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经济、社会和文化权利

人权与赤贫

人权与赤贫问题独立专家安妮·玛丽·利津女士
根据人权委员会第 2000/30 号决议提交的报告

增编

对多米尼加共和国的访问^{**}

内容提要

人权与赤贫问题独立专家继续考察同赤贫作斗争的最佳方式，于 2002 年 12 月 3 日至 6 日应多米尼加共和国当局的邀请访问了该国。

* 本报告的内容提要以所有正式语文分发，所附访问报告正文只以原文、西班牙文和英文印发。

** 本报告在大会决议规定的提交文件期限后提交，是因为需要等待多米尼加当局对关于 12 月 3 日至 6 日访问的报告表示没有异议。

政府为同赤贫作斗争而实行政策给独立专家留下了很好的印象。最近几年来，多米尼加共和国经济迅速增长，政府借此机会推行雄心勃勃的方案，力求改善最贫困的人的生活条件(提供社会住房、在贫困区免费供电、发放小额信贷、补助小农生产和产品商业销售)，并特别努力兴办教育，使最贫困的人掌握手段，借以摆脱贫困和社会排斥的恶性循环。政府最近通过了一项社会保障革新法，但所需经费仍未有着落。

政府还设法改革安全部门的管理。安全部门人员虐待海地合法或非法移民、侵犯其人权的情况屡见不鲜。但关于这个问题的法律草案一直遭到反对。第二代海地移民归化的困难说明情况的复杂性。独立专家评估了该国已作出的努力以及要摆脱社会现有成见尚需开展的工作。获取国民合法身份，对移民也有好处。

另一值得关注的问题是，警察有罪不罚，不受一般司法管辖。对此，政府也应确保，所有公民，包括最贫困者和最弱势者，都能得到民主警察的承认，得到警察的服务。尽早任命一名“人民监察员”无疑将有助于更好地保护人权。

政府的社会政策鼓励妇女参与社会、经济和政治生活，但独立专家认为，政府不妨加大力度鼓励节育，允许堕胎，取消或降低结婚登记费等等。

多米尼加政府十分注意听取人口中最贫困的各类群体的意见，为这些群体采取干预措施之前，都举行过切实协商。独立专家认为，这一做法是诚心诚意的证明，是成功的保障。行政和政治逐步分权也能有助于推进这方面的成功。

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Introduction

1. The mission, which took place at the invitation of the Dominican authorities, afforded an opportunity to assess action taken by the Dominican Republic to combat extreme poverty, through meetings with representatives of the Government and the civil service, specialized agencies of the United Nations and the World Bank, and also through field visits and interviews with residents of the poorest districts and a bateye neighbourhood.

2. In the course of her mission, the independent expert met the following people, whom she wishes to thank for making themselves available and the warm welcome they extended to her: the Vice-President of the Dominican Republic, Ms. Milagros Ortiz Bosch, the Chancellor, the Minister for Foreign Affairs, Mr. Hugo Tolentino Dipp, the Chief Justice of the Supreme Court, the Vice-Chairman of the Senate, Mr. Dagoberto Rodríguez (the official responsible for plans to develop the Dominican-Haitian border), Senator Ms. Celeste Gómez Martínez, the special rapporteur for questions relating to electric power, Ms. Peggy Cabral, chairperson of the board of the Social Office, Mr. Manuel Vargas Payano, Director-General of the President's Anti-Poverty Plan, and his colleague, Ms. Maïra Tabarez, Ms. Rafaelina Peratta Arias, full member of the Central Electoral Board, Mr. Servio Tulio Almánzar Botello, National Director of the Civil Registry Office, Mr. Bienvenido Brito, principal officer for national assets (the official responsible for State-owned real and movable property), Professor Aura Celeste Fernández, Professor Rubén Silié, director of the Dominican branch of the Latin American Faculty of Social Sciences (FLASCO), Chief Lieutenant of Police Guillermo Nolasco, attorney and teacher at the National Police Force Institute of Human Dignity, the heads of United Nations agencies, funds and programmes, including Mr. Juan Artola, Chief of Mission of the International Organization for Migration (IOM), Mr. Miguel Amado, chief of the European Commission delegation, Ms. Milady Meta de Vergara, honorary consul of Belgium, and Mr. Eduardo de Vergara, Secretary-General of the Centro Dominicano de Desarrollo Integral Femenino, a non-governmental organization (NGO) actively involved in efforts to stop the traffic in human beings.

3. The independent expert is particularly grateful to Ms. Anabella de Castro, human rights representative at the Ministry of Foreign Affairs, Mr. Niky Fabiancic, Resident Representative of the United Nations Development Programme (UNDP), and his colleague, Mr. Claudio Tomasi, for helping her to organize this mission and ensuring its success. As is her custom while on a field mission, the independent expert was able to talk with residents of poor districts and she is grateful to them for helping her gain a deeper insight into their situation.

I. VOLUNTARILY UNDERTAKEN SOCIAL POLICIES

4. The independent expert welcomes the measures taken to combat poverty in the Dominican Republic in the light of the best practices outlined in the report that she submitted to the Commission at its fifty-sixth session (E/CN.4/2000/52). Among the various measures adopted recently, the Government has promulgated a law on social security which clarifies matters such as health insurance, a pay-as-you-go pension system and pensions for persons with no income or those unable to work. This is a remarkable initiative, but its implementation is encountering financial difficulties. It is therefore being piloted in just 4 of the 30 regions of the country. Nevertheless, it is a landmark development in the region as a whole. It should also be

noted that the health system is free of charge, although patients are asked to pay a contribution for surgical operations. Medicines are sometimes unavailable at pharmacies in clinics and hospitals.

5. The right to housing remains a matter of concern in the Dominican Republic. Considerable efforts are being made to transfer title deeds to certain people living on State-owned land. The Government has decided to write off the outstanding annual payments on loans taken out to buy public housing which was built by the Dominican Housing Institute and which costs less than 150,000 pesos in total. Nearly 23,000 families are benefiting from this decision; 7,000 families have already been able to regularize their situation and now own their homes. Home ownership is automatically accorded to both partners, regardless of whether they are married or cohabiting, as often happens in poor families, and transfer of ownership requires the consent of both partners in order to protect the rights of women and mothers. This interest confers a genuine measure of dignity on whole sections of the population. The law also provides for the free transfer to any family of title to a State-owned plot of land on which it has built a home. The surface area of the plot must not exceed 300 m² in towns and 600 m² in rural areas. To encourage family stability, the State transfers 98 per cent of these plots to couples, married or otherwise. In a recent decision, the Supreme Court held that long-term cohabitation created rights in property for the cohabitees analogous to those created by marriage. Additionally, the National Assets Authority is cooperating with the Dominican Housing Institute and the National Housing Bank to help to rehouse slum dwellers in new public housing projects nearby, to which they hold full title. However, the very high cost of these operations inhibits their wider adoption. The expert believes that, despite the financial difficulties alluded to, the Dominican experience is one example of best practices which secure the right to housing.

6. Following a visit to a bateye neighbourhood and some poor districts, it was clear to the independent expert that the situation of women in these areas remains difficult. Many are teenagers when they first become pregnant and they subsequently bear large numbers of children. The hold which the Catholic Church exerts on society accounts for the continuing ban on abortion, which encourages recourse to backstreet abortions and explains the half-heartedness of family planning initiatives. Prostitution is a source of income for many young women who cannot find work.

7. As regards care of the elderly, during her tour of a very poor district, the independent expert was able to meet an 82-year-old woman living with her two daughters and her grandchildren. While this woman received no direct support from the State, she did enjoy free access to health care and had just become the owner of a house made of planks in a deprived area where many people had ended up in the aftermath of hurricane David in 1979. The situation of the elderly will be improved by the law on social security, the scope of which will extend to old-age pensions in the course of 2003, but the Government needs to make greater efforts in this area.

8. The subject of racism came up of its own accord during an interview that the independent expert had with the Vice-President of the Republic, Ms. Ortiz Bosch. Racism is a major ingredient of poverty in the Dominican Republic, sometimes among Dominicans themselves, but especially towards Haitians, persons of Haitian descent whose families have in some cases lived in the Dominican Republic for generations and Haitians who continue to arrive in the country.

This situation serves the interests of Dominican entrepreneurs, who happily receive cheap Haitian labour in the knowledge that Haiti's stubborn poverty guarantees a steady flow of newcomers who drive down wages.

9. In order to implement the provisions of resolution 2002/30 relating to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference) and study extreme poverty through the lens of racism, the independent expert was able to visit the bateye neighbourhood of Villa Altagracia, which has recently been rebuilt under the Social Plan and is home to a mixture of Dominicans and Haitians. The country has approximately 250 of these neighbourhoods housing almost 600,000 people. They are the former dwellings of agricultural labourers which have become de facto villages, of varying size, but almost always poor, especially since the closure of the rural sugar mills operated by the national corporation CEA, which employed large numbers of bateye residents.

10. The visit began with a meeting with a voodoo chief, introduced as such by the escort party, who welcomed the mission and performs the role of spiritual leader of the community. He is a Haitian who has lived in the Dominican Republic since 1950 and knows nothing about Africa, the land of his ancestors. Most of the inhabitants of the bateye are Dominicans. The poorest do not evince any signs of racism. However, Haitians rarely become naturalized, even those who have lived in the Dominican Republic since 1957 (like the voodoo chief).

11. This was the strongest discrimination which the independent expert witnessed throughout her mission. The authorities are aware of the problem: the Vice-President of the Republic and the Minister for Foreign Affairs said that the policy of reaching out to the Haitian population was a priority and one NGO organizes campaigns that focus exclusively on this topic.

12. The independent expert recommends that the public authorities and the universities of the Dominican Republic might think about studying and highlighting the memory and the heritage of African customs and religions as part of the work being done on the history of colonization and the slave trade. This collective remembrance could help to overcome prejudice and encourage understanding among peoples in the spirit intended by the Durban Declaration.

II. CIVIL STATUS, THE CENTREPIECE OF HUMAN RIGHTS IN THE DOMINICAN REPUBLIC

13. The legal non-existence of Haitians is based on a very deep-rooted conspiracy of silence. Yet the facts are clear: employers are able to employ illegal immigrants - who over time become illegal residents - and do not face prosecution. The instability in Haiti gives serious cause for concern because it breeds competition between the poorest members of society: poor Haitians and Dominicans crowd together in the same areas, which, as soon as they are improved, are reoccupied by new arrivals. The constant influx of new immigrants in many ways explains why the poorest Dominicans have hardly benefited at all from the economic growth of recent years, in contrast to the economic elite and the middle class who have seen their situation improve considerably thanks to income from tourism, the 40 free economic zones in which investment for manufacturing exports is concentrated and the strong growth of the property market and other related sectors (furniture making, maintenance).

14. A migration bill prepared with the assistance of OIM and scheduled to replace an unsatisfactory law dating from 1939 has been under discussion for two years. If adopted in its original version, the new law should grant definite status to the vast majority of Haitian immigrants and lay down clear rules for temporary residence (an annual quota of legal migrants). It has not yet been adopted because of opposition from public opinion and certain parliamentarians.

15. The efforts made by OIM have been encouraging. Haiti and the Dominican Republic must continue to move towards the shared and responsible management of migratory flows. The international community cannot continue its lack of commitment to Haiti by leaving the Dominican Republic on its own to face the consequences of the collapse of the Haitian State, whose resources include drug trafficking and smuggling into the Dominican Republic.

16. For Dominicans, the Central Electoral Board has done sterling work in recording the civil status of all citizens and issuing everyone with a computerized identity card; in this respect, the Dominican Republic is a shining example. This card is obtainable upon presentation of a birth certificate, which is itself issued free of charge if the birth is declared within 60 days (90 days in rural areas). It is possible to certify a birth after this deadline, but a fee is charged for issuing the certificate. Certificates may be issued on the basis of baptismal records of the Catholic Church (under a special agreement with the Vatican).

17. Document fraud relates mainly to departure for the United States of America, including the recruitment of Dominican boys (under 16 years of age) to play on North American baseball teams. In recent years, the Central Electoral Board has devised a special programme in conjunction with the North American Baseball Federation¹ to combat this form of trafficking and the abuses peculiar to this type of migration.

18. The Dominican civil status authorities issue a computerized identity card which also serves as a voter registration card. The independent expert checked in a number of health centres that the card was not asked for and that everyone who presented themselves, whether Dominican or Haitian, received proper medical attention. As far as schools and the right to attend school are concerned, however, national identity was formerly a crucial factor in excluding the children of Haitians, even those born in the Dominican Republic. At the invitation of the United Nations Children's Fund (UNICEF), among others, the new Government has recently started a policy of admitting all children to school, without restrictions. However, a birth certificate is still required to obtain a copy of the results achieved in the school-leaving examination.

19. Shortly before the independent expert's mission, a long-time resident Haitian family brought a case before a court of first instance, which upheld: (a) the right of two children born of illegal resident parents to enrol in school; and (b) the Dominican nationality of the Haitian couple's children.

20. This was a landmark case that will set a precedent. The independent expert believes that the court's ruling confirms the enforceability of economic and social rights. The court's decision against the Central Electoral Board could also strike a decisive blow against discrimination.

¹ Translator's note: title not traced, possibly "(American) Major League Baseball".

III. LISTENING TO THE POPULATION

21. The independent expert was able to attend a parliamentary hearing, broadcast live on several local television channels, concerning the price of electricity supplied by three private companies following the privatization of the former public corporation. She was also informed of the numerous meetings that are being held in Independencia Province to explain the new law on social security. The Dominican Republic is in this respect a listening country, where the most senior politicians make visits to poor districts, engage in debate, listen and subsequently report on what they have heard: the need for housing, transport and care for the elderly. During her visit to a bateye and a very poor district in the capital city (Las Americas/Los Alcarrizos), the independent expert was able to see for herself that very poor people did not hesitate to express their views and vent their frustration.

22. In late December 2002, the President's Anti-Poverty Plan will be put forward for nationwide consultations with the poor and NGOs and will thereby gain universal credibility. This very ambitious plan takes a holistic approach to poverty and contains a variety of measures focusing on education (nutritional breakfasts for children, free stationery, more nurseries, etc.); housing (construction of hard-floored dwellings, provision of corrugated iron sheeting); health care (free clinics); and micro-credit, support for small-scale farmers and market access facilities. Two observations could be made about the plan: the wider application of its measures throughout the country will require far greater resources than those currently available and there is a risk that the funds allocated to the President's Plan and the sometimes parallel structure of the ministries responsible for these areas could result in duplication or high administrative costs that would compromise the sustainability of these undertakings. It is nevertheless important to welcome the initiative shown by the Dominican authorities and their desire to translate into action the promises made to the poor. To take one example, it is to be noted that, despite the disastrous electricity supply situation throughout the country, residents of poor districts enjoy free electricity for 18 hours a day, entirely paid for by the State. The rest of the population has to endure frequent power cuts and only the most well-off and enterprises can afford generators.

23. The independent expert reiterated her call for the prompt appointment of an ombudsman, pursuant to a law adopted in 1991, to act as a national human rights institution capable of articulating the needs of citizens, consumers and other residents of the country before the courts and by tabling bills.

24. The reform of the police force and human rights training for police officers are very positive elements, but ultimately the unwarranted privileges that police officers enjoy must be done away with, namely, the fact that they are not held accountable for their mistakes and abuses before the civilian courts. This privilege also prevents the victims of these frequent abuses of power from seeking justice in the internal police courts. The Supreme Court has made known its opposition to this state of affairs, but only a reform of the 1969 law would put a stop to it.

Conclusion

25. The independent expert considers that there has been a real reduction in poverty owing to economic growth in general and the considerable efforts that have been made to tackle poverty. The choices made by the authorities focus on the root causes of poverty and some good practices have been implemented (the law on social security, civil status, access to health care, housing facilities, allowances for mothers with children in school, title deeds for the poorest members of society, micro-credit programmes).

26. Continuing efforts should be made to ensure that medicines are affordable, that the status of legal migrants is determined, that proper care is provided for the elderly and that the issues of female poverty, domestic violence and birth control are satisfactorily addressed. The independent expert also recommends that a study should be made of the history of the slave trade between Africa, Haiti and the Dominican Republic, focusing specifically on voodoo practices and traditional medicine, and that this scholarship should be woven into school textbooks in order to tackle prejudices.

27. The independent expert believes that United Nations agencies should be encouraged to increase the number of transborder projects and adopt an approach that embraces the whole of the island of Hispaniola, to a much greater extent than they do now. Lastly, Dominican civil status arrangements are a model that could be followed by many other poor countries. The impact of these arrangements on the enforceability of the right to education has been remarkable. The pioneering role of the Dominican courts in giving substance to economic, social, political and civil rights was one of the most positive findings made by the independent expert during her visit. It is incumbent on all Dominicans, and especially on their political leaders, to translate these decisions into prompt and universal action. And by appointing an ombudsman equal to the task of discharging his heavy responsibilities, the President and Parliament would provide their country with a mouthpiece for the marginalized and the oppressed.
