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Human Rights Committee

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Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Dominican Republic

1. The Human Rights Committee considered the fifth periodic report of the Dominican Republic (CCPR/C/DOM/5) at its 2864th and 2865th meetings, held on 12 and 13 March 2012 (CCPR/C/SR.2864 and 2865). At its 2885th meeting, held on 27 March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the Dominican Republic's fifth periodic report and the information contained therein. The Committee expresses appreciation for the opportunity to resume the dialogue with the delegation on measures to implement the provisions of the Covenant that were adopted by the State party during the reporting period. The Committee thanks the State party for its written replies (CCPR/C/DOM/Q/5/Add.1) to the list of issues (CCPR/C/DOM/Q/5), which were supplemented by the oral replies provided by the delegation and the additional information provided in writing. Nevertheless, the Committee notes the very late submission of the written replies to the list of issues, just hours before the beginning of the dialogue, which meant that the document could not be translated into the other working languages of the Committee in a timely fashion.

B. Positive aspects

3. The Committee notes with satisfaction:
- (a) The adoption of the new Constitution in January 2010;
 - (b) The introduction of the right to vote for persons deprived of liberty.

4. The Committee welcomes:

(a) The accession in August 2009 to the Convention on the Rights of Persons with Disabilities;

(b) The ratification on 24 January 2012 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Principal subjects of concern and recommendations

5. The Committee notes that the State party has not to date listed any examples of application of the provisions of the Covenant by the national courts and that the status of the Covenant in the domestic legal system is not entirely clear (art. 2).

The State party should clearly state that the Covenant takes precedence over domestic law. In its next periodic report, the State party should include examples of application of the Covenant by national courts and of access to the remedies provided by law for persons whose rights under the Covenant have been violated.

6. The Committee regrets that, more than 10 years after the establishment of the Office of the Ombudsman (*Defensoría del Pueblo*), no Ombudsman has been appointed and that the institution has not yet begun its work. The Committee also regrets that there is no national human rights institution functioning in conformity with the Paris Principles (art. 2).

The State party should appoint an Ombudsman as soon as possible through a transparent procedure, guaranteeing that the person selected has the highest levels of professionalism, independence and expertise. The State party should ensure the proper functioning of the Office of the Ombudsman, provide it with its own budget, strengthen its mandate, expand its powers of supervision and take all the necessary measures to ensure its full independence in accordance with the Paris Principles (General Assembly resolution 48/134).

7. The Committee remains concerned at the extremely vulnerable situation of Haitian migrants and their descendants, as well as at the discriminatory treatment, violence and aggression of which they are victims. The Committee regrets the lack of information on the investigation, prosecution and punishment of such cases (arts. 2 and 26).

The State party should make efforts to eradicate stereotypes and discrimination against Haitian migrants and their descendants, inter alia by conducting public information campaigns to promote tolerance and respect for diversity. The State party should ensure that cases of discrimination are systematically investigated, that the perpetrators are prosecuted and punished, and that appropriate compensation is awarded to the victims.

8. The Committee is concerned at the lack of clarity concerning the status of refugees within the territory of the State party, including in terms of their access to temporary identity documents that would legalize their stay in the country (arts. 2 and 16).

The State party should systematically provide recognized means of identification to asylum-seekers and to refugees in order to protect them from unwarranted deportation and ensure their access to social and economic opportunities.

9. The Committee regrets the continuing serious constraints on the access of persons with disabilities to education, cultural, health and labour services and on their integration and participation in society (arts. 2 and 26).

The State party should increase its efforts to ensure the full integration and participation in society of persons with disabilities. In that connection, the State party

should implement the provisions of the Convention on the Rights of Persons with Disabilities.

10. The Committee welcomes the inclusion of the principle of equality between men and women in the 2010 Constitution, as well as the obligation for the State to make equitable nominations for elective office. However, the Committee notes with concern that women remain underrepresented in both the public and private sectors, especially in decision-making posts, and regrets that there are not sufficient legal mechanisms to facilitate implementation of the constitutional principles relating to gender equality (arts. 3 and 26).

The State party should adopt whatever legislation is necessary to give full effect to the principle of equality between men and women. The State party should also increase the number of women in decision-making posts in the private and public sectors by implementing practical new initiatives, including, where necessary, the adoption of temporary special measures to give effect to the provisions of the Covenant.

11. The Committee welcomes the initiatives taken with regard to the prevention and punishment of acts of violence against women, as well as the inclusion of the offence of sexual harassment in the Criminal Code. The Committee nevertheless deplores the frequency of such acts of violence and the constraints on access to justice and adequate protection for victims, especially in rural areas where there are no competent judicial authorities or shelters or residences. Furthermore, the Committee regrets the persistent practice of sexual harassment and the lack of data on effective implementation in relation to this new criminal offence (arts. 6, 7 and 14).

The State party should intensify its efforts to eliminate violence against women, ensure that such cases are investigated, prosecuted and penalized in an appropriate and systematic way, and establish a rehabilitation system for the victims. In particular, the State party should provide access to justice for all women and increase the number of shelters or residences with adequate human and material resources throughout the country. The State party should improve training with regard to violence against women, including sexual harassment and domestic violence, for the staff of legal institutions and the police force. It should also establish a reporting system and a database for such acts in order to analyse and take appropriate measures in this area.

12. The Committee is concerned at the liability exemption proposed in the new draft Criminal Code, which suspends prosecution, liability and punishment in cases of rape when the perpetrator marries the victim. This proposal promotes sexual violence against women and leads to impunity in such cases, in violation of the Covenant (arts. 3, 7, 14 and 26).

The State party should ensure that the provisions of the new Criminal Code, currently under discussion in Congress, fully respect the rights of women. In this connection, the State party should exclude any exemption from liability in cases of rape or any other form of violence against women when the perpetrator marries the victim.

13. The Committee reiterates its concern at police brutality and the excessive use of force by law enforcement officials and at the high number of extrajudicial executions. The Committee also regrets the lack of criminalization of extrajudicial execution in domestic legislation, which has resulted in limited public awareness of the phenomenon and a lack of appropriate action by the judicial authorities (arts. 6 and 7).

The State party should continue its efforts to eliminate police brutality and the excessive use of force by law enforcement officials. In particular, it should make sure that the current reforms of the police force ensure: (a) quality professional training that includes full respect for human rights and conflict resolution as the main goals of

police intervention; (b) adequate labour conditions and salaries that reflect the level of responsibility of law enforcement officials; (c) opportunities for professional development and ongoing monitoring mechanisms that support absolute respect for human rights. The reform process that is currently under way should also ensure the harmonization of State policies, legislation and practices with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

14. The Committee welcomes the decision to recognize the competence of ordinary courts in cases of brutality or excessive use of force by law enforcement officials. Nevertheless, the Committee is concerned at the difficulties encountered by the victims of such acts, especially detained persons, in having their cases investigated in an immediate, independent and impartial fashion. The Committee also regrets that the majority of victims of brutality or excessive use of force by law enforcement officials do not receive the payments required by compensation awards (arts. 6, 7 and 14).

The State party should establish an independent and impartial mechanism for the immediate investigation of all cases of brutality or excessive use of force by law enforcement officials, particularly in prisons. In all cases of brutality or of excessive use of force by a law enforcement official in which the victim does not file a complaint, the State party should systematically ensure an investigation ex officio. The State party should also establish judicial and administrative mechanisms to ensure compliance with compensation awards made to victims of acts perpetrated by law enforcement officials. In this connection, the State party should modify article 61 of the National Police Institutional Act to include a reference to the civil liability of the State in all cases of police liability.

15. The Committee expresses its concern at the general criminalization of abortion, which obliges pregnant women to seek clandestine abortion services that endanger their lives and health. The Committee is also concerned at the persistently high indices of adolescent pregnancy and maternal mortality, despite the State party's prevention efforts (arts. 6 and 17).

The Committee recommends that the State party should review its legislation on abortion and make provision for exceptions to the general prohibition of abortion for therapeutic reasons and in cases of pregnancy resulting from rape or incest. The State party should ensure that reproductive health services are accessible for all women and adolescents. Furthermore, the State party should increase education and awareness-raising programmes, both formal (at schools and colleges) and informal (in the mass media), on the importance of using contraceptives and the right to reproductive health.

16. The Committee is concerned at reports of discrimination, bullying, homicide, ill-treatment, torture, sexual aggression and sexual harassment against persons because of their sexual orientation or gender identity. The Committee also regrets the lack of information on the effective investigation and punishment of such acts (arts. 3, 6, 7 and 26).

The State party should indicate clearly and officially that it shall not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, and harassment, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim are investigated, prosecuted and punished.

17. The Committee is concerned at the increasing number of cases of trafficking in persons, which mainly affect women and children, and the fact that only a few cases have resulted in investigations, prosecution and sentences. The Committee also regrets the

limited number of shelters available for victims of trafficking in persons, especially in areas far from the main cities (arts. 3, 7 and 8 of the Covenant).

The State party should investigate effectively the issue of trafficking in persons, identify those responsible, prosecute them and impose penalties that are commensurate with the seriousness of the acts. It should ensure that the victims' rights are protected, including through the provision of shelters in all regions of the country. In addition, the State party should compile reliable statistics in order to combat this scourge effectively.

18. The Committee commends the State party for the information provided on initiatives undertaken to prevent child labour. Nevertheless, the Committee is concerned at the serious situation of boys and girls who are victims of child labour, especially in the domestic and agricultural sectors (arts. 8 and 24).

The State party should continue its efforts to implement existing policies and laws that are designed to eradicate child labour, including through public information and education campaigns on the protection of children's rights. The State party should ensure that children have special protection, in accordance with article 24 of the Covenant. Lastly, the State party should ensure that this practice is prosecuted and punished and should keep reliable statistics in order to combat it effectively.

19. The Committee is concerned at the conditions to which migrant workers who work under unspecified employment contracts, without access to the basic rights and benefits to which they are entitled are subjected (art. 8).

The State party should adopt measures to ensure that all workers enjoy their basic rights, independently of their migrant status. It should also establish affordable and effective mechanisms to ensure that abusive employers are held accountable.

20. The Committee remains concerned at the practice of deporting foreigners in conditions that are incompatible with the provisions of the Covenant. The Committee also regrets the detention for unspecified periods of persons who are going to be deported (arts. 9 and 10).

The State party should provide all persons subject to a deportation process with the guarantees established by the Covenant, abolish the detention for an unspecified time period of persons who are going to be deported and provide detained persons with effective remedies.

21. The Committee is concerned at the lack of information on the situation in prisons which are not included in the new prison model programme and which house the majority of detained persons. It also regrets the limited use of alternatives to imprisonment, such as electronic surveillance and release (arts. 9 and 10).

The State party should ensure that the new prison model is not implemented at the expense of persons detained in prisons continuing to operate under the previous system. The State party should ensure full compliance with the Standard Minimum Rules for the Treatment of Prisoners at all of the country's prisons. It should also increase its efforts to introduce alternatives to imprisonment in the criminal justice system.

22. The Committee is concerned at reports that the 2004 General Migration Act has been applied retroactively in a number of cases in which recognition of the Dominican nationality of Dominican adults of Haitian origin has been withdrawn because their parents were "in transit" at the time of their birth, regardless of the duration of their stay in the country. The Committee regrets the serious consequences of this situation in terms of the affected persons' access to education, justice, employment, housing, health services and to

all the civil and political rights related to migration status and nationality (arts. 2, 16 and 26).

The State party should abstain from applying the 2004 General Migration Act retroactively and maintain Dominican nationality for persons who acquired it at birth. Furthermore the State party should consider the possibility of acceding to the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and adopt the necessary legislative and administrative measures to bring its laws and procedures in line with those norms.

23. The Committee is concerned at reports concerning children of Haitian origin born in the Dominican Republic who are deprived of access of official documentation on account of their origins (art. 24).

The State party should ensure that all children born within its territory are registered and receive an official birth certificate.

24. The Committee is concerned at reports of various cases of aggression, threats and intimidation against journalists due to their professional activities (art. 19).

The State party should adopt policies to protect and promote the freedom of expression that are consistent with the guidelines set out in the Committee's general comment No. 34. Furthermore, the State party should ensure that acts of aggression, threats and intimidation against journalists are investigated, prosecuted and punished.

25. The Committee regrets the lack of information concerning measures adopted to promote the effective exercise of the right to peaceful assembly and freedom of association on the part of undocumented migrant workers and to protect their freedom of association by applying the current legal provisions of domestic legislation (arts. 21 and 22).

The State party should ensure the real and effective implementation of the right to peaceful assembly and freedom of association for all migrant workers, without the exercise of these rights becoming grounds for loss of employment or for the deportation of the persons involved.

26. The State party should widely disseminate the Covenant, the text of the fifth periodic report, the written replies which it has provided in response to the list of issues prepared by the Committee and the present concluding observations in order to increase the awareness of the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. In addition, the State party is advised to engage in broad consultation with civil society and non-governmental organizations in the preparation of its sixth periodic report.

27. In accordance with article 71, paragraph 5, of the Committee's Rules of Procedure, the State party should provide, within a period of one year, relevant information on the measures adopted to implement the recommendations made by the Committee in paragraphs 8, 11 and 22 of these concluding observations.

28. The Committee requests the State party to provide, in its subsequent periodic report, to be presented no later than 30 March 2016, concrete and updated information on all the recommendations and on the Covenant as a whole.