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مجلس حقوق الإنسان  
الدورة السابعة  
البندان ٣ و ٩ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من أشكال التعصب: متابعة وتنفيذ إعلان وبرنامج عمل ديربان

مذكرة شفوية مؤرخة ١٣ آذار/مارس ٢٠٠٨ موجهة من البعثة الدائمة للجمهورية الدومينيكية لدى مكتب الأمم المتحدة في جنيف إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان

تهدي البعثة الدائمة للجمهورية الدومينيكية لدى مكتب الأمم المتحدة في جنيف والمنظمات الدولية الأخرى التي توجد مقارها في جنيف أطيب تحياتها لمفوضية الأمم المتحدة السامية لحقوق الإنسان، وتتشرف بأن تحيل إليها رفق هذه المذكرة تعليقات\* الحكومة الدومينيكية على التقرير المشترك للمقرر الخاص السيد دودو دين والخبيرة المستقلة السيدة غي مكدوغل، عن زيارتهما إلى الجمهورية الدومينيكية في تشرين الأول/أكتوبر ٢٠٠٧.

وقد بذلت الجمهورية الدومينيكية قصارى جهدها لتقديم هذه التعليقات في الوقت الذي حددته المفوضية السامية، راجيةً ترجمته إلى اللغتين الإنكليزية والفرنسية، ليصبح متاحاً بهما في ١٩ من الشهر الجاري، وهو التاريخ الذي سينشر فيه التقرير المذكور في إطار الدورة السابعة لمجلس حقوق الإنسان.

\* ترد مستنسخةً في المرفق بالصيغة التي وردت بها، باللغتين الأصلية والإنكليزية فقط.

**Annex**

**DOMINICAN REPUBLIC**

**Ministry of Foreign Affairs**

**REPLY TO THE DIÈNE-MCDOUGALL REPORT ON CONTEMPORARY  
FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND  
RELATED INTOLERANCE IN THE DOMINICAN REPUBLIC**

**Santo Domingo**

**11 March 2008**

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## I. STATEMENT OF PRINCIPLES<sup>1</sup>

1. The Dominican Government would first like to thank the Special Rapporteur, Mr. Doudou Diène, and the independent expert, also Ms. Gay McDougall, for accepting its invitation to visit the Dominican Republic in October 2007 and also for their efforts in drawing up the report to which we respond below.
2. The Dominican authorities, aware of the allegations against them, and also against Dominican society, that are circulating among certain - possibly misinformed - groups, took the initiative of asking Mr. Diène and Ms. McDougall to visit the country and to verify, in an independent and conscientious manner, the Dominican Republic's position. First, our country does not pursue a government policy that fosters or encourages a social order characterized by the institutionalization of racist, discriminatory or xenophobic practices.
3. Secondly, we maintain that Dominican society, with its deep democratic convictions, is in favour of a State based on the rule of law. Despite the social, institutional, economic, political and cultural constraints on the process of creating such a State, Dominican society as a whole is neither racist nor xenophobic.
4. Thirdly, there is not a single group or institution, let alone a law or legal code, in the whole of the country that explicitly or tacitly advocates any form of discrimination on the grounds of ethnic origin, race, language, religion, gender, age, nationality, political belief or membership of a party or trade union.
5. Fourthly and lastly, we maintain that the most striking feature of the Dominican Republic as a whole is the historical formation of what some authors have called a "mulatto" community because, irrespective of the racial, economic and cultural characteristics of the inhabitants of each region, sector and neighbourhood, there is always one recurrent cultural pattern, namely that of peaceful coexistence among nationals and between nationals and foreigners (the latter being mainly Haitians or people of Haitian descent) in conditions of relative social equality. This situation prevails irrespective of whether or not the socio-political limitations of our institutions have been able to secure the same level of socio-economic equity for all.
6. This coexistence is all the more remarkable and commendable at a time when, owing to certain difficulties in the area of governance that Haiti and its people have been experiencing for a number of decades, the Dominican people, at great personal sacrifice, is contending with uncontrolled, illegal migration from Haiti into its territory. This far exceeds the capacity of the Dominican Republic's economic system to receive and integrate illegal migrants and exhausts the scarce resources available to its population.

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<sup>1</sup> See pp. 2-4 of the Diène-McDougall report.

7. For these reasons, we welcome the fact that the Special Rapporteur and the independent expert have recognized that there is no government policy of racism in the Dominican Republic.

8. For the four above-mentioned reasons, we consider it essential to correct some inaccuracies contained in the report and to set the record straight with regard to a number of recurrent errors that are objectionable and unacceptable.

9. Failure to deny the alleged Dominican “racial prejudice” which, according to the Special Rapporteur and the independent expert, takes the form of discrimination against Haitians, would be unfair and inconsistent with the unquestionable and unconditional solidarity shown by the Dominican people towards Haitian nationals in the eastern part of Santo Domingo island. This solidarity among neighbouring peoples is unique and exemplary in the history of the contemporary world and can be easily verified.

10. Moreover, this would be tantamount to ignoring, without any justification, the Dominican Republic’s continuous and unfailing efforts to defend Haiti in all international forums where it consistently supports the sustainable development of Haiti and its institutions.

11. Consequently, and as will be demonstrated below, the Dominican people and its Government do not accept the accusation of racial prejudice, particularly the allegation of prejudice against Haitian nationals, which is repeated throughout the summary and body of the report.

12. On the contrary, the best evidence that this prejudice does not exist is that, for more than 50 years, right up to the present day, there is no Government or population on the American continent or anywhere else that has given, and continues to give, so much tangible proof of hospitality and support for Haitian nationals, as the Dominicans. This is the most cogent reason why, contrary to the conclusions drawn by the Special Rapporteur, Mr. Doudou Diène, and the independent expert, Ms. Gay McDougall, any current difficulties must not and cannot be understood or interpreted as racial prejudice, discrimination or xenophobia on the part of the population and host Government.

## **II. METHODOLOGY AND SUBSEQUENT ERRORS**

### **Methodology (paras. 1, 12 and 13)**

13. The methodology used by the authors of the report to gather and analyse information is inappropriate and, consequently, unjustifiable. It relies on a rather subjective procedure which, in the end, leads to hasty, inaccurate, unfounded and not very true conclusions.

14. This methodology comprises two stages.<sup>2</sup> The first consists in establishing a reference framework; this is made up of the international treaties and agreements ratified by the Dominican Republic that contain provisions that the country has undertaken to respect.

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<sup>2</sup> See paras. 1 and 13 of the Diène-McDougall report and also sect. III.B: Views of civil society and communities concerned.

The second stage consists in consulting individuals with an interest in the subject in order to ascertain whether the Dominican Republic is complying with these treaties and agreements.

15. But what are the limitations of the methodology used throughout the visit, during the subsequent drafting of the report, including the analysis carried out separately by the Special Rapporteur and the independent expert, and in their final joint conclusions?

16. There is only one possible answer: at no time during the process did the authors of the report test, verify or objectively and independently confirm the accuracy of the data and information that they received. Everything was assumed to be correct without a shred of objective evidence. In other words, the entire report is made up of a series of subjective allegations, none of which, either alone or in conjunction with the others, is anything more than a mere subjective allegation. Just because something is said or written does not make it true and accurate, and the report in question goes to extremes, as we will demonstrate: more weight is given to simple allegations than to the decisions of the highest judicial authority of the Dominican Republic.

17. Because the methodology employed was superficial, the three questions that the Special Rapporteur and the independent expert proposed to answer<sup>3</sup> - (a) whether there is racism and, if so, (b) which groups are victims and how is it expressed, and (c) how can it be overcome - end up being answered solely and exclusively through a series of interviews from which mere allegations, suspicions and circumstantial evidence are repeated and transcribed without any proof, which on paper become accusations. Thus, the report contains a string of complaints, suspicions and presumptions. These are, in short, mere allegations: no effort has been made to verify them or to provide any evidence to back them up.

18. Moreover, the authors do not limit themselves to making groundless assertions. In truth, such are the methodological defects of the Diène-McDougall report that it goes as far as to suggest on several occasions<sup>4</sup> that the Dominican authorities are emulating the Grand Inquisitor, scrutinizing and controlling the private lives of Dominican citizens; this in no way reflects the Dominican authorities' objective behaviour, which is the only thing that truly needs to be controlled in a democracy.

## **B. Examples of material errors**

19. As an example of the subjective and essentially biased nature of the report, let us first consider Dominican nationality. The authors of the report give more weight and credibility to the opinion of individuals than to the Supreme Court of the Dominican Republic.

20. Why were the authors of the report told over and over again that there is discrimination against the descendants of Haitian nationals in the Dominican Republic?

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<sup>3</sup> See para. 13.

<sup>4</sup> See paras. 38, 39, 42 and 43, to cite only a few examples.

21. In accordance with article 11 of the Dominican Constitution, the descendants of Haitians born in the Dominican Republic, many of whom have been working in the national territory for years, and even decades, thus making it difficult to categorize them as foreigners in “transit”, are subject to discrimination when they are denied the usufruct of Dominican citizenship, citizenship to which they are allegedly entitled by virtue of *jus soli*, which is referred to in article 11 of the Constitution.

22. As they believe everything they hear,<sup>5</sup> the authors of the report assume that their immediate conclusions drawn from a casual reading of article 11, and apparently supported by the statements of their informants, validate the claim that there is racial discrimination in the Dominican Republic. It seems that, in view of the weight and value that they give to the statements that they heard, the authors of the report did not consider it necessary to investigate such information any further and accepted what they were told at face value.

23. Owing to the aforementioned methodological flaws, the authors of the report failed to exercise their critical judgement and repeatedly let themselves be swayed by certain interlocutors without the support of any investigations or objective evidence. Consequently, they denounce Dominican society as racist; in doing so, they ignore the fact that the Dominican Republic, in defining who is Dominican, has freely and independently adopted a combination of *jus soli* and *jus sanguinis*, and not one or the other.

24. Being Dominican is not a matter of belonging to one race or another. Dominican society has been multiracial since its colonial history began in the fifteenth century. Being Dominican therefore requires a combination of two fundamental variables:

(a) Historical and cultural: sharing the same freedom-loving and cultural tradition, which cannot be summarized here as it encompasses our history as a people who have fought for their freedom at various times against England, France, Haiti, Spain and the United States of America since the sixteenth century. Thus, being Dominican means having a set of shared values and purposes, irrespective of race, creed, ideology or any other variable;

(b) Constitutional: Dominican citizenship requires compliance with the criteria of *jus sanguinis* and *jus soli*, as defined in the revised Constitution of the Dominican Republic of 1929, and as recognized by the Supreme Court in its ruling of 14 December 2005.<sup>6</sup>

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<sup>5</sup> See sect. IV (Issues relating to documentation of civil status and citizenship), and paras. 55, 56, 62, 69, 125 and 126.

<sup>6</sup> In its ruling of 14 December 2005, the Supreme Court clarified the meaning of article 11 of our Constitution when it established that: “Whereas, in effect, when article 11, paragraph 1, of the Constitution excludes the legitimate children of foreigners residing in the country as diplomatic representatives or of foreigners in transit from acquiring Dominican nationality by *jus soli*, it presupposes that those persons in transit have been in some way authorized to enter and stay in the country for a certain period. If in this situation, which is obviously legitimate, a foreign mother gives birth on national soil, the child is not Dominican according to the Constitution. A child born

Since illegality is not a source of law, the Supreme Court clarifies in this ruling that the Dominican Constitution grants Dominican nationality only to children whose parents are nationals or legal residents.

25. While the authors of the report are aware of the Supreme Court ruling (see para. 70), they simply reproduce it and, without discussing it, continue their line of argument, avoiding the ruling and countering it with opinions and allegations of community members and civil society NGOs; opinions and allegations to which they give credence before arriving at the conclusion that they perceived racism and a spirit of discrimination in the Dominican Republic.

26. On other occasions, the report contains blatant contradictions and prejudices: the authors recognize that individuals have access to the due process of the law; they confirm that the relevant authorities thoroughly examine each individual case before deciding whether or not to grant citizenship; yet they arbitrarily disregard all this evidence and predict the outcome of cases that are still in litigation or are being appealed before the Supreme Court, which they present as “proof” of racism.<sup>7</sup>

27. Therefore, the methodology used in the report leads over and over again, on topics such as nationality and registration in the “foreigners’ register”, (*libro de extranjería*), to the conclusion that there is discrimination in the Dominican Republic; however, in order to prove that discrimination exists, it is necessary to go beyond individual and biased opinions. At no time did the authors check the Dominican constitutional system or other issues of equal relevance; they simply accepted them without studying them.

28. In the end, an error, even when it is repeated a thousand times, is still an error. This is true of the second example of the limitations of the methodology used, when the report mentions children condemned to live without a country, without papers, without rights and without any subsequent opportunity to improve their lives, in violation of their inalienable human rights.

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to a foreign mother who is in an irregular situation at the time of the birth and therefore unable to justify her entry into or stay in the Dominican Republic, cannot, with all the more reason, be Dominican. Therefore, the situation of the children of foreigners born in the circumstances established in article 11, paragraph 1, of the Constitution is not based on considerations of race, colour, belief or origin, but on the express mandate contained in the aforementioned fundamental text which, since the revision of the Constitution in 1929, denies Dominican nationality, as has been shown, not only to children of foreigners in transit in the country, but also to children of foreigners residing in the country as diplomatic representatives, which rules out the possibility that the present interpretation could be considered discriminatory; consequently, the law called into question by the petitioners is not discriminatory and their case is therefore groundless and must be dismissed.”

<sup>7</sup> See paras. 58-60.

29. Throughout the report, the authors talk superficially of the denial of nationality to descendants of Haitian parents illegally residing in the country.<sup>8</sup> They erroneously consider such people to be stateless, with flagrant disregard for the fact that the Constitution of Haiti grants them nationality through *jus sanguinis*.

30. It seems that, through haste or for some other reason, the authors of the report overlook or disregard the fact that the Haitian Constitution establishes that all children of Haitian parents who are born outside the country are Haitian; therefore, those children are not deprived of a nationality, as is fallaciously alleged. If their methodology had been objective, the authors would have checked this, instead of simply receiving and passively transcribing biased and self-interested accusations.

31. But, in the same way as they gave more credence to certain allegations than to the provisions of the legitimate and highest embodiment of the Dominican constitutional order, which has been in force since 1929 in the Dominican Republic. They likewise, and for the same reason, consider that the opinions of NGOs and individuals are as important, or more important, than the legitimate and responsible authorities of the civil registry offices<sup>9</sup> in matters relating to personal identification documents and registering with these offices.

32. Furthermore, on the subject of stateless children and the registration of births in the so-called “pink book” (*Libro Rosado*), the authors of the report could have and should have officially consulted the Ambassador of the Republic of Haiti in Santo Domingo, His Excellency Fritz Cineas, who would have enlightened them on the subject, as he did voluntarily in the national press, just days before the visit of the Special Rapporteur and the independent expert to Santo Domingo in October 2007.

33. A third and final example of a fundamental topic in the report where the methodology used leads to indisputable errors and, therefore, unjustified and unacceptable claims of racism, prejudice and xenophobia, is that of children of unknown parents.

34. Far from allowing there to be children without a nationality in the Dominican Republic, the Central Electoral Board, in accordance with the international conventions to which the Dominican Republic is a signatory, has established that children of unknown parents are to be registered as Dominican nationals. Even though this practice is not recognized in the report, it is another reason why it is incorrect to talk of children without a nationality in Dominican territory.

35. In conclusion, the limitations of the methodology used lead the authors to express themselves in such an imprecise manner as to say that “racism is almost invisible in certain parts of society and in particular amongst elites” (see summary, p. 2), even though they and their informants see it everywhere. But that is not why they fail to answer the question of whether or not there is racism, racial discrimination or xenophobia in the country. They even, as we will show below, allude to “minority groups” who are victims of these phenomena and of a historical tradition of racism rooted in the country’s poverty.

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<sup>8</sup> See paras. 70 ff.

<sup>9</sup> See paras. 73 and 74.

### III. CENTRAL THEMES

#### A. Central Electoral Board and Civil Registry Offices<sup>10</sup>

36. With regard to the alleged violations of the right to an identity where Haitian nationals and their descendants are concerned, as well as the international response to these violations, it is easy to prove that, rather than being an issue of discrimination, it is more a matter of the State's bureaucratic limitations since between 9 per cent and 12 per cent of the Dominican population of more than 9 million people do not have certain documents.

37. Given this de facto situation, it is the responsibility of, and a challenge for, the Central Electoral Board to overcome this serious disadvantage, which predominantly affects Dominican nationals, and to strive to provide all residents of the Dominican Republic, both nationals and foreigners, with documents that are objectively accurate and reliable in the eyes of any third party.

38. It is therefore unfair and arbitrary to state that in the Dominican Republic there are violations of the right to an identity and that the efforts of the Central Electoral Board to provide everyone with accurate and reliable documents are discriminatory on racial grounds,<sup>11</sup> and even more so when the authors of the report, lacking evidence, rely on individual and biased allegations<sup>12</sup> and attach more weight to these subjective opinions than to the objectivity and legal and administrative impartiality of the Dominican civil system.<sup>13</sup>

39. There are basic requirements for the registration of a person's identity at the time of birth and, if there is an irregularity at the time of registration, it is true that a person cannot be provided with his or her document until that irregularity has been rectified; otherwise, there is a risk of perpetuating the irregularity and discrediting the entire Dominican civil registry system.

40. The late declaration of birth<sup>14</sup> is a procedure with a series of basic and important requirements. In order to help persons who do not have documents to comply with these requirements, the Central Electoral Board has implemented programmes to facilitate the issuing of documents, which include:

(a) The establishment of automated civil registry offices in maternity wards and clinics to provide newborns with a birth certificate and a unique identity number, which is a significant step forward, as it paves the way for eliminating under-registration in the future;

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<sup>10</sup> See sect. IV.

<sup>11</sup> See paras. 51 and 62.

<sup>12</sup> See paras. 55, 67 and 72.

<sup>13</sup> See paras. 73-77.

<sup>14</sup> Late declaration of birth: establishes a person's (the holder's) origin with regard to his or her birth, after the compulsory legal deadline.

(b) The Mobile Late Declarations Unit: According to the census carried out by the Welfare Office and the World Bank, there are more than 600,000 previously identified adult citizens in the Dominican Republic who do not have a birth certificate or an identity and voter registration card (*cédula de identidad y electoral*) and therefore are unable to exercise their most basic rights as citizens. That is why, as part of its efforts to eliminate under-registration, the Central Electoral Board has created the late declarations special unit programme. In order to carry out this programme, the Central Electoral Board inaugurated the first mobile late declarations unit in the city of Salcedo, Hermanas Mirabal province, on 29 November 2007, and it is hoped that 15 units will be functioning nationwide within eight months;<sup>15</sup>

(c) The unit issued the first late birth certificate to Joshua Imanol Rodríguez Pérez who, at the age of 1 year and 3 months, had not been declared because his mother did not have an identity and voter registration card, and it was therefore necessary to provide her with documents. Mobile units have the technology and qualified staff to offer this service; their objective is to travel to the remotest areas of the country where, because of limited economic means, people have not been entered in the civil register and therefore do not have any legal status;

(d) The agreement between the Central Electoral Board and the World Bank on the acquisition of mobile units for fieldwork: through this agreement, the parties undertake to provide identity documents to individuals who do not have birth certificates or identity and voter registration cards;

(e) The agreement between the Central Electoral Board and the United Nations Development Programme (UNDP): this agreement was concluded to provide birth certificates to 17,983 children enrolled in public schools who do not have this document; these children were previously identified by the Ministry of Education.<sup>16</sup>

41. One of the concerns of the report - not to say accusations against the Central Electoral Board - is that the Board regularly annuls the birth certificates of "Dominicans" of Haitian descent without the possibility of appeal.<sup>17</sup>

42. With regard to these allegations, it should be specified that foreigners born in the Dominican territory to parents who are duly registered, that is, legally admitted into the country, can register their children as Dominican.

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<sup>15</sup> Reports on mobile late declarations units and the issuance of birth certificates and identity cards to families without documents; the magazine *Elecciones 2008*, No. 7, September 2007.

<sup>16</sup> Agreements between the Central Electoral Board and the World Bank on the acquisition of mobile units for late declarations, and between the Central Electoral Board and UNDP to provide birth certificates to children enrolled in public schools.

<sup>17</sup> See paras. 62-64 and 71-73.

43. With regard to the allegations that the Central Electoral Board is annulling the birth certificates of those who already have them, we can confirm that this is not true; in reality, what is happening is that the civil registry is undergoing a standardization process, since many people have been enrolled in an irregular manner, either with false documentation or, in many cases, without documentation.

44. There are cases where the full court authorizes the initiation of judicial annulment proceedings, as in the case of a Dominican baseball player, Rafael Antonio Furcal Peguero, who was found by the Central Electoral Board to possess a dual identity by claiming to be younger than he was: his second birth certificate was therefore annulled.

45. All countries, including the United States of America and European countries have provisions similar to those of Circular No. 17.<sup>18</sup> The real relevance of this administrative provision lies in its aim to identify fraud or irregularities where they occur, to order a review of registrations that do not fulfil the legal requirements, and not, as is arbitrarily claimed in the report, to discriminate against black Dominicans, Haitians or their descendants.<sup>19</sup>

46. In the context of under-registration and the falsification of documents in the Dominican Republic, the provisions of Circular No. 17 cannot be viewed as being in any way discriminatory, but rather as an administrative measure aimed at maintaining the Central Electoral Board's status as an institution and the legal credibility of each and every document that it issues and of which it is a guarantor.

47. To illustrate the foregoing with examples, we present below two cases that were under investigation and that were finally resolved by the Central Electoral Board:

(a) The case of Ms. Luz Lama Navales<sup>20</sup>

(i) On 6 November 2007, Ms. Luz Lama Navales submitted an official request to the Central Electoral Board, through the Administrative Chamber, enclosing documentary evidence of her nationality, since she had not been issued an identity document because her case was under investigation. During the investigation it was proven that she was the daughter of Haitian citizens, but that, when her birth was declared, her father, Mr. Yanvie Lama, was in possession of a legitimate, personal identity card that had been correctly issued.

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<sup>18</sup> Circular No. 17 of March 2007, issued by the Administrative Chamber of the Central Electoral Board in view of the scandalous situation that was damaging the credibility of the Civil Registry, instructs civil registry officials to examine birth certificates thoroughly when issuing copies or extracts indicating a person's civil status, mainly because of reports that, in the past, irregular declarations of birth had been made.

<sup>19</sup> See para. 70 ff.

<sup>20</sup> The case of Luz Lama Navales from the Central Electoral Board.

Her father was legally resident in the country and his declaration was in order and in conformity with the legal requirements established by article 11 of the Constitution of the Dominican Republic;<sup>21</sup>

- (ii) On 19 November 2007, the National Director of the Civil Registry ordered the civil registry official of the eighth district of Santo Domingo Este to issue Ms. Luz Lama Navales's birth certificate, as there were no irregularities in her declaration of birth.<sup>22</sup>
- (b) The case of Ms. Nuny Angra Luís<sup>23</sup>
  - (i) On 10 December 2007, Ms. Nuny Angra Luís requested in writing to be issued with a copy of her birth certificate, as she had been refused at the place where her birth was declared;
  - (ii) A copy of her birth certificate has not been issued to Ms. Nuny Angra Luís because it has been verified by officials of our institution that the personal identity card number belonging to Cristian Angra (father) does not appear in the register, as the page with this number is missing (it has been removed from the book); and the number of the identity card of Leona Luís (mother) in fact belongs to Ms. Jacobina Serrano. The birth certificate was therefore issued in an irregular manner and is invalid because the documents required for declaring a child are, in this case, invalid; indeed there is evidence of fraud as someone else's identity was used by the mother in order to appear to be Dominican.

48. As indicated in the report, the new Migration Act (No. 258-04) is being partially applied in the Dominican Republic, before it formally enters into force, through the establishment of a new register called the "pink book".<sup>24</sup> According to the prejudiced allegations, children of undocumented Haitian mothers are registered in this book and then referred to the Haitian consulate to obtain the nationality of the neighbouring country, against the wishes of the mother and in violation of the Dominican Constitution, which designates nationality by *jus soli*.

49. In order to clear up and eliminate these prejudices and unjustified and unacceptable rumours, it should be made clear that the "pink" declaration of birth was introduced through the Migration Act.

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<sup>21</sup> Constitution of the Dominican Republic, art. 11: "All persons born in the territory of the Republic are Dominicans, except the legitimate children of foreigners residing in the country as diplomatic representatives, or of foreigners in transit."

<sup>22</sup> Through official communication No. 1954 of 19 November 2007 from the National Director of the Civil Registry.

<sup>23</sup> The case of Nuny Angra Luís from the Central Electoral Board.

<sup>24</sup> See paras. 61-66.

50. Secondly, its only aim is to comply with international agreements by giving a nationality to newborn children of foreign mothers who do not have Dominican nationality. Above all, the Dominican authorities understand the importance of the provisions of national and international laws when they state that everyone has the right to a given name and to the surnames of one or both of their parents, and the law shall guarantee this right to all.

51. Thirdly, Central Electoral Board Resolution No. 02-2007 of 18 April 2007 complies with the provisions of the aforementioned legislation and puts it into practice through the pink birth certificates to guarantee an identity to newborns.

52. The pink certificate or declaration of birth for foreign children born in the country is not and should never be interpreted as discriminatory. On the contrary, it guarantees to those children the right to an identity and a name, by allowing them to register those details in an official document, without it implying that Dominican nationality has been granted (they are not entitled to it because their parents were foreigners without a permanent and legal status in the country when their child was born).

53. An exception to the information contained in the preceding paragraph is the situation of children who are not recognized as nationals by the legislation of their country of origin. In such cases, in order to prevent these children from being stateless, they are granted Dominican nationality in accordance with the Convention on the Reduction of Statelessness adopted by the United Nations in 1961.

54. This exception does not apply to Haitian nationals because, as stated above, the Haitian Constitution establishes that Haitian nationality is acquired by *jus sanguinis*; the pink book upholds this right, since all foreign children (of any nationality) who are in the country and who are not entitled to Dominican nationality, in accordance with Dominican legislation, are issued with a pink declaration of birth as soon as they are born, so that they may apply for their nationality in the relevant consulate under *jus sanguinis*.

55. Hospitals are not authorized to issue birth certificates, only declarations of birth.

56. Finally, it is important to note that, even though it is not mentioned in the report, not even by mistake, on innumerable occasions, when persons of Haitian origin are not registered in their country, the Dominican Republic ends up registering them as Dominican nationals without any background documentation.

## **B. Migration issues<sup>25</sup>**

57. There is no State policy of racial discrimination against Haitians, black Dominicans or any other sector of the population. Furthermore, there are no grounds for claiming that black Dominicans are currently being repatriated.

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<sup>25</sup> See paras. 79-81.

58. On the contrary, as part of its continuous process of institutional reform, the Dominican Republic is making increasingly successful efforts to respect, in each individual case without exception, the human rights of each and every resident - legal and illegal - in the national territory.

59. As recognized in the report, it is impossible to find a country that has no discrimination.

60. The free access provided to basic services such as health, transport, drinking water, the media, food, housing, the courts and education is the greatest objective proof that there is no racial prejudice or xenophobia in the country. On the contrary, there is enough political will on the part of the Government and Dominican society to guarantee the social rights of the entire population residing in the national territory, regardless of national origin, beliefs, gender, age or skin colour.

61. The Migration Act (No. 285-04) is referred to in various paragraphs of the report since it is relevant to many issues relating to migrant documentation, the rights of illegal immigrants, the concept of being in transit in the territory, the registration of the births of foreigners and other important matters.

62. In particular, paragraphs 79 to 81 of the report directly concern the work of the Department of Migration, whose sole function is to ensure that the mechanisms provided for in laws and conventions are applied, precisely as approved.

63. With regard to paragraph 79, it is obvious above all that the information gathered by the Special Rapporteur and the independent expert from representatives of civil society and members of different communities is outdated. It is anachronistic.

64. For example, over the past four years express instructions have been given to migration officials, who have been urged to pay particular attention to the following:

(1) To avoid at all costs the separation of nuclear families, i.e. parents and minors, even when this provision means not carrying out repatriation;

(2) To give them an opportunity to prove their situation and present any documentation that justifies their stay and to provide “adequate opportunity to argue any distinctions”, contrary to what is indicated in the report. Once the validity of the identity card (whether for a national or a foreigner residing in the country, if this is the document presented) has been confirmed with the Central Electoral Board, the repatriation process is immediately suspended. This checking is justified because identity fraud, i.e. the substitution of identity in identity cards and the falsification of migration documents, is extremely common;

(3) If they do not hold an identity card or work document, to give them the opportunity to demonstrate that they have a stable job in the country, whether they are employees or self-employed, to confirm that they are carrying out some form of useful work and that they are not a social burden on the State;

(4) To give them an opportunity to demonstrate family connections established in the Dominican Republic, even if they do not possess a migration or identity document;

- (5) To register any property that they can prove is theirs, and carry out their instructions as to whether they wish to leave it in the national territory or take it with them;
- (6) To make telephone calls to or otherwise inform relatives;
- (7) To establish a register for each individual to be repatriated, enclosing their photograph for better identification;
- (8) To return intact any personal document that has not been falsified, whether it is a work permit, birth certificate or other document.

65. With regard to employment, it has been reiterated, incorrectly, that the competent authorities in the Dominican Republic do not carry out raids in the workplace and that only undocumented persons roaming the streets of Santo Domingo and Santiago who are, unable to demonstrate that they are employed, are students, dependants or have any other valid reason to be in the country, are subject to repatriation. In fact, beyond prejudiced and biased assumptions, no evidence may be provided in this connection.

66. In addition, it should be recalled that the Department of Migration has suspended repatriation on Fridays, when wages are usually paid, with a view to preventing unfair deals between employers and individuals to repatriate workers and other concerned persons so that they do not receive their week's wages.

67. The recruitment of Haitian workers for the sugar cane industry through a quota system, that is, the import of workers pre-recruited in Haiti, has been prohibited, at least officially, since 2005 owing to complaints of trafficking in persons through this mechanism, which is operated by unscrupulous individuals in both countries.

68. The number of returnees has increased through the activities of the Specialized Border Security Corps. This specialized border control force returns Haitian workers without migration documents from border towns owing to the massive influx of immigrants crossing the Dominican-Haitian border daily, freely and surreptitiously, with a view to settling or remaining illegally after the market days authorized in some of these localities.

69. Recognizing that their work entails a high potential for conflict, migration inspectors undertake continuous training in human rights and crisis management.

70. In any event, any verified failure [on the part of migration inspectors] to comply [with regulations] is immediately corrected and punished. Thus, it is noteworthy that the migration authorities maintain a zero-tolerance approach towards all cases of alleged ill-treatment or coercion. Such cases have been investigated and sanctions have been applied when necessary; in other cases, accused inspectors have been dismissed and brought to justice, as may be seen in the records of the migration authorities and in the cases brought before the courts.

71. At present, the regulations governing the Migration Act - which should clarify important questions on the implementation of the Act - have not yet been adopted.

72. In this context, however, attention should be drawn to various important legal aspects:

(a) The absence of regulations does not in general affect the validity of Act No. 285-04;

(b) The repatriation procedure is governed by the Protocol on Repatriation Mechanisms, a bilateral agreement signed between the Republic of Haiti and the Dominican Republic in 1999, which lays down the procedure to be followed for repatriation, a concept that is distinct from deportation and expulsion;

(c) The benefits of the Protocol, particularly for Haitian citizens, include the fact that individuals subject to repatriation are not prevented from returning to the Dominican Republic on a visa or from applying for and obtaining a residence permit, which is not the case for deported or expelled persons;

(d) At any time, Haitian nationals may apply for temporary or definitive residence provided that they meet the established requirements. In fact, all of the applications for residence that have been received have been granted.

73. The Migration Act provides for a census of foreigners, in preparation for a national plan for the regularization of foreigners. Under the plan, the determining factor for regularization will be the duration of residence in the country; the plan will offer opportunities to obtain a legal residence permit as well as naturalization options with a view to acquiring Dominican nationality, based on certain pre-established criteria.

74. The draft regulations under consideration by the executive include provisions for this plan, which will address many of the legitimate aspirations of persons who have no doubt become firmly established in the Dominican Republic, and will further organize and legalize the temporary or permanent stay of foreigners in our territory, in accordance with specific social and labour market factors.

75. The plan to be adopted should comply with other legislation adopted and other aspects that will have to be regulated to ensure its smooth implementation, all of which has delayed its final adoption.

76. The House of Representatives of the National Congress is also considering a very similar draft national regularization plan, to be enacted through the legislative process.

77. In conclusion, the Department of Migration has followed the explicit guidelines of the executive - recognizing the problems of the Haitian people and the contributions of Haitian immigration. Despite being overwhelmed by a recent wave of immigration that has exceeded its legitimate capacity to exercise control, the Department of Migration is making every effort to enforce the law in a way that is respectful and consistent with the functions assigned to it, and is endeavouring to ensure that the benefits of orderly immigration are enjoyed in the near future.

### C. *Bateyes*\*

78. The authors of the report place special emphasis on the situation of Haitian nationals and their descendants in the context of the sugar cane industry, particularly in paragraphs 86, 87, 101, 102, 112 and 113. Such concern calls for further clarification of the points already made at the beginning of the present document (see paragraphs 52-55).

79. The sugar cane economy is filled with challenges. Up to the year 2000, there were 14 sugar cane plantations in the Dominican Republic, with a total of 359 *bateyes* (only 339 now remain) inhabited by some 250,000 persons. Out of the total number of plantations, this year 11 were operating both in agriculture and manufacturing and 3 performed only agricultural activities (planting and harvesting).

80. The *bateyes* are distributed as follows:

Landowners	Year 2000	Year 2007
1. State Sugar Council	220	220
2. Central Romana	100	80
3. Grupo Vicini	39	39
Total	359	339

81. As time went by, many of these sugar cane communities did not become stagnant, without social mobility or progress, but developed and grew into towns that are no longer *bateyes* or primarily dependent on the sugar cane industry, and have obtained municipal status.

82. This was the case in Consuelo, Quisqueya, Santa Fe and Gautier in the province of San Pedro de Macorís, Güaimate in La Romana, and also Boca Chica, Guerra, San Luis, Villa Mella, Pedro Brand and Los Alcarrizos in the metropolitan area of Santo Domingo. There are also former *bateyes*, such as Bayona, which have been converted into large urban areas extending beyond the municipal level.

83. Villa Altagracia and Los Bajos de Haina were the central *bateyes* of the Catarey and Río Haina plantations - which were owned by the State Sugar Council and were closed down as a result of the capitalization process that began at the end of the 1990s.

84. The municipality of Don Juan was a *batey*, as was the municipality of Sabana Grande de Boya, both owned by the Río Haina plantation. These municipalities now make up the province of Monte Plata.

85. *Bateyes* also included Montellana, in the province of Puerto Plata, and Esperanza, where a plantation of the same name operated (also owned by the State Sugar Council and closed down) in the province of Valverde Mao.

86. The central *batey* of the Barahona plantation was an extension of the Barahona municipality in the province of the same name, where Pescadería and Fundación were also

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\* The communities attached to the sugar cane plantations, where the cane cutters live.

located. Further *bateyes* included Montserrat and El Palmar in Bahoruco province, and the municipality of Mella in Independencia province, all of which were under the influence of the Barahona plantation. Other *bateyes* were unable to achieve the same level of development as those mentioned above.

87. None of these communities were visited by the Special Rapporteur and the independent expert - the authors of the report under consideration - according to the first paragraph of the introduction to the report and paragraph 86.

88. With regard to the 39 *bateyes* owned by the Grupo Vicini, situated predominantly in the region of San Pedro de Macorís, projects are under way for their conversion into three sugar cane community estates at a cost of US\$ 10 million, equipped with all the basic amenities. Drinking water, electrical energy, schools, hospitals, sports facilities, cultural and shopping centres and entertainment will be provided in these model communities.

89. As mentioned earlier, not a single reference was made to these facts in the report, although the authors visited the region of San Pedro de Macorís.

90. As for Central Romana, the restructuring and renovation of the *bateyes* owned by it has involved the construction of 6,000 new concrete houses fully equipped with all the basic amenities; 1,000 of these houses have been given to both Haitian employees and Dominican employees of Haitian descent.

91. Although by definition the *bateyes* are work enclaves within a sugar cane plantation, the majority of Dominicans, Haitians and descendants of Haitians who live in these communities do not work in the sugar cane industry. Instead, they tend to work in construction, the free-trade sector, tourism, agriculture (excluding the sugar cane industry) and other informal activities that do not provide them free of charge, either de facto or de jure, with the accommodation and services available in the *bateyes*.

92. Notwithstanding the work situation mentioned above, the residents of the *bateyes* who do not work on any of the sugar cane agricultural or industrial farms continue to live there. It may be concluded, therefore, that their condition, whether good or bad, is by no means induced by the sugar cane industry, which employs only 11,000 Haitians and Dominicans of Haitian descent, which barely amounts to 1 per cent of the Haitian population throughout the Dominican Republic.

93. The same working conditions apply to all persons working in the sugar cane industry, and their recruitment is based on national labour regulations, particularly the Labour Code and the resolutions of the National Wages Committee, which establishes workers' rates of pay, irrespective of nationality.

94. In these communities, the sugar cane industry as a whole applies a zero-tolerance policy towards child labour, in accordance with article 245 of the Labour Code, which prohibits children under the age of 14 from working, and also International Labour Organization (ILO) Convention No. 138 concerning Minimum Age for Admission to Employment and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the

Worst Forms of Child Labour. Furthermore, in specific regions, such as San Pedro de Macorís, cooperation agreements have been signed with institutions such as Save the Children, safeguarding this child-oriented policy.

95. No constraints are imposed on the recruitment of Haitian workers and Dominican workers of Haitian descent: they enjoy full freedom of movement, the right to form trade unions, the right to employment benefits and retirement benefits.

96. As a matter of fact, contrary to what is stated in paragraph 86 of the report, no individual in the Dominican Republic, irrespective of nationality, who has spent 40 or 50 years working in the sugar cane industry is left without a pension. Nor is it entirely correct to claim that they “live in pitiable conditions with no access to running water, sanitation or electricity” as stated in paragraph 87.

97. Furthermore, de facto and de jure, agricultural workers in the sugar cane industry receive free health care and education. In 2006, workers received 173,000 medical visits and 124,000 dental visits, HIV care with vaccination programmes and basic pre- and post-natal care; they were also provided with necessary medicines.

98. With regard to education, the sugar cane industry is maintaining 87 schools with 80 teachers and 3,125 pupils (girls and boys).

99. In addition to the above, between 2005 and August 2007, the State provided medical services for 932,327 Haitians, who account for 98.5 per cent of the 945,455 foreigners receiving health care in the Dominican Republic. The cost of these services was US\$ 30.4 million, accounting for 4 per cent of the budget allocated during that period to the Ministry of Public Health and Social Welfare.

100. In the light of all these easily verifiable facts, it cannot be said that Haitian immigrants or Dominicans of Haitian descent are discriminated against in the Dominican Republic. These immigrants are integrated into Dominican society and participate in all national economic activities, including setting up their own businesses.

101. As a result, every year, Haitian immigrants and their descendants send US\$ 300 million in remittances to their country of origin, according to information provided by Inter-American Dialogue.

102. Haitian immigrants not only work and live with the various sectors of society in the country, but also form families by marrying or living with Dominicans.

103. The recommendations contained in paragraphs 115-117, 119, 120, 127, 128 and 130 are therefore unacceptable; equally unacceptable are all those parts of the report that suggest the existence in the Dominican Republic of racial discrimination, ill-treatment on grounds of ethnicity, xenophobia and any other racially motivated conduct towards Haitian immigrants, and the fact that the situation in the sugar cane industry community estates is reflected only superficially.

### Health services provided to foreign patients, 2005-2007<sup>26</sup>

Activity	Year			Overall Total	Unit Cost (in RD\$)	Total Cost (in RD\$)
	2005	2006	August 2007			
1. Consultations	123 403	107 569	75 510	306 482	250.60	76 804 389.20
2. Emergency care	98 516	73 500	52 969	224 985	835.94	188 073 960.90
Subtotal	221 919	181 069	128 479	531 467	1 086.54	264 878 350.10
3. Admissions	13 925	97 347	8 022	119 294	4 058.39	484 141 576.66
4. Surgery	1 700	1 417	596	3 713	10 500.00	38 986 500.00
5. Deliveries	8 923	3 592	3 569	16 084	7 219.06	116 111 361.04
6. Caesarean sections	683	1 400	659	2 742	16 495.79	45 231 456.18
7. Clinical testing	98 748	52 408	61 313	212 469	89.39	18 992 603.91
8. Vaccinations	20 776	11 876	27 060	59 712	608.67	36 344 903.04
<b>Total</b>	<b>366 674</b>	<b>349 109</b>	<b>229 698</b>	<b>945 481</b>	<b>40 058.00</b>	<b>1 004 686 750.93</b>
						<b>US\$ 30 445 053.03</b>

Health services provided to foreigners in 2005-2007 included the following:

Services	Total	Haitian nationals
Consultations	306 482	301 885
Emergencies	224 985	221 610
Admissions	119 294	117 505
Deliveries	16 084	15 843
Surgery	3 715	3 713
Caesarean sections	2 714	2 673
Clinical testing	212 469	209 282
Vaccinations	59 712	58 816
<b>Total</b>	<b>945 455</b>	<b>932 327</b>

<sup>26</sup> Source: Ministry of Public Health and Social Welfare.

Notes:

1. Rate applied based on the per capita cost of the Basic Health Plan - version 1.12A (updated on 23 November 2005).
2. 98.5 per cent of foreign patients receiving care are Haitian nationals.
3. The total cost of patient care accounts for 4 per cent of the national budget allocated to the Ministry of Public Health and Social Welfare.
4. Figures compiled from 86 per cent of the reports (forms 67-A) received from hospitals. Care provided in rural clinics and doctors' surgeries is not included.

#### IV. THE THREE KEY QUESTIONS

104. In accordance with paragraph 13 of the report, the authors considered whether or not racism exists in the Dominican Republic and, if so, which groups are affected and what policies are required to overcome the problem.

##### A. Existence of racism<sup>27</sup>

105. There is only one objective answer as to whether such reprehensible forms of exclusion occur: No. In the Dominican Republic, there is no policy or practice of racial discrimination against nationals or foreigners either on the part of the Government or the institutions of Dominican society, on the grounds of gender, race, ethnic group, age or physical appearance, language, religion, political or trade union affiliation, or any other consideration.

106. This is best illustrated by the fact that people are not segregated into ghettos on the grounds of ethnicity, race or nationality, nor are people confined on such grounds to one region or another of the country or to a specific enclave within the national territory, irrespective of whether it is in a semi-urban, urban or rural area.

107. In addition, in the context of democratic pluralism in the Dominican Republic, not a single group or association expresses discriminatory ideas or advocates or engages in discriminatory practices on the grounds of belief, race, nationality, language, economic and cultural status, or political ideas that promote the separation of national and foreign communities.

108. Clearly, this does not suggest that, in the process of social construction, there are no individuals who nurture feelings of and display racial, economic or social prejudice towards Haitian nationals or their descendants, or even towards their fellow citizens. Such prejudice and behaviour, however, is neither encouraged nor permitted by the authorities or any Dominican institution, whether it be a business or a religious, social or non-profit organization. Appropriate penalties are applied whenever such reprehensible behaviour is reported.

109. Accordingly, allegations of complicity in acts of racial discrimination and exclusion on the part of any of the institutions operating independently in the Dominican Republic or of the national authorities cannot be made.

110. Individual cases, which are less widespread than suggested, in addition to being observed in all human society throughout the ages, are understandable in view of the fact that Dominicans, Haitians and people of Haitian descent must compete for scarce resources against a backdrop of poverty. Although this is one aspect of human nature, it is nonetheless intolerable! The Dominican Republic has therefore recognized that an ongoing, systematic effort is required in the area of values education, which the Dominican education and social communication systems are endeavouring to achieve.

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<sup>27</sup> See sect. III, particularly paras. 36-50.

## **B. “Vulnerable”<sup>28</sup> groups affected by racism**

111. According to the report and, in particular, the conclusions of the independent expert, black Dominicans, Haitians and people of Haitian descent constitute “a minority group”<sup>29</sup> whose inalienable rights are being violated. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992, stipulates that foreigners, including immigrants, in contexts such as that of the Dominican Republic, should put legitimate pressure on the Government to ensure that their minority rights are respected and protected.

112. In the case of the Dominican Republic, however, the existence of such minorities cannot be recognized, and it is inappropriate to refer to the systematic denial of the inalienable rights of immigrants.

113. More specifically, immigrants in the country do not constitute minorities in the sociological sense of the term if this term involves or refers to ethnic minorities. The basic rights to education, health, transport, freedom of movement and freedom of expression, and the right to form trade unions; free and continuous coexistence of nationals and foreigners, freedom of marriage and family relations among communities, and free access for all to the justice system are guaranteed and respected, *de facto* and *de jure*, on a regular basis and without exception, throughout the country.

114. For instance, in accordance with the existing provisions introduced by the Secretary of State for Education, all children, whether Dominican or not, must be granted access to basic education<sup>30</sup>. This is the case irrespective of whether such children possess the required documents, and even when their parents reside illegally in the Dominican Republic.

115. Even if statistical evidence of the above is disregarded for the moment, we affirm that in all cases in which school directors have opposed the existing provisions whereby individuals without birth certificates, whether nationals or foreigners, cannot be excluded, such non-compliance has been satisfactorily overruled in favour of the student. To our knowledge there has not been a single case in which the aforementioned provisions have not been applied and which could serve as evidence to the contrary.

116. Furthermore, even though written ordinances authorize school enrolment up to the completion of basic education, in practice, enrolment of undocumented nationals and foreigners

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<sup>28</sup> Para. 87.

<sup>29</sup> See paras. 103 and 104.

<sup>30</sup> Contrary to the assumption made in paragraph 82, which does not even acknowledge the presence of more than 2,200 Haitian students in the Dominican university system, despite the existing difficulties mentioned in paragraph 84.

is also authorized at the intermediary level, out of solidarity in a context where people live together in harmony. In this connection, out of the 200,000 pupils studying at the basic education level (up to the fourth year of school), this authorization benefits 19,446 children (Dominican and foreign) who lack the necessary documents to enrol in school, as illustrated in the United Nations progress report on the Millennium Development Goals in the Dominican Republic. It should also be noted that in the sugar cane community estates, 87 schools operate on a daily basis, with just over 80 teachers for 3,125 pupils.

117. Secondly, foreigners, irrespective of their nationality or legal status in the country, have free access to health-care services, provided by both the State and private health-care services.

118. In 2007, the percentage of patients of Haitian nationality who received care in public hospitals across the country varied between 27 per cent and 30 per cent, and between 60 per cent and 65 per cent in the border region health-care centres.

119. In the same year, during which the authors of the report visited the country, the Dominican Government, through the Secretary of State for Public Health and Social Welfare, invested US\$ 17 million in hospital services throughout the country for Haitian patients, in consultations, emergency care, admissions, surgery, deliveries, caesarean sections, surgery, laboratory analysis and vaccinations.

120. Thirdly, on the subject of repatriation<sup>31</sup>, which has raised questions on the procedures followed by the authorities of the Dominican Department of Migration, it is noted that this is regulated by a bilateral protocol between the Haitian and Dominican authorities. This instrument regulates conduct between the parties. When any abuse by a Dominican official is reported and substantiated, it is punished ipso facto.

121. Although there have been abuses in the past, it is nonetheless the case that restrictions have been placed on officials' discretion to decide who should be sent back to Haiti.

122. It should also be pointed out that the number of returnees is significantly lower than that of persons who enter the country illegally.

123. In addition, the national authorities are endeavouring to ensure that the procedure is carried out with full respect for the human rights of the person concerned.

124. Fourthly, another example that illustrates that it is unacceptable to refer to minority groups in the sense that it is understood in the report is that of the aforementioned *bateyes*.<sup>32</sup>

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<sup>31</sup> See paras. 79-81.

<sup>32</sup> See paras. 86-87.

125. With regard to the existence of workplaces and *bateyes*<sup>33</sup> in the context of the sugar cane industry, it should be categorically stated that the Dominican Republic does not advocate or practise any modern form of slavery. No form of servitude exists or is tolerated in the Dominican Republic.

126. Basic Principles I, II and III of the Labour Code provide that no one may be forced to work against his or her will, that Dominican and foreign workers are equal, and that any form of discrimination is absolutely prohibited.

127. This is the situation, not only in the *bateyes* in general, but also specifically in the *batey* that the authors of the report claim to have visited, on the premises of a private-capital sugar cane company in the region of San Pedro de Macorís.<sup>34</sup> Anyone visiting these communities can clearly see the process of improvement, with the construction of modern semi-urban settlements, the elimination of former *bateyes* and the refurbishment of others, the construction of educational facilities up to the level of the school-leaving certificate (*bachillerato*), and of sports and health-care facilities. All of this could have been observed objectively and should have been noted by the authors of the report during the visit in question, to the extent that completed construction works and other construction projects still in progress are not hidden but may be seen by any visitor.

128. In any event, it should be recalled that there are no “minority groups” as such, since:

- (i) There is no government policy in this regard;
- (ii) All foreigners residing legally or illegally in the country enter voluntarily and freely and not by force;
- (iii) All individuals, whether Dominican or foreign, irrespective of their legal residence status, may leave the national territory if they so decide;
- (iv) All foreigners working in the national territory, whether they have legal status or not, receive a salary for their work;
- (v) All employment categories and posts are remunerated and include employment benefits provided for in the labour market through free supply and demand. Salaries are equal for all persons who perform equal work; thus, there is no discrimination, nor are nationality, gender, race, age, political or trade union affiliation or any other specific condition relating to the person performing the job taken into consideration;

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<sup>33</sup> Communities that currently accommodate some 66,500 people of all ages, of various nationalities and races, although the majority are Haitians and people of Haitian descent, accounting for less than 0.7 per cent of the national population.

<sup>34</sup> See the first paragraph of the summary of the report.

- (vi) The Constitution, Principle XII of the Labour Code, ILO Conventions No. 87 and No. 98, and also labour legislation, labour interlocutors, workers' and employers' organizations and public opinion guarantee all workers the freedom to form trade unions;
- (vii) All workers, irrespective of whether they are nationals or foreigners, or have legal status or not, receive equal treatment with regard to their employment benefits provided for by law in their employment contracts, in accordance with the Labour Code. And in the event of a disagreement or dispute, workers have free access to the Secretary of State for Labour to assert their rights;
- (viii) All foreign workers, whether legal or illegal, enjoy freedom of movement throughout the Dominican Republic, and also the freedom to move from one sector of the economy to another and from one company or workplace to another;
- (ix) All foreigners resident in the country, whether legally or illegally, irrespective of their nationality, enjoy the same quantity and quality of services as Dominican nationals, since at no time are they placed or obliged to live in areas designated exclusively for them or segregated from the rest of the population in Dominican territory;
- (x) All foreigners have the same access as all nationals to the opportunities and services existing in the country;
- (xi) All foreigners residing legally or illegally in the country have free access to the courts, as is borne out by the number of labour claims and judicial proceedings handled by the courts; and to state their case in the media.

129. The foregoing means that not only the social make-up but also the daily life of the Dominican people does not allow any scope for the exclusion or segregation of any minority in conditions of discriminatory marginalization on the grounds of race, racial prejudice or xenophobia.

### **C. Joint analysis and recommendations of the Special Rapporteur and independent expert<sup>35</sup>**

130. The recommendations agreed upon by the Special Rapporteur, Mr. Doudou Diène, and the independent expert, Ms. Gay McDougall, depend on the validity of the method used to investigate the existence of racism and racial prejudice in the Dominican Republic, and on confirmation of the existence of the minority groups that are the victims of racial discrimination. We must emphasize that this has not been methodologically proven or objectively established, and, as a result, the conclusions contained in the report are based exclusively on subjective and inaccurate statements.

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<sup>35</sup> Sect. V.

131. Thus, the poverty that affects the entire Dominican population - which according to the commission to follow up the achievement of the Millennium Development Goals fell from 43.4 per cent in 2004 to 35.8 per cent in 2007 - must not be misconstrued as the product of racial discrimination.

132. It is neither correct nor fair to argue, as in paragraph 97 of the report, that “poverty cannot be considered per se as the root cause of social and economic exclusion”.<sup>36</sup> While it is true that poverty is not inherent by nature, it is also true that poverty may exist irrespective of racial issues, both in the Dominican Republic and in other contemporary societies.

133. Moreover, the fact that the roots of deprivation, extreme poverty and poverty lie in historical factors that are common to the entire American hemisphere,<sup>37</sup> as the authors of the report affirm, in no way means that the allegation that these roots are the result of ancestral practices of racial discrimination is true merely because it has been made and set down in writing, without proof, particularly in the case of the Dominican Republic. The report is unsound in methodological and practical terms and the authors should have abstained from making statements that they could not prove, including the statement that racism and its practices are the root cause of the poverty of certain “minorities” living in Dominican territory.

134. As stated above, it should be recognized that the marked concentration of poor Haitian nationals can be easily explained by the fact that the immigrants who are indiscriminately received into Dominican Society are those who are least prepared for the labour market. As a result, they enter the labour market at a relative disadvantage; they are on a par with most Dominican nationals who, either owing to their peasant origins or for other reasons, do not have easy access to the best qualifications that would enable them to do well in Dominican society, given that opportunities and services of reasonable quality in a poor and developing society are scarce and limited.

135. Notwithstanding the hardship and poverty shared by Dominican and Haitian nationals alike, irrespective of racial origin, there is social, economic, cultural and political mobility within both sectors of the population at the individual and community level, which is neither exceptional nor infrequent in nature.<sup>38</sup> This social mobility is a day-to-day reality and can be seen within the same generation. The history is there - the Dominican Republic has had presidents and eminent political leaders of Haitian descent, in addition to businessmen, artists, sportsmen and academics.

136. This social mobility can be explained not in the context of racism but through the unquestionable solidarity shown by the Dominican people every day towards Haitians. We have

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<sup>36</sup> Para. 97.

<sup>37</sup> See paras. 88 and 89.

<sup>38</sup> These changes in communities are most apparent when *bateyes* become independent municipalities irrespective of whether they are connected with the sugar industry; in this regard, see sect. III.D, paras. 152-157 of the report.

always shown and will continue to show our solidarity towards them, in our country, where we share the same schools, university lecture halls, hospitals, workplaces, transport and homes.

137. In view of the foregoing, it is neither fair nor objective nor truthful to recommend - and even less so to accept - that the Dominican Government should officially recognize and publically acknowledge something that does not exist in the country: namely, institutionalized racism and racial discrimination that has deep historical and cultural roots, as is falsely alleged in paragraph 115 of the Diène and McDougall report. The Dominican Government has sufficient political will to continue tirelessly promoting equal opportunities for all, under the same rule of law.

138. Furthermore, the Dominican Government recognizes *de facto* and *de jure* the multicultural nature of its population, with Amerindian, European, African, Asian and American influences; the recommendation made in paragraph 116 of the report that this fact should be recognized is therefore inappropriate and unnecessary.

139. The debate requested in paragraph 117 of the report, is, *de facto* and *de jure*, on a subject that is frequently dealt with in academic forums and in the media, both in Spanish and often in Creole. Their purpose is to support and provide a forum for debate on all matters relating to human rights, the rights of migrants and such topical themes as racism and racial discrimination.

140. The recommendation made in paragraph 118 will be studied and due consideration will be given to see how it can be implemented.

141. As far as the recommendations made in paragraph 119 are concerned, the question of whether national and international organizations currently operating in the Dominican Republic are complying with the objective referred to in the report will be taken up as soon as possible. In addition, it should be noted that negotiations are under way on the Ombudsman's Act (Act No. 19-01) with a view to its implementation.

142. The Dominican Government has not delegated its international obligations. For this reason, as suggested in paragraph 120, various draft laws are being drawn up; for example, there is a draft law on the granting of an amnesty for the late registration of births, as well as draft laws on similar subjects.

143. As recognized in the report, it is difficult to obtain reliable statistical information. In view of this situation, and with the wholehearted support of UNDP, the national authorities are paying special attention to the National Statistics Office and, unless it constitutes an act of discrimination to single out individuals of one nationality or another on particular grounds, the recommendations contained in the report will be duly followed up.

144. The Ministry of Culture and other bodies dealing with cultural affairs are focusing efforts on reviewing the multicultural aspect of Dominican society. Everything from school textbooks to cultural programmes has been revised, as recommended in paragraph 123.

145. The Dominican authorities and society together recognize that the statement made in paragraph 123 is partly true. For this reason, although it was not mentioned in the report, over the past five years school textbooks, mainly history and geography textbooks, have been

meticulously revised, with attention paid to the complex nature of the Dominican Republic's multiracial, multicultural and multi-ethnic society, to the extent that the Dominican education system has been recognized and held up as an example to be followed by other countries in Latin America.

146. The recommendation contained in paragraph 124 is being implemented under Dominican legislation and by the media, and it is surprising that the authors of the report failed to notice this. In fact, in terms of information and awareness-raising it is an indisputable fact that all Haitians, all people of Haitian descent and all foreigners in the Dominican Republic are properly informed of their rights, of the respect and esteem they are due, and of how to give effect to such rights, through a series of television and radio programmes, some of which are broadcast in Creole. For example, four such radio programmes are broadcast nationwide by the radio stations *Mariel*, *Enriquillo*, *ABC* and *Santa María*. In addition, a vast range of websites - including Espacio Insular - and civil society organizations - such as Red de Encuentro Dominicano-Haitiano Jacques Viau - and a number of bodies and organizations belonging to the Catholic and Protestant churches, more than 100 of which are officially recognized, provide continuous information and special programmes to make people aware of their rights and proactive in asserting them.

147. This wide range of bodies and organizations, which are protected by legislation and safeguarded by the Dominican State and society, publicly and openly encourages foreigners, particularly Haitians and people of Haitian descent, to exercise their rights and to uphold them in the courts, when necessary.

148. The recommendation concerning article 11 of the Constitution, made in paragraph 126 of the report, is scrupulously complied with throughout the Dominican Republic, in accordance with national jurisprudence, which is based on a combination of *jus solis* and *jus sanguinis*, and judgements delivered by the Supreme Court of the Dominican Republic.

149. As shown by the foreigners' register, registration through the pink book, campaigns to allow for the late registration of births and the draft law on late birth registration, the Dominican authorities are removing all unnecessary obstacles so that all persons, irrespective of the nationality of their parents and their legal status in the Dominican Republic, may prove their nationality and place of birth.

150. According to the legal opinion issued by the Supreme Court, the Immigration Act (Act No. 285-04) is constitutional and thus in conformity with article 11 of the Constitution. The accompanying implementing regulations are currently being drawn up and will be promulgated shortly, as an additional requirement to the Act.

151. The recommendation contained in paragraph 127 of the report warrants the Dominican Government's full consideration and attention and will therefore be considered in keeping with our legal tradition, in accordance with our Constitution, our legislation and our institutional and administrative capabilities, and taking into account all human rights concerns and all the international treaties signed by the Dominican Republic.

152. The Dominican Government will make further efforts, in line with the recommendation made in paragraph 128, to provide all immigrants living in the country with the necessary

documentation, since it is aware that at present such immigrants enter the Dominican Republic illegally. It will also endeavour to systematically request employers to comply strictly with all national laws that lay down certain requirements, ranging from the number of foreign employees allowed on the payroll to the rights and privileges they enjoy.

153. The question of the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will be taken up in the near future.

154. The Dominican authorities consider that they do not promote any discriminatory practices during civil status registration procedures, or when they issue personal identification cards or birth certificates. In the light of the comments made in the report concerning Circular No. 17 of the Central Electoral Board, we wish to stress that the intent of the circular is by no means to discriminate against anyone; on the contrary, its purpose is to ensure that the documents in question are authentic and to rectify any discrepancies in the civil registry records, irrespective of the nationality of the person concerned.

155. As is public knowledge, the Government has complied with the judgement of the Inter-American Court of Human Rights and has taken the relevant measures with regard to the case of *Yean and Bosico v. the Dominican Republic*, referred to in paragraph 130.

156. Through State institutions, such as the Ministry of Labour, the Government recognizes and accepts its duty to guarantee the full enjoyment of human rights throughout the country, in all workplaces and homes. It is precisely for this reason that inspectors from various ministries and State bodies monitor the situation and bring offenders before the courts, when limited resources and budgets so allow.

157. The Ministry for Women is one of the State bodies whose mission is to raise awareness of and ensure due respect for the rights of women, particularly women who are the most vulnerable in social and economic terms. As far as the Dominican Republic is concerned, “the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights”. This simple fact means that women’s rights have gradually been recognized under Dominican legislation through the international conventions that promote such rights; at the same time, the Government is obliged to make the necessary changes at the national level to ensure the effective implementation of the agreements reached under those conventions.

158. Examples of this approach can be seen in current legislation: the Labour Code (Act No. 16-92), which provides benefits for pregnant women and punishes sexual harassment in the workplace; the Domestic Violence Act (Act No. 24-97); Act No. 57-97 amending the Agrarian Reform Act (Act No. 5879) to ensure the participation of female agricultural workers; Act No. 86-99 establishing the Ministry for Women; Act No. 88-03 establishing shelters for women and children in situations of domestic violence; Act No. 137-03 on the smuggling of migrants and trafficking in persons, as well as other legislation to protect women’s rights.

159. Although we are not aware of any racial prejudice inherent in the Migration Act, the matter will be given due consideration in order to determine whether the recommendation made in paragraph 132 is appropriate.

160. While we welcome the recommendation made in paragraph 133, some clarification of the shortcomings to be corrected would be appreciated.

161. With regard to paragraph 134, the report seems to have overlooked the paramount importance of children and also the enormous economic and social investment that is being made in the San Pedro de Macorís region, the region that the Special Rapporteur and independent expert claim to have visited.

162. We appreciate and welcome the authors' recognition of the degree of solidarity shown by Dominican society towards Haitian immigrants, as mentioned in paragraph 135.

163. We also join the appeal made by the Special Rapporteur, Mr. Doudou Diène, and the independent expert, Ms. Gay McDougall, to the international community to support fully the development of Haiti and the Dominican Republic, which is beneficial for both countries. As the Dominican Government has often held, Haiti is in need of international solidarity, and not only from the Dominican people.

164. The last recommendation contained in paragraph 136 of the report will be given due consideration.

## V. CONCLUSION

165. While we welcome the mission by the Special Rapporteur, Mr. Doudou Diène, and the independent expert, Ms. Gay McDougall, to the Dominican Republic at the invitation of the Government in October 2007, we deplore the subjective approach adopted by the authors, who were unable to verify and critically prove the opinions and allegations that they reported, since this has resulted in unsubstantiated and therefore unacceptable conclusions.

166. It must be emphasized that, notwithstanding the hardship and poverty shared by Dominican and Haitian nationals alike, there is social, economic, cultural and political mobility within both sectors of the population - mobility that is neither exceptional nor infrequent - owing to the absence of xenophobia and institutional discrimination in the Dominican Republic.

167. Disputes, misunderstandings and conflicts between individuals cannot be put forward or used to allege the existence of systematic racial discrimination by the Dominican Government and people. On the contrary, we live in a developing society governed by the rule of law where there is not one single law, regulation or ordinance that is flagrantly and incontrovertibly racist.

168. The Dominican Republic is one of the few, if not the only society in the world, that is composed entirely of people of mixed race living throughout the national territory, and where social mobility is a reality.

169. This reality and mobility seem to have escaped the attention of the authors of the report, Mr. Diène and Ms. McDougall, who confined themselves to hearing allegations and failed to recognize the unquestionable solidarity that the Dominican people have always shown towards Haitians.

170. In fact, throughout its history, the Dominican Republic has always shown and will continue to show solidarity towards Haitians in its territory, who share the same schools, university lecture halls, hospitals, workplaces, transport and housing. All this demonstrates that Dominican society is characterized by coexistence and solidarity.

171. We also show solidarity towards and defend Haiti's interests in international forums. No country does more for Haiti than the Dominican Republic. No country stands to gain more from Haiti's stability, growth and institution-building than the Dominican Republic, whose land border with Haiti is porous. Our country receives - not without concern - large and uncontrollable numbers of Haitian migrants, which places a very heavy burden on the limited resources of the Dominican Government and people.

172. In view of the foregoing, we hope that anyone who reads and passes judgement on the report in question will critically assess and consider the difficult situation faced by the Dominican authorities and people, namely uncontrollable migration flows; the need to observe the human rights of all Haitian citizens and their descendants in Dominican territory; and the inalienable right of the Dominican Republic to proclaim its right as a free and sovereign people.

173. Reiterating what we have already stated in other contexts, it is not a question of curtailing these rights or practices, but of seeking together an acceptable way of maintaining peace in the region and ensuring the well-being of two fraternal and poor countries that live together in harmony on the same island.

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