

## DOMINICAN REPUBLIC

### CCPR A/40/40 (1985)

382. The Committee considered the initial report of the Dominican Republic (CCPR/C/6/Add.10) at its 577<sup>th</sup>, 578<sup>th</sup>, 581<sup>st</sup> and 582<sup>nd</sup> meetings, held on 27 and 29 March 1985 (CCPR/C/SR.577, 578, 581 and 582).

383. The report was introduced by the representative of the State party who expressed his Government's regret for the long delay in submitting the report and assured the Committee of his Government's readiness to co-operate.

384. The representative stated that since the end of the dictatorial régime, 25 years previously, his country had been committed to democracy and the rule of law. Since 1978, when the Partido Democrático Revolucionario assumed power, the protection of human rights had formed an integral part of his country's official policy. The Dominican Republic had promulgated a general amnesty law and promptly ratified the International Covenant on Civil and Political Rights and its Optional Protocol and had taken a number of measures to bring legislation into line with the provisions of the Covenant, including the removal of restrictions on travel to certain countries, restoring the full rights of certain political parties, including the Communist party, and establishing a presidential office for the promotion and protection of human rights. As a further token of its attachment to human rights, the Dominican Republic had been among the first States, in February 1985, to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

385. Members of the Committee welcomed the additional information provided by the representative of the State party which, in their view, had helped to supplement, to some extent, a report that was inadequate and dealt almost exclusively with constitutional provisions rather than also addressing relevant laws and practices designed to ensure the enjoyment of the rights set out in the Covenant. They expressed particular interest in learning more about how the changes since 1978 and the current economic and debt problems had affected the enjoyment of human rights.

386. Referring to article 1 of the Covenant, members sought information on the position of the Dominican Republic regarding the crisis in Central America, the practice of apartheid in South Africa and the right to self-determination of the peoples of Palestine, Namibia, Democratic Kampuchea and Afghanistan.

387. Regarding article 2 of the Covenant, members asked whether the provisions of the Covenant had direct effect in the Dominican Republic or whether further legislation was needed to bring them into effect. If the former, it was asked whether the Covenant's provisions could be directly invoked before the courts. It was further inquired whether a system existed for harmonizing legislation that pre-dated both the Constitution and the Covenant. Questions were also asked about the publicity accorded to the Covenant, whether the Covenant was easily accessible to the public, whether instruction on human rights issues was provided in schools and universities and whether the general public was aware that the report was considered by the Committee. In addition, members asked

what the activities to celebrate Human Rights Day comprised and whether activities designed to make the population aware of human rights problems were included.

388. In connection with article 3 of the Covenant, one member requested information about laws and regulations ensuring the quality of rights of men and women in the Dominican Republic, the number of girls attending primary school and university and the number of women doctors and lawyers.

389. With regard to article 4 of the Covenant, it was asked what powers the Government had in a state of emergency, whether a state of emergency had ever been declared and, if so, whether such a declaration had been in conformity with the provisions of article 4 of the Covenant. In the same connection, it was asked whether an individual detained during a public emergency could avail himself of a writ of habeas corpus.

390. Regarding article 6 of the Covenant, members expressed concern about the disappearance of persons in the Dominican Republic and asked what the Government had done to investigate such cases, including several specific cases to which members of the Committee referred. They also inquired about certain recent incidents where the use of excessive force by police had led to death and injury and asked whether such incidents had been investigated with what results, and whether conditions imposed by the International Monetary Fund had caused these incidents. In addition, members asked for information regarding the regulations in force with respect to the use of firearms by security forces.

391. One member asked for additional information about population growth rates and infant mortality rates and whether or not abortion was legalized.

392. With regard to article 8 of the Covenant, members of the Committee referred to reports alleging that illegal migrant workers from Haiti had been forcibly transported to several sugar plantations and kept working against their will. Further information was requested about that matter, particularly as to whether the Government had put a stop to any such treatment.

393. Commenting on article 9 of the Covenant and the reported practice in the Dominican Republic of arbitrary arrest and preventive detention, members asked whether illegal practices of that kind, if they took place, had been halted and what remedies were available to victims of such practices - could they, for example, directly invoke article 8, section 2 (c), of the Constitution to obtain immediate discharge from custody or could they resort to habeas corpus? Members also asked whether such persons could apply for compensation, as provided in article 9, paragraph 5, of the Covenant. It was also asked what progress had been achieved in reducing the length of pre-trial detention.

394. Referring to article 10 of the Covenant, members asked for additional information about steps the Government had taken to ensure that the conditions of and rules for the treatment of prisoners were in conformity with international standards, whether law enforcement authorities had received adequate guidance concerning the United Nations Standard Minimum Rules for the Treatment of Prisoners and whether any difficulties had been encountered in implementing the Regulation (No. 7083) governing the organization and operation of public prisons.

395. In connection with articles 12 and 13 of the Covenant and with reference to the constitutional principle regarding freedom of movement cited in the report, members asked for additional clarification about the actual extent of permissible restrictions on the freedom of movement. Regarding the question of nationality, members inquired about the relevant laws governing the nationality of illegitimate children born in the Dominican Republic to accredited diplomatic representatives or to other aliens and whether any bilateral agreement had been concluded with other countries on the question of duality nationality. It was also asked whether aliens whose expulsion from the country had been ordered could appeal such decisions under any established procedure. In connection with the situation of Haitian refugees living in the Dominican Republic, it was asked whether the Dominican Government had made representations to the Government of Haiti concerning the forcible repatriation of refugees by Haitian agents.

396. In connection with article 14 of the Covenant, members asked for additional details concerning the judiciary system, including the tenure, dismissal and disciplining of members of the judiciary; whether the practice of election of judges by the Senate was adequate in ensuring judicial independence; whether there were any social or financial restrictions limiting access to the legal profession; how the court system was organized for the effective protection of human rights and what competence courts had in respect of administrative, social and labour matters; whether a legal aid system existed to assist persons who could not afford to pay legal costs; and whether any judges appointed during the era of the dictatorship were still serving. One member asked whether the establishment of an office of ombudsman or defensor del pueblo had ever been considered by the Government as a means of improving the administration of justice, particularly in rural areas or for foreign workers. Another member noted that the Committee had adopted a general comment dealing with the scope of article 14 (general comment 13 (21)) and suggested that the Government consider that general comment in preparing its next periodic report.

397. With reference to article 17 of the Covenant, information was requested on the actual application of the constitutional principle of the inviolability of the home. In particular, it was asked what the statute on police powers provided regarding permissible house searches.

398. In connection with article 19 of the Covenant, members asked whether a licence or other form of government approval was required to establish a newspaper, whether newspaper closures ordered by the Government could be challenged in the courts and, if so, under what procedure, whether broadcasts from mobile reporting units were still banned and, if so, why; whether any radio station had been closed since the ratification of the Covenant, whether the entry of foreign publications into the country was controlled by the Government and, if so, under what legislative authority. It was asked what remedies were available to those affected by such restrictions. It was also asked how article 1 of Act No. 4033, which apparently severely restricted the circulation of juvenile publications, could be reconciled with article 19 of the Covenant. In addition, one member inquired whether there were currently any political detainees in the country.

399. In connection with the activities of the National Human Rights Committee, members inquired as to the Government's attitudes towards that Committee and its criticisms and asked that the reported arrest of a board member of the National Human Rights Committee be investigated.

400. With respect to article 21 of the Covenant, it was asked whether the right to freedom of

assembly could be exercised within the Dominican Republic without undue government restrictions or interference. Specific reference was made to the reported unexplained prohibition of a meeting that was to have been held under the auspices of the National Human Rights Committee in December 1984 to celebrate Human Rights Day.

401. With regard to article 22 of the Covenant, members requested additional clarification concerning the exclusion from coverage under the Labour Code of such board categories of the labour force as agricultural, agro-industrial, forestry and stock-raising workers, as well as civil servants and other workers employed by public authorities. It was also asked whether striking workers enjoyed legal protection from dismissal and, if so, whether they could effectively avail themselves of such protection by seeking court ordered reinstatement after dismissal.

402. Referring to article 24 of the Covenant, information was requested concerning any measures taken by the Government to protect the rights and welfare of minors, particularly juvenile workers of foreign parentage. Members also asked about the age limit for compulsory education and about school enrolment statistics.

403. In connection with article 25 of the Covenant and with reference to the statement in the report concerning the need for conformity between the tenets of political parties or associations and constitutional principles, further clarification was requested as to the possible restrictions on political activities that such a proviso could lead to.

404. With regard to article 27 of the Covenant, one member asked whether there were any ethnic or religious minorities in the Dominican Republic.

405. The representative of the State party expressed appreciation for the Committee's constructive attitude in considering his country's initial report which, he acknowledged, was late and not sufficiently complete. He then proceeded to reply to questions raised by the Committee.

406. With regard to article 1 of the Covenant, the representative stated that his Government had declared its support for the principle of self-determination in all international forums, that it had consistently supported the struggle of the Namibian and Afghan peoples, that his Government also supported the right of the Palestinian people to exercise the right of self-determination without interference and coercion, including the right to establish a sovereign and independent State in Palestinian territory and that it considered the withdrawal of Israeli troops from Palestinian and other occupied Arab territories to be a prerequisite for a solution to the problem. His Government also considered apartheid to be a crime against humanity and an affront to man's conscience. He also reaffirmed his country's dedication to the principle of non-intervention, which constituted one of the key tenets of the Constitution of the Dominican Republic. In that connection, his Government's position on the current crisis in Central America was that it must be peacefully resolved and it had therefore staunchly supported the efforts of the Contadora Group to that end. His Government was fully aware that the situation in the region was a consequence of unjust political and economic structures.

407. Referring to questions posed under article 2 of the Covenant, the representative stated that as a valid international treaty which had been published in a nationally circulated newspaper and the

Registre Oficial (official gazette), the provisions of the Covenant had been fully incorporated into domestic law and could be directly invoked in the courts. Like other international treaties the Covenant had the force of constitutional law.

408. With regard to article 3 of the Covenant, the representative stated that under Dominican law women enjoyed full equality with men, including the right to vote and to be elected to public office. There were currently women in such important offices as government minister and provincial governor. Abortions were prohibited by law, but the Government was pursuing a policy of reducing the population growth rate.

409. Responding to the question raised under articles 4 and 9 of the Covenant as to the possibility of resort to habeas corpus by detainees, the representative said that any person deprived of his freedom could invoke habeas corpus before a competent tribunal to determine whether the detention was lawful.

410. Responding to questions raised under article 6 of the Covenant concerning the question of unexplained disappearances, the representative said that his Government had no specific policy covering such cases, which were considered to be sporadic, isolated incidents having no political overtones. With respect to one of the specific cases of disappearance that had been cited - that of the Haitian refugee Luis Samuel Roche - he noted that the alleged disappearance had occurred under the previous Government and that a thorough investigation had turned up no record of his ever having been held in the prison that had been named in the allegation or of his ever having been detained by Dominican police or immigration authorities.

411. As to the questions posed by members concerning the alleged use of excessive force by the police in quelling public protests, he stated that law enforcement officers had received special training so as to avoid the use of excessive force in coping with such protests. He pointed out that the protests had been directed against a serious economic situation which had been precipitated by his Government's negotiations with the International Monetary Fund, and he strongly supported a suggestion for a study of the adverse effects which the conditions imposed by the International Monetary Fund had on the enjoyment of human rights. He acknowledged, however, that excessive force might have been used during the isolated incident that had occurred in 1984, at a time when tension was very high.

412. With regard to birth rates and infant mortality rates, he stated that, according to the most recently available data, the birth rate in 1980 was 3.5 per cent and the infant mortality rate in 1979 was 33.2 per thousand.

413. With regard to articles 8 and 12 of the Covenant and the allegations concerning the treatment of illegal migrants from Haiti as forced labourers on sugar plantations, the representative categorically denied that the situation of such migrants was as depicted in the reports to which members of the Committee had made reference. In fact, illegal Haitian immigrants were not persecuted by the authorities and lived openly in Dominican society, some of them even marrying Dominican nationals.

414. As to the broader question concerning the treatment of migrant workers, particularly Haitians,

he stated that, in accordance with international labour conventions, funds were set aside to ensure that basic requirements for medical care, transport, food and the fulfilment of contracts were met. A recent ILO commission of inquiry had found that Haitian workers had been voluntarily recruited and could reside wherever they wished under the temporary residence permits with which they had entered the Dominican Republic. Such workers were not subjected to forced labour and enjoyed freedom of movement. In view of the requirements of the sugar harvest they did not work fixed hours, but could not be obliged to work more than six or seven hours a day. A general effort was under way, subject to the availability of funds, to improve housing conditions and the Government did all it could to abide by various ILO conventions concerning migrant workers.

415. Responding to one of the questions posed by members of the Committee under article 9 of the Covenant, the representative stated that he knew of no provision for granting financial compensation to a person who had been unlawfully arrested or detained, but that it was possible for such a person to seek moral redress (see also the answer provided under para. 409 above concerning resort by detainees to the remedy of habeas corpus).

416. With reference to article 10 of the Covenant, the representative explained that the pursuit of rehabilitation, to the extent that the scarcity of resources allowed, was an important objective in all cases of imprisonment. He also noted that a Prison Reform Commission, of which the country's First Lady, an ardent human right advocate, was a member, had been set up to study ways of improving prison conditions.

417. With regard to articles 12 and 13 of the Covenant, the representative stated that illegitimate children of aliens, if born in the Dominican Republic and facing the prospect of being stateless, were granted Dominican nationality. As to the question of dual nationality, no bilateral agreements had been concluded granting dual nationality as such. However, an agreement had been concluded with Spain under which Dominican nationals enjoyed the same civil, economic, social and cultural rights as Spanish nationals. With respect to the question of Haitian exiles, the representative stated that his country welcomed them and did nothing to hamper their freedom or to restrict their rights. No member of a foreign security service could act freely in the Dominican Republic since that would be a gross violation of Dominican sovereignty.

418. With respect to article 13 of the Covenant, the representative stated that foreigners were well received in the Dominican Republic, enjoyed full rights and could only be expelled for serious cause.

419. Replying to questions posed in connection with article 14 of the Covenant, the representative of the State party provided the following details concerning the judicial structure in the Dominican Republic: the highest tribunal was the Supreme Court, which reviewed both questions of fact and questions of the law. The courts of appeal reviewed criminal cases; justices of the peace were concerned with petty offences. The courts of first instance were subdivided into penal, civil and commercial tribunals. The land courts dealt with all matters pertaining to the ownership of land, and the labour courts took up labour-related cases after the parties concerned had exhausted the conciliation remedies available in the Ministry of Labour. There was also a State Audit Office which reported annually on the State's accounts.

420. In further responding to questions posed by members of the Committee under article 14, he noted that the legislature was considering a bill providing for the appointment of judges by the Supreme Court, that most judges belonged to the new generation that had grown up following the dictatorship and that there were no judges sitting who had served under the previous régime, that there was both a legal aid system and a system of public defenders in the Dominican Republic and that all persons had access to justice and to the courts.

421. With reference to article 17 of the Covenant, the representative stated that the inviolability of the home was safeguarded under the law.

422. With regard to article 19 of the Covenant, the representative noted, *inter alia*, that there was no censorship of the media in the Dominican Republic, that there were 10 nationally circulated newspapers, 100 television stations and more than 200 radio stations in the country, that the media could report on all domestic and international matters without restriction provided that public order, national security and propriety were not jeopardized, that broadcasting from mobile units had been discontinued as a preventive measure after the broadcasting of information from the scene of the events of April 1984 had resulted in increased unrest and that there were no special requirements for the establishment of newspapers other than those normally required for commercial enterprises. In addition, he stressed that there had been no political prisoners in his country for many years - a fact that was acknowledged by Dominican opposition parties and national human rights bodies. The representative also stated that he had no information concerning the reported detention of a leader of Dominican Human Rights Committee and that the question would be addressed in the next report.

423. With regard to article 22 of the Covenant, the representative explained that the Labour Code, which dated back to the time of the dictatorship, had been supplemented by a considerable body of labour legislation and adapted to contemporary labour realities and that the right to strike was neither prohibited nor restricted except in the case of public employees. He added that strikers who had been dismissed from their job could apply to the courts for redress.

424. In connection with article 24 of the Covenant, the representative noted that a National Children's Council had been established to formulate appropriate policies with regard to all aspects of child welfare, that primary education was free and compulsory and that a high proportion of the population was pursuing some form of education as a result of a literacy campaign launched by the Government in 1978.

425. Replying to the question raised under article 27 of the Covenant concerning the existence of any ethnic or religious minorities in the Dominican Republic, the representative stated that there were no such minorities in the country.

426. Finally, the representative said that his country was eager to provide a supplementary report and to meet the Committee's requirements in its second period report.

427. Members of the Committee commended the State party for its considerable progress, since the ratification of the Covenant, in protecting and implementing human rights. The Committee welcomed the co-operation being extended by the State party and expressed special appreciation for the earnest endeavour of the representative of the Dominican Republic to provide answers to as

many of the Committee's questions as possible and for the offer to submit a supplementary report.

428. The Committee decided to request the State party to submit its second periodic report, which would have been due in April 1984, within one year of the date of consideration of the current report, and to include in the second periodic report the supplementary information requested during consideration of the initial report. It was the Committee's expectation that, in addition to conforming to the guidelines concerning the form and content of periodic reports, the new report would contain information that would normally have been provided in the initial report, amplify, where necessary, the oral responses supplied by the State party's representative in the course of the consideration of the initial report and provide answers to the outstanding questions.

429. The representative of the Dominican Republic thanked the Committee for its decision and assured it of his Government's continued readiness to co-operate.



## **CCPR A/45/40 (1990)**

355. The Committee considered the second periodic report of the Dominican Republic (CCPR/C/32/Add.16) at its 967<sup>th</sup> to 970<sup>th</sup> meetings, on 29 and 30 March 1990 (CCPR/C/SR.967-SR.970).

356. The report was introduced by the representative of the State party, who said that international treaties and conventions, including the Covenant and its Optional Protocol, were incorporated in domestic legislation. Accordingly, any gaps that might exist in legislation with respect to recognition of human rights were covered.

### Constitutional and legal framework within which the Covenant is implemented

357. With reference to that issue, members of the Committee wished to know what the status of the Covenant was relative to the Constitution and to domestic law and whether the courts had authority to adjudicate any possible conflicts; whether the Covenant had ever been directly invoked before the courts and, if so, with what results; what factors and difficulties affecting the implementation of the Covenant, if any, had been encountered; whether article 10 of the Constitution had ever been used to justify imposing duties that may have the effect of derogating from certain rights; what activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol had been undertaken; whether human rights were taught as part of the regular curriculum; and whether the national human rights committee in the Dominican Republic was still active. Information was also requested regarding the activities of other non-governmental organizations concerned with human rights and regarding the outcome of a case submitted under the Optional Protocol in respect of which the Committee had conveyed its views but had not received a response from the Government of the Dominican Republic.

358. In reply to the questions raised by members of the Committee, the representative of the State party said that the Covenant, upon its ratification, had automatically become part of domestic law. No conflicts had arisen between domestic legislation and the Covenant, which could be invoked before the courts by any person. This had already happened in a few cases. The Constitution was supreme in the hierarchy of law and any other law, including international law, ranked below it. Since the Covenant formed part of domestic legislation there was widespread awareness in the Dominican Republic, among both the public and the authorities, of the need to respect human rights. The observance of such rights was monitored not only by the national human rights committee but also by the press and the media. Dominicans were fully aware of their human rights and of the importance of the Covenant, and information regarding the latter was disseminated periodically by non-governmental organizations for the benefit of the entire population. The authorities had not communicated with the Committee after it had issued its views on the individual complaint that had been submitted under the Optional Protocol because they had understood that the person involved had been planning to inform the Committee directly of the fact that a satisfactory settlement had been reached.

### State of emergency

359. With regard to that issue, members of the Committee wished to know what safeguards and remedies were available to the individual during a state of emergency, particularly in case of the suspension of habeas corpus; what rights, if any, could be derogated from during a state of emergency; and whether any such state of emergency had been invoked following the disturbances in 1984.

360. In reply, the representative of the State party said that all individual rights were safeguarded during a state of emergency and only rights pertaining to transit, correspondence and labour could be restricted. The writ of habeas corpus could be invoked at all times. No situation necessitating the declaration of a state of emergency had occurred in the country since 1965. No rights had been suspended during the 1984 disturbances.

#### Non-discrimination and equality of the sexes

361. With reference to that issue, members of the Committee wished to know which legal provisions, other than article 100 of the Constitution, provided guarantees conforming to the provisions of articles 2 (1) and 26 of the Covenant; to what extent remaining inequalities between the sexes were addressed by the draft bill pending before the legislature and what its current status was; whether married women enjoyed full civil capacity; in what respect the rights of aliens were restricted as compared with those of citizens; whether there were any statutory provisions guaranteeing protection against discrimination to aliens; and what the proportion of the sexes was in schools and universities.

362. In reply to the questions raised by members of the Committee, the representative of the State party said that under Dominican legislation there was no discrimination of any kind and everyone was considered equal before the law. The law covered all individuals legally in the country and court cases could be decided in favour of foreigners. All women, including married women, had the same rights and enjoyed full civil capacity. However, the community property régime and patria protestas, which were discriminatory, were being changed. Access to higher education was unrestricted and women represented more than 50 per cent of the enrolment in liberal studies in the universities. The Government was interested in increasing the participation of women and was in the process of doing so.

#### Right to life

363. In connection with that issue, members of the Committee wished to know what rules and regulations governed the use of firearms by the national police and security forces; whether there had been any violations of such rules and regulations and, if so, what measures had been taken to prevent their recurrence - in particular, whether deaths through the illegal use of firearms had been investigated and the policemen involved prosecuted and punished; how many violators had been prosecuted and sentenced; and whether any individuals had died while in police custody and, if so, what the procedure was for investigating such deaths. Members also asked what the country's infant mortality rate was; how the mortality rate of minority groups compared to that of the rest of the population; and what measures had been taken to improve health care.

364. In reply, the representative of the State Party said that under article 8 of the Constitution the inviolability of life was fundamental to the accomplishment of the principal aims of the State and that the possession of firearms was regulated under articles 115 and 116 of the Penal Code. Policemen underwent a four-year training period, were very civic minded and enjoyed the confidence of the population. Excesses by the police were punishable by dismissal or fines or imprisonment but were not frequent since they occurred mostly in the context of clashes between the police and armed criminals. Apparent violations were investigated by a commission appointed for that purpose and, when appropriate, the official involved was prosecuted. Many cases had been brought before the courts and some police officials had been imprisoned for abuse of power. There was no death penalty in the Dominican Republic and deaths in prison were not at all common. Prisoners enjoyed protection against abuse and had access to appropriate recourse procedures. The rate of infant mortality in the Dominican Republic was high and was a matter of concern to the Government. A public information and vaccination campaign was under way to protect the lives of young children and to reduce infant mortality. The vaccination campaign had already eliminated many childhood diseases.

#### Treatment of prisoners and other detainees

365. With reference to that issue, members of the Committee wished to know what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; what arrangements existed for the supervision of places of detention and what the procedures were for receiving and investigating complaints; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and relevant regulations and directives made known to prisoners; what the distinction was between untried prisoners and prisoners under preventive detention; whether there were any legal provisions requiring the segregation of juvenile prisoners from adults; whether certain cells in which inhuman conditions had existed were still in use; whether there had been any actual cases of cruel, inhuman or degrading treatment of detainees, including Haitian workers in particular, and what measures had been taken by the Government to prevent or to punish such treatment; and what measures had been or could be taken to alleviate the grave overcrowding in prisons, particularly in respect of the large number of persons in preventive detention. Members also wished to receive clarification of the distinctions among penitentiaries, prisons, establishments for prisoners sentenced to hard labour and “special institutions”, and information concerning detention in institutions other than prisons and for reasons other than crimes.

366. In reply, the representative of the State party said that the treatment of prisoners and detainees was regulated under Act No. 284, article 5 of which prohibited torture or inhuman treatment. Prisoners under preventive detention were those who had been charged on the basis of evidence but not yet tried or sentenced. Normally, persons in that situation would be released on bail but certain offenders, particularly persons charged with drug-related crimes, were kept in detention. Unfortunately, the number of such persons was large, but efforts were being made to reduce their number as well as to relieve overcrowding in prisons through the construction of more detention facilities. This would make it possible to keep different categories of prisoners separated and to comply more fully with the United Nations Standard Minimum Rules.

367. There were special courts and special prisons for minors under age 18 but some minors could also be found in regular prisons. A penitentiary Commission set up by the Roman Catholic Archdiocese was working in the prisons in addition to a number of private organizations. Lawyers' associations were also striving to improve the workings of the prison system and to help in the rehabilitation of prisoners. The so-called "Viet Nam cells" had all been dismantled and were now fortunately a thing of the past. There was a very large number of illegal Haitian workers in the country who were often subject to arbitrary treatment by Government officials and by plantation owners. This was a matter of serious concern to the Government.

#### Liberty and security of the person

368. With regard to that issue, members of the Committee wished to know how soon after arrest the concerned individual's family was notified and a lawyer contacted; what the maximum period of pre-trial detention was; and whether the penalty of "demotion" provided for in article 114 of the Penal Code for "ordering or committing arbitrary acts prejudicial to individual liberty or the political rights of individuals" was a sufficient punishment for such offences. Clarification was also requested of the stipulation in that article that a junior officer who committed an illegal act on the order of a superior officer would not be subject to punishment, and of the "summary procedure" established under the Habeas Corpus Act.

369. In reply, the representative of the State party said that the families of detainees were informed immediately and in case of need the State provided free defence counsel. The maximum period of pre-trial detention stipulated by law was five days but that time-limit was not always observed because the courts were overburdened. The penalty of "demotion" was in fact the penalty of degradación cívica stipulated in article 114 of the Penal Code, which called for stripping the offending official of his post and official capacity and thus making him subject to trial in the ordinary courts. When a junior officer acted unlawfully under orders from a supervisor it was the superior who was held responsible and subject to punishment. This provision dated from the era of the Napoleonic Code and the Government was gradually reforming the entire Penal Code. The summary procedure under the Habeas Corpus Act provided for the right of an individual to complain to the Public Prosecutor's Office of unjust imprisonment and obliged judges to hear the case even without an initiative from the latter.

#### Right to a fair trial

370. Concerning that issue, members of the Committee wished to know how the independence and impartiality of the judiciary was guaranteed and whether the selection of judges by the Senate was consistent with the principle of such independence. It was pointed out in that connection that the independence of the judiciary implied that judges should be independent of both the executive and legislative branches of government and that the classic way of ensuring an independent judiciary was by applying such measures as security of tenure, unvarying emoluments and mandatory retirement. Information was also requested concerning regulations governing tenure, dismissal and disciplining of members of the judiciary and the availability of free legal assistance to criminal defendants. In addition, members asked whether sentences in criminal cases were made public, as provided in article 14, paragraph 1 of the Covenant; whether Haitians who did not speak Spanish were provided with interpreters when they were involved in court proceedings; and whether the draft

bill that would give authority over the appointment of judges to the Supreme Court had been enacted.

371. In reply, the representative of the State party said that the procedures for the election or dismissal of judges were set out in Title VI of the Constitution. State prosecutors were appointed by the executive branch. Judges were appointed by the Senate and their terms of office were coterminous with that of the legislators. While a newly elected Senate sometimes extended the tenure of some judges it usually appointed new ones. In making such appointments the Senate did not follow a particular political line and took into account the views and recommendations of the bar association as to the qualifications of candidates for judicial appointment. However, there had been quite a number of cases of judges acting under undue influence from senators and some judges had been disciplined by the Supreme Court for that reason. Efforts were being made to change the current system by entrusting responsibility for the selection of judges to a national council but the amendment of the Constitution in that regard was a very delicate matter. The power to discipline all judges was vested in the Supreme Court and judges of the Supreme Court itself were also subject to the disciplinary authority of that Court. Sentences were public but were not published. Any individual could go to the court and receive a copy of a sentence and journalists could write about any sentence they found interesting. Criminal defendants without means were provided by the State with the services of lawyers and interpreters free of charge.

#### Freedom of movement and expulsion of aliens

372. With reference to that issue, members of the Committee wished to receive clarification of the penalty of “local expulsion” (destierro) and requested information concerning legal provisions governing the expulsions of aliens as well as relevant statistics indicating on an annual basis the number of expulsions and the reasons therefor. They also asked whether an appeal against an expulsion order had suspensive effect; whether laws that could restrict freedom of movement, if any, were compatible with article 12 of the Covenant; what the Government was doing to prevent the forcible retention of Haitian workers who wished to leave the country and, particularly, what instructions had been given to the Dominican security forces who were said to be responsible for that unacceptable practice. In that same connection, further details were requested concerning allegations in an ILO report that Haitians who had crossed illegally into the Dominican Republic were transported to the sugarcane plantations by government vehicles with military escort and that those Haitians who possessed identification documents were often relieved of them by the military.

373. In reply, the representative of the State party explained that although the penalty of local expulsion was provided for under the Dominican Penal Code it was an anachronism and was, in fact, never applied. Procedures for the indictment and conviction of aliens who broke the law were contained in legislation relating to immigration. Conviction for an offence could lead to expulsion but expulsion orders were subject to appeal except in the case of drug traffickers. However, alien drug traffickers, as indeed all aliens, had full rights to a fair and public trial with full guarantees, including the right of habeas corpus. The constant flow of Haitians who crossed the borders to work in the cane fields enjoyed all legal safeguards. They did not work under conditions of servitude or slavery and were entitled to the same freedom of movement as anyone else living in the Dominican Republic. Haitian immigrants were at times transported from the border to their places of work by the Dominican police but the Government had no policy permitting forced labour nor any desire to

promote such activity. It was possible that certain abuses vis-a-vis Haitian workers had occurred but they had not been officially sanctioned. Measures to restrict freedom of movement could be taken by the Government in the event of a threat to national security or a natural disaster.

#### Right to privacy

374. With regard to that issue, members of the Committee wished to know how constitutional guarantees relating to privacy were ensured in law and practice; whether there were any conditions under which the secrecy of telegraphic, telephonic and cable communications could be violated; and how the use of electronic listening devices was regulated. In reply, the representative of the State party explained that the appropriate authorities were authorized to enter a person's home in cases where there was evidence that the occupants were harbouring a criminal or hiding weapons. The use of electronic eavesdropping devices was not regulated since the Dominican Republic did not possess such devices. The secrecy of communications was inviolable under all circumstances.

#### Freedom of conscience, religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

375. With reference to that issue, members of the Committee wished to know what the grounds were for placing restrictions on freedom of conscience, worship and expression; how the imposition of such restrictions had been dealt with by the courts; how the term "subversive propaganda" was defined; whether the advantages enjoyed by the Catholic Church were also extended to other religious groups and to atheists; and what influence the Catholic Church had on freedom of religion.

376. In reply, the representative of the State party said that the Dominican Republic permitted full freedom of conscience, religion and expression and access by all persons to the media. Restrictions on such freedoms could be authorized only in cases of threats to public order or national security. Subversion was defined in the Penal Code as actions designed to incite people to take up arms against one another. Certain legal restrictions relating to subversion dated back to 1966, when the country had just emerged from civil war. In fact, the authorities had no desire to restrict the expression of opinion and no one had been prosecuted for engaging in subversive propaganda. Candidates for political office criticized the Government freely and there was no censorship. Agnosticism was not prohibited and there were no restrictions on religions other than Catholicism. The Catholic Church enjoyed considerable moral influence but had little weight.

#### Freedom of assembly and association

377. Concerning that issue, members of the Committee wished to receive information on the number, membership and organization of trade unions; laws and practices relating to the establishment of political parties; the basis for denying agro-industrial, agricultural and other workers the right to form trade unions; the status of the draft bill to protect trade union members from dismissal; and the planned revision of the Labour Code, particularly in relation to the right of civil servants to strike and the right of agricultural workers to participate in trade union activities. Referring to the establishment in 1988 of a special commission to review the situation of agricultural workers including, in particular, Haitian agricultural workers, members of the Committee wished to know whether that commission had already issued its recommendations and, if so, how the

Government intended to implement them.

378. In reply, the representative of the State party said that workers were free to co-operate and to defend their interests. Strikes were permitted under the Constitution and did take place. Currently, certain civil servants, including judges, teachers and doctors, were on strike despite the lack of provision in the Labour Code for strikes by civil servants. That strike was being tolerated by the Government, de facto and the Secretariat of Labour was studying the possibility of extending the right to strike to civil servants. A working group was engaged in the task of elaborating an amendment to include agricultural workers in the Labour Code so as to allow them to participate in trade union activities. The establishment of political parties was subject to approval by the Central Elections Board. To be eligible for registration, a political party had to be able to demonstrate support from five per cent of the electorate.

#### Protection of the family and children

379. With reference to that issue, members of the Committee wished to receive information regarding laws relating to the equality of spouses and providing for the protection of the property rights of married women, as well as the law and practice relating to the employment of minors. Members also wished to know what the differences were, if any, in the status and rights of children born in and out of wedlock and whether it was true that Dominican nationality had been refused to the children of undocumented Haitians.

380. In reply, the representative of the State party explained that where couples had chosen to live under a community property régime, the property was administered by the husband. However, a change was currently under study that would provide the wife with equal rights in that respect. Under present laws relating to inheritance, illegitimate children who had been recognized by their father inherited one-half of the amount that legitimate children inherited and those not recognized had no rights to inheritance at all. A bill was under consideration which would provide for recognition of the inheritance rights of illegitimate children. The employment of minors under 18 years of age was prohibited by law but, unfortunately, in fact it was common to see minors at work at various jobs except for the major industries, where the law was strictly enforced. It was not the official practice to refuse to register the children of Haitian parents but isolated cases where individual officials had done so could not be excluded.

#### Right to participate in public affairs

381. In connection with that issue, members of the Committee wished to know how equal access to public service was guaranteed; what means were used to enforce the obligation to vote and what the abstention rate had been at the last elections; why members of the armed forces and the police were deprived of the right to vote; and why convicted criminals lost the right to vote.

382. In reply, the representative of the State party said that the only requirement for participation in the public service was qualification for the job in question. Elective office was open to anyone who could attract the necessary votes. No penalties were imposed on the 30 to 40 per cent of the electorate that had abstained in the latest election. A person serving a criminal sentence only lost the right to vote during his incarceration. Members of the armed forces were denied the right to vote

in view of the army's excessive involvement in politics in the past and the need to preserve the army's political neutrality.

#### Rights of persons belonging to minorities

383. With reference to that issue, members of the Committee wished to receive information regarding the size of any ethnic, religious or linguistic minorities living in the Dominican Republic and concerning any measures taken actively to promote the enjoyment by them of their rights under article 27 of the Covenant.

384. In reply, the representative of the State party said that while Dominicans had many and diverse ethnic, linguistic and religious origins no special legislation promoting minority rights had been necessary since minorities were integrated into society and their rights were protected in the same way as those of the majority of Dominican citizens.

#### General observations

385. Members of the Committee thanked the representatives of the State party for their efforts to answer the Committee's questions but stressed that much more information was needed concerning the human rights situation in the Dominican Republic. They expressed their disappointment because neither of the two reports that had been submitted to date had complied with the Committee's guidelines, having been too general and lacking the specifics that could serve as a basis for a detailed consideration of the various issues and for the kind of dialogue from which the State party could most usefully benefit. Accordingly, members urged the State party to provide, in its third periodic report, more specific information, including relevant statistics as well as social and political information and explanations of how Dominican laws were actually implemented, so that the Committee could obtain a clear picture of the actual facts relating to the observance of the provisions of the Covenant.

386. Special concern was expressed by members regarding certain aspects of the human rights situation in the Dominican Republic that appeared to be at possible variance with provisions of the Covenant, including the loose wording of many constitutional and legal provisions relating to the restriction of certain individual rights, which seemed to leave too much room for interpretation by the authorities; the situation and treatment of the Haitian workers in the country, which appeared to involve major violations of the Covenant in a number of respects; inadequate guarantees of the independence of the judiciary; insufficient protection of the right of association of workers, particularly agricultural workers, and of their right to protection from anti-union discrimination and undue interference from employers; problems relating to the duration of preventive detention and the conditions of imprisonment; and discrimination in the treatment of children born out of wedlock.

387. In concluding the consideration of the second periodic report of the Dominican Republic, the Chairman expressed the hope that the State party's next report would be in conformity with the prescribed guidelines. He also requested the State party to inform the Committee in writing of the measures taken to settle the complaint that had been submitted under the Optional Protocol and in respect of which the Committee had submitted its views.



## CCPR A/48/40 (1993)

428. The Committee considered the third periodic report of the Dominican Republic (CCPR/C/70/Add.3) at its 1213<sup>th</sup> to 1215<sup>th</sup> meetings held on 25 and 26 March 1993 (CCPR/C/SR.1213-1215). (For the composition of the delegation, see annex XI..)

429. The report was introduced by the representative of the State party, who drew attention to a number of developments in the human rights situation in her country since the third periodic report had been prepared. For example, Haitians employed as sugar cane cutters had been furnished with temporary residence papers and were now permitted to keep those documents in their possession. Changes had also been made in the electoral system with a view to developing greater transparency. There was no systematic violation of human rights in the Dominican Republic, although, as in all countries, isolated instances might occur.

### Constitutional and legal framework within which the Covenant is being implemented, state of emergency, non-discrimination and prohibition of forced labour

430. With regard to those issues, the Committee wished to know if there had been, during the period under review, cases in which the provisions of the Covenant had been directly invoked in the courts or mentioned in court decisions; the extent to which the provisions of article 37, paragraphs 7 and 8, of the Constitution concerning possible restriction of rights recognized in the Covenant in time of state of siege or national emergency conformed with the provisions of article 4, paragraph 2, of the Covenant; the application of the principle of reciprocity regarding the enjoyment by aliens of the rights set forth in the Covenant; in what respects, other than in the exercise of political rights, were the rights of aliens restricted as compared with those enjoyed by Dominican citizens; whether the situation of Haitian workers had changed in practice since the adoption of Decree No. 417/90; whether specific measures had been taken in order to avoid abuses of Haitian workers during their transfer and during their stay in the sugar cane plantations; whether there had been any investigation of the allegations of forced labour by Haitian workers in such plantations and of the seizure of their identity documents; and whether follow-up action had been taken as a result of the Committee's views in respect of Communication No. 193/1985 (Pierre Giry vs. Dominican Republic). Further information was also requested on the application of the principle of reciprocity in the matter of the treatment of aliens.

431. In addition, members of the Committee wished to know what was the exact status of the Covenant in national law; whether the Covenant and the third periodic report had been published in the Dominican Republic; the extent to which the deportation of aliens, and their detention for the purposes of deportation, was in conformity with article 13 of the Covenant; whether a citizen or non-citizen could be exiled without grounds simply by order of the Government; whether there had been any change in the allegedly slave-like working conditions of Haitian workers in the sugar cane industry and what steps had been taken to monitor that situation; and what agencies had been established to act on behalf of individual workers in cases of disputes with employers.

432. Further information was also requested on the role of the State Sugar Council in recruiting foreign workers and the use of armed security guards for that purpose; the right of families to

accompany workers to sugar cane plantations; the use of vouchers instead of the national currency as wages; the right of plantation workers to organize and to engage in collective bargaining; the nationality of those affected by the recent deportation Decree No. 233-91 and the exact circumstances of that deportation; and on any steps taken by the Office of the Procurator-General of the Republic to investigate human rights abuses, especially in the context of the repatriation of foreign workers.

433. In reply, the representative of the State party said that, to be incorporated into domestic law following ratification, instruments had to be promulgated by the Government in the official gazette. That had been the case for the Covenant, which now formed part of domestic legislation. Under the Constitution, international instruments took precedence over domestic legislation in the event of conflict. The provisions of the Covenant could be invoked in the courts, although their Government had no knowledge of any cases in which court judgements had been based specifically on those provisions. The establishment of a human rights centre was being planned both to investigate human rights abuses and to promote awareness of human rights instruments. Additionally, non-governmental organizations and local human rights committees had absolute freedom to conduct their activities, including the transmission of reports of alleged human rights abuses to the Government, which the Government attempted to investigate.

434. The flow of Haitian nationals to the Dominican Republic was largely due to the political and economic problems in Haiti. The Dominican Republic was the most easily accessible State and it had accepted the Haitians and given them refugee status in conformity with the Convention on the Status of Refugees. Of the estimated 500,000 Haitian nationals who lived in the Dominican Republic, only a small portion worked in the sugar cane fields. The rest had employment similar to that of Dominicans. While there was no denying that illegal workers were vulnerable to exploitation, slavery was not practised in the Dominican Republic. Furthermore, there was no proof that Haitians had been recruited by Dominicans in Haiti; they had come to the Dominican Republic of their own free will in search of a better life. Their abuse by unscrupulous employers did not stem from any government policy.

435. While the working and living conditions of sugar cane cutters were undeniably poor, there had been a significant improvement since 1991 resulting from cooperation between the Government and the International Labour Organization. With respect to child labour, for example, statistics of the labour ministry now showed that fewer than 10 per cent of workers in the sugar cane industry were minors. Wages too had improved and workers were no longer paid in coupons but in cash under the supervision of Labour Department Inspectors. Eleven such inspectors continuously visited sugar mills and cane fields throughout the country to verify that proper labour practices were followed.

436. With regard to the principle of reciprocity, it was true that the Civil Code provided for aliens to be granted civil rights on such a basis. However, the Civil Code predated the Covenant and had not yet been amended accordingly, as perhaps it ought to be. In any case, now that the Covenant was part of the domestic legal order, aliens enjoyed the same civil and political rights as Dominican citizens. Under article 9 of the Constitution, however, foreigners were forbidden from participating in political activities. That raised a contradiction with articles 82 and 84 of the Civil Code allowing foreigners to be part of municipal governments, which, in fact, meant that they had to belong to a political party.

437. The provisions of the Penal Code concerning expulsion of aliens were mainly intended to deal with cases where the internal and external security of the State were threatened. In practice, those provisions had not been used for many years and should perhaps be amended. A new law on immigration that contained no provisions on the subject of expulsion was currently being drawn up with the help of advisers from international organizations, including the International Organization for Migration. The expulsion of Haitian citizens under the age of 16 pursuant to Decree No. 233-91 had been a response to complaints concerning the employment of minors in the agricultural sector. The Government had investigated those complaints and found that the minors in question had been recruited in their own country by Haitian nationals, who had lured them to the Dominican Republic with promises of high earnings. In many cases, they had no family or relatives in the Dominican Republic. In the light of the situation prevailing in Haiti, the measure had been suspended. The delegation would convey the Committee's concern to the Dominican Government so that steps could be taken to deal with the situation.

438. With regard to Communication No. 193/1985, which was contained in the report of the Committee to the General Assembly in 1990 (A/45/40, vol. II), the Minister for Foreign Affairs had received no documentation on that case and suggested that the Committee adopt new recommendations. Since the Government strictly observed any deadlines established by the Committee, its failure to respond was due, no doubt, to a lack of communication.

Right to life, liberty and security of person, treatment of prisoners and other persons deprived of liberty and right to a fair trial

439. With respect to those issues, the Committee wished to know what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what measures had been taken by the authorities to ensure strict observance of article 7 of the Covenant; whether confessions or testimony obtained under duress were admissible before the courts; whether the risk of being punished by suspension from duty without pay for up to 30 days was sufficient to deter officials from resorting to torture; what the powers of the Directorate General of Prisons were in the matter of supervision of penal establishments; whether there were any independent bodies empowered to visit places of detention and to receive complaints; whether any consideration was being given to amending the rules on the prevention of liberty to guarantee that a person's family is informed as soon as possible after arrest; and what had been the outcome of the study aiming to entrust the appointment of judges to a judicial council independent of the executive and legislative powers. Further information was requested on problems and difficulties in observing the limitation of the 48-hour period of police custody and in allowing a lawyer to see his client during this period; and on the possibility of accused persons obtaining free legal assistance and the assistance of an interpreter, with particular reference to Haitian workers who do not speak Spanish.

440. Members of the Committee also wished to know whether any of the known cases of extrajudicial killings, torture, and ill-treatment of detainees had actually been investigated and, if so, how many and to what effect; whether it was true that the Penal Code exempted any public official from punishment for torture if the official was acting on orders from a superior; and to what extent the 48-hour time-limit for arraignment was respected given the fact that 70 per cent of the prison population in the Dominican Republic was being held pending trial, whether minors were

being detained in prisons together with adults; and what provisions existed to ensure that judicial orders were complied with. Further information was also requested regarding health and sanitary conditions in prisons, which were reported to be extremely poor.

441. Replying to the questions, the representative of the State party said that the use of firearms was governed by Act No. 36, under which members of the armed forces, the police and some high-ranking civil servants were authorized to carry firearms. Civilians could also obtain a permit for firearms, although efforts have been stepped up to tighten the rules and to disarm civilians following recent violations and some unfortunate incidents.

442. Both the Penal Code and the Constitution prohibited torture and confessions obtained under duress were not admissible before the courts. Allegations of torture in prisons were investigated and those found to be responsible were tried and punished. The practice of torture was not envisaged by Dominican legislation. While excesses were occasionally committed, those responsible were brought to justice, and the practice was tending to disappear as a result of constant vigilance. In some cases, minors had been inadvertently incarcerated with adults but the errors had been discovered and corrected. The Directorate General of Prisons had been established under Act No. 224 of 1984 to exercise greater oversight and to ensure that the Standard Minimum Rules for the Treatment of Prisoners were observed. Many non-governmental organizations also evaluated and monitored the conditions of prisoners. A commission on prison reform made up of prominent personalities had noted the shortcomings of the prison system and, as a result, new prisons had been constructed to meet modern prison standards.

443. A preliminary draft on the establishment of a Judicial Council had been submitted to the legislature. Under the proposed plan, the Council would appoint judges through a commission comprised of the President of the Senate and Deputies. That would allow judges greater independence in the exercise of their duties and should lead to a more independent judiciary. The plan to establish the Council had received broad support from all the political parties that were planning to participate in the forthcoming elections.

Freedom of movement and expulsion of aliens; freedom of religion, assembly and association; equality of sexes and protection of the family; right to take part in the conduct of public affairs; and rights of persons belonging to minorities

444. With regard to those issues, the Committee wished to know whether appeals against expulsion orders had suspensive effect; how many expulsions had occurred each year and the grounds on which they were ordered; whether the Government had plans to take any measures with respect to religious sects mentioned in paragraphs 89 to 90 of the report; what the situation was in practice with regard to equality of men and women at work and in respect of participation in the conduct of public affairs; why the proposed new Labour Code did not recognize the right to strike of civil servants; the extent to which the provisions denying to members of the police and the armed forces the right to vote and to be elected conformed with article 25 of the Covenant; and the extent to which article 27 of the Covenant was being implemented in the light of the assertion that there were no ethnic, religious or linguistic minorities in the Dominican Republic.

445. Members of the Committee also wished to know the extent to which punishment by exile was

in conformity with article 12 of the Covenant; whether there were special courts for aliens in the Dominican Republic and, if so, whether the judgements of those courts could be appealed to the Supreme Court; to what extent a father's right to custody over a natural child conformed with article 24 of the Covenant; what kind of offences gave rise to restriction on freedom of movement, as provided for under article 8, paragraph 4, of the Constitution, and what such restrictions entailed; to what extent article 8, paragraph 6, of the Constitution prohibiting the expression of thoughts "prejudicial to the dignity and morality of individuals, to public policy or to propriety" conformed to article 19 of the Covenant; what steps were being taken to ensure that relevant legislation was compatible with article 24 of the Covenant; whether a special law on working conditions in the export processing zones enabled trade unions to operate freely; whether religions other than Catholicism, which was specifically protected under articles 261 and 262 of the Penal Code, received equal protection under the law; and whether the decision to prohibit certain radio broadcasts in Creole had established that such broadcasts would be subversive or a threat to public order.

446. Further information was also requested regarding the conversion of a deportation order into a prison sentence of up to two years, as provided for under article 13, paragraph 11 (f) of the Migration Act; the situation of religious and linguistic minorities in the Dominican Republic; and on progress achieved in implementing the draft law on eliminating discrimination in civil, commercial, penal and agrarian matters.

447. In reply, the representatives of the State party said that the Dominican Republic had adopted a new labour code in June 1992 which clearly established freedom of association. That new code was now being enforced with the approval of the International Labour Organization, which had warmly received the last report submitted to it by the Dominican Republic. With regard to discrimination against women, the representative underlined the important role played by women in the life of the country. There were women ministers and women made up over 60 per cent of the staff of banks, the public administration and the judiciary.

448. Although Roman Catholicism was the State religion, freedom of worship was guaranteed by the Constitution for all religions. The authorities could intervene only when the activities of a particular sect or religion threatened the integrity of the State. Religious sects were banned only for insulting other religions. There was no special legislation concerning ethnic minorities because there were really no such minorities in the Dominican Republic. Haitians were the largest group of foreign nationals and they enjoyed the same rights as Dominicans. With respect to the suspension of radio broadcasts in Creole, the radio station in question had been broadcasting news and information to Haitians regarding the political upheaval in Haiti and it had been deemed to be intervening in that country's internal affairs.

#### Concluding observations by individual members

449. Members of the Committee expressed their concern over the status of the Covenant in Dominican law. What was needed was not just an official promulgation of the Covenant but broad dissemination of its provisions by the Government. Not only did the country's legal system not guarantee all the rights embodied in the Covenant, but in many cases it was in open contradiction with the Covenant; thus, the Government had to make a basic effort to bring a large body of

domestic legislation into line with international human rights instruments. In this regard, it was noted that the pace of promotion of human rights in the Dominican Republic had slowed considerably since the State party's ratification of the Covenant 15 years ago. There needed to be greater awareness of the provisions of the Covenant, particularly among judges, police personnel, the armed forces and prison employees.

450. The situation of Haitian workers remained a matter of pressing concern and little action had been taken to remedy the situation. In this connection, members of the Committee expressed concern over the State party's compliance with the provisions of the Covenant concerning forced labour. Freedom of association was not guaranteed and trade unionists had been persecuted. In particular, the expulsion of Haitian workers was unjustified and inhumane, particularly in the case of those aliens under 16 or over 60 years of age. The Committee had been told that Presidential Decree No. 233-91, which was in flagrant violation of a number of rights embodied in the Covenant, had been suspended only, not abrogated. It was feared that the Government could still make use of that legislation if it so wished.

451. Members of the Committee expressed their concern over the protection of the rights of detainees. The police did not always respect the right to life, the practice of torture was uncontrolled, ill-treatment of detainees was a widespread practice, and the Government frequently did not investigate complaints, despite its obligation to do so. Additionally, the penalties for police and armed forces personnel found guilty of using torture were inadequate. The police did not obey court orders to release suspects and preventive detention extended well beyond the 48-hour period mandated by law. In addition, prosecutors could appeal writs of habeas corpus.

452. Members of the Committee expressed their concern over reported firearms abuses by members of the military and the police, particularly with regard to the excessive use of force by the police, including extrajudicial killings, torture and the ill-treatment of detainees. It was to be hoped that the Government would, as it had promised, provide training in human rights to its police and military personnel. The inadequacy of the current system for appointing members of the judiciary was emphasized, as was the need for an independent judiciary. In its absence, individuals would continue to be denied recourse when their rights were violated. Furthermore, the Dominican Republic needed to establish a truly independent agency for the investigation of complaints regarding human rights abuses.

453. While welcoming the indications provided by the State party of its willingness to cooperate more fully with the Committee in the future, members of the Committee emphasized their regret that both the report and the delegation had not been able to address the Committee's concerns. Regarding Communication No. 193/1985, there was no need for the Committee to make further recommendations with respect to it; rather, it was incumbent upon the State party to take all measures required to avoid a violation of the Covenant. With respect to article 27 of the Covenant, it was noted that freedom of religion was not guaranteed and minority religions were subject to discrimination. The prohibition of Creole-language broadcasts was not in conformity with the provisions of the Covenant.

454. The representative of the State party said that her Government would take note of the Committee's recommendations. Although the Dominican Republic had not been able to comply

consistently with all the provisions of the Covenant, it had no intention of violating the Covenant in a systematic manner.

455. In concluding the consideration of the second periodic report of the Dominican Republic, the Chairman of the Committee thanked the delegation for having engaged in a constructive dialogue with the Committee.

456. At its 1232<sup>nd</sup> meeting (forty-seventh session), held on 8 April 1993, the Committee adopted the following comments.

### Introduction

457. The Committee welcomes the third periodic report of the Dominican Republic and the opportunity to continue its dialogue with the State party. The Committee notes, however, that the information provided in the report was in many respects incomplete and did not take into account the dialogue that had taken place during the Committee's consideration of the previous report. The Committee would also have appreciated a more candid appraisal by the State party of existing legislative deficiencies as well as factors and difficulties encountered in the application of the Covenant. The third periodic report added little to what had been reported earlier in that respect and is deemed by the Committee to be insufficient. The Committee, however, expresses its appreciation to the delegation for the report as well as for the additional information it provided in response to questions raised by members of the Committee. However, many questions were not addressed and much of the information which was provided was not sufficiently detailed.

### Factors and difficulties impeding the application of the Covenant

458. The Committee notes that the Dominican Republic has received large numbers of refugees and foreign workers. It also notes that the State party has had to overcome a legacy of authoritarianism. These and other circumstances may to a certain extent explain why many of the provisions of the Covenant still have not been incorporated into the legal order of the Republic.

### Principal subjects of concern

459. The Committee notes with regret that, in general, there has been a lack of progress in the application of the Covenant since the consideration of the State party's second periodic report. In particular, there remains a significant body of legislation which still is not in conformity with the Covenant despite the fact that more than 15 years have elapsed since the accession of the Dominican Republic to the Covenant. A number of rights contained in the Covenant are not guaranteed in the present legal framework and other rights are being invalidated by domestic legal provisions that are incompatible with the Covenant. The Committee also regrets that it has not been informed in an unequivocal way about the Covenant's de jure and de facto status within the legal system of the Dominican Republic. In addition, the grounds for declaring a state of emergency are too broad, and the range of rights that may be derogated from is too wide to be in conformity with article 4 of the Covenant. The Committee is also concerned over the lack of adequate knowledge of the provisions of the Covenant by the legal profession, judicial officials and the public at large. Furthermore, the Committee notes that there is no governmental authority specifically responsible for ensuring the

observance of human rights standards. In that connection, the Committee notes that there has not been sufficient follow-up to its views adopted under the Optional Protocol but welcomes the promise of the State party for closer cooperation in this regard in the future.

460. The Committee expresses its concern over the lack of protection afforded to Haitians living or working in the country from such serious human rights abuses as forced labour and cruel, inhuman or degrading treatment. The Committee expresses its concern over the fact that the protection of the fundamental human rights of foreigners is subject to reciprocity. The Committee also expresses its concern over the degrading living and working conditions of Haitian labourers and the tolerated practices that effectively restrict their freedom of movement. Although some progress has been made in improving their living and working conditions, particularly with regard to child labour, these remain at an unacceptably low level. Furthermore, while many Haitian workers have been prevented from leaving their place of work, there have also been incidents of mass expulsions from the country. In this regard, the Committee considers that Presidential Decree No. 233-91, which resulted in the mass deportation of Haitian workers under 16 and over 60 years of age, represents a serious violation of several articles of the Covenant.

461. The Committee expresses its concern over the low level of legal protection and effective remedies available to the public concerning arbitrary arrest and lengthy pre-trial detention. The Committee notes with concern the large number of detainees awaiting trial, which is particularly worrisome in view of the high number of cases of alleged police abuse during detention and reports of unhealthy prison conditions. The Committee also underlines that punishment by exile is not compatible with the Covenant. Moreover, the powers and independence of the judiciary do not appear to be sufficiently protected. A judicial order for release should be implemented without question.

462. The Committee expresses its concern over the inadequate protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. In this regard, the Committee notes that the prohibition of broadcasting in a language other than Spanish is not in conformity with article 19 of the Covenant. The right of peaceful assembly is apparently not adequately respected by the police.

### Recommendations

463. The Committee recommends that the State party should undertake a major initiative aimed at harmonizing its domestic legislation with the provisions of the Covenant. In this regard, the Constitution and the relevant civil and penal codes should be reviewed in order to bring the law and its application into line with the provisions of the Covenant. The State party should also consider the establishment of offices and mechanisms to monitor the application of human rights standards and promote and protect human rights. This could include the designation of an independent office to receive complaints and, where necessary, undertake investigations into abuses. More publicity should be given to the provisions of the Covenant and the Optional Protocol in order to ensure that the legal profession, the judiciary and the general public are more aware of their contents.

464. The situation concerning the living and working conditions of Haitian labourers should be addressed as a matter of priority. The State party should ensure the implementation of laws



concerning labour standards, including adequate monitoring of working conditions. In this regard, the Committee emphasizes the necessity of strengthening the capacity of the labour inspectorate to effectively monitor the working conditions of Haitian labourers, with a view to ending their slave-like exploitation. Child labourers in particular require a higher level of protection and the relevant international standards should be vigorously applied. There should also be more active enforcement, particularly in the "export zones", of the exercise of trade union rights in conformity with article 22 of the Covenant. Additionally, Presidential Decree No. 233-91 should be abolished rather than merely suspended.

465. The Committee recommends that measures should be undertaken immediately to reduce the backlog of persons in detention awaiting trial and that the number of exceptions to the 48-hour rule should be significantly reduced. Much more severe sanctions are needed to effectively discourage torture and other abuses by prison and law enforcement officials. Steps should also be taken to tighten the regulations governing the use of firearms by police. Training courses in international human rights standards should be provided for police and prison officials.

466. The Committee recommends that the State party take further steps for the elimination of discrimination concerning ethnic, religious and linguistic minorities and recommends that the relevant legislation be reviewed in order to ensure its conformity with the Covenant.

## CCPR A/56/40 (2001)

### 78. Dominican Republic

(1) The Committee examined the fourth periodic report of the Dominican Republic (CCPR/C/DOM/99/3) at its 1906th and 1907th meetings, held on 23 March 2001, and at its 1921st meeting (seventy-first session), held on 3 April 2001, adopted the following observations.

#### Introduction

(2) The Committee welcomes the fourth periodic report of the Dominican Republic and the opportunity to continue to study the situation of human rights with the State party through a delegation made up of officials from various sectors of the Government. Nevertheless, it notes with concern that the information provided in the report is in many respects incomplete, that important recommendations made during the consideration of the previous report have not been taken into account, and that Committee guidelines were not followed in its elaboration. The Committee would have welcomed a more in-depth evaluation by the State party of the existing legislative deficiencies and the factors and difficulties encountered in implementation of the Covenant. However, the Committee expresses its gratitude to the delegation for the updated additional information which it provided in reply to the questions posed by members.

#### Positive aspects

(3) The Committee is pleased that its recommendation to revise the Constitution of the Dominican Republic has been accepted and that a new text was ratified and promulgated on 14 August 1994. The Committee notes that the new Constitution omits clauses which were incompatible with the Covenant, for example the penalty of internal exile and reciprocity for protection of the human rights of aliens.

(4) It is also gratified to learn of the repeal of Decree-Law No. 233-91, which had led to mass deportations of Haitian workers under 16 and over 60 years of age, seriously violating several articles of the Covenant, as noted in the concluding observations on the previous report.

(5) The Committee also notes with satisfaction both the establishment in the Constitution of the National Board of the Judiciary, which is responsible for appointing the members of the Supreme Court, and the legal establishment of the Office of Ombudsman.

#### Principal causes of concern and recommendations

(6) The Committee points out that article 3 of the current Constitution recognizes and applies the norms of international law which have been adopted by the State party and that, since these include the International Covenant on Civil and Political Rights, the Covenant has constitutional standing. However, it notes with regret that, in general, there has been a lack of progress in the implementation of the Covenant since the consideration of the third periodic report. In particular, a significant body of legislation is still incompatible with the Covenant, despite the fact that the latter has higher standing and that over 21 years have elapsed since the Dominican Republic acceded

to it.

(7) The Committee regrets the fact that it has not been informed unequivocally about the application of the Covenant within the Dominican Republic or about action in response to its decisions under the Optional Protocol, and regrets in particular the lack of clarity in the response given to communication 449/1991 (Mojica v. Dominican Republic).

The State party should provide that information (art. 2) to the Committee.

(8) The Committee notes with great concern the information from the delegation that 229 people suffered violent deaths at the hands of the police force in 2000, and that according to other sources the figure could be higher still. It has taken note with equal concern of the reports of extrajudicial executions of prisoners in the custody of the State party in its prisons and of deaths at the hands of the National Police, the Armed Forces and the National Drug Control Office owing to the excessive use of force and the apparent impunity that they enjoy.

The State party should take urgent steps to ensure respect for article 6 of the Covenant, to have those responsible for violations of the right to life guaranteed thereunder prosecuted and punished, and to make redress.

(9) The Committee notes with concern that, despite being prohibited by the Constitution (art. 8.1), torture is widespread, occurring in prisons and elsewhere, that not all its forms are classified as crimes under the law and that no independent body exists to investigate the many complaints of torture and cruel, inhuman or degrading treatment. Reports that acts of torture have not been investigated, that the perpetrators of those acts have in the majority of cases not been brought to trial and that victims and their families have not been compensated are also cause for concern.

The State party should take prompt action to comply fully with article 7 of the Covenant and to have violations thereof investigated so that the culprits may be tried and punished by ordinary courts and redress provided.

(10) The Committee deplores the fact that the National Police has its own judicial body, separate from that established by the Constitution, to try crimes and offences by its members; this is incompatible with the principle of equality before the law protected by articles 14 and 2, paragraph 3, of the Covenant. The Committee also observes that, although the police is a civilian body legally subordinate to the Department of the Interior and Police, in practice it is subject to military authority and discipline, to the extent that the chief of police is a general of the armed forces on active duty.

The State party should ensure that the jurisdiction of the police tribunals is restricted to internal disciplinary matters and that their powers to try police officers accused of common crimes are transferred to the ordinary civilian courts.

(11) Despite the creation of more courts, the Committee notes that the high percentage of prisoners in pre-trial detention observed in the third report has increased. This means that many people accused of crimes remain in detention waiting for their trials to end, which is counter to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant.

The State party should reform the law immediately to make pre-trial detention the exception rather than the rule, used only when strictly necessary. It should also provide statistics on the number of people in pre-trial detention and the size of the prison population.

(12) The power to hold prisoners incommunicado continues to provoke deep concern.

The State party should revise the law to ensure that detention incommunicado does not violate articles 7, 9 and 10 of the Covenant.

(13) The Committee is seriously concerned at the statement in paragraph 78 of the report that applications for habeas corpus are heard weeks or months after receipt. This is incompatible with article 9 of the Covenant.

The State party should take prompt action to enable the courts to rule on the legality of detentions as quickly as possible.

(14) The Committee has noted with serious concern that, far from improving as a result of the construction of new facilities and the renovation of older ones, the situation in prisons and other places of detention has worsened owing to the increase in the number of prisoners, enormous overcrowding, deplorable sanitary conditions, failure to separate juveniles from adults and men from women and the existence of solitary confinement cells without light, windows or ventilation.

The State party should establish institutional mechanisms to supervise prison conditions with a view to complying with article 10 of the Covenant and to investigate prisoners' complaints. The prison renovation programme that has been announced should go ahead as soon as possible.

(15) The Committee is concerned to learn that prisons are guarded by the police and the army because there is no prison guard service, although training courses to that end have started.

To comply with article 10 of the Covenant, the State party needs to establish as soon as possible a specialized prison guard service independent of the police investigation services and the armed forces that meets the United Nations standard minimum rules on the treatment of prisoners and is given instruction in human rights.

(16) The Committee is gravely concerned at the continuing reports of mass expulsions of ethnic Haitians, even when such persons are nationals of the Dominican Republic. It holds mass expulsions of non-nationals to be in breach of the Covenant since no account is taken of the situation of individuals for whom the Dominican Republic is their own country in the light of article 12, paragraph 4, nor of cases where expulsion may be contrary to article 7 given the risk of subsequent cruel, inhuman or degrading treatment, nor yet of cases where the legality of an individual's presence in the country is in dispute and must be settled in proceedings that satisfy the requirements of article 13.

The State party should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings are covered by the safeguards established in the Covenant.

(17) The Committee expresses its concern over the failure to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment. It also expresses concern over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom of movement.

The State party should give priority to addressing the issue of the working and living conditions of Haitian workers, and ensure that those workers can take advantage of the rights and safeguards laid down in articles 8, 17 and 22 of the Covenant.

(18) The Committee is concerned at the abuse of the legal notion of “transient aliens”. According to information in its possession, such persons may be born in the Dominican Republic to parents who were also born there but are still not considered to be nationals of the Dominican Republic.

The State party should regulate the situation of everyone living in the country and grant the rights recognized by article 12 of the Covenant.

(19) The Committee welcomes the greater level of participation of women in political life but cannot fail to express its concern over a number of issues where the rights of women are not properly respected, especially their rights to legal equality, equal opportunities in the workplace, their still limited participation in public and private life, and levels of domestic violence. Since it was not given sufficient information, the Committee has not been able to make a thorough assessment of the situation of women in Dominican society but it acknowledges that the establishment and work of the Department for the Advancement of Women is a positive development for combating the domestic violence, rape and sexual abuse to which many women are subjected. It has also been unable, for want of information to assess the extent of trafficking in women.

The State party should provide such information to the Committee as soon as possible so that its compliance with articles 3, 25 and 26 of the Covenant can be properly evaluated and should respect and guarantee all the rights of women. To that end, it should provide the necessary support to the Department for the Advancement of Women to enable it to achieve its goals.

(20) The Committee expresses concern over the lack of information on the protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. The delegation’s explanation that minorities are so integrated into the country’s culture that they cannot be considered as such is not sufficient.

The State party should provide the Committee with information on its application of article 27 of the Covenant.

(21) The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

(22) The Committee takes note of the existence of a crime of “desacato” (disrespect of authority), which it deems contrary to article 19 of the Covenant.

The State party should take steps to abolish that crime.

(23) The State party should widely disseminate the text of its fourth periodic report and these concluding observations.

(24) The State party should, pursuant to rule 70, paragraph 4, of the Committee’s rules of procedure, send information within one year on action it has taken in the light of the Committee’s recommendations on disappearances and extrajudicial executions (para. (8) above), torture and the use of excessive force by the police and security forces (para. (9)), police detention and detention pending judgement (paras. (11), (12) and (13)), prisons (paras. (14) and (15)) and the status of Haitians (paras. (16), (17) and (18)). The Committee hopes that information in response to the remainder of its recommendations will be incorporated into the fifth periodic report due for submission by 1 April 2005.