discriminatory. The same authorities are responsible for a whole series of initiatives 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, to which 1,500 million Dominican pesos (some US \$45.3 million) are allocated for this purpose annually. These programmes benefit nationals and foreigners equally, on condition that their illness is documented and subject to the availability of scarce resources in a society struggling to pursue its own growth and sustainable development.

166. It is important not to overlook the efforts of the Ministry of Public Health to safeguard the rights of women and HIV-AIDS sufferers whenever underhand attempts are made to subject them to pregnancy and HIV-AIDS testing in the workplace. 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>90</sup>

167. Besides medical insurance, the Dominican Social Security System includes a pension plan. This guarantees that every Dominican or legally resident foreign worker will receive a pension when reaching old age wherever he or she may have been employed; and 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. To date (June 2010), the pension fund, administered by five private and public companies, has reserves of 107,136,485,116.21 pesos (some US\$2,971,885,856.2).<sup>91</sup>

168. To underline the point with an example drawn from national practices, while the sugar plantations are notorious locations in the geography of poverty in the Dominican Republic, the private sugarcane companies, the only ones operating in the country, have responded to the situation created by Act No. 87-01 on illegal immigrants<sup>92</sup> by introducing various alternatives providing health care for its field workers, mainly of Haitian origin.

<sup>88</sup> From 2007 to June 2011.

<sup>89</sup> In the past year alone (2010), the Ministry of Public Health and Social Welfare allocated 576 million pesos (some \$16 million), equivalent to over 13 per cent of its budget, to caring for the Haitian population in the country requiring health care. The most commonly used services include births, caesarean operations, surgery, supply of medicines and in-patient care in state social service centres nationwide. In the frontier area alone, 42 per cent of the consultations carried out benefited foreigners, irrespective of their legal status in the country.

<sup>90</sup> A survey carried out by the NGO Profamilia among 1,000 people living with HIV-AIDS in the country revealed that 43.2 per cent were unemployed and 20 per cent of them attributed the loss of their jobs or source of income to their serological status.

<sup>91</sup> See Dominican Pension System, Quarterly Bulletin No. 28. Office of the Superintendent of Pensions of the Dominican Republic, 30 June 2010.

<sup>92</sup> The main reason is that by not being "legal residents" in the country they find themselves legally

169. The Central Romana possesses a medical centre in La Romana and two medical dispensaries located in its sugarcane camps. The Consorcio Azucarero de Empresas Industriales (CAEI) has contracted with a private insurance company—ARS Universal—to provide free no-limit health cover to its 950 workers and their dependents; in addition, it has 16 primary health-care centres located in its various camp sites. The Consorcio Azucarero Central (CAC) en Barahona continues to subscribe to the Dominican Social Security Institute (IDSS) but without the inclusion of work-related risks or the pension fund.

*Right to education*

170. The situation in education is similar to that in the health sector: namely, Dominicans and foreigners, whether legal or illegal immigrants, enjoy equal access to the free and compulsory education provided by the State. The General Education Act No. 66–97 states that "education is a permanent and inalienable right of human beings" (chap. II, art. 4). Where exclusion in educational access exists, it has to be seen as due to the arbitrary behaviour of individuals and not because of structural discrimination against black Dominicans and/or foreigners or those of Haitian origin. Dominicans and Haitians share the same classrooms, the same teachers and the same learning materials. Given its importance for the exercise of human rights and for the Convention with which this report is concerned, the subject is examined below in greater detail.

171. The Dominican education system is divided into initial, basic and intermediary education, and higher education.

172. The State party is responsible for providing free public education, which is compulsory at the initial, basic and secondary stages. It is provided through the public education system available to all requesting it, without privileges or exclusions.

173. The basic level receives the most resources under the national budget. During the 2010–2011 school year, primary education was allocated 21,111 million pesos (some \$585 million), i.e. 56 per cent of the total allocation. This figure represents 17,886 million pesos (some \$496 million) more than initial education, which receives the least; and 16,822 million pesos (\$466.5 million) more than the investment in 2010 at the intermediate level.

174. The above figures do not include the annual resources invested in scholarships to enable the most deserving students to study at undergraduate and postgraduate level in top universities in America, Europe and Asia. At the end of 2008 and 2009, 2500 students were pursuing university studies, at an average investment of 12,500 per student. The figure in question also excludes the series of projects that the Government carries out with funds deriving from international or bilateral cooperation,<sup>93</sup> as well as the national scholarship fund that the Government and Dominican universities allocate to cover the costs of over 14,000 Haitians studying in the country, who are supported through these funds as if they were Dominicans.<sup>94</sup>

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excluded from the Dominican Social Security System established by Act No. 87–01. Prior to the implementation of this law, in 2001, illegal immigrants were registered in the Dominican Social Security Institute (IDSS) and 2.5 per cent of their salaries was withheld as a contribution towards receiving care in the dispensaries and health centres in case of work accidents or other needs of the workers and their families.

<sup>93</sup> A notable example among many others is the US\$42 million initial education project with the World Bank and the US\$25 million Youth Development Project.

<sup>94</sup> This figure alone relativizes the concern of the Committee on the Elimination of Racial Discrimination when it states that the population of Haitian origin does not have access to university (see CERD/C/DOM/CO/12, para. 18).

175. Over 2.5 million children attend the country's 6800 state schools. In the 2009–2010 school year, the enrolment figures in the free public sector totalled 2,672,089: 241,899 students at the initial level; 1,694,268 at the four-year basic level; 549,645 at the intermediate level; and 186,283 in adult education.<sup>95</sup> In addition to these students enrolled in state schools, some 1 million more attend private educational establishments.

176. With regard to the composition of enrolments by gender, the differences between males and females are not significant by entry quintile. The largest inequalities are to be found between rural and urban areas and between the poor in urban areas and the rest of the population in those same areas, but there is no study or at least no complaint alleging racial discrimination.<sup>96</sup>

177. In this context, the great challenge facing all branches of education in the country, particularly basic education, is to improve system quality, in terms of management, contents and educational outcomes. Quality is what determines the knowledge, values and skills of students—whether Dominican or not, irrespective of race or socio-economic status—for whom education is free if they opt for state institutions. In practice, while the country possesses the second highest enrolment rate in Latin America, namely 91.1 per cent for students between the ages of 6 and 18, and has had a gross enrolment rate of 83.7 per cent for the last year of preschool education, 104 per cent for primary education and 71 per cent for secondary education, it is ranked 133rd out of 139 countries worldwide in terms of the quality of its educational system, as evaluated by the World Economic Forum's Global Competitiveness Index for 2010, and its achievement in mathematics and sciences is rated 136th out of 139 countries.<sup>97</sup>

178. Despite this major challenge, the State party is systematically concerned with ensuring that the education received complies in all respects with the principles of non-discrimination. The Ministry of Education has therefore adopted standards and guidelines to be included in the courses at the higher institutes of education for the training of teachers and other professionals operating in the school environment. These standards provide the

<sup>95</sup> The rate of school attendance showed a significant increase between 2007 and 2009 in almost all age groups: the rate in the school year 2008–2009 stood at 78 per cent for the 5-year-old population; 90 per cent for six-year-olds; 100 per cent for seven-year-olds; 100 per cent for eight-year-olds; 100 per cent for nine-year-olds; 100 per cent for ten-year-olds; 100 per cent for eleven-year-olds; 97 per cent for twelve-year-olds; 98 per cent for thirteen-year-olds; and, more modestly, 91 per cent for fourteen-year-olds; 88 per cent for fifteen-year-olds; 84 per cent for sixteen-year-olds and 70 per cent for seventeen-year-olds. For further statistical information and the historical background, see [www.see.gob.do/portalSEE/index.htm](http://www.see.gob.do/portalSEE/index.htm).

<sup>96</sup> According to past studies financed by the Inter-American Development Bank in 2003 (Centre for Social and Demographic Studies: Demographic and Health Survey), while 25 per cent of heads of households in rural areas have not had primary education, the same is true of only 11 per cent of homes in urban areas. There is also a marked contrast in the urban population, where 23 per cent of heads of households in the poorest quintile never attended primary school, compared with 3.8 per cent of heads of households in the wealthiest quintile. The illiteracy rate for women over 15 was 12.2 per cent. Nationally, in rural areas, the gap favours women aged between 20 and 25, and there is also an advantage for the 15 to 19 age group, while in urban areas progress towards equality is observed only in the 20 to 24 age group.

<sup>97</sup> The Dominican Republic made great progress in the 1990s regarding access. Between 1991–1992 and 2001–2002, the gross enrolment rate in the first cycle of basic education (grades 1 to 4) increased by 91 per cent to 138 per cent and the gross enrolment rate for the second cycle (grades 5 to 8) increased by 42 per cent to 90 per cent. The increase in the same period was much greater at the intermediate level: from 23 per cent to 62 per cent. This increase was due not only to the large number of students coming from basic education but also to the reduction in dropout and the return of mature students to complete intermediate education. In a report for the IDB, Álvarez (2004) refers to policies to increase educational flexibility and promote the reintegration of students in schools as the main explanation for the increase in access (*Source: OECD, Reviews of National Policies for Education—Dominican Republic, 2008*).

basis for an education encompassing an ethical, democratic, humanistic, critical and equitable perspective, geared to a vision of greater understanding, tolerance and friendship between the groups making up the educational community.

179. In addition, under Ordinance No. 6-2003, the Ministry of Education has adopted a series of measures to evaluate and review learning resources aimed at avoiding the dissemination of expressions and images embodying references that distort human dignity, and it consequently does not approve any book that promotes discrimination and disregard for human rights. Chap. III, art. 10, subparas (e), (j) and (i), specify teaching content with regard to gender and vocabulary, including: (a) adaptability and attention to diversity: that is, the degree to which the printed word is adaptable to the context in which it will be used (b) non-discrimination: expression of the equality of rights without discrimination in terms of sex, belief, disability, social class, ethnic origin or race; and (c) language: nonsexist, vocabulary appropriate to the level for which it is intended, correct spelling, agreement of gender and number. Ordinance 3-99 of August 2000 includes contents by grade that refer to equality and human rights, including companionship and solidarity, respect for dignity and tolerance and promotion of human rights.<sup>98</sup>

180. The curriculum corresponding in broad terms to the second cycle of intermediate education is conceived as a basis for students entering higher education. However, many of these students do not proceed to the higher level.

181. It is estimated that only 17 per cent of the population of the country aged 18 to 24 go on to higher education, a percentage comparable to the majority of Latin American and Caribbean countries, where it ranges from 14 per cent to 33 per cent, except in countries like Argentina, Uruguay and Chile.

182. The authorities are currently analysing how to overcome these disadvantages, through projects ranging from the opening of more community technical schools to the provision of more training courses by the National Institute of Technical and Vocational Training (INFOTEP)<sup>99</sup>.

183. We arrive finally at the key question in this accountability exercise by the Dominican Republic: Is it correct to say, believe or insinuate that this country discriminates against migrants of Haitian origin by denying them equal access to education? The correct response must be a double negative.

184. Negative firstly since there is no trace or evidence of racial or other kind of discrimination in the Dominican public education system, where all are admitted without regard to anything but the ability to progress to its different grades and levels and where even the contents are supervised to avoid any element of discrimination.<sup>100</sup>

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<sup>98</sup> It should also be mentioned, as regards elements to be included in textbooks and in chapters on the history and culture of groups protected by the Vienna Convention, that account should be taken of the provisions of Ordinance No. 6-2003, regarding: adaptability or attention to diversity: degree to which the printed work is adaptable to the context in which it will be used. Moreover, the texts on moral and civic education contain units and chapters treating the topic of human rights and emphasising that all people are free and equal. Reference here is to the revised contents of various textbooks on moral and civic education containing units and chapters dealing with the topic. As to the evaluation of educational software, it should ensure that the vocabulary and terminology is appropriate to the cultural level of the user (Ordinance No. 6-2003, p. 25). With regard to educational videos, the aspects to be taken into account include promotion of the equality and plurality of races and cultures, promotion of equality between human beings and recognition of the dignity of individuals (Ordinance No. 6-2003, p. 31).

<sup>99</sup> See paras 75 and 76 above.

<sup>100</sup> Chap. III of Ordinance 6-2003 on learning resources, under art. 10, subparas (e), (j) and (i), describes what printed matter should take into account in terms of gender and vocabulary: namely, adaptability

185. Negative, secondly, since there is no discrimination, not even towards undocumented minors.

186. True, there is great concern about undocumented minors—whether Dominican or foreign—who, since they lack proper identity documents, should in principle not be allowed to attend school. However, so as not to deprive them of their right to education, from the start of the academic year 2002–2003 the Ministry of Education ruled that the children concerned could enroll in the first cycle of basic education without the proper identity papers, in the hope that their situation would be regularized within a reasonable period.<sup>101</sup> Subsequently, in 2008, it authorized even those cases lacking proper identity documents to enter and complete the second cycle. In this way, all nationals and foreigners, documented or undocumented, have access free of charge to all the education facilities provided by the Dominican State.

187. To overcome the problem of undocumented children, an agreement exists between the Ministry of Education and the body responsible for official documents, the Central Electoral Board, designed to put an end to this situation. The Ministry identifies undeclared youngsters and the Board, as the body responsible for the Civil Registry, facilitates the process by providing parents with a birth certificate for each student. According to sources in the School Supervision Department, 31,979 children and adolescents in schools in the different regional departments were identified between September and December of the 2008–2009 academic year as not having birth certificates, and 21,152 or 66.14 per cent of them were provided with one by the end of the academic year.

188. At the same time as these opportunities were granted, various measures were introduced to attract children, Dominicans or otherwise, to the classroom and prevent them being diverted from a proper education by some form of child labour.

189. Concerning child protection, it must be stated unequivocally that the Dominican Republic pursues a policy of zero tolerance with regard to child labour, whatever violations may be cited, and that this policy is backed by both the public<sup>102</sup> and private sectors.<sup>103</sup>

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and attention to diversity: degree to which the printed work is adaptable to the context in which it is will be used; nondiscrimination: expression of the equality of rights without discrimination with regard to sex, belief, disability, social class, ethnic origin or race; and language: nonsexist, vocabulary appropriate to the level for which it is intended, appropriate spelling, agreement of gender and number. As to the evaluation of educational software, it should take into account images and illustrations that: promote the equality and plurality of races and cultures; promote gender; recognize the equality of human beings and exclude images of violence, racial, cultural or gender discrimination (except in cases where a critical approach is adopted).

<sup>101</sup> See above paras 41 et seq.

<sup>102</sup> To counteract and stamp out this undesirable practice, the National Steering Committee to Combat Child Labour, chaired by the Ministry of Labour, has 31 municipal committees 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. 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. 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, trade union and employers organizations, the Ministry of Labour has continued to cooperate with the ILO International Programme on the Elimination of Child Labour (IPEC).

<sup>103</sup> 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. 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

190. Besides the efforts made by the Ministry of Education itself to improve coverage, prevent dropout and improve teaching quality, the Social Cabinet of the Dominican Government has introduced a programme of subsidies for needy families in exchange for acceptance that their school-age children will attend school and leave jobs. In 2009, the "school subsidy" programme benefited more than 218,000 families, on condition that the children in those families attended over 85 per cent of their classes. These programmes do not differentiate between nationals and non-nationals and are distributed between the various state-run schools for the benefit of the pupils enrolled there.

191. In this way, in terms of both health and education, the Dominican Republic is ensuring, free access to the relevant services, irrespective of quality, to all those living in the corresponding areas without introducing exclusions or inequalities between nationals and foreigners or between documented and undocumented children and without regard to socio-economic status, race or nationality.

#### *Housing*

192. The above rights are similarly applicable in the case of housing. The Constitution establishes the right to housing (art. 59), granting everyone the right to decent housing with essential basic services. However, this right is also conditional upon national supply and the socioeconomic status of each individual.

193. According to data from studies carried out in the housing sector, it has been estimated that the population resident in the country, including Dominicans and foreigners, shows an accumulated shortage of between 500,000 to 800,000 homes,<sup>104</sup> over 70 per cent in high-risk areas subject to hurricanes and tropical storms. This deficit negatively affects some 650,000 families, and it is thought that some 50,000 to 55,000 housing units need to be built annually.

194. With regard to the Convention, the significant fact is that no foreign group, whether of Haitian or other nationality, or members of any particular racial group in the Dominican Republic is isolated, confined or segregated in exclusive residential zones, cut off from free commerce with the Dominican population or other national groups. On the contrary, all without exception live on an equal footing in the Dominican Republic, interacting and mixing with the Dominican population and other nationalities.<sup>105</sup>

#### *Free access to public places*

195. A visit to any part of the country, urban or rural, will show that there is no discrimination of any kind regarding access to public places.

196. It should however be pointed out that cases were reported in 2007 and 2008 of private night clubs (discotheques) that, reserving the right of entry, refused access to Black Dominicans and foreigners. Once the fact had been reported, the authorities took the cases to court under article 336 of the Criminal Code (and subsequent articles) and today some of these places remain closed.

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(Dominican Institute for All-Round Development). Currently, a road map is being implemented to free the Dominican Republic of child labour, including its worst forms, under six headings: (a) combating poverty and child labour; (b) health policy and child labour; (c) educational policy and child labour; (d) legislative and institutional framework for the comprehensive protection of rights; (e) social awareness and mobilization; (f) knowledge generation and mechanisms for monitoring policies to combat child labour including its worst forms.

<sup>104</sup> The greatest need is found in the southern part of the country, in the provinces of Pedernales, Barahona, San Juan de la Maguana and Jimaní; and in the Metropolitan area of Santo Domingo.

<sup>105</sup> Concerning the well-known case of the sugarcane plantations, see paras 69 et seq.

197. On the basis of a few isolated and exceptional cases, it is not however possible to identify or generalize about racial discrimination as a common problem in the Dominican Republic. In fact and in law, the right of access to all public places and services, including transport, hotels, restaurants, cafes, spectacles, recreation centres and parks, is guaranteed in the everyday life of inhabitants of the Dominican Republic.

*Participation in cultural activities*

198. As in the political life of the nation and in public activities, the Dominican Constitution and Government authorities guarantee full participation by all in cultural activities. To date, there has been no report of any incident or formal complaint involving racial discrimination.

199. Moreover, discrimination of this kind is not possible, since the Dominican nation is a multiracial and multicultural society. Hence the authorities remain committed to guarantee the right of all to participate in cultural activities and development and to preserve and promote their tangible and intangible heritage, the product of a history full of interactions between highly diverse cultural groups—Indians, Africans, Europeans, Asians and Americans. These traits and circumstances have made the right to culture the shared heritage of all.<sup>106</sup>

## **F. Artículo 6**

200. In compliance with this article, the Dominican State will assure to everyone within its jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any act of discrimination. Provision to this effect is made in its Constitution and its legal practice. An example is to be found in the previously highlighted case of undocumented foreign workers having access to justice (paras 91 to 94 above).

201. Hence any violation of the human rights and fundamental freedoms of an individual or group can be examined in the labour courts or other tribunals where just and adequate reparation or satisfaction can be sought for any damage suffered as a result of such discrimination.

## **G. Artículo 7**

202. As a State party, the Dominican Republic is committed to adopting immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting

<sup>106</sup> The relevant legislative provisions include: Organization Act No. 41–00 establishing the Office of the Secretary of State for Culture; Act No. 65–00 on copyright and its enabling regulations (No. 362–01); Act No. 502–08 on books and libraries; General Act No. 481–08 on the archives of the Dominican Republic, and Act No. 122–05 on the regulation and promotion of not-for-profit institutions. The following preliminary draft bills have also been prepared over the last four years: General Law on the Cinema, Law on the National Tangible and Intangible Cultural Heritage, Law on Handicrafts of the Dominican Republic, and an article 53 on cultural rights has been included in the Constitution. The Dominican Republic has also acceded to the following international instruments: Convention for the Safeguarding of the Intangible Cultural Heritage, dated 11 September 2006, by Decision No. 309–06 of the Congress of the Dominican Republic, dated 14 March 2006; the Ibero-American Cultural Charter of the Organization of American States (OAS)—2005; the Santo Domingo Decision, 2006. Group of African, Caribbean and Pacific States (ACP); the Cartagena Declaration; and the International Covenant on Civil and Political Rights.

understanding, tolerance and friendship among nations and the various racial or ethnical groups in and outside its territory.

203. This commitment is manifest not only in its adherence to the aims and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention but also in its own Constitution (art. 39), the legal system underpinning it and the corresponding updating of the various services it provides on an equal basis to all communities in the Dominican nation.<sup>107</sup>

## **IV. Follow-up to the concerns and recommendations of the Committee**

### **A. Introduction**

204. This periodic report takes into account the Committee's concluding observations on the ninth to twelfth periodic reports of the Dominican Republic.<sup>108</sup> The Committee's main observations in the relevant document are summarized below, followed by a statement of the Dominican authorities' position in that regard.

### **B. Follow-up to the concluding observations**

#### **1. Follow-up to paragraph 8**

205. The Committee expresses its concern "that, in paragraph 67 of its report, the State party, when describing the composition of the population of the Dominican Republic, uses the expressions "racial purity" and "genetic characteristics" of different ethnic groups, which could lead to an erroneous interpretation of the State party's policies."

206. Having taken note of this concern, the Dominican State reaffirms that the language employed, while it could rightly be considered equivocal, is in no way or circumstance the expression of a discriminatory policy by the Dominican Republic, as reflected in this report (paras 30 to 34) and in the letter of the Constitution of the Republic.

207. In the same paragraph, the Committee "reminds the State party that it is an obligation under article 2 (d) of the Convention to prohibit and bring to an end, by all appropriate means, including legislation, racial discrimination by any persons, group or organizations". With regard to this very requirement, the Dominican Republic in 2010 incorporated in its Constitution a provision excluding any form of discrimination, updated its legislation (paras 26 to 29) and unconditionally rejects any form of discrimination as part of state policy (para 30). An example is the way in which the Dominican Republic complies with articles 2 and 3 of the Convention and provisions on the equality of all and the equal access of all to justice (see above paras 35 et seq., 61 et seq. and 91 to 94).

#### **2. Follow-up to paragraph 9 and 11**

208. The Committee recommended "that the State party adopt comprehensive legislation prohibiting discrimination on the grounds of race, colour, descent or national or ethnic

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<sup>107</sup> With regard to civil rights, see paras 107 et seq.; and to enjoyment of public services, paras 157 et seq.

<sup>108</sup> CERD/C/DOM/CO/12.



origin" and that the Criminal Code take the provisions of the Constitution fully into consideration.<sup>109</sup>

209. The present report by the Dominican Republic shows (paras 18 to 29) that not only does the 2010 Constitution unequivocally uphold human rights and non-discrimination but articles 336, 336-1 and 336 of the Criminal Code condemn any form of discrimination understood as a distinction, including with the imposition of long terms of imprisonment, and that article 11 of the Code of Criminal Procedure guarantees equal treatment before the law.

### **3. Follow-up to paragraph 10**

210. Concerning the "envisaged establishment of a national human rights institution, in accordance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights", it must be repeated that the Dominican Republic has an Inter-Agency Commission on Human Rights that was established by Presidential Decree and complies with the Vienna Declaration and Programme of Action.

### **4. Follow-up to paragraph 12**

211. One of the concerns expressed by the Committee involves "reports of racial discrimination in access to places or services and facilities to the general public, including leisure facilities". In response to this concern, the State party reiterates that a visit to any part of the country, urban or rural, will show that there is no discrimination of any kind as regards access to public places. There is no opposition anywhere to freedom of entry and, on the limited occasions on which this rule has not been respected, appropriate measures have been taken in keeping with domestic legal provisions to overcome these drawbacks and irregularities under article 336 et seq. of the Criminal Code.

### **5. Follow-up to paragraph 13**

212. The Dominican authorities have paid close attention to the Committee's many recommendations in its report, in which it expresses its concern at "information received according to which migrants of Haitian origin, whether documented or undocumented, are allegedly detained and subject to collective deportations ("repatriations") to Haiti without any guarantee of due process;" calls on the State party to ensure that "laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin;" and when it claims that the State party should "avoid the expulsion of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life"

213. As already stated (paras 152 et seq.), the Dominican Republic, without renouncing its sovereignty in the matter, exercises its right in compliance with the existing protocol between the Haitian and Dominican Republics concerning these cases. Any excessive zeal by any official in the performance of his duties, or any abuse of authority in relation to any illegal foreigner, is punishable according to each particular case by administrative or criminal sanctions.

214. With regard to the Migration Act No. 285-04 and the expectations and concerns of the Committee, the State party has definitively adopted the legally foreseen Regulations in this regard.

<sup>109</sup> See, paras 9 and 11.

215. Under these Regulation, foreign workers hired by national firms will be issued with an identity card by the Office of Migration. Article 73 of the Regulations provides that this Government body will indicate the entry points for temporary workers, while article 74 empowers the Ministry of Public Health to introduce the relevant health checks for the workers admitted, prior to their transfer to the place of work

216. It provides among other things that the employer responsible should transport the hired workers from the check point to the place of work. The same condition applies to repatriation.

217. With regard to deportation, the regulation in question provides that the Dominican Government may expel a foreigner from the country for breach of the law, on the premise that his return will be subject to special authorization. "The alien subject to deportation shall be liable personally or through the insurance or guarantor company for the expenses incurred by the Migration Department" (art. 137). When the alien is interviewed, the fact will be noted on a form, and if the person admits to any charge that would render him liable to deportation, a memorandum to that effect will be drawn up and signed by the migration inspector, and the alien where possible. Detention will never be used in cases involving minors, pregnant or nursing mothers, the elderly and asylum seekers.

218. In compliance with the Migration Law and Regulations, a databank will be created to provide for an exchange of documents between the Migration Department and the Ministry of the Interior and Policing on foreigners living in the country. Administrative measures will also be taken to facilitate and display the granting of residence to foreign investors, including in the category of permanent residents. In this case, the foreigners must invest a minimum of \$200,000 in the country.

219. The procedures for the regularization of undocumented residents are covered in the Regulations, in accordance with the legal provisions governing residence and naturalization in the country.

220. The document also provides for the creation of the National School of Migration, which will be responsible for training inspectors to carry out checks. Once trained, the inspectors will have the rank of migration officer. It is important in this context that there should be appropriate regulatory documents conducive to respect for the law and the human rights of all immigrants in the country.

## **6. Follow-up to paragraphs 14 and 15**

221. The concerns expressed by the Committee in paragraphs 14 to 16 of its concluding observations<sup>110</sup> are substantial, but so also, unless it is claimed that the State party should abdicate its sovereignty and its own legal statutes, is the need to discover the truth of the facts. In this regard, the Dominican Republic is obliged to study, in fact and in law, one by one, the procedures accompanying each certificate issued by the Central Electoral Board as the body responsible for the Civil Registry.

222. This report (see paras 39 to 52 above) has set out in detail the various administrative measures adopted by the Central Electoral Board to ensure that each community, Dominican or not, has the right to recognition of its nationality and to reliable and verifiable documents. This concern and commitment to transparency even extends to

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<sup>110</sup> Concerning discrimination against Haitians and their descendants whenever their Dominican documents are confiscated or withdrawn on grounds of race and/or nationality; and also as a result of the various administrative obstacles placed in the way of infants and young children of Haitian citizens born in the Dominican Republic to avoid granting them Dominican nationality. See CERD/C/DOM/CO/12.

providing provisional documents to those persons whose documents are being investigated with regard to their legality, in accordance with Circular 32/2011.

**7. Follow-up to paragraph 16**

223. Along the same lines as in the previous paragraph, the Committee expressed its concern at "reports alleging that Dominicans of Haitian descent, who are holders of a birth certificate, identity cards and electoral identity documents have had their identity documents confiscated and destroyed, or have been denied copies of these documents on the grounds of their ethnic origin."

224. It is clear that this information is not correct and, for the sake of hypothetical argument, even if it were, then those responsible for this abnormal behaviour would be acting illegally and reprehensibly since such discriminatory procedure, which violates one of the most basic human rights, is not state policy and is not accepted by the State party.

225. By way of refutation, this report by the Dominican Republic, in response to the concerns expressed by the Committee, has clarified and provided statistical data on the work carried out by the Central Electoral Board, aimed solely at screening the civil registry for which it is responsible so as to avoid the falsification of documents and identities (see paras 49 to 52 above).

**8. Follow-up to paragraph 17**

226. The Dominican Republic is gratified at the satisfaction expressed by the Committee in "welcoming the efforts of the State party to combat human trafficking for purposes of economic exploitation" and trusts that the information set out in the present periodic report (paras 71, 74, and 136 et seq.) illustrates the policies, programmes and resources aimed at ensuring that requests for labour in the sugar, tourist and construction industries do not favour and further human trafficking and trafficking in undocumented persons, thereby compromising the national commitment to banishing any form of discrimination on Dominican soil.

**9. Follow-up to paragraph 18**

227. One of the Committee's strongest concerns relates to a series of "reports received regarding the dire living conditions of undocumented Haitian migrants."<sup>111</sup>

228. For the Committee, as for many international organizations, social scientists and national and foreign journalists, the most critical situation is that found in the sugar plantations, regarded as prototypes of overexploitation and discrimination, so that any statement of defence by the Dominican Republic is said to be contradicted by the mere existence of these settlements. The supposed segregation, mainly of the Haitian population confined in sugar mill work camps, is seen as the tropical manifestation of South African apartheid or, earlier, Nazi ghettos.

229. The reality, however, is quite different from these abominable examples of segregation and bears no relation to such historical precedents, as explained at length in this report (para. 64 et seq.).

230. The paragraphs concerned clarify the conditions under which Haitian nationals enter and remain in the Dominican Republic. They also detail the findings of the most recent studies carried out independently and the progress made by private firms in a context of sustainability and corporate social responsibility. It can thus be verified, in principle and in

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<sup>111</sup> *Ibid.*, para 18.

practice, that the Dominican Republic is actively opposed to any form of abuse of workers and immigrants, irrespective of their race, nationality and legal or socio-economic status.

231. The same paragraph in the Committee's document also expresses concern at the Haitian migrants' "limited access to health services, housing, sanitation, drinking water and education, including university studies."

232. While it is true that opportunities, services and resources in the country are limited, this does not mean that migrants are denied access to them. As has been explained in detail, the Haitian population in the country, irrespective of its illegal status and other considerations, enjoy the same access as nationals and other foreigners (see paras 157 to 196).

233. It must be clearly and unequivocally stated that—despite the fact that the Dominican Republic has to contend with an influx of immigrants equivalent to 12 per cent of Dominican nationals, and that over 10 per cent of the national population is living in a state of extreme poverty and up to 34 per cent below the poverty line, with 14 per cent unemployment and 56 per cent working in the informal economy<sup>112</sup>—the conditions experienced by migrants of Haitian origin place them "on an equal footing"<sup>113</sup> with the Dominican population. Rather than speaking of racial discrimination in the access to and enjoyment of health, education, housing and other services, emphasis should be placed on the scarcity and poverty governing the distribution of resources in a free-market economy within a modern state, such as the State party, subject to the rule of law.

#### **10. Follow-up to paragraph 19**

234. The Dominican authorities share the concern expressed by the Committee,<sup>114</sup> inasmuch as isolated cases are known to exist of dark-skinned Dominicans suffering discrimination in various sectors of the country, such as sugar cane plantations, free-trade zones, the construction sector and, more generally, the informal sector of the economy. This practice does not represent a state policy of racial discrimination and is tending to be eliminated by the Dominican authorities, as explained previously (paras 91 et seq.). This is why the Dominican Republic, conscious of its obligations under the Convention with regard to racial discrimination, played an active part in the Durban Review Conference, held from 17 to 19 June 2008 in Brazil, where the Dominican authorities submitted a response to a questionnaire on the topic of racial discrimination and xenophobia and described the measures carried out in that regard.

#### **11. Follow-up to paragraph 20**

235. Without regard to the source of the information, one of the most frequent concerns with respect to racial discrimination is that expressed by the Committee when it refers to cases not being prosecuted in the Republic's courts because of the absence of complaints and/or lack of public awareness of this kind of abuse. However, the factual data provided throughout this report by the Dominican Republic (for example, in paras 137 to 144

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<sup>112</sup> See above para 13.

<sup>113</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, para. 1. Enjoyment or exercise on an equal footing, that is, non-exclusion, is the *sine qua non* for determining whether or not there has been discrimination against a particular race or group. This condition is doubly relevant in the case of Dominican Republic: above all there is no exercise on an equal footing and therefore no enjoyment of opportunities between nationals and illegal migrants. Secondly, despite this formal situation, as analysed in the main body of the text, Dominicans and Haitian nationals voluntarily entering the country illegally live together on an equal footing in sugar plantations, working-class neighbourhoods, sites and semi-urban districts throughout the country.

<sup>114</sup> See CERD/C/DOM/CO/12, paras 19 and 20.

and 147) places these concerns in perspective and refutes any allegation of indifference, not to say complicity, on the part of the Dominican authorities in these cases.

**12. Follow-up to paragraph 21**

236. One of the concerns of the Committee refers to the need to raise awareness of the provisions and rights furthering non-discrimination in the country. However, as noted in this report (paras 86 and 87, among others), regular discussion and publicizing of those rights takes place in the Dominican and international media circulating freely in electronic and printed form throughout the country .

237. Complaints, prosecutions, awareness campaign and human rights training follow upon any incident reported as being an expression of racism, xenophobia and intolerance injurious to the rights of the immigrant or any other citizen.

**V. Conclusion**

238. The Dominican Republic is not the land of opportunity to which people aspire, but neither is it a place of exclusion and discrimination as some allege. The process of democratic transition begun with the death of the dictator Trujillo in 1961 has reached the stage where all civil procedures are becoming institutionalized.

239. This brings with it two main challenges: first, making available to all, equally, despite economic difficulties, improved opportunities and services in urban, rural and semi-urban areas, irrespective of gender, nationality, race, age, belief or other factors; second, checking and regulating the steady influx of undocumented immigrant workers in order to cope with the socio-economic, institutional and cultural burden on the Dominican nation imposed by an immigrant population already representing slightly over 12 per cent of the total population; and to do so while observing strict respect for the human rights of all those present in the country.

240. Taken together, the achievements of recent decades, which find reflection in the Constitution of 2010, show that progress in overcoming discriminatory obstacles depends directly on the active commitment of the Government and civil society to safeguarding and promoting fundamental rights

241. The Dominican Republic is therefore formally committed to continue receiving the recommendations of relevant bodies such as the Committee for the Elimination of Racial Discrimination, to learning about best practices internationally and to pursuing the path of faithful and unrestricted compliance with all its national and international human rights commitments, through their observance and enforcement.

242. The Dominican Republic thus attaches special importance to this reporting process and thanks the Committee for its sustained interest in the performance in this regard of the Dominican Republic.