



## **DOMINICAN REPUBLIC**

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### **Open Letter from Amnesty International to Dominican Presidential Candidates for the May 2012 Elections**

The next Presidential elections represent an extraordinary opportunity for candidates to engage with citizens in a constructive dialogue about the different challenges faced by the Dominican Republic and to commit to specific measures to overcome or mitigate those challenges.

Among the numerous challenges that the country faces, the first is to ensure that everybody in the country enjoys all their rights and freedoms and has access to an effective remedy whenever those rights and freedoms are at risk or have been violated. Such obligation is enshrined in the Dominican Republic's legislation and in the international human rights treaties to which the country is party. The respect of such obligation is becoming more and more the object of scrutiny and advocacy by the vibrant and diversified Dominican civil society and by the international community.

With a view to the forthcoming presidential elections, Amnesty International is writing to all the presidential candidates to raise the organization's human rights concerns with them and to call on them to commit to prioritising the respect, promotion and protection of all human rights.

Amnesty International calls on all candidates to publicly commit to a series of specific measures, detailed below which while not an exhaustive list of human rights recommendations, could serve as a first step towards dramatically improving the human rights of all in the Dominican Republic.

Amnesty International hopes to receive written responses from all the candidates in the coming days and, if this is the case, it will make them public before the end of the campaign.

***1. Ensure that people are adequately protected from crime and violence, in particular by implementing a human rights based police reform, ensuring independent, prompt, thorough and impartial investigations of all allegations of human rights violations by the police and ensuring full reparation to all victims of human rights violations***

People living in the Dominican Republic are deeply concerned by the levels of crime and violence, which have been on the rise in the last decade mainly due to an increase in drug trafficking, a proliferation of firearms and growing inequalities. People desperately demand measures which will reduce crime levels and enable them to live free from fear.

However, there is evidence that the National Police often applies abusive policing methods which result in a number of serious human rights violations, such as enforced disappearances, unlawful killings, torture and other ill-treatment, and arbitrary arrests. Unlawful police methods have shown to be ineffective in fighting crime and violence. On the contrary they exacerbate the problem, by alienating large parts of the population from the police and by sending the message that it is legitimate to take justice into one's own hands. People can only be effectively protected from crime and violence if the human rights of everybody, including suspected criminals, are respected. Persistent allegations and instances of corruption within the police and the involvement of law enforcement officers in criminal activities also contribute to undermine public trust and exacerbate the public security crisis.

Many voices have risen against this aggressive, unlawful and ineffective policing. Journalists, academics, members of civil society organisations constantly denounce abuses committed by the police and call for institutional reforms and for justice for victims. In July 2010, youth organizations launched a campaign called "Police don't kill me! I will stop" to draw attention to police killings where people had failed to comply with orders to stop. Residents of communities affected by high crime rates show very little trust in the police and have in many instances expressed outrage at police abuses and at the incapacity of the institution to effectively protect them. In March 2012, the United Nations Human Rights Committee also expressed concern at police brutality, the excessive use of force and the high number of killings by the police and subsequently formulated specific recommendations in this regard.<sup>1</sup>

Given the public security context, it is undeniable that the National Police operate in a difficult and dangerous environment. As the National Police constantly remember, a considerable number of police officers are also killed. Some officers are killed in the line of duty but many fall as victims of violent crime. Although these killings are appalling, they are no different than any other violent crime committed on ordinary citizens and are in no way comparable to the unlawful killings committed by the police. Being committed by agents of the state, unlawful killings by police are an indication of the failure of the state to respect, protect and fulfil human rights.

The new President will have to acknowledge publicly the extent of the problem of human rights violations committed by the police, recognise the responsibility of the Dominican state and take effective measures to end abusive practises which exacerbate the public security crisis.

First of all, it is crucial that all allegations of human rights violations by the police are independently, promptly, thoroughly and impartially investigated. One first step for the new President could be to ensure that the Office of the Prosecutor General instructs all prosecutors to investigate thoroughly all allegations of human rights violations by the police, whether or not a formal complaint has been lodged or the case has been referred

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<sup>1</sup> CCPR/C/DOM/CO/5, paragraph 13.

by the National Police. Additionally, the new President will have to ensure that investigations in a number of pending alleged cases of unlawful killings, enforced disappearances and torture are completed according to international standards. The recent sentence from the Inter-American Court of Human Rights for the disappearance of Narciso González Medina highlights the serious shortcomings of the administration of justice and urges the state to effectively investigate such cases.

Second, it is paramount for the new President to take effective measures to prevent human rights violations by the police. Initiating human rights based reform of the National Police would be an essential first step in this direction. This reform should be based on an independent assessment of the National Police and would have to be comprehensive, including aspects related to recruitment, promotion and vetting of officers, internal and external oversight on the police and working conditions of officers. It is crucial that the organic law of the police reflect these aspects, establishing the legal grounds for an effective human rights based reform. Amnesty International is concerned that the draft organic law of the police currently being examined by the Congress will not permit an exhaustive and adequate reform of the National Police.

Third, the new President will have to address the current problem of victims of human rights violations by the police and their families being in practise denied their right to full reparations, even when courts recognise the criminal responsibility of the officers. The new President will therefore have to take legislative and executive measures to ensure that victims and families of victims of human rights violations by the police receive full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In particular, as recently reminded by the UN Human Rights Committee, it is crucial to reform article 61 of the institutional law of the police in order to establish the responsibility of the state for all cases of human rights violations by the police.<sup>2</sup>

Moreover, it is very important that the new President promote the ratification and the implementation of the International Convention for the Protection of All Persons from Enforced Disappearances and the Inter-American Conventions on Forces Disappearances of Persons. The implementation of the newly ratified UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should also receive particular attention by the new administration.

By implementing all the above mentioned reforms, the new President will show unequivocally his will to effectively enhance the protection of every person in the Dominican Republic. These measures will benefit the entire society, including the same police officers, as they will help transform the police into the institution that all Dominicans deserve and they will certainly have a positive impact in tackling the public security crisis.

## ***2. Ensure that the ombudsman is appointed without further delays and that the office of the ombudsman is provided with adequate resources and powers***

The failure to appoint the ombudsman (Defensor del Pueblo) eleven years after the adoption of the law creating this institution leaves the Dominican Republic deprived of an institution which is essential to enhance protection of human rights in the country.

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<sup>2</sup> CCPR/C/DOM/CO/5, paragraph 14.

It is certainly laudable that the Dominican Republic has established several governmental institutions and bodies in charge of promoting human rights and has created the Inter-institutional Commission for Human Rights as a mechanism of coordination among those. However, the Dominican Republic also needs an independent institution in charge of monitoring human rights violations and recommending actions of redress.

Therefore, the new President should ensure that an ombudsman is appointed without further delays, so as to implement section VIII of the 2010 constitution. Many UN human rights bodies have also repeated this call in different occasions.<sup>3</sup>

The appointee should be independent and free of political pressure, should have a good understanding of the human rights protection and promotion system, and a proven commitment to providing remedies to all victims of abuses and human rights violations by public officers.

It is also crucial that adequate resources are allocated to the ombudsman, including competent and independent investigators. In particular, given the incidence of reports of human rights violations by the police, the ombudsman should have the powers and the resources to undertake investigations into complaints of police abuses, including human rights violations.

### ***3. Implement effective measures to reduce gender-based violence***

The high number of women killed by family members and the prevalence of other cases of domestic violence and sexual assault indicate that further efforts have to be made in order to fully protect the right of women to be free from gender-based violence. Women's rights organizations, judges and prosecutors, psychologists and doctors regularly contribute to informing the public debate on the issue and have put forward concrete proposals and recommendations.

It is encouraging to note that several electoral pledges have been made to tackle the problem of gender-based violence. Presidential candidates have included in their manifestos several legislative, policy and administrative measures to enhance prevention of gender-based violence and improve cares to victims of violence.

The new President is therefore expected to implement all the measures that have already been identified. In particular, it is crucial to establish Units for the Integrated Assistance for Victims of Violence against Women in each of the country's 32 provinces; to ensure satisfactory prosecution of cases of gender-based violence, in particular by increasing the number of trained personnel in the Public Prosecutor's Office working to combat violence against women and girls; to ensure the immediate establishment of a minimum of one shelter for 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; to ensure that all relevant institutions are adequately resourced.

The new President will also have to redress the situation of violence and discrimination lived by women as a consequence of a full ban on abortions. The criminalization of abortion is considered an important factor contributing to high rates of maternal mortality

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<sup>3</sup> See for example Committee of the Rights of the Child, 1 February 2008, CRC/C/DOM/CO/2, paragraphs 15-16; Committee on the Elimination of Racial Discrimination, 16 May 2008, CERD/C/DOM/CO/12, paragraph 10; Committee on Economic, Social and Cultural Rights, 19 November 2010, E/C.12/DOM/CO/3, paragraph 9; Human Rights Committee, 29 March 2012, CCPR/C/DOM/CO/5, paragraph 9.

in the country.<sup>4</sup> For example, the Dominican Society of Gynecology and Obstetrics calculated that in 2007 13% of maternal deaths were the consequences of unsafe abortions.

As recommended by the UN Human Rights Committee, it is essential that the new President will promote the reform of national legislation in order to ensure that abortion is permitted at least when the pregnancy poses a risk to the life or grave risk to the health of the woman and when the pregnancy is the consequence of rape, sexual assault or incest.<sup>5</sup>

#### ***4. Ensure that Dominicans of Haitian origin are not arbitrarily deprived of their nationality***

It is undisputable that the Dominican Republic has, as every other state, the right to establish by law the requirements needed for the acquisition of the Dominican nationality. However, international law forbids to deprive of nationality persons who had it at the time of their birth and to apply laws retroactively.

Thousands of Dominicans of Haitian origins have been denied access to identity documents by the Central Electoral Board on the basis of the Circular 017 issued in 2007. This directive instructed officers of the civil registry to examine carefully 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. The refusal to issue identity documents has resulted in people being denied 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 implementation of the Circular 017 represents a retroactive application of the General Law on Migration 285/04 to persons born before its enactment in 2004. The new Dominican Constitution, entered into force in January 2010, consolidated the exception to the right to nationality to non residents introduced by the 2004 Migration Law. Under the previous Constitution, the only persons exempted from the constitutional guarantee of the right to nationality were the children of diplomats and the children of persons in transit. The new Constitution further widens this exemption to exclude children of persons who are deemed to be illegally residing 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>6</sup> that the migratory status of a parent should have no bearing on a child's right to nationality.

The situation of uncertainty and denial of rights in which thousands of Dominicans of Haitian descent have been living has raised concerns among several international and regional human rights bodies. Already in 2008, the UN Committee for the elimination of racial discrimination urged the Dominican Republic "to take immediate steps, including the removal of administrative obstacles, to issue all Dominicans of Haitian descent with identity documents, including those whose documents have been confiscated or

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<sup>4</sup> According to the 2010 National Report on the Implementation of the Millennium Development Goals, in 2007 the maternal mortality rate was 159 for every 100.000 births. The report is available at: [http://www.stp.gov.do/eWeb%5CArchivos%5CLibros%5CInforme\\_Objeto\\_Desarrollo\\_del\\_Milenio.pdf](http://www.stp.gov.do/eWeb%5CArchivos%5CLibros%5CInforme_Objeto_Desarrollo_del_Milenio.pdf).

<sup>5</sup> CCPR/C/DOM/CO/5, paragraph 15.

<sup>6</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).

destroyed by the authorities.”<sup>7</sup> In March 2012, the UN Human Rights Committee considered that the Dominican Republic has to refrain from applying retroactively the 2004 migration law and maintain Dominican nationality of all those who had it at their birth.<sup>8</sup> The Committee in particular requested that the Dominican Republic report within a year on the implementation of this particular recommendation.

The new President should take decisive measures to comply with the above mentioned recommendations in order to redress the violation of the rights of thousands of people. In particular, it is crucial to fully comply with the judgment and findings of the Inter-American Court of Human Rights in the case of *Yean and Bosico vs. the Dominican Republic*; to withdraw Circular 017 and introduce effective measures to stop discriminatory practices linked to granting citizenship and civil status registration, including identity documents; to ensure that all persons affected by the Circular 017 receive full compensation for the damages caused by the application of the directive; and to avoid any retroactive application of the General Law on Migration 285/04 and of the Constitution.

### **5. Ensure that the rights of Haitian migrants are fully protected**

The Dominican Republic has the right to establish its policies on migration. However, as every other country, it also has the obligation to ensure protection of human rights of migrants, regardless of their status. These include the right to liberty and security of the person, the right to freedom from arbitrary detention and collective expulsion without access to due process; protection against the arbitrary deprivation of property and identity documents, protection from discrimination. Being the Dominican Republic a country both of origin and destination of migration, authorities should be particularly aware of the importance of ensuring protection to all migrants in their territory.

However, in practise Haitian migrants in the Dominican Republic are particularly vulnerable to a number of human rights violations.

For example, the Dominican authorities continue to carry out mass expulsions of Haitian migrants, in spite of an appeal in February 2010 (renewed in June 2011) from 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.

There is evidence that mass expulsions of Haitian migrants continue to be carried out in breach of international human rights standards and those expelled have no recourse to appeal. Collective expulsions contravene the Protocol of understanding on the mechanisms of repatriation agreed by the Dominican and Haitian governments in December 1999. In signing the Protocol, the Dominican Republic undertook to improve its deportation mechanisms and made a number of specific commitments, including to avoid separating nuclear families during the process of repatriation and to allow those being deported to collect their belongings and keep their identity documents.

Although the adoption of the regulation enabling the implementation of the 2004 migration is welcome, NGOs working on migrants’ rights have expressed concern that the

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<sup>7</sup> CERD/C/DOM/CO/12 paragraph 16.

<sup>8</sup> CCPR/C/DOM/CO/5, paragraph 22.

proceedings for expulsions have failed to include essential guarantees for the protection of migrants. Moreover, migrant workers cannot appeal the deportation orders before a competent judicial body, in violation of international and constitutional standards of due process.

The new President will have to show unequivocal political will to protect the rights of migrants, in particular by complying with the UN call to suspend all involuntary returns to Haiti on humanitarian grounds; stopping mass arbitrary expulsions and ensure that the human rights of migrant workers are respected in all deportation processes; ensuring that all migrant workers can appeal the deportation orders before a competent judicial body; promoting ratification and implementation of the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families.

#### ***6. Stop forced evictions and provide access to adequate and affordable housing with legal security of tenure to everyone***

A high number of forced evictions are carried out all over the country and especially in the National District and in Santo Domingo Province. According to local NGOs, at least 100 forced evictions were carried out between January and September 2011. Most of the evictions are executed without due process or adequate consultation with the communities affected to make lands available for the construction of infrastructure, tourist estates or industrial complexes. On several occasions, fatalities and injuries from gun shots by the armed forces have been reported during forced evictions.

The lack of deeds and security of tenure, which is estimated to affect more than 50% of the population (75% in Santo Domingo Province), are among the main arguments used by the authorities to justify forced evictions.

The new President will have to ensure compliance of the Dominican Republic with its international obligations in particular on the right to adequate and affordable housing. As reminded by the UN Committee on Economic, Social and Cultural Rights,<sup>9</sup> it is essential to adopt and implement all necessary legislative and policy measures to promote security of tenure to reduce vulnerabilities and to promote equal access to housing resources; to ensure that evictions only occur in exceptional circumstances and only after genuine consultation with communities to identify all feasible alternatives to evictions and on resettlement options, and that persons forcibly evicted are provided with adequate notice, adequate alternative accommodation, compensation, and effective remedies.

#### ***7. Promote signature, ratification and implementation of International Human Rights Treaties***

When a country ratifies international and regional human rights treaties, it sends an important message to people living in its territory and to the international community that it commits to make all necessary efforts to respect, protect and promote the rights included in the treaties.

For this reason, the new President will show his commitment to prioritising human rights issues by ensuring signature and ratification or accession to the following international human rights treaties:

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<sup>9</sup> E/C.12/DOM/CO/3, paragraph 27.

- International Convention for the Protection of All Persons from Enforced Disappearances;
- International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families;
- **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;**
- **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- **Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict;**
- **Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

The priorities that the new President will face in leading the country will be many and varied. Above all, Amnesty International hopes and expects that human rights will be understood not as a secondary or separate issue from daily issues of politics and economics, but as integral and essential to the Dominican society. All the issues affecting the development and the wellbeing of the people and the society as a whole are ultimately human rights issues. The main objective of the head of State should therefore be to respect, protect and promote human rights of all in the Dominican Republic.

Amnesty International hopes that in the run-up to the elections on 20 May, all candidates will give due priority to the promotion, respect and protection of human rights. Amnesty International looks forward to hearing candidates' clear and specific proposals in this regard.