

Summary of Amnesty International's concerns, submitted to the Human Rights Committee in March 2001

Introduction

Amnesty International welcomes the opportunity to raise its concerns regarding the Dominican Republic's failure to comply fully with Articles 2.3, 6, 7, 9, 10, 13, 14 and 19 of the ICCPR, prior to the Committee's consideration of the Dominican Republic's fourth periodic report (CCPR/C/DOM/99/4).

This document also draws attention to the failure by Dominican authorities to comply with some of the key recommendations of the Human Rights Committee in its Concluding Observations (CCPR/C/79/Add.18) on the country's third report (CCPR/C/70/Add.3), submitted in 1992. Under article 3 of the amended Dominican Constitution of 1994, the ICCPR and other international conventions adopted by the Dominican Republic acquire the force of law.

Background

Though the recent political transition has occurred peacefully between civilian administrations, the legacy of past dictatorships in the Dominican Republic has perpetuated a climate in which police and military believe that they are allowed to use an 'iron fist' approach. This is exacerbated by a perception of growing criminality, in part linked to the drug trade, within the country. One outcome is a high number of killings of civilians by members of the security forces; roughly 200 such killings were reported in 1999, and international and local press have set a similar or higher figure for 2000. While security forces maintain that most of these deaths occur in exchanges of gunfire with criminal suspects, in numerous cases their account is contradicted by witness testimony or other evidence.

There is very little judicial or other oversight of police and military conduct. Alleged perpetrators of human rights violations, if tried at all, are most often acquitted or given merely disciplinary sanctions by military or police courts, following cursory procedures that do not meet international standards of independence and impartiality. Exceptionally, highly-publicized cases may be passed to civilian courts in response to public pressure. In spite of such exceptions and of token measures such as internal purges, however, the police and military continue to resist attempts to influence the behaviour of their institutions, even when that behaviour conflicts with international standards such as the Code of Conduct for Law Enforcement Officials,(3) the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials(4) and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.(5)

Civil society in the Dominican Republic is, however, increasingly involved in debate of issues around the conduct of the security forces, judicial oversight and reform. The Dominican media has played a fundamental role in encouraging debate as have, to a lesser but still significant extent, governmental commissions on reform. The human rights community is also involved in public discussions of key issues; for example, some organizations have recently submitted a suit alleging the unconstitutionality of police courts to the Attorney General. Discussions continue on the possible creation of an Ombudsman-type office tasked with receiving and acting on reports of violations.

According to Article 55 of the Constitution of the Dominican Republic, the President is the supreme commander of the security forces.(6) Newly-inaugurated president Hipólito Mejía has announced certain human rights initiatives such as the creation of a Commission for the Reform and Modernization of the Armed Forces and the Police, and a Military Institute for Human Rights. A plan for reform and modernization of the police was submitted in October 2000. These initiatives are welcomed. Even more urgent, however, is the need to ensure that police and military respect human rights norms in the course of their day-to-day activities; that alleged violations are without exception investigated promptly and thoroughly; and that those implicated are tried before independent and impartial authorities in ordinary (civilian) courts.

Specific Violations of Articles of the ICCPR

1. ICCPR Article 2.3: right to effective remedy for individuals whose rights have been violated

Amnesty International has called repeatedly for those accused of past human rights violations to be brought to trial. In 2000 there was some progress in the struggle against impunity with the conviction of four men, including two high-ranking military officers, for the 1975 killing of journalist Orlando Martínez Howley. Each received the maximum possible sentence of 30 years; the sentence has been appealed.

Other important cases, however, are still pending. One is that of Narciso González, a journalist and university lecturer "disappeared" in 1994 after reportedly being taken into custody by members of the military. Amnesty International has on numerous occasions urged the authorities to carry out an independent investigation and bring those implicated to justice. The case file is in the hands of an investigating judge, who in 2000 reportedly conducted inquiries with witnesses and other sources.

2. ICCPR Article 6: right to life and protection against arbitrary deprivation of life

In 1993 the Human Rights Committee recommended that "steps should be taken to tighten the regulations governing the use of firearms by police."⁽⁷⁾ Nonetheless, Dominican security forces continue, as described below, to kill civilians in circumstances which fall outside the limits set by international standards governing the use of force. According to these standards, law enforcement officials may only use intentional lethal force when it is "strictly unavoidable in order to protect life."⁽⁸⁾ Similarly, Dominican domestic law restricts the use of force by law enforcement officials to instances in which it is "strictly necessary," and requires that it be in proportion to the needs required to carry out their duties.⁽⁹⁾ In practice, however, those responsible for violating these norms are only rarely brought to justice, creating a climate of impunity in which such killings invariably continue.

According to press reports, in 1999 at least 200 people were reportedly killed by security forces in the Dominican Republic, the majority by members of the Policía Nacional, National Police, and others by the Fuerzas Armadas de la República Dominicana, Armed Forces of the Dominican Republic. Press reports have set a similar or higher figure for 2000. Security forces have generally downplayed these deaths, portraying them as unavoidable by-products of the struggle to halt a perceived 'crime wave' caused by cross-border drug trafficking or the influence of 'criminal deportees' from the USA. Whatever the accepted figures, there is certainly a pattern across numerous cases in which official claims that killings have occurred during exchanges of gunfire with armed suspects have been contradicted by witness testimony, forensic indicators or other evidence. The circumstances of some of the killings indicated extrajudicial execution.

In only a few cases have allegedly unlawful killings been investigated or the officials involved sanctioned, endorsing public belief in the lack of accountability of the security forces. This situation has stimulated debate within the Dominican Republic regarding on the one hand, the conduct of the security forces, and on the other, the will on the part of the authorities to bring those responsible for human rights violations to justice. Concern has also been expressed at the international level, for example by the Inter-American Commission on Human Rights in its October 1999 report on the Dominican Republic.⁽¹⁰⁾ In May 2000 the government of the United States of America halted nearly \$1 million in aid to the National Police,⁽¹¹⁾ reportedly due to official inaction on police killings.

One example of lack of accountability for unlawful killings is the case of Víctor Matos Espinosa, Antonio Ramón Hernández and Julio Horguín, killed by police on 13 July 1999 in the community of Cayetano Germosén, Moca, in Espaillat province. Police claims that they died during an exchange of gunfire were publicly disproved when television stations broadcast footage of the three handcuffed men climbing under guard into a police vehicle. Later, officers reportedly admitted summarily executing them in revenge for the death of a colleague believed to have been killed by the same men following an attempted robbery earlier that evening. In the subsequent public outcry, President Leonel Fernández Reyna declared that "occurrences of this nature will not be tolerated in this country."⁽¹²⁾ Six police were arrested in connection with the incident, and were tried in police court. Four of them were acquitted, and the remaining two were sentenced to two years' imprisonment. The sentence against them was overturned on appeal, the judge having reportedly decided that they had acted in self defence.

In 1993 the Human Rights Committee expressed concern over the particular vulnerability of Haitians, or those of Haitian descent, to serious human rights violations.(13) Amnesty International has drawn attention to numerous cases of killings of Haitians by security forces; the most recent of these were the 12 August 2000 beating death of Jeannot Succès by soldiers in Cañado, Miguel on the Haitian border and the 26 November 2000 shooting death of Dieuseul Semât by military in Jimaní.

The most prominent case of this kind, however, involved the killing of six Haitian citizens and one Dominican(14) on the night of 17-18 June 2000, in Guayubín, Montecristi province. At some distance within the Dominican Republic, soldiers of the Department of Border Investigation Operations of the Armed Forces apparently ordered the truck in which the victims were travelling to stop and began to fire repeatedly when the driver did not respond. After a pursuit of reportedly more than 20 kilometres, during which the soldiers continued firing, the truck crashed. The bodies of six of the deceased bore signs of multiple bullet wounds, while the remaining death was believed to be a result of the crash. At least 14 of the approximately 35 Haitian passengers were wounded, either by bullets or the impact of the crash.

Amnesty International recommended to the Dominican authorities that, as a sign of the government's commitment to respecting human rights norms, a transparent and complete investigation be carried out within the parameters of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Amnesty International further urged that the investigation and follow-up take place within the context of ordinary (civilian) courts, with full participation of the Public Prosecutor's Office, in line with the growing recognition within the body of international law that police or military courts cannot have jurisdiction over matters of alleged human rights violations (see below, item 6). Nonetheless, a commission of military officers formed to investigate the Guayubín killings recommended that those involved be tried before a military court, and the investigation reportedly remains under military jurisdiction. No information on its progress has been made public.

Finally, there have been several instances of killings of detainees by military or police guards. In one example, three prisoners were extrajudicially executed in Najayo prison on 19 August 2000 after having been taken into custody following an escape attempt. An investigation by the Attorney General and Chief of the National Police concluded that 'excessive force' had been used; the case is reportedly pending before police courts.

3. ICCPR Articles 7 and 10: Prohibition of torture and treatment of detainees

Torture and ill-treatment

Article 8(1) of the Constitution of the Dominican Republic prohibits torture and "any other punishment or procedure harmful to, or entailing the loss or diminution of, the physical integrity or health of the individual."(15) Dominican law expressly outlaws torture or cruel, inhuman or degrading treatment or punishment and prohibits law enforcement officials from justifying such acts on the grounds of orders from superior officers, special circumstances, state of war, internal political instability, public emergency or threat to national security.(16)

In 1993 the Human Rights Committee recommended that much more severe sanctions were needed to discourage torture and other abuses by prison and law enforcement officials.(17) However, such practices continue. During its November 2000 visit, Amnesty International met numerous individuals who reported having been beaten, most often upon arrest; indeed, some prison authorities admitted receiving detainees who had been beaten by security forces prior to transfer.

In a widely publicized initiative, in June 2000 the Commission in Support of Judicial Reform prompted an investigation into allegations of ill-treatment and torture of adolescents by members of the police force and military. The public prosecutor asked police and military authorities to suspend the personnel implicated pending the outcome of the inquiry, but this was apparently not carried out. Prosecutorial authorities changed throughout the country following the inauguration of President Mejía; when Amnesty International inquired about the status of the investigation, the new authorities reported that the case had not been handed over to them, and that no follow-up had been initiated.

In May 2000 12 prisoners in Rafey prison in Santiago claimed to have been badly beaten by guards. The guards were sent before a police court, and the chief of police announced the formation of a commission to

investigate claims of ill-treatment of pre-trial detainees. It is not clear, however, what the findings of the commission have been or what if any follow-up will be given to this and other cases.

Prison conditions constituting cruel, inhuman or degrading treatment

In 1993 the Human Rights Committee expressed concern about the large number of pre-trial detainees in Dominican prisons and the lack of effective remedy against arbitrary detention and lengthy pre-trial incarceration.(18) At that time the Dominican Republic reported that over 70 % of detainees were awaiting trial(19); the current state report sets that percentage at 76% of the current total of 11,000 people incarcerated.(20)

In November 2000 Amnesty International visited seven of the country's 34 prisons and assessed conditions there.(21) Effectively, it found that all the facilities were exceedingly overcrowded, with between two and a half and four times their maximum capacity. In each the conditions clearly fell far below international guidelines such as the Standard Minimum Rules for the Treatment of Prisoners(22) and constituted cruel, inhuman or degrading treatment.

Article 10(2) of the ICCPR and paragraph 8 of the Standard Minimum Rules mandate separation of convicted from pre-trial detainees, and of juveniles from adults. In none of the facilities visited were convicted prisoners separated from pre-trial detainees. Efforts were made in some prisons to separate boys from men, but this was not always the case. In all the prisons visited, girls were incarcerated together with women, again without separation of pre-trial and convicted inmates. Prison authorities were aware of their failure to comply with international standards in this area, but attributed their failure to do so to overcrowding.

In all of the prisons visited by Amnesty International, cells housed at least two and a half times their capacity, in flagrant violation of the provisions regarding accommodation in paragraphs 9 and 10 of the Standard Minimum Rules. As a result, inmates created makeshift bunks or slept on the floor of cells. Even so, many detainees could not be accommodated within cells at all, so were forced to sleep back to back on the floor of often filthy corridors between cells. A significant number of these were without mattresses.(23) In some prisons, such as Najayo Model Preventive Prison, even the corridor floors were full to overflowing, and inmates had no choice but to sleep in makeshift sheet hammocks slung in the air overhead. In Dajabón, with a capacity of 40, there was not enough space for the more than 160 inmates indoors; even in rainy weather, many were forced to remain, day and night, outside in the open courtyard. Drainage in the courtyard was poor, and inmates said it was often damp. In Barahona, the Haitian inmates of the prison were sleeping together on the damp, unsanitary floor of the poorly ventilated and ill-lit toilets, some without any kind of bedding.

Ventilation and light, particularly for those forced to sleep in corridors and other makeshift spaces, were wholly inadequate.(24) Moreover, these overcrowding-induced circumstances constituted serious safety hazards, as exemplified by the June 2000 electrical fire in a cellblock of La Victoria prison, in which at least 13 inmates were believed to have died. The danger was exacerbated by the absence of prison guards in the facilities after the evening lockdown, when inmates were locked into their cellblocks.

There were serious health concerns in the prisons, again heightened by the results of overcrowding. Inmates with infectious diseases such as tuberculosis, even when identified, were often subject to the same overcrowded and unsanitary conditions as other prisoners, putting both them and uninfected prisoners at risk. The health of prisoners with HIV/AIDS was also placed at risk by the unhygienic conditions and lack of adequate and regular medical care. Water was not potable, and inmates had to buy purified water to drink; in Rafey prison, to cite one example, the cistern for the prison's nearly 1200 inmates was not properly sealed from refuse, insects and animals. Sanitation was at times insufficient, contributing to intestinal and other illnesses. Skin diseases, exacerbated by inadequate conditions for hygiene, were rampant among all prisoners. Reported access to medical care fell far short of international requirements.(25) In many prisons, doctors had not been appointed since President Mejía's inauguration three months before, while others reportedly did not attend regularly. In addition, prisons did not have adequate levels of medication to allow proper treatment of diseases commonly found among prisoners.

In many prisons, inmates had inadequate access to exercise and fresh air, in contravention of the provisions of paragraph 21 of the Standard Minimum Rules. In Dajabón, to cite one example, the prison

was situated in the courtyard of an enclosed military facility, and there was no space for inmates to go outside or exercise. The prison was so overcrowded that the interior courtyard was said to be perpetually full; inmates had room to stand or sit there, but not to move with any freedom.

The lack of exercise was particularly worrying with regard to young inmates. A new facility has been constructed at Najayo specifically for youth, in an effort to comply with the requirements regarding separation of juvenile offenders from adults and in recognition of their need for social rehabilitation efforts that are appropriate for their age as outlined in Article 10.2 and 10.3 of the ICCPR and Article 37 of the Convention on the Rights of the Child. However, that facility has never been used for youth; at the time of the November 2000 visit it was housing adult detainees from San Cristobal prison following an explosion there in October 2000. As a result, the youth were housed in a wing of Najayo prison, where the physical plant was wholly inadequate for their needs; at the time of Amnesty International's visit they had reportedly not been allowed out into the open-air exercise area on a regular basis for several months due to fears that they might escape or have inappropriate contact with adult inmates. Supervision was wholly inadequate, contributing to high levels of inmate-on-inmate violence among young detainees. There were no meaningful activities or programmes aimed at promoting the health and self-respect of young detainees or assisting in their development, as required by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.(26)

Amnesty International noted the existence of punishment cells which at times lacked electrical lighting and/or windows and in which ventilation was minimal. There was no bedding provided at all, little or no access to running water and no opportunity for exercise. Inmates could reportedly spend weeks or months in these conditions before being returned to the prison or transferred elsewhere. The use of such cells obviously conflicts with the provisions of the Standard Minimum Rules, under which "corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences."(27)

To help address the situation in the prisons, the Attorney General announced in January 2001 the allocation of funds to remodel twelve prisons. While this is a welcome step, it is only a beginning; serious commitment of human and monetary resources backed by political will to enforce compliance with international standards must be effected with all possible speed, in order to alleviate the unacceptable conditions facing Dominican prisoners.

Prison administration

Prison oversight is the duty of a civilian administrator, the *alcalde*. However, there is no body of specialized prison personnel as required by the Standard Minimum Rules,(28) and civilian administrators seemed to have little or no authority over the police or military who are assigned, on a temporary basis, to guard the prisons. The task of the security forces in these instances is limited to securing the perimeter of any given facility, and they are given no training in prison duties. In practice, then, the degree of safety and control within any given institution is left to the discretion of the individual police or military officer in charge. In most cases this translated to a complete absence of official supervision within the prison except during morning and evening roll calls. 'Security' was provided by inmates themselves, at times with the tacit authority of the guards. This situation lends itself to potential corruption and abuse among inmates; it also constitutes a failure of the security forces in their duty to provide minimal protection for all detainees.

Linked to this issue is the widespread failure of authorities, with the exception of those in the Najayo temporary prison, to keep an up-to-date and accessible global register of prisoners as required by the Standard Minimum Rules,(29) for regular control of which prisoners are convicted and which are pre-trial, the status of the legal files of the latter category, and other related issues. Contact between inmates and civilian prison administrators, understaffed and hampered by inadequate resources, again varied enormously, depending on the capacity and professionalism of the individual concerned. This irregularity heightened tensions within the prisons, already exacerbated by the effects of severe overcrowding and the high proportion of detainees awaiting trial.

Former president Leonel Fernández Reyna issued a decree creating a Commission for the Definition and Execution of a National Prison Policy which in turn produced a proposal for reform of the penal system. However, no resources were allocated to implement the proposal, and no further action was apparently

taken. Development of a specialized prison policy, including properly selected and trained prison guards operating under a specific code of conduct and implementing a standardized prison regime, is essential for the Dominican Republic to comply with its international obligations with regard to treatment of detainees.

4. ICCPR Article 9: the right to liberty and security of person

Article 9 requires states to ensure that no one is subjected to arbitrary arrest or detention. The backlog of pre-trial detainees about which the Human Rights Committee expressed concern in 1993⁽³⁰⁾ remains, and lends credence to fears that arbitrary detention may be widespread and potentially of long duration. In recognition of this risk, Dominican authorities have taken a number of measures designed to curb arbitrary detention at the source. These include increased cooperation between police and the representatives of the Public Prosecutor's Office, who are now stationed in many police stations throughout the country. Part of the task of the representatives is to ensure that arrests are carried out legally and that the 48-hour time limit for judicial review of cases is respected.

However, it is not clear how much authority these officials have in monitoring the day-to-day functioning of the police. Moreover, Amnesty International is concerned that certain practices of the Dominican security forces, such as round-ups of suspected criminals or preventing participation in demonstrations or strikes, violate in principle the provisions of Article 9.

5. ICCPR Article 13: the right of foreigners not to be expelled from the territory of a State Party without legal review by a competent authority

In 1993 the Human Rights Committee expressed concern at incidents of mass expulsion of suspected Haitians.⁽³¹⁾ Evidence of these expulsions continues to surface, in direct contradiction of the provisions of the Dominican Migration Regulation No. 279 of 1939 referred to in the fourth periodic report, to the effect that no alien shall be deported without having been informed of the specific charges giving grounds to the deportation or without having been given a fair opportunity to refute those charges.⁽³²⁾ Collective expulsions of foreigners such as these are not allowed in the context of the ICCPR; the Committee states in paragraph 10 of "The position of aliens under the Covenant:.11/04/86. General comment 15," that

... article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when 'compelling reasons of national security' so require. Discrimination may not be made between different categories of aliens in the application of article 13.

Moreover, collective expulsions are explicitly prohibited in international treaties such as the American Convention of Human Rights,⁽³³⁾ which has been ratified by the Dominican Republic. Amnesty International and other human rights organizations have documented numerous occasions in which mass expulsions have been carried out against Haitians and Dominicans reportedly suspected of being Haitian because of their color. In one example, the Haitian National Migration Office reported that 6,000 people were expelled en masse to Haiti in November 1999. Though the two countries signed an agreement in December 1999 regarding deportation modalities, as of February 2001 there continue to be reports that people are detained and transported across the border without the opportunity to produce their documents or appeal the decision. In many instances they are not given the opportunity to collect their belongings or advise their families; this practice continues to result in family separations, in contravention of international principles such those laid out in Articles 9.1 and 9.2 of the Convention on the Rights of the Child. Amnesty International continues to be concerned, moreover, that these expulsions may provide the framework for serious violations by security forces of the rights to life or physical integrity.

6. ICCPR Article 14: fair trial and, specifically, the right to be publicly heard by a competent, independent and impartial tribunal established by law

Amnesty International believes that the Dominican Republic is failing in its obligation to provide fair trials, particularly with regard to alleged human rights violations. In practice, alleged human rights violations are

rarely brought to trial; when they are, it is usually before police or military tribunals, following decision to that effect by police or military authorities. Both the police and military have their own codes of justice, which lay out the circumstances and infractions for which their members are to be tried in police or military rather than ordinary (civilian) courts.(34) Generally, the codes provide that the courts should cover cases involving police or military acting within the boundaries of official service; in practice, security forces argue that this includes most incidents in which human rights violations are committed.

In cases with a high degree of publicity the police or military hierarchy often names an investigative commission made up of its own members, to make preliminary inquiries and recommendations for follow-up through internal sanctions or by subsequent trial in police or military courts. In cases that proceed to trial by police or military tribunal, the proceedings and outcome are not always made public, so that the alleged perpetrators are not seen to be sanctioned. In this way, the impression of impunity of the security forces is perpetuated.

There are serious concerns about the impartiality and commitment of these tribunals and the extent to which their decisions comply with international standards for fair trial. Issues include the independence and impartiality of judges; their freedom from interference by superiors or outside influence within the court; and the capacity of the tribunals for the proper administration of justice. For their part, police and other authorities have frequently expressed concern regarding the capacity of civilian courts to try police or military in an independent and impartial manner. In response, Amnesty International reiterates that fair trial guarantees are binding on all courts, and urges the Dominican authorities to ensure that all trials at all levels comply with these standards.

There is a growing recognition within the body of international law that police or military courts cannot have jurisdiction in issues of alleged human rights violations. For example, the Declaration on the Protection of all Persons from Enforced Disappearance, adopted unanimously by the UN General Assembly in a 1992 resolution, states expressly that perpetrators "shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts."(35) This principle is reflected in Article 9 of the Inter-American Convention on Forced Disappearance of Persons, to which the Dominican Republic has yet to become a party.

For its part, the Human Rights Committee, in reviewing the periodic reports submitted by states parties to the Committee, has repeatedly said that cases involving human rights violations must be tried in ordinary courts. In one example, the Committee made the following comment on the report submitted by Colombia:

p0 the Committee also urges that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent ordinary courts and suspended from active duty during the period of investigation. To this end, the Committee recommends that the jurisdiction of the military courts with respect to human rights violations be transferred to ordinary courts and that investigations of such cases be carried out by the Office of the Attorney-General and the Public Prosecutor.(36)

Similarly, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions has expressed concern about the fulfilment of international standards for fair trial by military tribunals:

the Special Rapporteur expresses his concern about reports regarding trials of members of the security forces before military courts, where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity.(37)

In October a police commission submitted to President Mejía a plan for Reform and Modernization of the National Police, one aim of which is to improve the institution's credibility. Among other measures, the plan indicates that cases of police excess would be passed before civilian courts; it remains to be seen, however, whether this would apply to all allegations of human rights violations as urged by Amnesty International, or only to ones which fill certain criteria.

7. ICCPR Article 19: freedom of expression

Amnesty International is concerned about the ability of some human rights defenders in the Dominican

Republic to exercise full freedom of expression. Sonia Pierre of the Movimiento de Mujeres Dominicano-Haitianas, Dominican-Haitian Women's Movement, and Père Pedro Ruquoy of Centro Puente, the Bridge Center, and their respective staffs have told Amnesty International that they have been subject to anonymous phone threats, threatening graffiti left on their premises and other acts of intimidation by individuals apparently opposed to their work on behalf of Haitians and Dominicans of Haitian descent. Public figures and organizations have issued calls in national newspapers and other media for the government to revoke their legal status or citizenship. Amnesty International has urged the Dominican government to fulfil its obligation to protect fundamental freedoms, particularly with regard to these and other human rights defenders.

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(Concluding Observations/Comments)

COMITE DE DERECHOS HUMANOS
VERSION SIN EDITAR

EXAMEN DE LOS INFORMES PRESENTADOS POR LOS ESTADOS PARTES
DE CONFORMIDAD CON EL ARTÍCULO 40 DEL PACTO

Observaciones del Comité de Derechos Humanos
REPUBLICA DOMINICANA

1. El Comité consideró el cuarto informe periódico de la República Dominicana (CCPR/C/DOM/99/3) en sus sesiones 1906a. a 1907a., celebradas el 23 de marzo de 2001, y aprobó en su 1921 a. sesión (71^o período de sesiones), celebrada el 3 de abril de 2001 las observaciones siguientes:

A. Introducción

2. El Comité acoge con agrado el cuarto informe periódico de la República Dominicana, así como la oportunidad de continuar el estudio de la situación de los derechos humanos con el Estado Parte a través de una delegación integrada por funcionarios de diversos sectores del Gobierno. No obstante, el Comité observa con desazón que la información suministrada en el informe es en muchos sentidos incompleta y que no ha tenido en cuenta importantes recomendaciones emitidas tras el examen del anterior informe, como así también que en su elaboración no se han seguido las directrices del Comité. El Comité habría agradecido que el Estado Parte hubiera realizado una evaluación más profunda de las deficiencias legislativas existentes, así como de los factores y dificultades que se encontraron en la aplicación del Pacto. Sin embargo, el Comité expresa su reconocimiento a la delegación por la información adicional actualizada que le ha suministrado en respuesta a las preguntas planteadas por sus miembros.

B. Aspectos Positivos

3. El Comité expresa su beneplácito de que se haya acogido su recomendación de revisar la Constitución de la República Dominicana y que se haya procedido a votar y a proclamar un nuevo texto el 14 de agosto de 1994. El Comité toma nota de que la nueva Constitución ha eliminado cláusulas que eran incompatibles con el Pacto, como la pena de exilio y la reciprocidad para la protección de los derechos humanos de los extranjeros, por ejemplo.

4. Asimismo nota con satisfacción por la información recibida de que ha sido revocado el decreto ley numero 233-91 que había provocado la deportación en masa de trabajadores haitianos, en particular los menores de 16 años y mayores de 60, lo que constituía una violación grave de varios artículos del Pacto, como se señaló en las Observaciones Finales del informe anterior.

5. Igualmente el Comité señala su satisfacción tanto por la creación constitucional del Consejo de la Magistratura, que tiene a su cargo la designación de los miembros de la Suprema Corte, como por la

creación legal del Defensor del Pueblo.

C. Principales objetos de preocupación y recomendaciones

6. El Comité advierte que la Constitución actual en su artículo 3º reconoce y aplica las normas del Derecho Internacional que han sido adoptadas por el Estado Parte y que, siendo ese el caso del Pacto Internacional de Derechos Civiles y Políticos, el mismo tiene jerarquía constitucional. Sin embargo, advierte con pesar de que, en general, ha habido falta de progreso en la aplicación del Pacto desde que se examinó el tercer informe periódico. En particular, subsiste un conjunto significativo de legislación que no se ajusta al Pacto pese a tener esta una jerarquía superior y a que han transcurrido más de 21 años desde que la República Dominicana se adhirió a él.

7. El Comité lamenta que no se le haya informado en forma inequívoca acerca de la aplicación del Pacto en la República Dominicana, así como de la implementación de las decisiones del Comité relativas al protocolo facultativo y en particular la falta de claridad en cuanto a la respuesta proporcionada en la comunicación número 449/1991 (Mojica c. República Dominicana) .

El Estado Parte deberá proporcionar al Comité dicha información (artículo 2) .

8. El Comité toma nota con viva preocupación de la información proporcionada por la delegación que da cuenta de que durante el año 2000, hubo 229 muertes violentas a manos de las fuerzas policiales, y que según otras fuentes dicha cantidad sería aun mayor. El Comité también ha tomado nota con igual inquietud de las denuncias sobre ejecuciones extrajudiciales de prisioneros que se encuentran bajo la custodia del Estado Parte en las cárceles del mismo y de muertes a manos de la Policía Nacional, de las Fuerzas Armadas y de la Dirección Nacional para el Control de Drogas, como resultado del uso excesivo de la fuerza, así como de la aparente impunidad de la cual gozarían.

El Estado Parte debe tomar medidas urgentes para que se respete el artículo 6 del Pacto y para que los responsables de violar el derecho a la vida por él garantizado sean investigados y sancionados, como así también reparadas las consecuencias.

9. El Comité advierte con pesar que pese a la prohibición constitucional (art. 8. 1), existen serias alegaciones de que la tortura es una práctica generalizada que, inclusive, se practica en las cárceles, que no todas sus formas están tipificadas por la ley y que no existe un órgano independiente para investigar el importante número de quejas sobre las alegaciones de tortura y de tratamientos crueles, inhumanos o degradantes. También son motivo de preocupación las denuncias de actos de tortura, que no han sido investigados, que las personas responsables de estos actos, en la mayoría de los casos, no han sido sometidas a juicio y que las víctimas o sus familias no han sido indemnizadas.

El Estado Parte debe adoptar disposiciones urgentes para que se cumpla en todos sus extremos el artículo 7 del Pacto, como así también se investiguen sus violaciones a fin de que sus responsables sean juzgados y sancionados por la justicia ordinaria y que se reparen las consecuencias.

10. El Comité deplora que la Policía Nacional tenga a su cargo un órgano judicial propio, ajeno al establecido por la Constitución para juzgar las faltas y delitos de sus miembros, lo que resulta incompatible con el principio de igualdad ante la ley protegido por los artículos 14, 26 y 2 párrafo 3 del Pacto. Asimismo el Comité toma nota de que pese a ser la Policía un cuerpo civil legalmente subordinado a la Secretaría de Interior y Policía, en la práctica esta sometida a autoridades y disciplina militar, hasta el punto que su jefe es un general en actividad de las fuerzas armadas.

El Estado Parte debe garantizar que la jurisdicción de los tribunales de la policía se limite a asuntos disciplinarios policiales y que la competencia de estos tribunales para juzgar a policías acusados de delitos comunes sea trasladada a la jurisdicción civil ordinaria.

11. A pesar de la creación de un mayor número de tribunales, el Comité advierte que el alto porcentaje de detenidos preventivamente observado en el tercer informe ha sufrido un aumento. Esto permite que un gran número de personas acusadas de delitos permanezcan en detención preventiva a la espera de que culminen sus procesos penales, lo que está en pugna con el párrafo 3 del artículo 9 y el párrafo 2 del artículo 14 del Pacto.

El Estado Parte debe reformar la ley de inmediato para garantizar que la detención preventiva sea la excepción y no la regla, y que se recurra a ella sólo cuando resulte estrictamente necesaria. Asimismo debe proporcionar estadísticas sobre el número de personas en prisión preventiva así como sobre los registros de prisioneros.

12. La potestad de mantener incomunicados a los detenidos sigue siendo objeto de profunda preocupación.

El Estado Parte debe revisar la ley que se refiere a este aspecto con vistas a asegurar que la incomunicación no viole las disposiciones de los artículos 7, 9 y 10 del Pacto.

13. El Comité está seriamente preocupado por la información dada en el párrafo 78 del informe en cuanto a que las solicitudes de habeas corpus se demoran en llegar a los tribunales varias semanas o incluso meses desde que se interponen. Esto es incompatible con el artículo 9, párrafo 4 del Pacto.

El Estado Parte debe tomar medidas urgentes para asegurar que los tribunales puedan decidir a la mayor brevedad posible la legalidad de las privaciones de libertad.

14. El Comité ha advertido con seria preocupación que, pese a haberse realizado algunas construcciones de obras nuevas y otras de remodelación, la situación carcelaria y de los lugares de detención lejos de mejorar ha empeorado como consecuencia del aumento del número de presos, del enorme hacinamiento, de las deplorables condiciones higiénicas, de la falta de separación entre detenidos juveniles y adultos y entre hombres y mujeres y de la existencia de celdas de castigo sin luz, sin ventanas ni ventilación.

El Estado Parte debe establecer mecanismos institucionalizados para supervisar las condiciones de las cárceles, con vistas al cumplimiento del artículo 10 del Pacto, y para investigar las denuncias de los reclusos. Igualmente recomienda que se concrete en el menor tiempo posible el programa anunciado para la rehabilitación de las prisiones.

15. El Comité siente preocupación por la información recibida en cuanto a que las cárceles están sometidas al control de la policía y del ejército al no existir un cuerpo de guardianes de prisiones, aun cuando se hayan iniciado ya los cursos de capacitación al respecto.

A fin de cumplir con el párrafo 10 del Pacto el Estado Parte debe proceder con la mayor celeridad a poner en marcha un cuerpo especializado de guardianes de prisiones, independientes de los cuerpos de investigación policial y de las fuerzas armadas, que cumpla con las normas mínimas de las Naciones Unidas sobre el tratamiento de prisioneros y reciba instrucción en derechos humanos.

16. El Comité siente gran preocupación por las continuadas informaciones respecto a las deportaciones masivas de personas de origen haitianos aun cuando se trate de ciudadanos dominicanos. Asimismo, el Comité considera que la expulsión masiva de no-nacionales es contraria al Pacto, ya que en estos casos no se tiene en cuenta, por ejemplo, la situación de aquellas personas para las cuales la República Dominicana ha de ser considerada como el propio país de la persona, de conformidad con el párrafo 4 del artículo 12; ni los casos en los cuales la deportación podría atentar contra el artículo 7 debido al riesgo de trato cruel, inhumano o degradante como consecuencia de la deportación; ni aquellos en los cuales la legalidad de la estancia de la persona está en disputa y debe ser determinada mediante un proceso que reúna los requisitos del artículo 13 del Pacto.

El Estado Parte debe garantizar a todo ciudadano dominicano el derecho a no ser expulsado del país, así como proporcionar a todas aquellas personas sujetas a un proceso de deportación las garantías establecidas en el Pacto.

17. El Comité expresa su inquietud por la falta de protección ofrecida a los haitianos que viven o trabajan en el país contra abusos de derechos humanos tan graves como los trabajos forzados y los tratos crueles, inhumanos o degradantes. Asimismo expresa su preocupación por las condiciones de vida y laborales de los trabajadores haitianos y las prácticas toleradas que restringen su libertad de movimientos.

El Estado Parte debe enfrentar con carácter prioritario la situación de las condiciones laborales y de vida de los trabajadores haitianos, asegurando que estos puedan disfrutar de los derechos y garantías que les reconocen los artículos 8, 17 y 22 del Pacto.

18. El Comité siente preocupación por el abuso de la figura jurídica del inmigrante transeúnte que según informaciones recibidas puede llegar a ser una persona nacida en la República Dominicana de padres que a su vez nacieron en la misma y no obstante no se los considera como ciudadanos nacionales dominicanos.

El Estado Parte debe regular la situación de todas las personas residentes en la República Dominicana y proporcionarles los derechos recogidos en el artículo 12 del Pacto.

19. El Comité observa con simpatía el mayor nivel de participación de la mujer en la vida pública, pese a lo cual el Comité no puede dejar de expresar su preocupación por numerosos aspectos que no respetan debidamente la situación de la mujer, en particular sus derechos a la igualdad jurídica, igualdad de oportunidades en material laboral, su todavía escasa participación en la vida pública y privada, así como los niveles de violencia doméstica. El Comité señala que no ha podido evaluar en profundidad la situación de la mujer en la sociedad dominicana, por no habersele proporcionado información suficiente, aunque reconoce que la creación y la labor realizada por la Dirección General de la Promoción de la Mujer es un hecho positivo para luchar contra la violencia doméstica, violaciones y abusos sexuales que sufren muchas mujeres. Tampoco ha podido el Comité evaluar el fenómeno del tráfico de mujeres por carecer asimismo de información.

A fin de permitir al Comité analizar debidamente el cumplimiento del Estado Parte con los artículos 3, 25 y 26 del Pacto este debe proporcionarle al Comité dicha información, debe respetar y garantizar todos los derechos de la mujer y con tal fin debe brindar el apoyo necesario a la Dirección General de Promoción de la Mujer para que pueda cumplir con sus objetivos.

20. El Comité expresa su preocupación ante la falta de información con respecto a la protección de los derechos de las personas pertenecientes a las minorías étnicas, religiosas y lingüísticas en la República Dominicana, no considerando suficiente la explicación proporcionada por la delegación de que las minorías están tan enraizadas en la cultura dominicana que no pueden ser consideradas como tales.

El Estado Parte debe proporcionarle al Comité la información pertinente con respecto a la implementación del artículo 27 del Pacto.

21. El Comité toma nota de que la ley dominicana no contempla la condición de objetor de conciencia al servicio militar, en el legítimo ejercicio del artículo 18 del Pacto.

El Estado Parte debe asegurar que las personas obligadas al servicio militar puedan invocar la eximente de objeción de conciencia y beneficiarse de un servicio sustitutorio no discriminatorio.

22. El Comité toma nota de la existencia del delito de desacato el cual considera contrario al artículo 19 del Pacto.

El Estado parte debe proceder a la derogación de dicho delito.

23. El Estado Parte debe difundir ampliamente el texto de su cuarto informe periódico y de estas observaciones finales.

24. El Estado Parte deberá, de conformidad con el artículo 70, párrafo 5 de su Reglamento, enviar información en el plazo de un año, sobre las medidas que haya tomado a la luz de las recomendaciones del Comité respecto de las desapariciones y ejecuciones judiciales (párrafo 8 de estas observaciones), de la tortura y del uso excesivo de la fuerza por parte de la policía y otras fuerzas de seguridad (párrafo 9), de la detención policial y la detención a la espera de sentencia definitiva (párrafos 11, 12 y 13), de las cárceles (párrafo 14 y 15), y de la situación de los haitianos (párrafos 16, 17 y 18). El Comité solicita que la información referente al resto de las recomendaciones sea incluida en su cuarto informe periódico, que deberá presentar antes del 1 de abril del año 2005.

(1) CCPR/C/DOM/99/3, considered in sessions 1906-1907 of the United Nations Human Rights Committee, 23 March 2001.

- (2) CCPR/CO/71/DOM, 6 April 2001.
- (3) Adopted by General Assembly resolution 34/169, U.N. Doc. A/34/46 (1979); referenced in Dominican domestic law No. 672 of 19 July 1982.
- (4) Adopted by the Eighth Congress of the United Nations on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- (5) Recommended by the Economic and Social Council in its resolution 1989/65 of 24 May 1989.
- (6) Article 93 of the Constitution of the Dominican Republic states that the armed forces are essentially obedient and apolitical, and were created to defend the independence and integrity of the Republic, to maintain public order and to support the Constitution and the laws. The national police force was formed by decree in 1936, and placed under the Secretary of State for the Interior, Police, War and Navy. Organic Law of the National Police No. 4587, dated 19 February 1959, places this institution under the Secretary of State for the Armed Forces, but simultaneously notes that it is currently under the Secretary of State for the Interior and the Police; the latter situation holds today. The current head of the police was, before his posting to the police force, a high-ranking officer of the Armed Forces.
- (7) Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.18, para. 10.
- (8) Inter alia, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 9.
- (9) Law No. 672 of 19 July 1982, article 3: "los funcionarios encargados de hacer cumplir la ley podrán usar la fuerza cuando sea estrictamente necesario y en la medida que lo requiera el desempeño de sus tareas."
- (10) Informe sobre la Situación de los Derechos Humanos en la República Dominicana, OEA/Ser.L/V/II.104, Doc. 49 rev. 1, 7 October 1999, para. 163.
- (11) The funds were reportedly slated to be given under the US Justice Department's International Criminal Investigative Training Assistance Program. See "U.S. cuts aid to protest killings by Dominican Republic police," Miami Herald, 29 May 2000.
- (12) "Presidente condena ejecución; pide respetar derechos humanos," Hoy D.R., 18 July 1999.
- (13) CCPR/C/79/Add.18, para. 5.
- (14) Folieu Dosema, Nana Dosema, Noupady Fortilus, Yemiol Sintil, Rosalaine Therneur, Yachin Masimé and Máximo Rubén Espinal (as reported in "Someten a consejo de guerra militares que acribillaron haitianos en Montecristi," El Siglo, 22 June 2000).
- (15) Unofficial translation.
- (16) Law No. 672 of 19 July 1982, article 5: "ningún funcionario encargado de hacer cumplir la ley podrá infligir, instigar o tolerar ningún acto de tortura u otros tratos o penas crueles, inhumanas o degradantes, provocar la orden de un superior o circunstancias especiales, o estado de guerra o amenaza de guerra, amenaza a la seguridad nacional, inestabilidad política interna o cualquier otra emergencia pública como justificación de la tortura u otros tratos o penas crueles, inhumanas o degradantes."
- (17) CCPR/C/79/Add.18, para. 10.
- (18) CCPR/C/79/Add.18, para. 10.
- (19) CCPR/C/70/Add.3, para. 58.
- (20) CCPR/C/DOM/99/4, para. 77.
- (21) Barahona, Dajabón, La Victoria, Moca, Cárcel Modelo de Najayo, Cárcel Temporal de Najayo, Rafey.
- (22) Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
- (23) See paras. 17 and 19 of the Standard Minimum Rules.
- (24) See paras. 10 and 11 of the Standard Minimum Rules.
- (25) See paras. 22, 24 and 25 of the Standard Minimum Rules.
- (26) Adopted by General Assembly resolution 45/113 of 14 December 1990. See para. 12.
- (27) See para. 31.
- (28) See paras. 46 and 47.
- (29) See para. 7.
- (30) CCPR/C/79/Add.18, para. 10.
- (31) CCPR/C/79/Add.18, para. 5.
- (32) CCPR/C/DOM/99/4, para. 84.
- (33) See Article 22.9.
- (34) Code of Police Justice, ch. 3. Also Code of Justice for the Armed Forces, art. 3, as quoted in Derechos del Acusado: tribunales ordinarios, militares y policiales, Henry Garrido (Dominican Republic, 1996) p. 61.
- (35) Declaration on the Protection of all Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992, A/RES/47/133, art. 16.2.
- (36) Concluding Observations by the UN Human Rights Committee : Consideration of reports submitted by

states parties under article 40 of the covenant : Colombia, 01/04/97; CCPR/C/79/Add.76, para. 34. See also M/CCPR/92/18 (Colombia); CCPR/C/79/Add. 66, para. 10 (Brazil); CCPR/S1519 and CCPR/C/SR1521 (Peru); CCPR/C/79/Add.78, para. 14 (Lebanon); CCPR/C/79/Add. 104, para. 9 (Chile).

(37) Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, in UN document A/51/457 of 7 October 1996; para. 125.