



# DOMINICAN REPUBLIC

## AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW

### 18TH SESSION OF THE UPR WORKING GROUP, JANUARY - FEBRUARY 2014

#### FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review (UPR) in December 2009, the Dominican Republic supported recommendations to “promptly designate the person who will occupy the position of Ombudsman (*Defensor del Pueblo*)”.<sup>1</sup> However, it was only in May 2013 that the first Ombudsman was appointed and so far no measures have been taken to expedite the creation of an independent national human rights institution in conformity with the Paris Principle, as agreed by the Dominican Republic during the last review.<sup>2</sup>

Concerning the international human rights conventions that the Dominican Republic agreed to sign and ratify during the last review,<sup>3</sup> it has ratified only the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 24 January 2012.

Although the Dominican Republic supported recommendations to establish an independent oversight body to investigate complaints of police abuse and human rights violations,<sup>4</sup> no action has been undertaken to implement these.

The Dominican Republic also supported several recommendations related to combating violence against women and girls.<sup>5</sup> Amnesty International notes that although some steps have been taken, much more needs to be done to implement the recommendations and to eradicate violence against women and girls (see also below).

The Dominican Republic accepted a number of recommendations to combat racism and racial discrimination,<sup>6</sup> as well as two recommendations related to the protection of the rights of migrants.<sup>7</sup> To Amnesty International’s knowledge, the Dominican Republic has not taken action to implement any of those recommendations (see also below).

Amnesty International regrets that the Dominican Republic rejected the recommendation to ensure that Dominicans of Haitian descent are not denied citizenship or access to civil and birth registration procedures and are not arbitrarily subject to retroactive cancellation of birth and identity documents.<sup>8</sup>

#### THE NATIONAL HUMAN RIGHTS FRAMEWORK

##### **Right to nationality**

The new Constitution, which entered into force in January 2010, consolidates the exception to the right to *jus solis* nationality introduced by the 2004 Migration Law. Under the previous Constitution, the only persons exempted from the right to nationality were the children of diplomats and of persons in transit. The new Constitution further widens this exemption to exclude children of persons who are residing illegally in the country. This new nationality provision directly contradicts the 2005 ruling of the Inter-American Court of Human Rights in *Dilcia Yean and Violeta Bosico v. Dominican Republic*<sup>9</sup> according to which the migratory status of a parent should have no bearing on a child’s right to nationality.

### **Right to abortion**

Amnesty International is concerned that under the Criminal Code women seeking abortion services and those who provide those services face criminal sanctions regardless of the circumstances in which the abortion was sought or provided. The new Constitution reinforces this framework, and in article 37 states the inviolability of the right to life “from conception to death”.

A reform of the Criminal Code has been ongoing for several years. In June 2013, a commission of the Lower House submitted an amended draft to the plenary of the House which continues to deny women the right to abortion in all circumstances.

### **Responsibility of the state for human rights violations**

Current legal provisions only ensure compensation and restitution to victims of human rights violations and their families, thereby falling short of international standards, which require states to ensure reparation for victims of human rights violations and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Article 5 of the new draft Criminal Code presented in June 2013 expressly absolves the Dominican State of any criminal responsibility.

The Institutional Law on the National Police recognizes only the personal responsibility of members of the police for unlawful actions carried out while on duty. Accordingly, the National Police does not consider itself liable as an institution for civil damages resulting from the unlawful actions of its members.

## **THE HUMAN RIGHTS SITUATION ON THE GROUND**

### **Human rights violations by police**

Amnesty International has documented numerous cases of unlawful killings, torture and other ill-treatment, enforced disappearances and arbitrary detentions, committed by the police.<sup>30</sup> The National Police is responsible for a high number of killings every year; according to statistics from the Office of the Prosecutor General, 2,663 persons were killed by the police between 2005 and 2012.

The vast majority of these fatal shootings are described by the police as “exchanges of gunfire” (*intercambios de disparos*) with criminal suspects. However, interviews with victims’ families carried out by Amnesty International, as well as newspapers and NGO reports, suggest that in many cases police officers fail to comply with international standards and domestic law and use force that is disproportionate to the threat they face.

For example, Jean Carlos de León (known as Cacón) was killed by the police on 4 January 2013 during what the police described “an exchange of gunfire”, as they investigated the alleged killing of a police officer. On 2 January 2013 the Police Chief stated on TV that he would prefer Cacón not to hand himself in to the police, so that the police could look for him. According to witnesses, when the police went to arrest him, he knelt down and pleaded for clemency. Although the Prosecutor General stated that an investigation had been opened into the case, the family was never contacted and the outcome of the investigation has not been made public.

Several people have been killed by the police in the context of demonstrations and in many such instances the police appear to have used unnecessary or excessive force. In June 2012, three men and a pregnant woman were killed in the town of Salcedo during a demonstration sparked by the lack of progress in the investigation into a police killing. In October 2012, the Prosecutor General stated that the investigation into the killings was ongoing. On 11 June 2013, a demonstration took place protesting against the lack of progress in the investigation.

Amnesty International has also received several reports of torture and other ill-treatment committed by the police, mostly during interrogation of suspects, including the use of electroshocks. Many former detainees told Amnesty

International that they had been handcuffed, hung from bars or nails by their handcuffs and beaten every time they tried to put their feet on the floor.

Two cases of possible enforced disappearance have also been reported to Amnesty International: Juan Almonte Herrera<sup>11</sup> and Gabriel Sandi Alistar, who were both last seen in 2009 while in police custody.

Although some police officers have been brought to justice, many other cases of human rights violations remain unpunished. Amnesty International's research indicates that many investigations lack the thoroughness and independence required under international law.

During a meeting with Amnesty International delegates in November 2012, the President acknowledged that the police commit abuses and that radical reform was needed. In May 2013, the President submitted a new draft organic law on the national police to Congress. Even though the draft law represents an advance in relation to existing legislation, and to previous drafts, it still fails to establish the liability of superior officers or the civil liability of either the police as an institution or of the state for human rights violations committed by police officers in the course of their duties.

### **Violence against women and girls**

Amnesty International remains seriously concerned at the high rate of violence against women in recent years, including killings, domestic violence and sexual assault. According to the Office of the Prosecutor General, 1,619 women and girls were killed between January 2005 and March 2013, 854 of them by partners or former partners.

In response to these alarming statistics, a new law on the prevention, care, sanction and eradication of violence against women<sup>12</sup> was adopted by the Senate in November 2012.

The establishment in 2005 of units for integrated assistance to victims of gender-based violence, domestic violence and sexual crimes, under the supervision of the Office of the Prosecutor General,<sup>13</sup> is a major step towards enhancing the institutional response to gender-based violence. Women's organizations remain concerned, however, that the number of units is insufficient (there are currently only 17 units for 32 provinces), that more extensive education programmes and awareness-raising campaigns are needed to prevent gender-based violence, and that the government has not adequately funded plans to eradicate violence against women.

Women's organizations also report that the national health system is largely unable to provide adequate medical and psychological care to victims of gender-based violence, despite Ministry of Health protocols for the provision of comprehensive care for survivors of domestic and other gender-based violence.

### **Sexual and reproductive rights**

The criminalization of abortion has a serious impact on the rights of women, including their right to life, health, freedom from torture and other ill-treatment and non-discrimination. For example, in August 2012, Rosaura, a 16-year-old girl with leukemia, died of complications caused by a miscarriage. She had been prevented from having a therapeutic abortion – as recommended by various health professionals – because it was against the law. Her chemotherapy treatment had also been delayed as doctors were concerned it would harm the foetus.

Despite a decrease in the maternal mortality rate over the past decade, unsafe abortions and complications during pregnancy and delivery are among the major causes of maternal death, according to the Minister of Public Health.

### **Illegal expulsion of Haitian migrant workers**

The Dominican authorities continue to carry out mass expulsions of Haitian migrants, despite an appeal in February 2010 (renewed in June 2011) from both the UN High Commissioner for Refugees and the Office of the High Commissioner for Human Rights to suspend all involuntary returns to Haiti on humanitarian grounds, following the earthquake in Haiti in January 2010. These mass expulsions also breach international human rights standards.

For example, on 20 September 2011, at 5am, at least 80 Haitian migrants living in Navarrete were deported to Haiti. According to local organizations working with migrants, several migrants were beaten and some of the children were

separated from their parents. The migrants, many of whom had been living in the community for over 10 years, did not have an opportunity to have their cases individually examined, and therefore to appeal against the decision to deport them.

### **Discrimination against Dominicans of Haitian descent**

Since 2007, thousands of Dominicans of Haitian descent have been denied access to identity documents on the basis of directives (circular 017 and resolution 12) issued in March and December 2007 by the Central Electoral Board.<sup>14</sup> These instructed civil registry officers to check whether identity documents presented for renewal or registration had been wrongly issued in the past to children of foreign parents who did not prove their residence or legal status in the country and if so to provisionally suspend these documents. This has led to the arbitrary removal from the civil registry of persons born and recognized as Dominicans and their enrolment in the Registry of Foreigners (*Libro de Extranjería*). The refusal to issue identity documents and the attempt to retroactively modify nationality status have resulted in a dramatic violation of their human rights for thousands of people who have become de facto stateless and been denied enjoyment of their civil rights, including access to education, employment and health services, the right to vote and citizenship. Those without papers are also at risk of arbitrary detention and mass expulsion, without access to judicial review. The vast majority of people affected by these directives are of Haitian descent.

It is unclear how many people are affected by these measures as they are usually only informed at the time of requesting the renewal of their identity documents. In February 2013 the Central Electoral Board announced that a list of more than 22,000 Dominicans had been removed from the civil registry and transferred to the General Directorate of Migration, under the pretext that their parents were illegally residing in the Dominican Republic. Such a measure would have the effect of arbitrarily and retroactively reviewing the citizenship of the affected people, who have not even been individually notified of the process.

On 10 June 2013, the Inter-American Commission on Human Rights granted urgent protective measures on behalf of 80 Dominicans of Haitian descent, including 32 children, who have been denied their identity documents and are at risk of being illegally expelled from their own country.

### **Forced evictions**

The high number of forced evictions, as well as the manner in which these are carried out, continue to be a serious concern for Amnesty International. In order to make land available for the construction of infrastructure, tourist estates and industrial complexes, evictions are executed without due process or consultation with the affected communities. The lack of deeds and security of tenure, which is estimated to affect more than 50 percent of the population (75 percent in Santo Domingo Province), are among the main arguments used by the authorities to justify forced evictions.

Excessive use of force by the police during evictions is common in the Dominican Republic. For example, on 15 October 2011, some 72 families were forcibly evicted from private land in the neighbourhood of Brisas del Este in Santo Domingo Este.<sup>15</sup> According to eyewitnesses, police and soldiers fired buckshot and teargas into the families' houses to force them out. The evicted families were not offered any alternative accommodation.

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of the Dominican Republic:**

#### *National Human Rights Institutions*

- To provide adequate resources to the Office of the Ombudsman, including competent and independent investigators, and to ensure that state institutions, including the National Police, collaborate fully with this Office;
- To take steps to gradually strengthen the Office of the Ombudsman in line with the Paris Principles with a view to it becoming recognized as an independent national human rights institution.

#### *Human rights violations by police and security forces*

- To undertake independent, prompt, thorough and impartial investigations into all cases of alleged human rights violations by the police and to ensure that victims and families receive full reparation;
- To ensure that national legislation makes explicit reference to the responsibility of the police as an institution and of the state for human rights violations committed by members of the police and other state agents while acting in the course of their official duties or exercising their authority as law enforcement officials;
- To design and implement an effective and human rights-based reform of the police, including through a new law on the police, developed in consultation with civil society, and the establishment of a fully independent oversight body to receive and investigate complaints of police abuses.

#### *Violence against women and girls*

- To establish Units for the Integrated Assistance for Victims of Violence against Women in each of the country's 32 provinces, and shelters in each of the country's nine regions;
- To implement the Strategic Plan for the Prevention, Detection, Support and Punishment of Violence against Women and Domestic Violence, 2011-2016, adopted in April 2011;
- To strengthen the national legal framework for the protection of women and girls from gender-based violence.

#### *Sexual and reproductive rights*

- To reform the Criminal Code to ensure that women and girls seeking abortion services are not subject to criminal sanctions and that health professionals are not criminalized for providing safe abortion services, and further ensure that counseling, information, and safe and legal abortion services are available, accessible, acceptable and of good quality for all women who require them in cases of unwanted pregnancy as result of rape, sexual assault, or incest, and pregnancy which poses a risk to the life or the health of the woman;
- To dedicate adequate resources for the full implementation of the National Strategic Plan for the Reduction of the Maternal Mortality, 2012-2016, and a National Plan for the Prevention of Pregnancies in Adolescents, 2011-2016.

#### *Illegal expulsions of Haitian migrant workers*

- To stop mass arbitrary expulsions of migrant workers and to ensure that their human rights are respected in all deportation processes, including the right to appeal deportation orders before a competent judicial body;
- To take effective measures to reduce the climate of racism and xenophobia against Haitians and Dominicans of Haitian descent in the Dominican Republic.

#### *Discrimination against Dominicans of Haitian descent*

- To introduce effective measures to stop discriminatory practices linked to the process of granting citizenship and civil status registration, including issuing identity documents;
- To ensure that all persons affected by the Circular 017 and Resolution 12 receive full compensation for the damages caused by the application of these directives;
- To avoid any retroactive application of the General Law on Migration 285/04 and of the Constitution and to recognize citizenship of those who had it at the time of their birth.

#### *Forced evictions*

- To adopt and implement all necessary legislative and policy measures to promote security of tenure, particularly for women and vulnerable groups, to reduce vulnerabilities, and to promote equal access to housing resources;
- To ensure that evictions are carried out in conformity with international human rights standards, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.<sup>16</sup>

## ENDNOTES

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<sup>1</sup> A/HRC/13/3, 4 January 2010, paragraph 87.2 (Peru)

<sup>2</sup> Ibid, paragraph 88.16 (Egypt, France, Mexico, Norway, Peru)

<sup>3</sup> Ibid, paragraphs 88.1-88.11

<sup>4</sup> Ibid, paragraphs 88.17-88.18 (Belgium, Netherlands)

<sup>5</sup> Ibid, paragraphs 87.13- 87.21 and 88.28

<sup>6</sup> Ibid, paragraph 87.7-87.12

<sup>7</sup> Ibid, paragraphs 87.40 (Nicaragua) and 87.42 (Ghana)

<sup>8</sup> Ibid, paragraph 89.4 (United States)

<sup>9</sup> The ruling is available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_156\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_156_esp.pdf).

<sup>10</sup> See Amnesty International report AMR 27/002/2011 "Shut up if you don't want to be killed." Human rights violations by police in the Dominican Republic at <http://www.amnesty.org/en/library/info/AMR27/002/2011/en>.

<sup>11</sup> See Amnesty International report AMR 27/003/2010 'One year on, Juan Almonte's fate continues to be unknown: possible enforced disappearance in the Dominican Republic' <http://www.amnesty.org/en/library/info/AMR27/003/2010/en>

<sup>12</sup> Ley Orgánica para la Prevención, Atención, Sanción y Erradicación de la Violencia contra las Mujeres

<sup>13</sup> Unidad de atención integral para las víctimas de violencia de género, intrafamiliar y delitos sexuales

<sup>14</sup> Junta Central Electoral

<sup>15</sup> See Amnesty International report 'Violent eviction in Santo Domingo leaves scores living in a tent' <http://www.amnesty.org/en/news/violent-eviction-santo-domingo-leaves-scores-living-tent-2011-11-28>

<sup>16</sup> A/HRC/4/18.