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Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Dominican Republic

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of the Dominican Republic on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/DOM/3) at its 34th, 35th and 36th meetings, held on 3 and 4 November 2010 (see E/C.12/2010/SR.34, 35 and 36), and adopted, at its 55th meeting held on 19 November 2010, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the Dominican Republic. The Committee also appreciates the dialogue held with the delegation of the State party, the written replies to the list of issues, as well as the oral responses provided by the delegation of the State party. However, it regrets the 11-year delay in the presentation of the report, and the fact that the written replies to the list of issues were only submitted on 29 October 2010, too late for their translation into the working languages of the Committee.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the International Convention on the Rights of Persons with Disabilities and its Optional Protocol (2009), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2006), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2002), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,

supplementing the United Nations Convention against Transnational Organized Crime (2000).

4. The Committee also welcomes the enactment by the State party of new laws and plans to advance the realization of the Covenant rights, including:

(a) Law No. 87-01 of 9 May 2001, which created the Dominican Social Security System;

(b) Law No. 42-01 of 2001 or the General Law on Health, which established the foundations for the National Health System;

(c) Law No. 137-03 of 2003 on unlawful trafficking in migrants and trafficking in persons;

(d) The National Gender Equity Plan II (2007–2017).

5. The Committee appreciates the positive role played by the State party in response to the January 2010 earthquake that struck neighbouring Haiti.

C. Principal subjects of concerns and recommendations

6. The Committee is concerned about the lack of references to Covenant provisions by domestic courts, despite the fact that international treaties form part of the domestic legal order of the State party.

The Committee recommends that the State party take effective measures to increase awareness of the Covenant rights among the judiciary and the public at large, and ensure that Covenant provisions can be invoked before the domestic courts. The Committee draws the attention of the State party to its general comments Nos. 3 (1990) on the nature of States parties' obligations and 9 (1998) on the domestic application of the Covenant, and invites the State party to ensure that the process of adapting the legal system to the new Constitution is done with a view to fulfilling the enjoyment of economic, social and cultural rights by all persons living in the State party.

7. The Committee regrets that the absence of disaggregated statistical information in the State party report did not enable the Committee to fully assess to what extent and how the rights set out in the Covenant were implemented in the State party.

The Committee urges the State party to provide, in its fourth periodic report, updated statistical data showing the practical application of the Covenant, on a comparative annual basis, including disaggregated data and relevant statistics regarding the implementation of its laws and the practical results of plans, programmes and strategies carried out in relation to the various rights enshrined in the Covenant.

8. The Committee notes with concern that information about the impact of the United States-Dominican Republic-Central America Free Trade Agreement (CAFTA) and the Economic Partnership Agreements with the European Union on the fulfilment of social economic and cultural rights in the State party was not available. It is also concerned by cases of investment agreements being approved before the environmental and social impact assessments are carried out.

The Committee encourages the State party to take into account its obligations under the Covenant in all aspects of its negotiations with investors and while negotiating and signing international agreements on economic partnerships. The Committee calls upon the State party to play an active role in regulating

economic and social policy to ensure that the enjoyment of economic, social and cultural rights, particularly by the most disadvantaged and marginalized groups, is not undermined. The Committee recommends that the State party to take steps to ensure that environmental and social impact assessments precede the approval of investment agreements or commencement of activities that might negatively impact economic, cultural and social rights, in particular of the most disadvantaged and vulnerable groups.

9. The Committee expresses its concern that although the *Defensor/a del Pueblo* (Human Rights Ombudsperson) was established by Law No. 19-01 in 2001, and despite recent efforts for his/her appointment, the position remains unfilled.

The Committee urges the State party to implement Law No. 19-01, to accelerate the appointment of the *Defensor/a del Pueblo*. It also encourages the State party to furnish the Office of the *Defensor/a del Pueblo* with all the competences of a fully fledged national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) or to consider the establishment of a national human rights commission with such competences.

10. The Committee regrets the absence of a comprehensive anti-discrimination law, despite provisions in existing legislation promoting equality and prohibiting discrimination in specific areas. The Committee is also concerned about the discriminatory impact of certain laws and practices, especially those linked to nationality and birth registration (art. 2, para. 2).

The Committee urges the State party to adopt a comprehensive anti-discrimination law spelling out all the prohibited grounds for discrimination, as set out by article 2, paragraph 2, of the Covenant and taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

11. The Committee reiterates its concern that racial prejudice and discrimination against Haitians and Dominicans of Haitian descent in the State party persists. It regrets that five years after the judgment by the Inter-American Court of Human Rights in the Yean and Bosico case, children of Haitian descent born in the State party continue to suffer discrimination, in particular through the revocation of identity documents as a result of the application of Law No. 285-04 on Migration of 2004, Resolution No. 017 by the Dominican Electoral Board in 2007, and article 18.3 of the Constitution of 2010. The Committee notes that the non-renewal of residency documents has increased the exposure of Haitian children and Dominican children of Haitian descent, especially, to discriminatory practices. The Committee is also concerned that the aforementioned Law No. 285-04 on Migration expanded groups of children denied their right to Dominican nationality making them effectively stateless and that this law is applicable retroactively. The Committee is in particular concerned that the approach taken by Law No. 285-04 on Migration of 2004 has been integrated into the 2010 Constitution of the State party (art. 2, para. 2).

The Committee recommends that the State party adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate formal or de facto discrimination against Haitians and Dominicans of Haitian descent. It also urges the State party to ensure birth registration with regard to these groups and guarantee their economic, social and cultural rights. It urges the State party to reconsider the regulations relating to the citizenship of children of Haitians and Dominicans of Haitian descent, in particular, by ensuring a non-discriminatory access to the Dominican nationality, irrespective of date of birth.

12. The Committee reiterates its concern that, despite legislative efforts to ensure the equal enjoyment by men and women of economic, social and cultural rights, discrimination against women persists in many fields of life, as is manifested inter alia by the persisting wage gap between men and women, the low percentage of women in high-ranking positions in political and public life, occupational sex segregation and pregnancy tests carried out in free trade zones as a precondition for employment (art. 3).

The Committee reiterates its previous recommendations that the State party pursue policies to achieve the full equality between men and women and draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights. It recommends that the State party take steps towards enhancing the participation of women in high-ranking positions in political and public life. It also recommends that the State party intensify its efforts to effectively promote the greater participation of women in the labour market and to ensure equal working conditions, including equal pay for work of equal value, as well as to ensure the prohibition of the practice of carrying out pregnancy tests. The Committee urges the State party to hold employers who continue to apply these practices accountable.

13. The Committee is concerned that the Ministry of Women receives 0.08 per cent of the national budget, the ministry with the lowest budget allocation, making the implementation of the National Gender Equity Plan II virtually impossible. It also notes with concern public statements to the effect that the Ministry of Women could undergo changes affecting its autonomy (art. 3).

The Committee encourages the State party to ensure an adequate allocation of financial and human resources for the implementation of the National Gender Equity Plan II as well as the strengthening the capacities of the Ministry of Women.

14. The Committee is deeply concerned about the poor working conditions in export processing zones, in particular for women. It is also concerned about the obstacles encountered in the exercise of basic trade union rights by workers in these zones; it is indicative that less than 15 per cent of the companies operating in the export processing zones have a trade union and there is a lack of collective processes and bargaining agreements. The Committee also notes with concern the large groups of employees in such zones that have recently lost their jobs, and many of whom remain without compensation and are yet to receive their accumulated benefits (arts. 7 and 8).

The Committee reiterates its recommendation that workers in export processing zones be allowed to form and join trade unions and that their right to strike and to enjoy just and favourable conditions of work be guaranteed. It reminds the State party of its obligation to protect workers and their families against incidents of abuses of human rights by the corporate sector in these zones.

15. The Committee is concerned about violations of labour standards, trade union freedoms and equal rights of men and women, as indicated by trade union complaints presented to competent bodies. The Committee also regrets the lack of information from the State party on the numbers and nature of complaints made by trade union organizations concerning conditions of work and trade union freedoms (arts. 7 and 8).

The Committee urges the State party to strictly enforce basic labour standards and further increase the number of labour inspections, promote training and enhanced opportunities for workers, ensure trade union freedom and guarantee that women have the same conditions of work as men. With a view to

achieving progress in these areas, the Committee recommends the thorough analysis of the complaints submitted by trade unions.

16. The Committee reiterates its concern that the minimum wage remains insufficient for workers and their families to enjoy an adequate standard of living. It is concerned that the current system of 14 different minimum wages for different work categories does not cover all sectors of activity and, as a result of its complexity, may negatively affect the implementation of the right to minimum wage (art. 7 (a)).

The Committee reiterates its previous recommendation that the State party ensure that the minimum wage provides workers and their families with an adequate standard of living in accordance with article 7, paragraph (a) (ii), of the Covenant and invites the State party to continue collaboration with the International Labour Organization (ILO) on this issue. The Committee also recommends that the State party ratify ILO Convention No. 131 (1970) concerning Minimum Wage Fixing at this juncture.

17. The Committee notes with concern that sexual harassment in the workplace continues to affect more than 30 per cent of women and that only a few cases were settled under the Labour Code. It is further concerned that sexual harassment has not been recognized as a crime under penal law (art. 7 (b)).

The Committee recommends that the State party adopt and implement legislation that criminalizes sexual harassment in the workplace and that it set up mechanisms to monitor its implementation. It also recommends that the State party raise public awareness of the criminal nature of sexual harassment.

18. The Committee reiterates its concern for migrant workers in an irregular situation and their families, mainly those of Haitian origin, who are in a vulnerable situation and often subject to exploitation, discrimination and unpaid wages owing to their lack of personal documents. It notes with concern that, despite the right to form and join trade unions being provided for by the Labour Code, regardless of legal status, the majority of these workers in the agricultural and construction industries do not exercise their rights, fearing dismissal or deportation (arts. 7, 8 and 9).

The Committee reiterates its view that it is necessary to regularize the situation of undocumented workers, through the delivery of residence permits or naturalization. It recommends that the State party adopt specific and effective measures for the protection of the rights of undocumented workers, ensuring the implementation of the guarantees set by the Labour Code for the same protection granted to national workers. The Committee also recommends that the State party take the necessary measures to guarantee that migrants and Dominican workers of Haitian origin have full opportunity to exercise their trade union rights in practice, and that they are protected from retaliation measures for exercising these rights.

19. The Committee is concerned that underemployment and unemployment remain high in the State party, disproportionately affecting women and young persons, notably those living in rural areas. It also notes with concern that the creation of employment opportunities is taking place primarily in the informal economy, which involves 54 per cent of the workforce but does not guarantee an adequate level of protection of the rights of employees (arts. 6, 7 and 9).

The Committee recommends that the State party take effective measures, such as an employment action plan, to expand regular employment and ensure an accelerated reduction of underemployment and unemployment with a special focus on women and young persons. It also recommends that the State party

undertake to ensure the respect of the rights of all employees, irrespective of their employment scheme.

20. The Committee is concerned at the slow implementation of the 2003 Dominican System of Social Security, its limited coverage and services and the fact that more than three quarters of the population, in particular women and the elderly, lack pensions and appropriate health care in the framework of the system. The Committee also notes with concern that, in urban areas, only 12 per cent of older people are entitled to the universal old-age pension and access to health treatment, and that this percentage drops to 3.4 per cent of the population in rural areas (arts. 6, 7 and 9).

The Committee reiterates the State party's obligation for universal social security coverage under article 9 of the Covenant and recommends that the State party undertake to extend the coverage of social security to workers in rural areas and the informal sector in line with general comment No. 19 (2007) on the right to social security. The Committee encourages the State party to strengthen inspections with a view to identifying non-declaration or under-declaration of employees, in order to strengthen the fiscal system of the State party and thus to allow for financing of the Social Security System. At this juncture, the Committee recommends that the State party consider ratifying ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security.

21. The Committee expresses its concern about continuing violence against women, in particular, domestic violence, despite legislation which characterizes and penalizes family violence, such as article 42 (2) of the Constitution and Law No. 24-97 (art. 10).

The Committee urges the State party to attach high priority to comprehensive measures to address domestic and other violence against women and requests that the State party allocate the human and financial resources necessary to put in place a national action plan to combat violence against women. It calls on the State party to ensure the effective application of the 1997 Law No. 24-97 on domestic violence by the competent authorities, pursuing, inter alia, an effective access to justice for victims and accountability of perpetrators. It also recommends that the State party encourage and facilitate coordination among all actors working on domestic violence cases and carry out measures to address the physical, mental and sexual health issues arising from this violence by providing support and rehabilitation services to victims. The Committee calls on the State party to carry out awareness-raising programmes and training for law enforcement officials and relevant professionals on the criminal nature of acts of domestic violence and for the public at large including a campaign of zero tolerance that makes such violence unacceptable.

22. The Committee is concerned about the problem of trafficking in human beings in the State party where persons, in particular women and children continue to be trafficked from, through and within the country for the purposes of sexual exploitation and forced labour. It is concerned by the lack of adequate funds to enforce and monitor the National Action Plan against the Trafficking of Persons and Smuggling of Migrants and the lack of measures for the rehabilitation of victims of trafficking and exploitation (art. 10, para. 3).

The Committee recommends that the State party intensify its efforts to combat human trafficking, especially of women and children, for purposes of sexual exploitation and forced labour, inter alia by prosecuting and convicting offenders of the law against trafficking, supporting programmes and public awareness campaigns to prevent trafficking — in particular emphasizing that trafficking of women and children for sexual exploitation is a criminal offence,

providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support for victims.

23. The Committee is concerned that despite the efforts of the State party, child labour continues to be widespread, especially in agriculture and the informal sector (art 10, para. 3).

The Committee recommends that the State party intensify its efforts to combat child labour, including through labour inspections in agriculture and the informal sector, ensuring that employers exploiting child labour are held accountable. It also recommends that victims of child labour are rehabilitated. The Committee calls on the State party to undertake awareness-raising campaigns with a view to eradicating socially accepted child labour.

24. The Committee is concerned that despite the efforts by the State party to issue birth certificates or personal identification documents to affected Dominicans, a large number of persons, almost 100,000, are still not registered (arts. 10 and 11).

The Committee urges the State party to accelerate the process of birth registration for those persons still lacking identity documents and requests that information in this regard be included in the next periodic report.

25. The Committee is concerned that the national refugee status determination procedure in place has been largely inactive, which has left asylum claims pending for many years. It further regrets that the non-renewal of personal documentation of refugees and lack of access to birth registration by the State authorities seriously hinders their enjoyment of economic, social and cultural rights, including access to the rights to work, health and education (art. 10 and 11).

The Committee urges the State party to ensure protection for asylum-seekers and refugees in line with international standards, including ensuring compliance with the principle of non-refoulement. It urges the State party to develop and implement viable migration policies, in consultation with relevant States. It recommends that the State party consider accession to international instruments to address the situation of stateless persons, namely the 1954 Convention relating to the Status of Stateless Persons and that it continue its cooperation with the Office of the United Nations High Commissioner for Refugees in this regard.

26. The Committee is concerned about the large number of persons living in poverty (42 per cent) and in extreme poverty (10 per cent) in the State party. It is further concerned that the declining average real income in recent years has meant for Dominican households a decrease in consumption of staple foods, below minimum subsistence levels for the most vulnerable population and regrets that chronic malnutrition has risen. It notes with concern that while the National Development Strategy is a positive endeavour, it largely lacks a human rights-based approach and does not sufficiently address existing inequalities between women and men (art. 11).

The Committee urges the State party to fully integrate human rights, and especially economic, social and cultural rights, into its poverty-reduction strategies, and encourages in particular, steps aimed at reducing social inequalities. In this regard, the Committee refers the State party to the Statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted by the Committee on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex VII) and to its general comment No. 15 (2002) on the right to water. It also encourages the State party to develop

indicators and benchmarks and that it compile disaggregated data for the purpose of specifically assessing the needs of disadvantaged and marginalized individuals and groups, and requests that this information be included in the next periodic report.

27. The Committee reiterates its concern about the continuing housing deficit in the State party, both in terms of quantity and quality, and about housing conditions in the *bateyes*, including limited access to sanitation infrastructure, water supply and health and educational services. The Committee also reiterates its concern over forced evictions taking place in contravention of the State party's obligations under the Covenant and notes the absence of a law or decree prohibiting the practice of evictions (art. 11).

In light of the Committee's general comments Nos. 4 (1991) on the right to adequate housing and 7 (1997) on forced evictions, the Committee recommends that the State party carry out measures to provide access to adequate and affordable housing with legal security of tenure for everyone, irrespective of income or access to economic resources and particularly to the most disadvantaged and marginalized individuals and groups. The Committee also urges the State party to take specific measures to ensure that persons forcibly evicted are provided with alternative accommodation or compensation enabling them to acquire adequate accommodation, including by adopting an adequate legal framework. It further requests that the State party provide additional updated information in one year's time on the implementation of the recommendations made in the report on the technical assistance mission to the State party of the Committee on 19–26 September 1997 (E/C.12/1997/9).

28. The Committee expresses concern about the persistently high maternal mortality rate and the overall low quality in maternal health care, the increasing number of teenage pregnancies, the high number of unsafe abortions involving girls between 12 and 18 years old, as well as the lack of adequate and accessible sexual and reproductive health care and education services (arts. 10 and 12).

The Committee recommends that the State party undertake all necessary measures to decrease the maternal mortality rate including measures to improve the quality of maternal care, including prenatal health services and medical assistance at birth. It encourages the State party to ensure affordable access for everyone to comprehensive family planning services, including adolescents, and to raise public awareness and education on sexual and reproductive health.

29. The Committee is also concerned about amendments to article 37 of the Constitution criminalizing abortion in all settings (arts. 10 and 12).

The Committee recommends that the State party provide funds to ensure the availability of contraceptives to assist women and men to prevent unwanted pregnancies and resort to potentially life-threatening, unsafe abortions. It urges the State party to reconsider its legislation on abortion with a view to lifting its prohibition in cases of a serious threat to the health or life of the pregnant woman and pregnancies resulting from rape or incest.

30. The Committee is concerned that, despite efforts by the State party in the area of health care, disadvantaged and marginalized individuals continue to have inadequate access to quality medical services. The Committee is further concerned that:

(a) The public health system is seriously underfunded, as compared to the international recommended standard of 3 per cent of gross domestic product (GDP);

(b) The per capita expenditure on health care is disproportionately divided throughout the country; and

(c) The State party system lacks a holistic health protection, promotion and disease prevention strategy (art. 12).

The Committee urges the State party to increase expenditures for health care, at least in line with the internationally recommended standard of 3 per cent of GDP, and to take all appropriate measures to ensure universal access to health care, at costs that are affordable to everyone. In this vein, the Committee draws the attention of the State party to the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health. It recommends that the State party adopt health protection and promotion and disease prevention programmes. The Committee also recommends that the State party ensure the adequate training of health personnel, in quantitative and qualitative terms, including on human right-related aspects of health care.

31. The Committee is concerned that antiretroviral treatment or specific HIV-related tests are not covered by the Basic Health Plan. It also notes with concern that discrimination against persons with HIV/AIDS and high-risk groups, such as men in same-sex relationships and transgender persons continues, and that these groups, along with undocumented Haitians residing in the State party and Dominicans of Haitian origin and persons living with HIV in *bateyes*, face serious difficulties in accessing prevention, treatment, care and support services (art. 12, paras. 1 and 2 (c)).

The Committee encourages the State party to continue its efforts towards the adoption of comprehensive HIV care programmes, including support services, and to limit the spread of HIV/AIDS, through effective prevention campaigns. The Committee further recommends that the State party undertake effective steps to prevent discrimination of specific groups in their access to protection against HIV/AIDS and to focus HIV/AIDS programmes on those specific groups disproportionately affected by this epidemic.

32. The Committee is concerned that public education is severely underfunded despite the obligations set forth in article 63 (10) of the Constitution and the General Law on Education No. 66-97. According to data from the State party, the goal for financing education set by law is 4 per cent of GDP, however, in 2010 it was 2.4 per cent and in 2011 the budget proposal is 1.98 per cent of GDP (arts. 13 and 14).

The Committee urges the State party to ensure a sufficient budget allocation to the education sector, in particular with a view to guaranteeing universal free primary education.

33. The Committee is concerned that children in remote areas, Dominican-born children of Haitian descent and children of migrants continue to face difficulties in initial enrolment and access to education and that the overall quality and quantity of education is low, in particular among disadvantaged and marginalized groups and in rural areas, which issue is accompanied by a high rate of school dropouts and repetition. It also notes with concern that, despite ongoing efforts by the State party, rates of illiteracy among young persons and adults remain high (arts. 13 and 14).

The Committee recommends that the State party take steps to ensure that education in primary and secondary schools is provided according to the Education Law at a level of five hours on a daily average instead of the present three hours. It also recommends that the State party strengthen the quality of the public education system and continue its efforts to provide targeted financial support and other incentives to families belonging to vulnerable and

disadvantaged groups, to ensure that education is equally accessible to all and without discrimination.

33. The Committee encourages the State party to sign and ratify the Optional Protocol to the Covenant.
34. The Committee invites the State party to expedite its ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
35. The Committee recommends that the State party provide, in its next periodic report, updated statistical data on the enjoyment of each right enshrined in the Covenant, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant criteria, on an annual comparative basis over the previous five years.
36. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.
37. The Committee invites the State party to submit an updated common core document in accordance with the harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.6).
38. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2015.