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Summary record of the first part (public)* of the 34th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 3 November 2010, at 3 p.m.

Chairperson: Mr. Marchán Romero

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The meeting was called to order at 3.05 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Third periodic report of the Dominican Republic (E/C.12/DOM/3; E/C.12/DOM/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Dominican Republic took places at the Committee table.*

2. **The Chairperson** welcomed the delegation of the Dominican Republic and invited it to present the State party's third periodic report.

3. **Mr. Puig** (Dominican Republic) said that a new Constitution had come into force in January 2010. By incorporating the principles of the Covenant, the list of fundamental rights acknowledged in the Constitution was now extensive and included intellectual property; consumers, food security; family and protection of minors, older adults and persons with disabilities. The Dominican State was defined in the instrument as a social and democratic State governed by the rule of law. The Constitution also provided for mechanisms for citizen participation, including by local referendum and plebiscite and by national referendum and peoples' initiatives. It established the Constitutional Court and an ombudsman's office, strengthened the measures for fighting corruption and nepotism and condemned corrupt practices. It endorses professional secrecy, contained a conscientious objection clause for journalists and guaranteed the right of reply and the right of correction. The Constitution established provisions for the use of grammatical gender, reflecting the State's unambiguous commitment to gender equality. Spouses of Dominican citizens, male or female, were entitled to Dominican nationality. Moreover, the Supreme Court of Justice had decided, at the time of its creation in 2003 and as reaffirmed in a 2005 decision, that the body of Dominican constitutional law consisted of provisions of equal rank emanating from two sources of law: domestic, namely the Constitution and constitutional jurisprudence; and international law, namely the international instruments, the advisory opinions and the decisions of the Inter-American Court of Human Rights. The ever-increasing recognition of economic, social and cultural rights began with the overthrow of the tyrannies that had oppressed the Dominican people up to 1961. In 2011 the country would be celebrating 50 years of democracy.

4. The structural context of the building of that democracy had been marked by poverty and shaped by immigration. The Dominican Republic shared the island on which it was located with Haiti, and between them the two countries had 20 million inhabitants. Between 1 million and 1.2 million Haitians had moved to the Dominican Republic. Despite Government efforts to boost economic growth, over 43 per cent of the population lived below the poverty line, according to data of the Economic Commission for Latin America and the Caribbean (ECLAC). Recent Central Bank figures showed that 56 per cent of the economically active population worked in the informal sector.

5. Many Dominicans — 364,000 according to a 2002 study — had no identity papers. The Electoral Board had been taking measures since 2005 to remedy what was an unacceptable situation in a State governed by the rule of law and had established a central service and 10 mobile units for late registration, which had subsequently enabled some 270,000 Dominicans, mostly of modest means, to obtain their papers and thus benefit from all the rights inherent in citizenship. The Board had created a foreign birth registry (*Libro de extranjería*) for children born to undocumented foreigners. Those children would therefore have a legal birth certificate which, in accordance with international agreements

on the matter, could subsequently be used to register their birth in their parents' country of origin. Stateless children were not recorded in the foreign birth registry. Instead if the mother's nationality was unknown, the child automatically obtained Dominican nationality under the 1961 United Convention on the Reduction of Statelessness. The Dominican Republic had also had to overhaul all its civil registers as they had contained a multitude of incomplete, falsified and altered records.

6. The Constitution condemned discrimination on grounds of race, nationality, gender, beliefs, age, religion or other grounds. Only individual sporadic acts of discrimination occurred. Articles 39 to 41 of the Constitution recognized the equality of all persons before the law and condemned discrimination in all its forms and manifestations, which had led the Supreme Court of Justice to take steps to render unenforceable any laws deemed to be an obstacle to certain sectors of the population. Haitian immigrants made up a sizeable proportion of the population (about 10 per cent to 12 per cent). It had been alleged that the authorities discriminated against them, but poor people in the Dominican Republic, whether Dominican nationals or foreigners, lived in similarly precarious conditions. The repatriation of Haitian citizens had been conducted in keeping with the memorandum of understanding signed in 1999 between the Dominican Republic and Haiti. However, after the terrible tragedy that had struck Haiti in January 2010, the Dominican Republic had suspended all repatriation to its neighbour. The Government spent large sums on Haitian immigrants, which absorbed 23 per cent of the regular Ministry of Health budget. There was no discrimination whatsoever in education.

7. Women enjoyed the same rights as men in the Dominican Republic. Under a positive discrimination policy, 33 per cent of municipal and parliamentary seats were reserved for women, thus doubling the proportion of women in Congress from 9.3 per cent in 1990–1994 to 19 per cent in 2010–2016. The Ministry of Labour and the Ministry for Women had signed a strategic alliance to guarantee women's rights in the workplace. The Public Prosecution Service (*Ministerio Público*) had created the post of special prosecutor for the protection of women's rights. Various multidisciplinary teams, consisting of psychologists, doctors, lawyers and specially trained police officers, had been formed to protect and care for victims in order to address the numerous cases of gender-based violence. Domestic violence was also widespread and the Government had consequently responded with measures — including legislative measures — in order to change attitudes.

8. Trafficking in persons in all its forms, whether women, children or undocumented persons, was prohibited under the Constitution. In 2007, the Government had created a National Commission against Trafficking in Persons, which had drawn up a national action plan against slavery and the trafficking of migrants for 2009–2014. As early as 2004, the Public Prosecution Service (*Ministerio Público*) had begun systematic investigation and prosecution of slavery and trafficking cases through its anti-slavery and anti-trafficking unit. Targeted policies were also in place to combat the sexual exploitation of minors for commercial purposes.

9. Women made up 50.2 per cent of the population and outnumbered men in secondary schools and at university, accounting for 55 per cent of students, a situation that was producing noticeable changes in companies and the employment market.

10. The Labour Code prohibited the employment of children under the age of 14 years, imposed tight restrictions on the employment of young people under the age of 16 and protected children against the worst forms of child labour. Any violation of those labour norms were subject to vigorous prosecution. The National Committee for Combating Child Labour had set up 35 local committees, comprising both public and private actors to implement the national strategic plan to eliminate the worst forms of child labour. The Dominican Republic participated in the regional programme to eliminate the worst forms of child labour by 2015 and to eliminate child labour entirely by 2020. Under the programme,

27,000 minors had been protected from exploitation for commercial purposes. A child labour study currently under way would show the notable progress made in that area. To support its firm belief that children belonged in school, the Government had created a school grants programme in 2008 which benefited 208,000 families.

11. As party to the International Labour Organization (ILO) conventions on freedom of association and on the right to organize and collective bargaining, the Labour Code of the Dominican Republic protected freedom of association and the right to form trade unions. The Ministry of Labour had 203 inspectors, the highest concentration in the Central American and Caribbean region. The Ministry's strategic plan for 2008–2012 had four pillars: enforcement of labour regulations; creation of more and better jobs; non-discrimination and equal opportunities; and development of the social security system. Programmes had also been implemented to ensure access to employment for the most disadvantaged groups, such as persons with disabilities, to provide vocational training and to improve the employability of young people aged 16–29 who had dropped out of school and were tempted by a life of crime. Some 45,000 young people had been trained under the programme with 60 per cent of them now holding steady jobs. Huge problems remained of course: 56 per cent of workers were to be found in the informal sector; there was a lack of skilled workers; and productivity was low, among other things generating a vicious cycle that needed to be broken.

12. The Government assigned priority to the fight against poverty and exclusion and had implemented aid and grant programmes for the worst-off, namely: “Comer es Primero” (Eating comes first) and “Solidaridad”, whereby beneficiaries were given electronic debit cards to purchase a basic food basket, and grants to cover certain services; and “Bono Gas”, whereby poor households received subsidized cooking gas and public vehicle drivers obtained subsidized fuel. The Government had also responded decisively to the housing shortage: between 2003 and 2008, the National Housing Institute had delivered 230,000 units.

13. At the beginning of the 2000s, the Government had addressed the issue of social security by passing an Act in 2001 to attack the social security problem. The system, which was being set up gradually, had three elements: a worker contribution scheme; a State subsidy scheme; and a mixed State-subsidy worker-contribution scheme. Considerable progress had been made. In 2007, a mere 20 per cent of the population — 2 million people — were being covered by one or other of the schemes; by July 2010, that proportion had surpassed 40 per cent, which meant that 4 million people were now covered, the subsidy scheme being the one with the most members.

14. The Presidential Council on AIDS was working extremely hard and its strategy for containing the spread of the epidemic had produced good results.

15. Primary education was obligatory in the Dominican Republic, and coverage had improved a great deal, from 92 per cent in 2000 to 95 per cent in 2010, and was expected to reach 100 per cent in 2019. The quality of education, however, was problematic, as was the number of repeaters. The school dropout rate also remained high despite a slight decline.

16. The Dominican Republic was both a source of and host country for migrants. As a host country, it had very close ties with its neighbour, Haiti. The Dominican Republic planned to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Ibero-American Multilateral Convention on Social Security.

Articles 1 to 5

17. **Mr. Pillay** said that as a decision of the Supreme Court of the Dominican Republic conferred constitutional status on the international instruments to which the State became

party, he wished to know whether there was any national case law on economic, social and cultural rights. He would also like to know the Covenant's place in the country's domestic legal hierarchy because the Supreme Court had apparently sometimes overturned previous decisions. It also seemed that the Government did not allocate sufficient resources to consolidating economic, social and cultural rights inasmuch as social investment accounted for no more than 8 per cent of gross domestic product, compared with 16 per cent in other countries of the region. He would like an explanation, and to know whether there were plans to rectify the situation.

18. Insufficient action had been taken to combat corruption and the impunity rife among law enforcement officers and agencies; he would appreciate knowing whether a committee would be set up to investigate human rights violations so that the culprits could be prosecuted and punished.

19. Given that the Act establishing the office of an ombudsman's office had been passed in 2000, he wished to know why the post was still vacant. He similarly wished to know why the post of ombudsman for children's rights had also not been filled.

20. **Mr. Kedzia**, following on from Mr. Pillay's questions, enquired whether the State party intended to ratify the Optional Protocol to the Covenant, whether a deadline had been set for appointing an ombudsman, and whether he or she would apply for accreditation in accordance with the Paris Principles.

21. He would like to know whether anti-discrimination legislation had been passed or was under consideration and whether the provision granting equal rights and freedoms to Dominican nationals and foreigners extended to Haitians who had entered the country illegally or to migrants and asylum-seekers, among others.

22. With regard to nationality issues, the Supreme Court had decided that Haitian workers were to be considered "persons in transit" and as such ineligible for Dominican nationality. Furthermore, the 2004 Immigration Act had extended the definition of "persons in transit" to embrace non-residents, including persons whose residence papers had expired, and undocumented workers. It was claimed, however, that the Act was being applied retroactively. Could the delegation confirm whether that was the case and provide details on the pertinent provisions in the 2010 Constitution, as well as information on the outcome of the hearings held on 28 October 2010 by the Inter-American Commission on Human Rights on the new Constitution of the Dominican Republic and its impact on the status of foreigners, particularly those of Haitian origin?

23. Although the Government's efforts were highly commendable, he wished to know why it took so long to issue birth certificates. In 2002, 364,000 inhabitants were without a birth certificate, yet by November 2010 only 270,000 had been issued. Had a deadline been set for completing the process? As to the registration of foreigners in the foreign birth registry (*Libro de extranjería*) referred to by the Minister of Labour, he wished to know if undocumented persons born prior to the passage of the 2004 Act were affected.

24. **Mr. Schrijver** acknowledged the progress made by the State party but noted several structural problems that hampered the exercise of economic, social and cultural rights in the Dominican Republic, including the discrimination, and even ill-treatment, which, according to various sources, people of Haitian origin suffered. He requested details on the repatriation of Haitians since the earthquake of January 2010 and asked about the action taken to mitigate the effects of the tragedy.

25. He further requested more detailed information on the policies put in place by the State party to tackle various structural problems, including the expansion of the informal sector, which generated considerable income gaps and increased child labour; extrajudicial executions; and domestic violence and other issues. He would also be interested to learn

what kind of international assistance the country received or requested, and suggested that it might be an opportune moment to apply for technical assistance from the Office of the High Commissioner for Human Rights, the International Labour Organization or the World Bank, for instance, in order to boost institutional capacity and promote economic, social and cultural rights by tackling the problems at their source.

26. **Mr. Abashidze** said that 12 years had passed since the submission of the Dominican Republic's second and third periodic reports and he wished to know why there had been such a delay. He also wished to know whether, in the preparation of the third periodic report, the State party had taken into account the issues raised following consideration of the initial report, to which the State had not replied. He would appreciate learning what mechanisms or measures there were in place to monitor the courts' implementation of international instruments and to ensure that the Covenant enjoyed the same status as domestic laws, or supremacy in the event of discrepancies. He also wished to know whether there was an institution responsible for defending human rights in the Dominican Republic and, if so, whether it adhered to the Paris Principles.

27. According to some sources, the Dominican Republic failed to recognize the existence of discrimination or racism on its territory. He wished to know whether there was any national action plan to eliminate discrimination and whether the State party intended to amend the legislation that denied undocumented Haitians the right to vote; also, whether the Government had a clear idea of the number of people living clandestinely in the country. Given that forced labour, which under international law was akin to slavery, was practised in the building sector, the services industry and agriculture, he wondered why the State party had not ratified the 1926 Slavery Convention or taken any measures with respect to its 1953 Protocol.

28. **Mr. Atangana**, following on from other Committee members' questions on the status of the Covenant in domestic legislation, asked whether it had constitutional rank and could thus be invoked before the courts. As to the fight against corruption, despite Government efforts, the State party was ranked 99 out of 180 countries surveyed by Transparency International, and he wondered whether this was not due to a lack of coordination among the various agencies in charge of combating the phenomenon. Corruption weakened the judicial system because it undermined its credibility in the eyes of the population. Under the new Code of Criminal Procedure, military personnel could be tried in civilian courts. He wished to know whether that had influenced judgements in cases involving senior officials, for example. He would also like information on the measures taken to improve the organization of the legal system and the geographical distribution of judges.

29. **Ms. Barahona Riera** asked whether the gender equality strategy implemented by the Ministry for Women and that pursued by the Ministry of Labour were linked and how large the budget was for each one. Given the low level of female participation in politics (30 per cent), she wished to know whether the proposed transformation of the Ministry for Women into the Ministry for the Family was intended to step up action to promote parity or to reduce such action. She wished to know whether the Government, through its action, made any particular effort to address the needs of very poor women in rural areas, who were the worst affected in that respect. Also, were there any laws against sexual harassment in the workplace?

30. **Ms. Bras Gomes** asked whether the State party had introduced measures to counteract the negative effects — especially on the right to water — of the free trade or economic and trade partnership agreements entered into with the United States of America, the European Union and the Caribbean Community, and what guarantees would be put in place to mitigate such effects. She also wished to know whether the State party had translated the many laws and provisions on discrimination listed on pages 6 to 9 of the

report into actual programmes and measures and what the results had been. She would like the State party to specify whether it intended to collect all the provisions on discrimination into a single law. With regard to the economic and social marginalization of sugar plantation workers (question No. 7 on the list of issues), the Committee was concerned not so much about the lack of economic resources as about their unfair distribution.

31. **Mr. Tirado Mejia** said that, given the discrimination, particularly towards the Haitian population, that persisted despite the progress made on the legislative front and in terms of behaviour, the Committee wished to see the adoption of strong governmental measures, especially regarding labour and pay. Far more rigorous measures were also needed to address the problem of undocumented individuals, who were effectively condemned to civil death. Children of foreigners were denied a whole range of opportunities and ended up in an extremely confusing and alarming situation. He would like the delegation to cite the text of the article of the new Criminal Code that criminalized discrimination and attacks as well as specific cases in which criminal penalties had been imposed for acts of discrimination.

32. **Mr. Sadi**, remarking on the small proportion of budget the State allocated to economic, social and cultural rights, asked what its vision of the Covenant was as a whole and whether it viewed the Optional Protocol positively. The Catholic Church played a prominent role in the Dominican Republic, and he would like to know whether the other religions represented in the country were treated differently. He wished to know whether civil society had been involved in the preparation of the State party's report. No specific details having been provided on human rights education, he would like to know whether it was obligatory and how it was incorporated. In conclusion, it was far more important to ensure that children of foreign or stateless persons could exercise their social rights under the Covenant, such as their rights to education, health and housing, than to worry about registering their births.

33. **Mr. Abdel-Moneim** asked how the amount of State development aid had varied over the 10 years since the previous report, what proportion of that aid had been spent on building economic infrastructure and to what extent it had promoted the full implementation of the rights enshrined in the Covenant.

34. **Mr. Puig** (Dominican Republic) said that, first of all, civil society had been consulted during the preparation of the periodic report but that the report reflected only the position of the Government, as was proper. With regard to the case law on economic and social rights, the new Constitution was very recent, but the Supreme Court of Justice had already repealed certain articles of the Civil Code that were deemed to discriminate against the poorest sectors of the population such as the obligation to make a payment prior to claiming certain rights. The Constitutional Court, created under the new Constitution, whose members were to be appointed shortly, would have all the skill and expertise required to rule on the constitutionality of certain laws. As to the high poverty rate and the lack of social investment, the conditions governing the loans the country had obtained from the international financial institutions limited the Government's scope for action. Moreover, the huge loans extended by those institutions in the wake of the 2008 crisis had raised the country's level of indebtedness, and its budget had decreased in proportion to the increase in its debt service payments.

35. In the fight against corruption among public officials, the Government had raised not only wages, but also recruiting standards, and arranged ongoing professional development training. Eager to obtain external assistance for the fight against corruption, the Government had met with representatives of the United Nations, the World Bank and the Inter-American Development Bank and had asked them to conduct a study on the level of corruption in both the public and private sectors. At the request of the President of the

Republic himself, those organizations had drawn up and recently delivered some 30 recommendations on the subject.

36. Contrary to the allegations mentioned by Mr. Pillay, extrajudicial executions were systematically prosecuted, including those involving members of the police who had clearly used excessive force. In all such cases, it was up to the courts to decide whether or not the acts constituted murder.

37. The office of an ombudsman had been created in 2000, but the post was still vacant because of a lack of consensus on the matter in Congress. Congress had similarly failed to agree on who should fill the posts of ombudsman for children's rights and ombudsman for environmental affairs. The legislature had been busy since the passing of the new Constitution in January 2010, but the appointment should soon be settled, at the latest by the end of the year. Congress was also examining the possibility of ratifying the Optional Protocol to the Covenant, accession to which was expected in the near future.

38. The Labour Code made no distinction between workers on account of their nationality, and regularity or otherwise of workers' situation had no bearing on their working conditions. Provided there was a labour contract between the parties, foreign workers who wished to claim their rights in a dispute with their employer could seek assistance from the Ministry of Labour regardless of their immigration status.

39. As Dominican law did not distinguish between workers on the basis of their nationality or legal status, there were no statistics on foreign workers in the Dominican Republic.

40. **Mr. Marqués** (Dominican Republic) said that Act No. 08/1992 had made the Electoral Board responsible for the registration of births and deaths.

41. In 2002, a study had been made of undocumented persons living in extremely poor neighbourhoods. It found that between 400,000 and 500,000 people in poor areas could not even produce a birth certificate. They were not foreigners living in a precarious situation, but Dominicans from the most underprivileged and marginalized sectors of society. With the cooperation of the United Nations Population Fund (UNFPA), the United Nations Development Fund (UNDP), the World Bank and the United Nations Children's Fund (UNICEF), a programme had been launched and 364,000 of such people had been successfully identified and issued with identity papers. The programme had been carried out largely through mobile units of social workers, sociologists and other advocates sent into the more remote areas to conduct a census of the individuals who had never been censured. The Government was aware of the need to attack the root causes of the problem and, as the National Statistics Office had conducted a study showing that two thirds of women gave birth in hospitals, civil registry offices had consequently been set up in hospitals to make registering births easier. Those civil registry services were now available in the 30 hospitals in which 85 per cent of hospital births took place so that mothers who had their babies there were issued with a birth certificate bearing a number that would enable their child to be identified for the rest of his or her life.

42. The Dominican Government had also taken measures to combat the falsification of identity papers that facilitated human trafficking. Identity cards could be issued only upon presentation of a birth certificate, and identity cards included the bearer's fingerprints. Anyone unable to produce an identity document was investigated, but that did not constitute a policy of discrimination against foreigners because it was applied to anyone without identity papers.

43. According to a 2008 UNDP study, 90 per cent of migrants possessed a birth certificate, a baptism certificate, an identity card or passport, suggesting that the problem of undocumented foreigners was not as serious as claimed.

44. Under Dominican law, only Dominican citizens had the right to vote. Foreigners wishing to participate in political life could take steps to apply for Dominican nationality.

45. Articles 18 and 25 of the new Constitution covered the right to citizenship. All children born to a Dominican national automatically acquired Dominican nationality at birth. Children born to two foreigners legally resident in the Dominican Republic were also entitled to Dominican citizenship.

46. Since the earthquake that had struck Haiti in January 2010, between 20 per cent and 30 per cent of the women who had given birth in the hospitals of Santiago province had been Haitians who had crossed the border to have their babies in a medical facility. Those women had not been seeking Dominican nationality for their children; they had merely wanted their children to be born in safe conditions. That was why the authorities had not issued them with identity papers, but with birth certificates that would allow the babies to be registered by the civil authorities in Haiti, which did not recognize dual nationality.

47. Persons who obtained Dominican nationality by fraudulent means had their false identity papers withdrawn, but still had the possibility of obtaining them by legal means. That applied to all foreigners holding false papers, regardless of their country of origin and not to Haitians alone. If Committee members knew of specific cases of unfair withdrawal of Dominican citizenship, they should provide the delegation with a detailed list specifying the persons involved so that it could pursue the matter.

48. **Mr. Puig** (Dominican Republic) said that the Dominican courts had already handed down convictions, including criminal convictions, under the country's anti-discrimination laws.

49. He insisted that there was no forced labour or slavery of any kind in the Dominican Republic, and foreigners employed there, whether or not they had work permits, had all entered of their own accord.

The first part (public) of the meeting rose at 5.50 p.m.