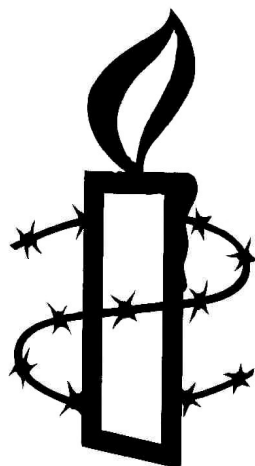

amnesty international

**Dominican Republic
Submission to the UN Universal
Periodic Review**

**Sixth session of the UPR Working Group of the
Human Rights Council
November-December 2009**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- In Section B, Amnesty International raises concerns over shortcomings of national legislation with regards to migrants' rights and sexual and reproductive rights.
- Section C highlights Amnesty International's concerns in relation to excessive use of force by the security forces, violence against women and girls, ill-treatment of and discrimination against Haitian migrant workers, trafficking of persons, restrictions on rights to freedom of the press, housing rights, and the right to health in the context of HIV/AIDS.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Dominican Republic

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B. Normative and institutional framework of the State

The constitutionality of the General Migration Law (*Ley General para las Migraciones, No. 285-04*), approved in 2004, has been questioned both by Dominican human rights organizations and by the UN Independent Expert on minority issues who visited the country in October 2007 together with the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The basis for their concerns are articles in the law which seek to limit the scope of Article 11 of the Constitution by defining all “non-residents” as persons “in transit”, and to impose limitations on their right to Dominican nationality (Article 36, paragraph 10). The Independent Expert on minority issues wrote in her report: “As concluded by the Inter-American Court of Human Rights, the “in transit” exception in the Constitution to the granting of citizenship based on *jus soli*² cannot be interpreted to include illegal migrants and there is no requirement that legality is a precondition to exercising the right of nationality by birth”.

By conflating the two categories – people in transit and non-residents -- the new law has created considerable confusion. Moreover, some of its articles contain provisions which discriminate against migrant workers and their descendents. For example, Article 22 provides for the recognition of the civil rights of non-nationals living in the country – including migrant workers in a regular situation – *only* where their country of nationality accords similar recognition to Dominican nationals living there. The General Migration Law has not yet entered into force as the government has not yet drawn up rules of procedure for its implementation.

A proposed reform of the Constitution was put before Congress in September 2008 by President Leonel Fernández and is currently being examined by the Parliamentary Assembly for the Revision of the Constitution (*Asamblea Revisora*). The proposal has alarmed civil society organizations working on behalf of Haitian migrants and Dominicans of Haitian descent because of the clause stating that Dominican nationality cannot be acquired by children born to parents residing “illegally” on Dominican soil. If adopted, this clause could be used to extend the parents’ irregular status and subsequent lack of documentation to children born on Dominican soil.

In 2007, the administrative branch of the Central Electoral Board (*Junta Central Electoral* – JCE) issued “Circular 17”, which instructs government officials to examine whether identity documents presented for renewal or registration had been wrongly issued in the past. Amnesty International is concerned that this provision could be used to deny Dominicans of Haitian descent access to official documentation and consequently deny them access to education, the right to vote, the formal job market and a state pension. Dominican NGOs have documented thousands of cases where parents have been unable to register their child’s birth or renew their own identity documents. This includes not only Haitian migrants but also Dominicans of Haitian descent, many of whom are in possession of Dominican birth certificates, *cédulas* (identity cards obtained at age 18) and electoral identification documents, attesting their Dominican citizenship.

The proposed reform of the Constitution also includes a reference to the inviolability of the right to life “from conception to death”. The Draft Penal Code, which is also currently being discussed, contains a provision

² *Jus soli* designates the principle, according to which a state lends its nationality to all children, who are born on its national territory.

specifically providing for the imprisonment of women pregnant as a result of rape, incest or involuntary assisted fertilization who seek or cause their own termination of pregnancy. Amnesty International opposes laws which permit the imprisonment or imposition of any other criminal sanction on women or girls for seeking or having an abortion. Criminalisation of abortion means that women and girls are more likely to turn to unsafe methods of terminating a pregnancy and then fail to seek medical treatment for complications to avoid prosecution.

C. Promotion and protection of human rights on the ground

Human rights violations by police and security forces

Amnesty International is concerned by continued reports of fatal shootings by members of the security forces, some of which may amount to unlawful killings.

According to data from the Attorney General's Office quoted in the US Department of State 2008 Human Rights Report, 455 persons were killed by police officers in the course of duty in 2008, representing approximately 19 percent of all violent deaths and an increase of 32 percent over 2007.

According to a national NGO, the *Comision Nacional des Derechos Humanos*, more than 3,000 people have been killed by police in the last ten years. The official explanation frequently given for killings by the police is "exchange of fire" (*intercambios de disparos*) with armed criminal suspects. However, in many cases eyewitness testimony contradicts this version of events.

For example, on 30 December 2008, five men were killed by police officers during what was described by the police as an "exchange of fire" in the Mirador Sur Park in the capital Santo Domingo. However, the results of the autopsy revealed that four of the men had been in shot in the back. The police investigative commission recommended criminal prosecution of the nine officers involved in the incident, all of whom are currently held in preventive detention pending the outcome of investigation.

In another incident, on 28 March 2009, Nicolas Disla was walking along a busy street in the Cristo Rey district of Santo Domingo when he was ordered to stop by three police officers in a patrol car. Eyewitnesses report that although Nicolas Disla, who was unarmed, obeyed the order, one of the officers shot him twice in the legs. The officers then handcuffed him as he lay injured, and drove him away. Members of his family later that day learned that Nicolas had been admitted to the local hospital, but was pronounced dead on arrival. He had been shot in the stomach as well as in the legs. Two days later, one of the officers allegedly responsible for the killing, tried to shoot Nicolas' brother, Juan Carlos Disla, as he attended his funeral.

The military, in particular the Special Border Security Force (*Cuerpo Especializado de Seguridad Fronteriza - CESFRONT*), has been questioned by local and international human rights groups for excessive or unlawful use of force. On 9 July 2006, members of CESFRONT reportedly opened fire on a group of Haitian nationals as they tried to cross the border into the Dominican Republic near the town of Dajabón. One member of the group was allegedly shot in the back and subsequently died in hospital. In another case, in Dajabón along the river Masacre on the Dominican border, on 24 March 2008, a member of CESFRONT reportedly opened fire on a Haitian market seller with whom he was having an argument, injuring him in the arm. A Haitian woman who challenged the soldier's action was also shot by him and died shortly after. A year later, the officer implicated was transferred to another station, but no criminal investigation appears to have been initiated against him.

Amnesty International recognizes there have been some advances in recent years with regard to ending impunity for human rights violations committed by members of the security forces and welcomes the new Code of Criminal Procedure which places all human rights violations committed by members of the security forces under civilian jurisdiction. However, civil society organizations in the Dominican Republic have pointed to the lack of

adequate coordination between public prosecutors and the police, which hinders investigations. The fact that investigations into police abuses are carried out by an internal police unit also hampers their effectiveness and independence.

Violence against women and girls

Amnesty International is concerned at the high incidence of violence against women in the Dominican Republic, including domestic violence and sexual assault, and the high number of killings of women in recent years. Inadequate access by victims of such violence to state institutions, such as the police, justice services and medical care are also of major concern.

According to statistics released by the National District Department for Violence against Women and Girls, during 2008, a daily average of 33 women and girls filed complaints of gender-based violence in the National District (the capital region). According to a report published by the Spanish Center of Studies Reina Sofia, in 2003 the Dominican Republic ranked sixth in a list of forty countries for the prevalence per million women of women killed. Official sources quoted in the press reveal that between January 2005 and August 2008, a total of 673 women were killed by their partner or other relatives. This figure has led national parliamentarians, women's organizations and international development partners to express concern. A survey carried out by the Dominican Centre for Demographic Studies (CESDEM) found that 20% of all Dominican women and girls over 15 had suffered physical violence at some time in their life. The study also showed that one woman in ten had been raped.

Over the past 10 years, progress has been made on introducing new legislation to promote women's rights and on creating state institutions to provide assistance to victims of gender-based violence, such as the Units for the Integrated Assistance for Victims of Violence against Women (*Unidad de Atención y Prevención de la Violencia de Género y Abuso Sexual*). However, concerns remain at the levels of impunity arising from state failure to effectively investigate complaints and punish perpetrators. A joint report entitled the "Critical Path of Dominican Women Survivors of Gender Violence", issued in June 2008 by several Dominican women's rights NGOs, found that the great majority of survivors of gender-based violence are discriminated against by members of the judiciary and sixty per cent of victims abandon the legal process they have initiated. The report also pointed to a lack of judicial personnel to deal with the issue and to a lack of training and sensitivity in gender-based violence.

In its concluding observations on the fifth periodic report by the Dominican Republic, the UN Committee on the Elimination of Discrimination against Women raised concerns about the use of reconciliation proceedings between the perpetrator and the victim during the pre-trial phase, "since the outcome could be detrimental to the victim".

Despite the passing in 2003 of Law 88-03 regarding the Establishment of Halfway Houses and Shelters, there is, according to women's rights organizations, currently only one functional shelter in the Dominican Republic. Women at risk and their children are mostly forced to take refuge in the homes of family and friends. This makes them more easily located by their aggressor and increases risks to their safety.

Discrimination against and ill-treatment of Haitian migrant workers

Amnesty International is concerned about the discrimination faced by Haitian migrants and Dominicans of Haitian descent. In a ruling by the Inter-American Court of Human Rights (IACHR) in the case of *Yean and Bosico vs. the Dominican Republic*, in September 2005, the Dominican Republic was found to have violated the two children's right to nationality and to judicial personality, as well as the right to equal protection before the law. The government was required to pay a modest sum in compensation and to simplify the procedures and requirements for Dominican-born Haitians to acquire Dominican nationality. However, in November 2007 the IACHR reported that so far the Dominican Republic had only complied with the compensation element of the judgment.

Since 2007, children born to undocumented migrants are recorded in a registry for foreigners. Amnesty International considers this measure discriminatory as it could hamper children of Haitian descent from exercising their right to Dominican nationality.

Dominican NGOs working on migrants' rights issues have continuously denounced mass expulsions of Haitian migrants because those expelled have no recourse to appeal. Every year thousands of Haitians are deported arbitrarily. In June 2008, for example, the Director of CESFRONT stated that 400 people were expelled daily from the border towns of Jimaní and Dajabon. In May 2005, more than 3,000 Haitians and black Dominicans were forcibly expelled in three days. They were reportedly rounded up in the early hours of the morning, forced onto buses and left at the Haitian border. Many were unable to collect their belongings and some were allegedly separated from family members.

There have also been reports of Haitian migrants suffering ill-treatment, both physical and psychological, at the hands of migration officials and members of the security forces, including the CESFRONT, or being victims of extortion to be allowed to cross the border. For example, according to a civil society organization working on the Haitian-Dominican border, the Haitian Migrants and Refugee Support Group (*Groupe d'Appui aux Repatriés et Réfugiés* – GARR), on 7 April 2009, a group of 44 Haitian migrants were beaten up by Dominican security forces on board a bus by which they were being repatriated.

Amnesty International is also concerned at reports of lynching of Haitian migrants and Dominicans of Haitian descent in apparent reprisal for killings of Dominican citizens attributed to Haitians. In November 2008, in the municipalities of Neiba and Guayubín indiscriminate mob attacks against Haitians left at least two dead, several injured and numerous houses destroyed as members of both communities sought revenge for the murder of a Dominican allegedly by a Haitian.

Trafficking of persons

According to human rights organizations working on both sides of the border, 1,353 Haitian children were trafficked into the Dominican Republic during the first six months of 2008, and exploited for agricultural and domestic work, begging, street-vending and prostitution.

Trafficking of irregular migrants is also widespread and often takes place with the complicity of local state agents. In November 2007, a military unit of the Special Border Security Force based in Dajabón was replaced after local NGOs exposed their involvement in the ill-treatment of trafficked Haitian nationals and their acceptance of bribes in exchange for allowing irregular migrants into the country.

In January 2007, two civilians and two military officers were sentenced to 20 and 10 years' imprisonment, respectively, for their part in a trafficking ring whose operations led to the deaths by asphyxiation of 25 Haitian migrant workers in January 2006.

Attacks on freedom of the press

Intimidation and harassment of media workers by the authorities and private individuals are periodically reported, often in relation to journalists' investigations of corruption. In October 2008, the Dominican National Union of Press Workers announced that between January and September of that year 32 journalists had been physically attacked or threatened and 21 others had been subjected to spurious judicial proceedings in relation to their reporting.

On 7 August 2008, Normando García, a cameraman and producer with the local television station *Teleunión* was shot dead in Santiago when multiple gunshots were fired from a moving car. Prior to his killing, his car had been set on fire in an apparent arson attack and he had been receiving anonymous threats following the broadcast of various programmes investigating crime in the local area. The Special Rapporteur on freedom of

expression of the Inter-American Commission on Human Rights deplored his murder and called for a prompt and effective investigation. To date, the case remains unsolved.

Forced evictions

Amnesty International is alarmed by the high number of forced evictions carried out all over the country and especially in the National District and in Santo Domingo Province. Most of the evictions are executed without due process or consultation with the communities affected to make lands available for the construction of infrastructure, tourist estates or industrial complexes. 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. A network of local NGOs, *Red de coordinación urbano popular por la defensa del territorio*, in 2008 reported that more than 50.000 families in the country face the threat of forced eviction either from the state or from individuals claiming the property of the lands.

In most cases, forced evictions are conducted by military personnel and/or police officers assisting bailiffs or private individuals. On several occasions, fatalities and injuries from gun shots have been reported during forced evictions. For example, on 9 September 2006, in the Boca Chica area of Los Altos de Chavón (Santo Domingo Province), a forced eviction took place under the supervision of an army colonel, accompanied by police officers, military personnel and a group of armed civilians wearing balaclavas, known as 'The Vultures'. They destroyed nearly 100 houses without a court order. During the incident, 27 evictees were wounded by gun shots. In another incident, in June 2007, police and military officers used pellets and tear gas to evict 75 families from public land in Villa Venecia de Pantojas, Santo Domingo Este. César Ureña, a community leader, was reportedly extrajudicially executed by military officers during the eviction. On 13 May 2008, the Finance Ministry's Department of National Assets (*Administración General de Bienes Nacionales*) gave a plot of land to the evicted families. However, just four days later the relocated families were forcibly evicted from that land by a contingent of police and military personnel. An 18 year old man was shot in the leg by the security forces and a 76 year old man died of asphyxiation caused by the use of tear gas during the eviction.

Right to health in the context of HIV/AIDS

Although the HIV/AIDS epidemic has stabilized in the Dominican Republic, Amnesty International remains concerned by the over-dependence on external funding of the government's response to the disease. The HIV incidence among residents of *bateyes* (communities for sugar plantation workers) remains high and there are concerns that the Haitian migrant population and Dominico-Haitians face obstacles in gaining access to treatment. There are reports of discrimination in the workplace against people living with HIV/AIDS, and in 2006 employees were reportedly being tested for HIV without their consent or as a condition of their employment. A study released in March 2009 by the Dominican Association for the Well-being of the Family (*Instituto Probienestar de la Familia - Profamilia*) revealed that assaults, verbal and physical threats and exclusion from family and work activities are among the most common forms of discrimination against persons living with HIV/AIDS.

D. Recommendations for action by the State under review**Amnesty International calls on the government:***Human rights violations by police and security forces*

- To ensure that all reports of human rights violations by members of the security forces are fully and impartially investigated, and that those suspected of involvement in violations are suspended from active duty and brought to justice;
- To strengthen the coordination between the National Police and the Public Prosecutor's Offices to ensure investigations into human rights violations are conducted promptly, independently and impartially;

- To establish a fully independent oversight body to receive and investigate complaints of police misconduct and reports of human rights violations;
- To ensure that all police officers and other members of the security forces are trained in and follow at all times the provisions of the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- To ratify and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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;
- To establish national coordination of policy from the Attorney General's Office with all public prosecutors' offices to ensure access to justice for women and girl victims of violence throughout the country;
- To ensure satisfactory prosecution of cases of gender-based violence, in particular by increasing the number of competent personnel in the Public Prosecutor's Office working to combat violence against women and girls;
- To fund and implement compulsory training programmes for officials – including police, lawyers, judges, forensic and medical personnel, social workers, immigration officials and teachers – in how to identify cases of violence against women and girls both in the home and the community, how to deal with victims and ensure the safety of survivors, and how to effectively collect, safeguard, consider and present evidence;
- To ensure that women are not coerced or forced to enter into reconciliation proceedings and that such proceedings are not used as a substitute for the effective investigation of reports of violence against women and girls;
- To ensure that all relevant government departments collect and publish disaggregated data and statistics on 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 elaborate and implement a plan for the prevention of gender-based violence, in conjunction with civil society;
- To ensure that women are not imprisoned or subjected to other criminal sanction for seeking or having an abortion;
- To take all necessary measures, including reform of the criminal law, to ensure that counseling, information and safe and legal abortion services are available, accessible, acceptable and of good quality, as part of comprehensive medical and psycho-social care, for all women who require them in cases of unwanted pregnancy as a result of rape, sexual assault or incest, and pregnancy which poses a risk to the life or grave risk to the health of the woman.

Discrimination against and ill-treatment of Haitian migrant workers and their descendents

- 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 17 and introduce effective measures to stop discriminatory practices linked to granting citizenship and civil status registration, including identity documents;
- To ensure that any denial of a request to issue identity-related documents is recorded and accompanied by a full written explanation;
- To stop mass arbitrary expulsions and ensure that the human rights of migrant workers are respected in all deportation processes;
- To take effective measures to reduce the climate of racism and xenophobia against Haitians and Dominicans of Haitian descent in the Dominican Republic and put an end to mob violence against them;
- To implement migration policies that protect human rights, including by ratifying and implementing the International Convention on the Protection of the Rights of all Migrant Workers and Their Families;
- To ensure equal and non-discriminatory access for children to documentation and nationality, in particular for children of Haitian origin born on Dominican soil, and repeal any legal provision which perpetuates the lack of legal status of the parents.

Trafficking in persons

- To ensure effective implementation of Law No. 137-03 prohibiting smuggling of migrants and trafficking of persons;
- To create a task force, with participation of civil society, to detect and investigate reports of trafficking;
- To prioritise actions aimed at detecting trafficking and exploitation of children.

Attacks on freedom of the press

- To ensure effective investigation of threats and intimidation aimed at journalists and ensure prosecution of those responsible for the killings of journalists;
- To reform national laws regulating criminal libel, slander, and defamation law so that only civil penalties may be applied in the case of offenses against public officials.

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 only occur in exceptional circumstances and only after all possible alternatives have been fully exhausted;
- To ensure that evictions are carried out in accordance with guidelines, drawn up by the UN Special Rapporteur on Adequate Housing, on development-based evictions and displacements.³ In particular, to ensure that all potentially affected groups and persons have the right to relevant information, full consultation and participation throughout the process; to provide immediate compensation, resettlement and rehabilitation for those subject to evictions; and to ensure that all persons threatened with or subject to forced evictions have the right of access to timely remedy;

³ A/HRC/4/18.

- To ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, and that those responsible for human rights violations during the process of evictions are brought to justice.

Right to health in the context of HIV/AIDS

- To develop strategies to combat stigma and social exclusion connected with the HIV/AIDS epidemic;
- To ensure adequate and equal access to health care and treatment for those living with HIV/AIDS.

Appendix: Amnesty International documents for further reference⁴

Dominican Republic: Urgent Action - Fear for safety/death threats: Juan Carlos Disla; AI Index: AMR 27/001/2009, 3 April 2009

Dominican Republic: Challenging discrimination in the Dominican Republic: Protecting the rights of Haitian migrant workers and their descendants, AI Index: AMR 27/003/2008, 9 November 2008

Dominican Republic: Urgent Action - Fear for safety/death threats: Gysselle Baret Reyes, Minoscal de Olis Oguiza, Emildo Bueno Oguis; AI Index: AMR 27/002/2008, 22 July 2008

Dominican Republic: Urgent Action - Fear for safety: Johnny Rivas and his family; AI Index: AMR 27/001/2008, 11 January 2008

Dominican Republic: Discrimination at Birth: Haitian Migrants and their Descendants in the Dominican Republic; AI Index: AMR 27/006/2007, 18 December 2007

Dominican Republic: Urgent Action – Forced Evictions: 45 families in Villa Venecia de Pantoja; AI Index: AMR 27/007/2007, 05 December 2007

Dominican Republic: Urgent Action - Fear for safety/death threats: a group of Haitian migrant workers and Dominicans of Haitian descent living in the community of Ranchadero victims of a racist motivated attack; AI Index: AMR 27/005/2007, 2 November 2007

Dominican Republic: Report: A life in transit - The plight of Haitian migrants and Dominicans of Haitian descent, AI Index: AMR 27/001/2007, 21 March 2007

Dominican Republic: Urgent Action - Fear for safety/Death Threats: Adonis Polanco, HIV/AIDS activist; AI Index: AMR 27/003/2006, 7 June 2006

Dominican Republic: Open letter from Amnesty International to the President of the Dominican Republic; AI Index: AMR 27/001/2006, 8 March 2006

Dominican Republic: Urgent Action - Fear for safety/death threat: Father Pedro Ruquoy, human rights defender, AI Index: AMR 27/001/2005, 11 September 2005

⁴ This document is available on Amnesty International's website: <http://www.amnesty.org/en/region/dominican-republic>