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Summary record of the 1906th meeting

Held at Headquarters, New York, on 23 March 2001, at 10 a.m.

Chairperson: Mr. Bhagwati

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The meeting was called to order at 10.20 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

*Fourth periodic report of the Dominican Republic (CCPR/C/DOM/99/4)**

1. *At the invitation of the Chairperson, the members of the delegation of the Dominican Republic took their places at the Committee table.*

2. **Ms. Abreu de Polanco** (Dominican Republic) thanked Committee members for the new opportunity to exchange views and assured them of the Dominican Republic's ongoing commitment to implementing the Covenant. The great importance that her country accorded the meeting was reflected by the large size of the delegation, which included representatives from government agencies and institutions with an interest in human rights.

3. She stated that progress was being made in promoting human rights in the Dominican Republic. For example, after the filing of the country's third periodic report, the Human Rights Committee had asked the Dominican Republic to amend its Constitution to ensure full independence of the judiciary. The Constitution had been duly modified in 1994 with the creation of the National Board of the Judiciary, which was entrusted with the responsibility of appointing Supreme Court judges, who in turn selected the rest of the country's judges. The initial selection process, which had been televised, had resulted in five women and 11 men being appointed to the Supreme Court. Moreover, the new makeup of the Dominican Republic's judicial branch had become a model for other countries in the Americas.

4. In February 1999, the Supreme Court had incorporated the remedy of *amparo* into the country's legal framework. She pointed out that the Dominican Republic was a signatory to the 1969 American Convention on Human Rights (the Pact of San José), and that article 8 of the amended Dominican Constitution of 1994 had drawn inspiration from the Universal Declaration of Human Rights.

5. An Ombudsman's Office had recently been created; it was designed to ensure that aliens and nationals alike had access to a quick, informal and free means to lodge complaints involving acts or omissions by any State agency that had resulted in an abuse of human rights.

6. She pointed out that resident aliens had long enjoyed the same rights as nationals, the Dominican Republic having signed the Convention relative to the Rights of Aliens in 1932.

7. She added that the Civil Code contained provisions allowing for the endorsement of sentences imposed by foreign courts. Reminding members that the Dominican Republic had acceded to the Optional Protocol to the Covenant, she said that only one such case had arisen under those provisions and had been settled amicably.

8. The Dominican Republic had ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and was also host country to the headquarters of the International Research and Training Institute for the Advancement of Women (INSTRAW). Through those and other involvements, the Government was committed to providing better opportunities for all Dominican women in a climate of equity and freedom.

9. In fact, a great deal of progress had been made with respect to women's rights, with the adoption of a series of legislative initiatives (Constitution, Electoral Act, Agrarian Reform Act, Education Act) containing provisions based on the Universal Declaration of Human Rights.

10. Turning to the list of issues raised by the Committee (CCPR/C/71/L/DOM), she noted that the case of *B. Mójica v. the Dominican Republic* would be commented on by Mr. García Lara, that all cases of extrajudicial abuse were being investigated, and that penalties had been imposed in the most important cases.

11. She observed that the National Academy of the Judiciary had begun providing human-rights training courses to all members of the judiciary. Furthermore, a human-rights institute had been set up within the armed forces to raise awareness of the need to protect human rights.

12. She then cited a series of additional advances: the Minister for Foreign Affairs had compiled and

* The symbol on the report was erroneously given as "CCPR/C/DOM/99/3".

distributed a handbook listing all international and domestic human-rights legislation; the Dominican Republic had been working with United Nations agencies to set up a national human-rights action plan; since its last report, her country had received the visit of a delegation from the Inter-American Commission on Human Rights; a seminar had been held to inform government agencies on how to draw up reports with respect to human-rights conventions; and lastly, the Dominican Republic had recently recognized the competence of the Inter-American Court of Human Rights.

List of issues (CCPR/C/71/L/DOM)

Constitutional and legal framework within which the Covenant and the Optional Protocol (arts. 1 and 2) are implemented

13. **The Chairperson** invited the delegation to reply to the questions in paragraphs 1-4 of the list of issues (CCPR/C/71/L/DOM): provisions of the Covenant that had been directly invoked before State bodies, and the ranking of the Covenant within the domestic legal system; status of an independent human rights commission and the creation of an Ombudsman's Office; reciprocity of rights of aliens; and implementation of the views of the Committee.

14. **Ms. Abreu de Polanco** (Dominican Republic) said that, although the provisions of the Covenant had not been directly invoked before the courts, the remedy of *amparo* had been recognized by judges pursuant to an order by the Supreme Court and in line with her country's signature of the Pact of San José. She also indicated that an Ombudsman's Office had been set up under the provisions of Bill 19-2001.

15. **Mr. Guzmán** (Dominican Republic) stated that, under the Civil Code, aliens could bring legal actions (or be the subject of such actions), acquire property and contract mortgages. Similarly, aliens enjoyed the same rights as nationals in respect of the right to life, security and work — those rights being guaranteed by law. He pointed out, however, that national immigration law drew a distinction between immigrants and non-immigrants. While immigrants were entitled to reside legally in the Dominican Republic, non-immigrants (such as seasonal agricultural workers and their families, persons in transit, and ship crews) were not. Nor were non-immigrants entitled to receive or acquire property. As

for sentences imposed by foreign courts, they could be endorsed and applied in the Dominican Republic. However, such sentences had first to be validated by a domestic legal tribunal in keeping with the Constitution and the country's moral precepts. If it was determined that the judgement did not run counter to Dominican law, the sentence could be executed and the interests of the individual safeguarded.

Gender equality and the principle of non-discrimination (art. 3 of the Covenant)

16. **The Chairperson** invited the delegation to reply to the question in paragraph 5 of the list of issues (CCPR/C/71/L/DOM): the de jure and de facto situation of women in the public and private sectors and measures taken by Government to promote gender equality.

17. **Ms. de Castro** (Dominican Republic) listed a series of legislative initiatives in favour of women's rights in the following areas: family violence, access of women to credit and property as part of agrarian reform, creation of Minister for Women, ratification of the 1994 Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará), gender equality, and the mandated increase from 25 per cent to 33 per cent in the number of women to be represented on elected municipal and national government councils.

18. She added that a national gender-equity plan had been put in place, and that the Minister for Women had been carrying out training and awareness-raising seminars concerning women's rights with the police and other members of the Dominican legal system. She noted that a woman had been elected to chair the National Assembly and that the Vice-President of the Republic was a woman. Moreover, increasing numbers of women had joined the ranks of the police and the army, including four at the rank of general.

Right to life (art. 6 of the Covenant)

19. **The Chairperson** invited the delegation to reply to the questions in paragraphs 6-8 of the list of issues (CCPR/C/71/L/DOM): status of *B. Mójica v. the Dominican Republic* case; ratification of the Second Optional Protocol; investigation of cases of at least 200 people reportedly killed by the National Police in 1999.

20. **Ms. Abreu de Polanco** (Dominican Republic) provided information on the disappearance of Barbara

Mójica (Communication No. 449/1991). The father, Rafael Mójica, who had a history of mental problems and conflicts with neighbours, had made complaints about the disappearance of his daughter on a number of occasions. The investigators following up on his complaints had recovered dismembered bodies from the sea but had been unable to identify the remains. The father had since died. All those and other details were contained in a comprehensive legal file which the delegation would be pleased to make available to the Committee, in the hope that the case could be closed.

21. She acknowledged that the previous Government had been slow to ratify the Second Optional Protocol to the Covenant. However, the current Government, which had only been in power for the past six months, had moved swiftly and the Protocol was currently before Congress for ratification.

22. **Mr. García Lara** (Dominican Republic) reported that, during the period 1 March 1999 to 21 April 2000, some 229 criminals had been shot and killed by police patrols. In line with article 27 of the Police Justice Code, which outlined actions to be taken in the case of possible infractions on the part of national police officers when carrying out their duties, those cases had been investigated and referred to police tribunals. Moreover, Act No. 285 adopted by the National Assembly provided for investigation of those cases of police abuse occurring when an officer was off duty. In such cases, the agent was suspended and the case brought before a regular court.

23. Over the past three to four years, the Attorney-General had opened offices within police precincts around the country. Those offices, in conjunction with local police authorities, were in charge of investigating alleged cases of abuse and for referring them either to police tribunals or to the regular courts. He added that there were hundreds of cases in which police officers had been suspended and brought before the regular courts.

Right to liberty and security of person, treatment of prisoners, fair trial and due safeguards (arts. 7, 9, 10 and 14)

24. **The Chairperson** invited the delegation to reply to the questions in paragraphs 9-13 of the list of issues (CCPR/C/71/L/DOM): use of firearms by police; institutional system that controlled the National Police; number of persons currently held in pre-trial detention

and steps taken to reduce the number of exceptions to the 48-hour limit; the problem of the backlog of cases; a system of registration of prisoners and the situation regarding the imprisonment of juvenile offenders.

25. **Mr. García Lara** (Dominican Republic) said that with respect to the use of firearms by police, an Internal Affairs Directorate had recently been created within the National Police. The Directorate had been put in charge of programmes designed to eliminate corruption, abuse and criminal acts (whether committed on or off duty). Created with a view to reforming the National Police, the main mission of the Directorate was to rebuild the confidence of citizens and to oversee and investigate actions of members of the National Police (on or off duty). Furthermore, the highest levels of command within the National Police and the Government had agreed on the need for reforms. The National Police was currently governed by legislation dating back to 1936, and a draft bill outlining the numerous reforms required had recently been introduced in the National Assembly.

26. One aspect of the reforms involved the police tribunals. He had recently attended the first human-rights seminar dispensed by the Military Institute on Human Rights. The seminar, entitled "Justification for Police Tribunals", spoke of the need to restructure rather than to abolish the current system of tribunals. It was suggested that representatives of the Attorney-General's department should be added to such tribunals. It was also suggested that tribunals should hold proceedings outside police facilities, which would allow citizens involved in criminal cases to feel more independent of police structures when exercising their rights. Civil suits could be brought against members of the police and, under the provisions of bill 281, agents could not invoke habeas corpus in cases of alleged criminal activity on their part.

27. Although some observers had suggested that police tribunals should be dismantled owing to a lack of impartiality, the reform was instead designed to improve the workings of these tribunals. An example of such improvements was the severe penalty imposed in the celebrated recent case of a merchant who had been shot and killed on Avenida 27 de febrero. The agent responsible had been sentenced to 10 years' imprisonment, and dozens of other similar cases could be cited.

28. With respect to the institutional system that controlled the National Police, by virtue of article 33 of the National Police Act (No. 6141 of 1972), the President of the Republic was in charge of the National Police. Under article 34, the direct commander was a career civil servant with the title of Chief of National Police. The reform envisaged changing that individual's title to Director-General. He/she would be the highest ranking officer for command, management, organization and training of the police corps. In the past, the Chief of National Police had been assisted by a collegiate organization known as the *Plana Mayor*. However, the draft bill currently before Congress proposed replacing the *Plana Mayor* by a new entity called the Supreme Police Council, to be chaired by the Minister for Security and Police Matters, and to include the Director-General of National Police and the Attorney-General, among others.

29. He cited a number of recent cases from the police courts of first instance and appeal, in which sentences of imprisonment ranging from two to 15 years, with dismissal from employment, had been awarded or upheld against police officers found guilty of violations of the Criminal Code in the course of their duties. Those cases included convictions for manslaughter not justified by a claim of self-defence under articles 3.28 and 3.29 of the Criminal Code.

30. **Mr. Castaños Guzman** (Dominican Republic), in reply to the questions in paragraph 11 of the list of issues, said that the number of prisoners in Dominican prisons had now risen to 13,000, of whom 80 per cent were in pre-trial detention. It was a difficult situation, but there were many ways in which prisoners held in pre-trial detention could regain their liberty. For instance, they could be released under an amnesty; the most recent amnesty law dated from 1978. There were also periodic pardons issued by executive decree, which came into effect in December, February and August of each year. Exemplary conduct while in prison could also win pardon and release. Under the remedy of habeas corpus, a judge could order the immediate release of a person imprisoned unjustly. For convicted prisoners, there was also the possibility of provisional liberty for good conduct under a bail system in criminal cases, and for release on probation when half the sentence had been served, decided by a parole board in the light of the prisoner's conduct. Furthermore, the Supreme Court had the power to

review cases if new facts or evidence came to light, with the result that a prisoner might be released.

31. The 48-hour limit on detention was a problem for the police and the judicial authorities, which often argued that it did not allow enough time to carry out a full investigation. However, the time limit was a constitutional right and was intended to protect the accused. Improvements were taking place in the system of investigation, especially through the increased use of scientific methods, and reduced reliance on testimony and confessions. As a result, arrest now often followed investigation rather than the other way round. The Procurator-General was especially vigorous in ensuring that the 48-hour limit was respected.

32. In reply to question 12, on the backlog of cases, he explained that a judicial reform had been in progress since 1997. The judges of the new Supreme Court were appointed through a process involving all the political forces of the nation and civil society. The National Board of the Judiciary was a highly professional body. Judges were now expected to deal with cases within 60 days, although they could seek an extension if the case file was especially voluminous. When the reform had begun there had been thousands of pending cases, but over the past three years the courts had managed to clear them. As for the registration of prisoners, that was the responsibility of the General Directorate of Prisons, which kept full details of each prisoner, his or her whereabouts in the prison system and all orders made concerning him or her. The registration process had been much improved by computerization. Significant improvements had taken place in the human rights situation for pre-trial prisoners, according to international observers, who considered that the rule of law now prevailed in the Dominican Republic.

33. Juvenile offenders, mentioned in paragraph 13 of the list of issues, were a worldwide phenomenon. Young people drifted into crime because of family breakdown, acute poverty and irresponsible parenting. The Dominican Republic tackled the problem by means of special youth centres, governed by the Code on Minors, which treated them not as adult offenders under the Criminal Code but as adolescents in need of education and rehabilitation, both of which were provided in the centres. Non-governmental organizations were active in that area, and the Don Bosco programme, for the rehabilitation of street children, was internationally acclaimed.

34. **Ms. Abreu de Polanco** (Dominican Republic), referring to question 4 of the list of issues, which had not yet been answered, said that, when the Dominican Republic had ratified the Optional Protocol, it had undertaken to deal with any complaints or views expressed by the Committee. Only one case, to her knowledge, had come to the Committee's attention under the Optional Protocol, and there were none pending. She added that whenever the Dominican Republic ratified an international instrument, its provisions were incorporated into domestic law and became fully binding on the State and on citizens.

35. **Mr. Solari Yrigoyen** paid tribute to the efforts made by the Dominican Republic to develop constitutional and institutional mechanisms to improve its democratic system and the human rights situation in the country. He also welcomed the 1994 constitutional reform and the emphasis, in article 3 of the Constitution, on the freedom and independence of the much-invaded Dominican Republic from any foreign power, reflecting the right of self-determination enshrined in article 1 of the Covenant.

36. There was still much to be done for the country to comply fully with its obligations under the Covenant. The fourth periodic report (CCPR/C/DOM/99/4) had been prepared by the previous Government, and did not provide enough information on some points, especially the implementation of legislation. He was also concerned with the problems arising from the presence of half a million Haitians in the Republic, now working in industry or construction rather than in sugar-cane plantations, as in the past. When the third periodic report had been prepared, decree No. 233 of 1991 had been in force, suspending certain articles of the Covenant. What was the current position with regard to the effects of that decree? It was not clear how much inspection took place of workplaces employing Haitians; according to the previous report, there had been only 17 inspectors. As for the culture of impunity and the progress made in combating it, he wanted to know the outcome of any appeal against the conviction of four Dominican citizens for the murder of the journalist Orlando Martínez in 1975, and the findings of any judicial investigation into the 1994 disappearance of the journalist Narciso González.

37. In 1999, 200 homicides had reportedly been committed by members of the police and the armed forces. The figure for 2000 was apparently similar. He wondered what investigation had taken place into those

incidents (question 8). Criminal offences committed by the police were tried in special police courts, which the Government claimed complied with the requirements of article 14 of the Covenant. However, he would welcome more information about those courts. In particular, he could not understand why police offences should not be tried in the ordinary criminal courts. There had also been an extrajudicial killing, on 13 July 1999, by the police in the province of Espayan. During a shooting incident, they had killed three people: Victor Matos Espinosa, Antonio Ramón Hernández and Julio Holguín. The victims had been seen on television being removed in a police vehicle, belying the version of events given by the police. Had the police officers responsible gone unpunished?

38. Military tribunals appeared to lie outside the reach of the Covenant, especially article 14. What had happened in the case of the 16 Haitians and one Dominican, killed near the border on 17 June 1999 by members of the armed forces; had those responsible been tried in the military tribunals? Two Haitians had been killed by members of the armed forces, on 12 August and 27 November 2000 respectively; what was the outcome of the military trials in those cases?

39. Article 8.1 of the Constitution prohibited torture; however, there were many indications that torture was widely practised by the police, the army and prison officers. What steps was the Government taking to combat it, and what information could the Dominican Government supply on trials and convictions for torture in the past three years?

40. The situation in the prisons was disquieting, and the conditions in prisons appeared to amount to cruel and degrading treatment. Since the percentage of pre-trial prisoners had now risen to 80 per cent, it was important to know more about their conditions. In some prisons, such as those in La Vitoria and San Cristóbal, he had heard that prisoners were sleeping in the corridors, there were no medical facilities and water supply and hygiene were unsatisfactory. There were punishment cells without ventilation or lighting. What steps was the Government taking to improve conditions in the short term, and what deadlines had it set to effect the prison reforms it had promised in January 2001?

41. In 1993, the Committee had expressed concern about the detention of Haitians. What was the policy of the new Government concerning the deportation of

aliens (paras. 83 and 84 of the report)? The problem of impunity for human-rights violations had already been mentioned. What steps was the Government taking to ensure the trial of police and army officers accused of human-rights violations in the ordinary courts, rather than in special courts where due process could not be guaranteed? Finally, was military service compulsory for all, or was there an alternative form of service, and what provision was made for conscientious objectors?

42. **Ms. Medina Quiroga** said she was disappointed with the paucity of information in the report. Little new information had been provided since the third periodic report in 1993, which indicated that the situation in the Dominican Republic was inconsistent with its human-rights obligations under the Covenant. Did the Covenant have the status of law in the Republic, and if so did a subsequent enactment take priority over an earlier one? If it did not, was there a possibility that the Covenant could be inapplicable even though it was later in time than other pieces of legislation? Did it apply directly, and was the judiciary trained in the requirements of international law? She was not satisfied with the reply given to question 4 in the list of issues. It was important to know what mechanisms were in place to give effect to the Committee's views.

43. On the basis of the report and the delegation's presentation, it was impossible for the Committee to ascertain the status of women in the Dominican Republic. The delegation had provided no information at all on violence against women, their access to public office (other than the four female Army generals mentioned in the oral presentation) or their opportunities to participate in society on an equal footing with men. It would be surprising indeed if the situation of women in the Dominican Republic was vastly different from that in other Latin American countries.

44. The figure of at least 200 deaths at the hands of the National Police (CCPR/C/71/L/DOM, para. 8) was alarming, as was the lack of any system to control such incidents. The State party should explain why police officers were prosecuted in special police courts rather than in ordinary courts. That was completely at variance with article 14 of the Covenant. In that same vein, she wondered whether there was an independent entity to investigate crimes committed by police officers. It would be important to know how many of the 200 or more cases had been adjudicated and how

many had resulted in convictions and/or compensation to the victims' families.

45. Equally alarming was the percentage of the prison population in pre-trial detention — nearly 80 per cent, according to the report (CCPR/C/DOM/99/3, para. 77). She enquired about the average duration of pre-trial detention and whether such prisoners were held separately from those who had been convicted. The delays in hearing applications for habeas corpus (para. 78 of the report) seemed to indicate that there was no recourse at all in respect of detention. She wondered whether that situation still obtained or whether the 1978 law governing habeas corpus had been updated. She lamented the total lack of specialized prison personnel accountable for the conditions in prison facilities but nonetheless welcomed the introduction of a register of detainees and enquired whether it was being kept nationwide.

46. Referring to paragraph 64 of the report and paragraph 3 of the list of issues, she said that the Committee had not been given any explanation of the principle of reciprocity of rights of aliens but rather had been informed that, in principle, aliens had the same rights as Dominican nationals. She would appreciate a fuller definition of that concept and details on instances in which aliens did not enjoy equal rights. The State party should also explain the criterion used to distinguish between "immigrants", who were permitted to apply for permanent residence, and "non-immigrants".

47. **Mr. Klein** said that, while the State party was to be commended for its continuing interest in exchanging ideas with the Committee, the delegation's presence did not compensate for the lack of basic information in the report. Five sentences on the whole of article 14 were simply not sufficient. The report should have addressed the country's high crime rate and the killings by police officers, yet it did not even contain a special heading for articles 6 and 7. Similarly, paragraph 109 on gender equality was far from exhaustive. The Committee could not possibly assess whether the State party was implementing its obligations under the Covenant on the basis of such a report.

48. He noted that Ms. Medina Quiroga had already questioned the delegation on mechanisms to facilitate the implementation of the Committee's views (CCPR/C/71/L/DOM, para. 4). Even if, like many

States, the Dominican Republic had no legal mechanism to that end, surely there must be some sort of mechanism in practice for which a particular government ministry was responsible. The delegation should elaborate.

49. With regard to the Committee's questions concerning aliens (para. 3 of the list of issues), he would welcome clarification of the meaning of aliens "in transit", a concept which was still applied to persons who had resided in the Dominican Republic for as long as 10 or 20 years. He wished to know why persons who had been in the country that long were not granted legal status.

50. As for the special police courts, it very much appeared that they existed in order to give special treatment and protection to the police.

51. Referring to paragraphs 72 and 73 of the report, he welcomed the characterization of torture and arbitrary detention as punishable crimes but wished to know how the relevant laws were applied in practice. While legislation could address individual incidents, it was not clear who was responsible for the fact that the entire prison system — with its overcrowding, punishment cells and appalling sanitary conditions — was in violation of article 10 and perhaps even article 7 of the Covenant. Referring to the second sentence of paragraph 78 of the report, he enquired how a person could continue to be detained even if the detention was illegal. Welcoming the introduction of a prison register, he wished to know whether it was accessible to the public, particularly those seeking information on missing persons. He would appreciate details on the role of the military in the security forces — for example, whether they were empowered to carry out the functions of normal police officers and whether they remained accountable to their military superiors when doing so. He also wondered whether there were special military courts analogous to the police courts.

52. In conclusion, he observed that, although the Dominican Republic had ratified the Covenant more than 30 years earlier, it must still take vigorous action in order to implement its provisions.

53. **Mr. Yalden** said he agreed with Mr. Klein, Ms. Medina Quiroga and Mr. Solari Yrigoyen concerning the report's shortcomings. The Committee's reporting guidelines made it clear that vague references to laws, regulations and decrees or broad statements, such as "There is no discrimination of any kind ...",

were not sufficient; substantiation was absolutely essential.

54. The information on gender equality in both the report and the delegation's oral presentation did not enable the Committee to arrive at any meaningful assessment of the situation of women in the Dominican Republic. While paragraph 109 indicated that 60 per cent of foreign-service posts were held by women, it gave no information on what percentage occupied senior, middle-ranking or clerical posts. The Committee also needed statistical information on women's post-secondary education, their standing in society, their pay in comparison to that of men and their presence in managerial posts in both the public and private sectors.

55. As for national human-rights institutions, the State party had made a passing reference in its oral presentation to the Office of the Ombudsman but had said nothing of its jurisdiction (for example, over the armed forces or in handling prisoner complaints) or its activities. Nor had it given any indication of whether it had independent, impartial and transparent human rights organizations, as recognized by the Paris principles (General Assembly resolution 48/134, annex), or an agency to ensure impartial and transparent investigation of alleged human rights violations by police officers (CCPR/C/71/L/DOM, para. 10). Like other Committee members, he was critical of the existence of special police courts. In short, he wondered whether the State party had any intention of establishing agencies to oversee the implementation of the Covenant in practice and to hear human rights complaints. The creation of an independent, impartial agency to monitor the prison system would also be a positive step.

56. **Mr. Tawfik Khalil** acknowledged that it was not always easy to overcome the legacies of the past, of which police courts were a glaring example. Like Ms. Medina Quiroga, he was disturbed not only by the 229 killings reported by the delegation but also by the State party's insistence on maintaining special police courts, which reportedly pronounced lighter sentences. There seemed to be a lack of accountability about police officers' excessive use of weapons with impunity. Prosecution of such offenders in civil courts would at least lend an air of credibility to the proceedings.

57. He noted that the very large percentage of pre-trial detainees had risen from 70 to nearly 80 per cent

and expressed concern at the upward trend rather than the hoped-for reduction.

58. Noting that the condition of Dominican prisons was appalling in all aspects, he asked whether pre-trial detainees and juvenile offenders were held with those who had been convicted.

59. **Mr. Kretzmer** said he endorsed the comments and questions of all previous speakers; he was especially concerned by the large number of killings by security forces, and the impunity they enjoyed. The fact that 200 such cases were pending against police was indicative of the gravity of the situation.

60. The Committee's guidelines specified that the State party must not merely describe laws but describe and analyse the factual situation, providing examples. The report contained no information regarding the factual situation. The discussion of article 10, for example, indicated that persons held in pre-trial detention and convicted prisoners, and men and women, were confined separately; reports received from independent sources showed, however, that in fact prisoners were held together, and that there were an extraordinary number of persons in pre-trial detention. The report therefore lacked credibility.

61. With respect to article 9, he would like to know what law governed arrest and detention, on what grounds the police could carry out an arrest without a warrant, and what mechanisms existed to ensure that the police complied with the law. The remedy of habeas corpus was not working effectively if a detained person had to wait weeks or months before his case was heard. Article 9, paragraph 3, specified that a person arrested or detained should be brought promptly before a judge and tried or released within a reasonable time: and yet, astoundingly, 80 per cent of prisoners in Dominican jails were being held in pre-trial detention. He would like to know what were the grounds for holding a person in pre-trial detention, and when must an arrested person be brought before a judge. If he had understood correctly, the delegation had stated that bail was obligatory but discretionary. What was meant by that statement? It would be useful to know the procedure for setting bail, since such a system would not work if the amount of the bail was incompatible with a person's means.

62. Article 10 was categorical: a person deprived of liberty must be treated with humanity and respect. The State party was not entitled to hold people in detention

while violating the terms of that article. Reports indicated that the State party was not, in fact, complying with article 10. The principle reason was the severe overcrowding of Dominican prisons, and the cause of the overcrowding was the inordinate number of persons held in pre-trial detention. He would like to know whether a Dominican judge who made a decision to hold a person in detention awaiting trial was aware that he was violating article 10 of the Covenant.

63. **Mr. Lallah** said that he too felt a sense of deep dissatisfaction with the Dominican report. The concluding observations adopted after the examination of previous reports did not seem to have been heeded, making a meaningful dialogue difficult. He was grateful for the presence, on the delegation, of representatives of various branches of the Government. The Dominican Republic should describe the difficulties it experienced in fulfilling its reporting obligations under article 40, so that the Committee would be better equipped to assist it.

64. He was especially concerned by the vast prison population, by the inability of the courts to cope with the caseload, and by the inequality both among Dominicans and between Dominicans and others living in that country. He would like to know whether courts other than the regular courts, the police courts and the military courts existed, and if so, what they were. Furthermore, it would be helpful to know what procedures operated in the various courts, and what were the differences among them. What was the *raison d'être* of the police courts? Why had the Dominican Republic found it necessary to establish them?

65. With respect to article 14, he would like to know whether the courts were open to the public, which courts were open to the public, and why a special procedure existed for police officers who took a person's life during the exercise of their duties. The vast number of persons held in pre-trial detention impaired the enjoyment of rights under articles 9 and 10. He would like to know what resources were available to assist persons held in pre-trial detention, including assistance in obtaining a lawyer and in initiating a habeas corpus remedy. Article 14 provided that a person must be tried without undue delay. That term was not relative, especially when that person was being held in pre-trial detention.

66. **Mr. Amor** said that, although the Dominican Republic had cited various reforms, a whole new

approach seemed necessary. It would be useful to know the reason for the scantiness of the report, in particular since that State party had appeared before the Committee several times in the past, and since the Committee's guidelines were clear on reporting obligations. The Committee had asked for specific information on the application of the Covenant; little progress had been made in either information or analysis.

67. The State party should give the reason for the existence of the exceptional courts, and describe the difference in their procedures and operations as well as in the safeguards they provided. It was unlikely that such exceptional jurisdictions as the police courts and the military courts were compatible with the terms of the Covenant. He was aware of no other country in which such a large percentage of prisoners were persons held in pre-trial detention. He had listened carefully to the delegation's explanations of pardons and amnesties; such remedies applied, however, only to persons whose guilt had already been established. The fact that convicted prisoners and those held in pre-trial detention, and adults and minors, were confined together, raised grave concerns, in particular since, according to various sources, living conditions in those overcrowded facilities were harsh. The procedures for arrest and detention remained vague, as did the existence of any mechanisms for monitoring police activities. It seemed clear that in the Dominican Republic the right to liberty was endangered.

68. The report contained almost no information about equality between men and women. Although it cited the number of women that held certain public offices, it made no mention of the types of employment held by women, and whether they benefited from any special protections.

69. Paragraph 43 stated that anti-corruption bills had been submitted to Congress with the aim of introducing the presumption of guilt into cases involving civil servants. And yet, civil servants should benefit from the same protections as those enjoyed by all other persons. Those bills would unquestionably breach the principle of the presumption of innocence.

70. **Mr. Ando** said that he welcomed the report of the Dominican Republic, in itself an indication that the State party wished to fulfil its obligations under the Covenant; there were other States parties that did not submit reports. He was also grateful for the presence of a sizeable delegation. In addition, the State party had formulated a new Constitution in an effort to improve

its human rights situation. He shared, however, the sense of disappointment expressed by other members of the Committee.

71. No reply had been received to the question in paragraph 4 of the list of issues, which inquired what mechanisms existed to facilitate implementation of the Committee's views under the Optional Protocol. The answer to the question in paragraph 6, namely, that investigations were being conducted with regard to the case of *B. Mójica v. the Dominican Republic*, touched on that matter. That was not, however, a sufficient answer. In addition, it was unclear whether international instruments had the force of law under the new Constitution. When a treaty obligation conflicted with a domestic law, which of the two prevailed?

72. As paragraphs 8 to 10 of the report indicated, many Haitians lived in the Dominican Republic. The State party should describe the applicable provisions of the naturalization law, and the procedure for acquiring permanent residency. According to paragraph 10, Haitians and Dominicans entered into consensual unions but were reluctant to register their children: it would be useful to know the legal status of such children, and whether a Dominican unregistered child and the unregistered child of a Haitian and Dominican union were treated differently under the law. He would like to know whether a provision existed granting Dominican nationality to a child otherwise stateless who had been born away from home.

73. In addition, he would like to know, with respect to articles 21 and 22, what were the procedures and requirements for forming a trade union, and what was meant by the proviso contained in paragraph 100 of the report that such organizations should be formed for peaceful, labour-related purposes. How were the rights of workers regulated by law?

74. **Mr. Rivas Posada** said that, since police courts presumably existed in order to investigate and prosecute crimes committed by members of the police forces, it would be useful to know whether, in the Dominican Republic, the police forces were considered a civilian corps or a branch or tool of the military forces. Those were two quite different approaches, affecting basic democratic principles and bearing on the question of whether the police had powers independent from the ordinary civil courts.

The meeting rose at 1 p.m.