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种族主义、种族歧视、仇外心理和相关的不容忍现象：
《德班宣言和行动纲领》的后续行动和执行情况

当代形式种族主义、种族歧视、仇外心理和相关的不容忍现象特别报告员
杜杜·迪耶内和少数群体问题独立专家盖伊·麦克杜格尔的报告

增 编

对多米尼加共和国的访问* **

* 本内容提要以所有正式语文分发。报告本身载于内容提要的附件内，以西班牙文和提交的原文印发。

** 本文件迟交是为了列入最新资料。

内 容 提 要

应多米尼加共和国政府的邀请，当代形式种族主义、种族歧视、仇外心理和相关的不容忍现象特别报告员杜杜·迪耶内和少数群体问题独立专家盖伊·麦克杜格尔根据各自的任务授权于 2007 年 10 月 23 日至 29 日期间访问了多米尼加共和国。在访问期间，他们会晤了多名政府高级代表、立法和司法机构的成员、非政府组织、社区成员、学者和研究者、政党、媒体和其他机构，以及从事少数群体问题、社会包容、反种族主义和歧视等问题工作的个人。代表团访问了圣多明各、Dajabón 和与海地交界的边界地区、圣地亚哥和 San Pedro de Macorís。

两位专家发现，多米尼加社会存在着根深蒂固的种族主义和歧视问题，通常影响到黑人、特别是多米尼加黑人、海地后裔和海地人。大多数多米尼加人认为他们的黑白混血后的肤色使他们有别于肤色更深的多米尼加人和海地人。

专家指出，种族主义问题在社会的某些阶层几乎被掩盖起来，尤其是社会精英，他们坚决否认可能存在这种现象。两位专家认为，这种对问题视而不见的情况可能反映了好几项因素，或是其结果：从历史和文化的角度看，西半球存在着根深蒂固的种族主义，这从奴隶制和殖民主义时代开始一直持续到现在：海地曾经占领多米尼加共和国，后来多米尼加共和国摆脱海地的统治，赢得独立；在 Trujillo 执政期间种族因素曾被作为核心的工具，对多米尼加社会产生了深刻影响。这种情况一直持续到今天，这加强了对黑人包括海地黑人和海地后裔及海地人的消极的种族主义的看法。种族和肤色因素深深地侵入到多米尼加社会的各个角落，种族偏见是反对海地运动的一个重要因素。

虽然政府没有任何种族主义政策，并且任何立法从表面上看也没有公开地具有歧视性，但两位专家强调某些法律具有歧视性影响，特别是涉及到移民、公民地位和向多米尼加共和国出生的海地后裔授予多米尼加公民资格的法律。特别是第 285-04 号移民法，它存在着与多米尼加宪法的冲突，同时存在着在追溯性和歧视性适用等方面的问题。

居住在多米尼加共和国的海地后裔构成了具有权利的少数族群，正如《关于属于民族或族裔、宗教和语言上的少数的人的权利宣言》¹ 所阐明的。¹ 在这一群体中有

¹ 大会第 47/135 号决议。

些是在多米尼加共和国生活了几十年的海地后裔，以及出生在中美洲国家的第二代和第三代后裔，多米尼加宪法中的出生地主义规定给予他们公民权，这是普遍公认的。但现在各类海地后裔的存在都受到质疑，不论他们是否在过去获得了正式的身份证件。他们处在极度脆弱的境地，受到不公正的驱逐、种族歧视，无法充分享受到人权。他们也无法正当地获得公民资格。

必须作为紧急事项、对现行的移民法进行修订，以遵守宪法中的出生地规定，必须尊重所有海地后裔的权利。

作为关键的一步，两位专家都敦促承认种族主义和歧视的现实，并在最高一级表达政治意愿，建立反对种族主义、种族歧视和仇外心理的国家行动计划，在此过程中应与多米尼加社会的所有群体进行磋商。两位专家还呼吁就该国的种族主义、种族歧视问题进行广泛的包容性的辩论，特别是就这些群体的遭遇，以便重新建立各个群体之间和群体内的信任，促进归属感。

在采取政治和法律战略的同时，两位专家呼吁采取伦理和文化的战略，以铲除种族主义和种族歧视的根源，解决少数群体及其他遭受歧视的人被忽略或无法表达意见的情况。这样的战略应该首先对种族主义的历史遗留情况进行集体的批评性讨论，促进对文化和价值的相互了解，并促进不同群体之间的互动，并加强与种族主义和歧视做斗争与建立民主、公平和互动性多元文化社会这一长远工作的联系。

ANNEX

**REPORT OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF
RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED
INTOLERANCE, DOUDOU DIÈNE, AND THE INDEPENDENT EXPERT ON
MINORITY ISSUES, GAY MCDUGALL, ON THEIR MISSION TO DOMINICAN
REPUBLIC (23 – 29 OCTOBER 2007)**

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Introduction

1. At the invitation of the Government of the Dominican Republic and in the pursuance of their respective mandates, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the independent expert on minority issues, Gay McDougall, visited the Dominican Republic between 23 and 29 October 2007. During their visit, they consulted with many senior Government representatives, both at national and local level, members of the legislative and judiciary branches, non-governmental organizations (NGOs), community members, academics and students, political parties, media and other institutions and individuals working in the field of human rights, minority issues, social inclusion, anti-racism and discrimination.² The United Nations delegation visited Santo Domingo, Dajabón and the border region with Haiti, Santiago and San Pedro de Macorís. They obtained the views of community members and representatives of minority communities, through consultations and open discussion forums.

2. The experts express their thanks to the Government of the Dominican Republic for its invitation to visit the country and for its assistance in the preparation and conduct of their visit. They also express thanks to numerous non-governmental organizations, civil society groups and individuals who met with them, provided valuable information, and facilitated aspects of their visit. They also thank the United Nations Country Team in Santo Domingo for the support and advice provided during the mission.

3. This report is structured in six sections: firstly a general background; secondly a consideration of the methodologies used by the experts; thirdly an overview of the situation of racism and racial discrimination reflecting the views of State officials and civil society; fourthly an overview of issues related to the documentation of civil status and citizenship and its implications; fifthly an analysis by the Special Rapporteur and the independent expert based upon their consultations and findings during the course of their visit; and finally a series of joint recommendations proposed by the Special Rapporteur and the independent expert.

4. The experts acknowledge with thanks the comments to the present report by the Government of the Dominican Republic, which were received on 13 March 2008.

I. GENERAL BACKGROUND

A. Historical context

5. The island of Hispaniola was populated by around 600,000 Taino Indians at the time of the arrival of Christopher Columbus on 5 December 1492. With the discovery of gold mines and other natural resources, the Taino Indians were put into slavery and, over the next three decades, were physically wiped out.

² Quotes used in this report are original comments made to the independent expert and the Special Rapporteur during consultations with Governmental and non-governmental sources during their visit. In all cases the identity of the source is withheld.

6. In 1503 the European settlers began bringing enslaved Africans to the island to ensure adequate labor for their plantations, especially after the introduction of sugar cane. In 1697, the French occupied the western third of the island, becoming an important economic and political rival to the Spanish authorities. This area, which became the richest colony in the world with large sugar plantations worked by approximately half a million slaves from Africa, gained its independence from France in 1804, becoming the Republic of Haiti.

7. The history of the Dominican Republic has been marked by difficult, often dramatic episodes with Haiti, foremost the Haitian occupation of the Dominican Republic from 1822 to 1844, following which the Dominican Republic gained independence. From 1930 to 1961 the country came under the dictatorial control of Rafael Leónidas Trujillo, who fostered an official policy of racism and promoted a European and Hispanic identity, built around the development of anti-Haitian sentiments and the use of violence against Haitians. Since the late 1960s, elected Presidents have held office.

B. Demographic and ethnic composition

8. In its 2007 periodic report to the Committee on the Elimination of Racial Discrimination (CERD),³ the Government of the Dominican Republic states that the country has a population of 8,200,000, 80 percent of whom are black and 20 percent are of mixed race. However, in the country's previous report to CERD,⁴ the Government noted that, according to data from censuses prior to 1992, a majority of the country's population, amounting to practically 80 percent, did not fit into the classic racial typology, combining indigenous Amerindian, Spanish Caucasian (itself the outcome of Iberian/Arab/Moorish crossbreeding) and black races. The latter was the position unanimously expressed by Government representatives, who referred to an overwhelmingly "mulatto" population of individuals of both lighter and darker skin tones.

9. The Dominican Republic shares the island of Hispaniola with Haiti. Although there are no reliable statistics, different estimates put the number of Haitians and Dominicans of Haitian descent who live in the Dominican Republic at between 500,000 and 1 million,⁵ engaged in various occupations, including construction, agriculture, private security services, domestic service and the informal sector. Of those, several sources estimate that more than half were born in the Dominican Republic.

C. International human rights instruments

10. The Dominican Republic is party to all major international human rights instruments including, of particular relevance to the mandates on racism and minority issues, the International Covenant on Civil and Political Rights and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the

³ CERD/C/DOM/12.

⁴ CERD/C/331/Add.1.

⁵ The Dominican Government states in its 2007 report to CERD that approximately 1 million Haitians live in the Dominican Republic (CERD/C/DOM/12).

Child, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. The Dominican Republic is not a party to the International Convention on the Protection of All Migrant Workers and Members of Their Families or the 1961 Convention on the Reduction of Statelessness.

11. The Dominican Republic is also obligated to recognize and implement the Universal Declaration on Human Rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities).

12. The Dominican Republic is a member of the Organization of American States and a signatory to all major Inter-American conventions and the American Convention on Human Rights (Pact of San José). Since 2006, a judge of Dominican nationality has served on the Inter-American Court of Human Rights.

II. METHODOLOGY OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE INDEPENDENT EXPERT ON MINORITY ISSUES

13. The Special Rapporteur evaluates the state of racism, racial discrimination, xenophobia and related intolerance in regard to the commitments undertaken by State parties to the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international instruments. His assessment of the situation revolves around the following three key questions: (a) Is there racism, racial discrimination, xenophobia and related intolerance in the Dominican society? (b) If so, which groups are victims and how is this manifested and expressed? (c) What are the existing or needed policies and programmes to fight these phenomena at the political, legal and cultural levels?

14. The independent expert's evaluation of minority issues in the Dominican Republic is based on the 1992 Declaration on the Rights of Minorities and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally. These are: (a) the protection of a minority's survival, through combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups, and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of the right of members of minorities to effective participation in public life, especially with regard to decisions that affect them. The current report is based upon analysis of these four areas of concern as they relate to the Dominican Republic.

III. RACISM AND RACIAL DISCRIMINATION

A. Political and legal strategy of the public authorities

15. Government representatives met by the experts vehemently denied the existence of racism and racial discrimination in the Dominican Republic, in consonance with the Government's position communicated to United Nations human rights competent bodies, in particular, the Committee on the Elimination of Racial Discrimination.

1. Adequacy of the legal framework to combat racism and racial discrimination

16. In the view of Government officials, the domestic legal framework contains a wide range of instruments which create a very solid and comprehensive basis to combat any sporadic, isolated or individual manifestation of racism. According to them, the promotion of the principle of equality and the express prohibition of racial discrimination in the domestic legal system, coupled with the ratification of regional and international instruments on the prohibition of discrimination, constitute strong evidence that racism and racial discrimination do not exist in the country.

17. Following this line of argumentation, several references were made to the principle of equality before the law established in article 8, paragraph 5, and article 100 of the Constitution. Article 100 provides that "The Republic proscribes any privileges and any situation intended to undermine the equality of all Dominicans, among whom no differences shall be recognized, other than those resulting from talents or virtues".

18. Government officials also emphasized that the definition of different forms of discrimination, including racial discrimination, is provided for in the draft criminal code, which establishes, in article 250, that "Any unequal or offensive treatment on the part of natural persons owing to their origin, age, sex, family circumstances, state of health, disabilities, customs, political views, trade union activities or membership or non-membership, or actual or supposed membership of a specific ethnic group, nation, race or religion, constitutes discrimination".

19. Representatives of the Ministry of Education and the National Council for Childhood and Adolescence (CONANI) highlighted that the right to education for all children is provided for in article 4 of the General Education Act, No. 66-97. This article states that "(a) Education is a permanent and inalienable human right. To ensure its effective enjoyment, everyone has the right to comprehensive education allowing the development of his or her personality and the performance of a socially useful activity in accordance with his or her aptitudes and with the local and national interest, without any discrimination on the grounds of race, sex, belief, economic and social status or any other basis". It was emphasized that the universal right to education is also provided for in Act No. 136-03, establishing the Code for the System of Protection of the Fundamental Rights of Children and Adolescents, which provides that "The provisions of this Code apply equally to all children and adolescents without any discrimination whatsoever on the grounds of race, colour, sex, age, language, opinion, conscience, religion, belief, culture, political or other views, economic status, social, ethnic or national origin, disability, illness, birth in a high-risk situation, or any other circumstance of the child or adolescent, his or her parents, representatives or guardians or of his or her family members".

20. Several Government officials indicated that all workers, whether nationals or foreigners legally residing in the country, enjoy the same rights in terms of integration into the labour market. They mentioned that such guarantee is contained in the 1992 Labour Code, which has territorial application, and which states in its principle VII that “Any discrimination, exclusion or preference based on grounds of sex, age, race, colour, nationality, social origin, political opinion, trade union activism or religious belief, with the exceptions laid down in the Code itself for the purpose of protecting the worker, shall be prohibited”. In addition, reference was made to the fact that the Dominican Republic has ratified ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation), which affirms that “All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.

2. Perceptions and reactions of State officials

21. Government representatives strongly rejected the possibility that racism and racial discrimination exist in Dominican society. In their view, a history of ethnic mixing has resulted in a harmonious multi-ethnic and multicultural society in which racism or discrimination are either absent or confined to isolated, individual incidents.

22. State officials rejected the criticisms expressed in recent studies and documentaries indicating the existence of racism and racial discrimination in the Dominican Republic as an international conspiracy against the country. It is in this context that, on 23 October 2007, on the occasion of the experts’ visit, the Senate passed a resolution calling upon “the Government, the press, the Church, trade unions and employers’ organizations and political parties to remain vigilant in relation to the visit of the United Nations officials, in order to prevent the distortions, lies and perversities of groups that have used anti-Dominicanism as their basis for action, so that said officials leave the country with a clear and objective perception of our reality, that is, a reality without prejudices, and with a clear vision that in this country nobody is discriminated against nor targeted on the grounds of national origin or colour of the skin.”

23. To support their position regarding the non-existence of racism and racial discrimination in the country, State officials essentially put forward the following arguments: firstly, the fact that the Dominican Republic has a domestic legal framework that provides a solid and comprehensive basis to promote equality and prohibit racial discrimination; secondly, that there does not exist a single complaint filed before a Dominican tribunal on grounds of racism or racial discrimination; and thirdly, the voluntary presence of approximately one million Haitians in the country, engaged in various activities, including the construction sector and agriculture, in a climate of harmonious and peaceful coexistence. In expressing this position, State officials made constant reference to the popular saying “We all have a black person behind the ears”, an expression that refers to the presence of African roots in each Dominican - a presence perceived, per se, as an element that excludes any possibility of the existence of racism.

24. Government officials acknowledged the possibility that sporadic, individual acts of racism may take place, though emphasizing that such cases would be the result of the motivation of private individuals and, therefore, could not in any case be attributed to an official policy of the Government. Mention was made in this regard of two allegedly racially discriminatory

incidents that occurred in the past months in Santo Domingo: in the first one, in which an African-American US Embassy employee was denied access to a nightclub, the experts were told that relevant State authorities had formally complained to the owner of the nightclub; in the second one, in which a female student was killed following an incident in which a black young woman was denied access to another nightclub, State officials indicated that the national district first investigative judge ordered the temporary closure of the club premises in order to allow for a proper investigation of the facts.

25. State officials stressed that marginalization of some parts of the population arises from the poverty that affects a large number of Dominicans, unrelated to their skin colour. However, in its 2007 report to CERD,⁶ the Government does acknowledge the existence of inequalities and difficulties experienced by Dominicans of African origin. Indeed, it observes that “most Dominicans of African origin are in the lower strata of society” and that “those of African cultural origin are among the main victims of failure to enjoy economic, social and cultural rights”. Having admitted this reality, the Government recognizes the need “a) To identify the obstacles to the participation by people of African origin in the economic, social and cultural life of the country; ... (c) To promote the adoption of a regional framework to raise awareness among the population and encourage a rapprochement that will facilitate the adoption of affirmative action policies on behalf of people of African origin, to correct or make good historical injustices, to remedy social and structural discrimination, to create diverse and proportionally representative groups, to provide disadvantaged communities with role models that can offer the necessary motivation and incentives, and to put an end to vicious and prejudicial stereotypes; (d) To counter social unrest, and ensure the effectiveness and justice of the socio-economic system; (e) To support research aimed at restoring values of African origin; (f) To bolster self-esteem on the basis of the work done by the men and women enslaved during the colonial period”.

26. In their dialogue with the experts, the majority of State officials referred extensively to the tensions created by the presence of “illegal Haitians” in the country and recognized that migration issues have had a strong impact on the question of racial identity. It was emphasized, however, that such tensions need to be understood in the context of the poverty and social and economic difficulties faced by the country and should not be misunderstood or represented as issues of racism or racial discrimination. In this regard, while acknowledging the situation of extreme poverty and political instability in Haiti and highlighting the efforts being carried out in order to provide assistance to those fleeing that country, especially in the field of health, the Dominican Government noted that it was unable to handle by itself the very high numbers of Haitians that were illegally entering the country.

27. Numerous officials referred to the very good relations existing between the Dominican Republic and Haiti – reflected, for instance, in the creation of a bilateral commission to tackle issues of common interest and concern for the two countries – and to various statements of high level Haitian authorities pertaining to the absence of racism and discrimination in the Dominican Republic.

⁶ CERD/C/DOM/12.

3. Policies and measures to combat racism and racial discrimination

28. In responding to the Special Rapporteur's three main questions, Government officials noted that, given the absence of Government manifestations and expressions of racism and racial discrimination, there were no policies or programmes addressed at directly fighting these phenomena, be it at the political, legal or cultural levels.

29. Regarding the presence and influence of African heritage, representatives of the Ministry of Culture referred to the formulation, for the first time in the country's history, of a cultural policy that acknowledges the African contribution in the Dominican Republic. Representatives of that Ministry also highlighted several cultural activities organized jointly with their counterparts in Haiti, such as a project between Dominican and Haitian historians to reflect on and review the way in which history books have presented the relations between the two countries, or invitations systematically being extended to Haitian representatives on the occasion of relevant cultural events. Representatives from the Ministry of Education noted that significant efforts have been carried out over the past years in order to reflect in school textbooks the importance of African heritage in the building of Dominican identity.

B. Views of civil society and communities concerned

1. Concerns in response to the State's strategy, perceptions and reactions

30. In contrast with the position expressed by Government officials, representatives of NGOs dealing with issues of racism and racial discrimination met by the experts mostly noted that these phenomena are deeply rooted in the Dominican Republic. That position was shared by numerous intellectuals and academics, some media professionals and representatives from trade unions.

31. Some sectors within the Catholic Church, especially those directly providing services to the most marginalized groups in the population, clearly and openly referred to the problem of racism as being a profoundly entrenched reality in Dominican society. This position was in marked contrast to the public declarations of the Head of the Roman Catholic Church in the Dominican Republic, Cardinal Nicolás López Rodríguez, on the occasion of the experts' visit, when he stated that "It is not only useless, but hardly serious and irresponsible on the part of the United Nations and of whomever to send people to investigate alleged racism and xenophobia in the Dominican Republic."

32. Many intellectuals, academics and other civil society actors noted that racism and racial discrimination in the Dominican Republic have deep historical and cultural roots, which go beyond the socio-economic situation of the country. Its manifestations and expressions profoundly affect blacks in all spheres of life and can be found in a high degree of anti-black societal prejudice, which finds its basis in a value system that supports and allows for discriminatory actions against certain marginalized communities, and in policies and practices that directly or indirectly discriminate against certain parts of the population because of their skin colour.

33. In spite of provisions in the legislation promoting equality and prohibiting racial discrimination, civil society organizations noted the lack of a comprehensive anti-discrimination

law and the discriminatory impact of some laws and practices, especially those linked to granting citizenship and the registration system, leading in many cases to the denial of the exercise of basic rights.

34. The absence of judicial complaints on the grounds of racism or racial discrimination, which public officials considered as a strong element to support their conviction that racism does not exist in the country, was mainly attributed to the following factors: an absolute lack of confidence in the justice system with regard to obtaining remedies or reparation for racially-motivated acts, in a context where high level officials, including from the judiciary, fundamentally deny the existence of racism in the country; the refusal or reluctance of victims to file a complaint, fearing retaliatory measures and unlawful or discriminatory reactions; and the absence of an independent national human rights institution where individual complaints could be filed.

35. In contrast with the Government's position expressed to CERD associating the marginalization of Dominicans of African descent with the general situation of poverty in the country, civil society actors highlighted that racial discrimination against blacks was an important contributing factor to the general situation of poverty. In this regard, the absence of a policy framework that expressly relates to people of African descent and the lack of disaggregated quantitative and qualitative data on the economic, social and political representation of Dominicans of African descent within society was considered as a major problem and a major challenge in combating racism and racial discrimination.

2. Expressions and manifestations of racism and racial discrimination

(a) Racial discrimination against blacks

36. Civil society representatives referred extensively to the existence of a deeply rooted societal prejudice against blacks in Dominican society. Academics and intellectuals noted that resistance to "blackness" and to the country's African heritage is deeply entrenched culturally, and reflected in areas such as language, interpersonal relationships, prototypes of social aesthetics and of physical beauty and school textbooks.

37. Intellectuals and academics working on issues of race and identity pointed out that racial prejudice is embedded in everyday language, as reflected in the existence of aggressive and insulting expressions widely used among society which stigmatize and negatively stereotype black persons. As illustrations, they noted the use of the term "black" as an insult, disturbing references made to blacks as being "pig feed", ignorant or unhygienic, or the frequent association of blacks with both illegal status and criminality.

38. Officially, the "Afro-descendent" category is not considered to be part of the country's ethnic and racial make-up, and the term black in relation to Dominicans is systematically replaced by the terms "indio" (Indian), "indio claro" (light Indian) or "indio oscuro" (dark Indian) by administrative officials in registration offices. Black Dominicans noted with frustration the resistance and incomprehension they have to face from registration officers when they wish to identify themselves as black in their identity documents.

39. The experts were told that rejection of blackness is very present in interpersonal relationships, even among family or friendship circles, and strongly determines social constructs. A community representative said: “Even black mothers say they want their daughters to marry a white man to improve the blood line. If you are a white man and marry a black woman, you are taking a step back.” Another one noted: “When my father saw me in my cot the first thing he said was ‘what a pity she is black’, that tells you something”.

40. Reference was often made to the social pressure that exists within the Dominican society to respect a prototype of beauty that follows white European canons. That prototype, strongly fostered by mainstream media, is also followed by many black Dominicans in order to be perceived as “whiter” or “less black”, and finds one of its most evident expressions in the widespread rejection of braids and natural hair amongst women. It was noted that light skin tones were automatically associated with high social status.

41. Historians and sociologists made reference to the way in which these social constructs are reflected in the education system and expressed concern at the fact that issues of racial prejudice are not part of the course programmes nor of the teachers’ curricula. They particularly highlighted the very limited space in school textbooks devoted to events such as colonization and slavery or the contribution of enslaved Africans and their descendants to the Dominican culture, and the common portrayal of black persons in negative stereotypical roles.

42. Despite acknowledging the important role of some sectors within the Catholic Church in the fight against racial prejudice in the country, mention was made of a general rejection of African cultural and religious expressions during Catholic rites, such as the prohibition of drum-center music or other forms of “pagan” worship, presented as a threat to morality and Christian values. They noted, however, the importance of the recognition by the United Nations Educational, Scientific and Cultural Organization in May 2001 of the 300-year old brotherhood of Villa Mella, near Santo Domingo, which has preserved and pursued various religious beliefs with traditional African rituals.

43. Black Dominicans with whom the experts met spoke of their daily experiences of racism and discrimination, including in areas such as employment or access to leisure and social facilities. Despite the prohibition of discrimination established in the Labour Code, black Dominicans highlighted the requirement for a “good presence” in job advertisements, a requirement which is understood to be code for a white or non-black person. Several testimonies indicated the difficulties for black Dominicans in having access to skilled employment, particularly to high-visibility positions. Many people spoke of how they had been refused entrance to clubs and discothèques because of their skin colour and reference was made, in that context, to the recent public protest by the United States Ambassador in the country when an African-American member of the Embassy staff was denied entrance to a nightclub. It was also noted that by 2005, United States diplomats had already held meetings with representatives of private leisure facilities in order to protest strongly at the frequent occurrence of such incidents.

44. Manifestations of racism were also identified in the framework of expulsions and deportations. These procedures were noted to be particularly targeting those who are presumed to be “Haitians”, a determination that would be mainly based on skin colour, without distinguishing between Haitians, Dominicans of Haitian descent and black Dominicans with no

ties at all with Haiti. A community member stated that: “The most important passport is skin colour. Those with light skin rarely have a problem. Those who are black and look poor face problems all the time, no matter whether Haitian or Dominican. If you are black, you are Haitian”. It was reported to the experts that there had been cases where black foreigners, with no ties at all with the Dominican Republic or Haiti, but happening to be in the border area had also been threatened, just because of the colour of their skin, with deportation to Haiti.

(b) Racial prejudice in anti-Haitianism

45. Civil society representatives highlighted that among blacks, Haitians and Dominicans of Haitian descent are subject to the more acute forms of racial prejudice and discrimination. Anti-Haitianism, being a construct that results not only from the evolution of racial prejudice against Haiti, but also from political, historical, sociological and economic factors that characterize the relationship between the two countries, was said to be permeating every aspect of today’s Dominican culture.

46. It was generally noted that the term black and, by extension, traits or elements related to African descent are associated with Haitians – which in turn is commonly used to designate both documented and undocumented Haitians and Dominicans of Haitian descent. “Haitian” is also used as a label for improper behavior, lack of civility, and often as an insult in Dominican society. As a result of those associations, Haitians have become identified with all discriminatory stereotypes associated with blacks. It was noted that racial prejudice towards Haitians was accepted and recognized by some sectors of the Dominican population, and justified primarily as a defensive attitude to confront “the Haitian threat”. In this context, civil society actors highlighted the fact that many black Dominicans would reject being labelled as black in order to mark a difference with Haitians.

47. Anti-Haitian political discourse and statements referring to the threat of “Haitianization” were noted to be common. One community representative in Santo Domingo stated: “Anti-Haitian feeling is part of the State ideology here – if you want to be a good Dominican, you have to be anti-Haitian”. In meetings with representatives of the main political parties, the experts noted the influence of a political discourse based on a security approach towards immigration through statements that referred to the “peaceful invasion of the country” or to “the need to preserve national security and national identity”. This discourse, which contrasts with a reality where Dominican entrepreneurs benefit from a steady arrival of cheap Haitian labour, is particularly at the core of the so-called nationalist political parties, whose views are also shared by a small but highly influential group of intellectuals and historians.

48. Civil society actors generally referred to the dissemination of prejudices and stereotypes against Haitians in school textbooks and by an increasing sector of the media. In their view, this is contributing strongly to fostering feelings of discrimination and intolerance within the population.

49. In the course of several meetings and in visits to affected communities, Dominicans of Haitian descent and Haitians exposed the various manifestations of racism that they face with a profound sense of frustration, vulnerability and isolation. They described a reality of insults and verbal aggressions, widespread and institutionalized discrimination resulting, amongst others, in

extreme difficulties in obtaining registration documents or in gaining access to skilled employment, even for those in possession of official documents. Some testimonies spoke of the discrimination, harassment and stigmatization faced by those whose names are of Haitian origin to the extent that it is common for people to change their names in order to disguise their origins.

50. In this context, organizations and individuals engaged in the fight against racial discrimination highlighted the increasing difficulties they encounter in carrying out their activities. They emphasized the isolation in which they work, with no support from the political elites, as a result of their denial of the existence of racism in the country. Human rights defenders working with Haitian migrants and Dominicans of Haitian descent described the climate of hostility that they face, particularly from the political and economic elites who consider them as “traitors to the Dominican nation”. This situation results in an increasing fear of the victims they represent to speak openly about acts of racism and discrimination, fearing retaliation from the authorities and deportation to Haiti.

IV. ISSUES RELATING TO DOCUMENTATION OF CIVIL STATUS AND CITIZENSHIP

51. Issues of documentation, regularization of legal status and denial or deprivation of citizenship emerged as major concerns for residents of Haitian heritage. These problems impact both long-term settled resident Haitians and Dominican citizens of Haitian descent.

A. Documentation

52. It was highlighted to the experts that there are two principal forms of official identity documents, the official birth certificate which establishes nationality, and the identity card or *cédula*, both vital to accessing a wide range of civil, political, economic, social and cultural rights.

53. The official birth certificate is required for registering for schools, obtaining health insurance and for accessing other public services. It is also required in order to obtain a passport up to the age of 18. Upon the birth of a child in the Dominican Republic parents receive a document from the hospital, clinic or midwife called *constancia de nacimiento* (declaration of birth) which must be submitted to the registration office, which in turn registers the birth and issues a birth certificate. At the age of 18 it becomes necessary for individuals to obtain a *cédula de identidad*. The *cédula* is a vital document for adults in both public and private spheres, including for enrolment in university and obtaining lawful employment, for eligibility for health insurance and social security, and for the right to vote. It is also necessary for purchasing property, getting married and for registering and baptizing children. The *cédula* is valid for four years after which it must be renewed.

54. The government agency responsible for issuing these identity documents is the Junta Central Electoral (the Central Electoral Board).⁷ The Board has responsibility for keeping the

⁷ The JCE is made up of nine judges who serve in one of two chambers, the Administrative Chamber and the Electoral Proceedings Chamber. Its wider mandate includes initiatives to address the issue of under-registration and to establish a unit for improving the situation in regard to late registration.

civil registry, implementing policies on documentation and organizing elections. It is the supervisory agency for the 158 registry offices (*Oficialías del Estado*) located throughout the Dominican Republic.

55. Without exception, individuals of Haitian descent born in the Dominican Republic reported that, because of their colour or their Haitian looks or name, it is virtually impossible to obtain identity documents or even copies or renewals of previously issued documents. NGOs, community representatives and individuals described ill-treatment, insults and even ejection from registration offices of those that are or are presumed to be of Haitian descent.

56. Without identity documents verifying their lawful presence in the country, they are left vulnerable to deportation or expulsion to Haiti, even as Dominican citizens with no or limited connection with Haiti. Those who were born in the Dominican Republic assert that they are being denied or deprived of their right to Dominican citizenship under article 11 of the Dominican Constitution, which is based on the principle of *jus soli* “except in the case of the legitimate children of foreign diplomats resident in the country or those whose parents are considered to be in transit”.

57. In addressing the question of the legal status of long-term undocumented workers and the nationality of children born to Haitian parents in the Dominican Republic, the Inter-American Commission on Human Rights noted that while many countries grant citizenship or permanent resident status after lengthy periods of residency, this is not the case for Haitians in the Dominican Republic. In consideration of this issue, the Commission recommended in 1999 that the Dominican Republic adopt measures aimed at improving and regularizing the situation of undocumented Haitian workers by distributing work permits and residency cards and legalizing the situation of their children in keeping with article 11 of the Dominican Constitution. The Commission further observed that: “it is not possible to consider persons who have resided for several years in a country in which they have developed innumerable contacts of all types to be in transit.”

58. The domestic jurisprudence in relation to the question of the nationality of children born to Haitian parents in the Dominican Republic is limited. Two cases with similar characteristics resulted in radically different court decisions.

59. The first case concerns the Maytime-Mondesir family, Haitian migrants living in Santiago de los Caballeros, whose three children, born in the Dominican Republic, were denied registration in the civil registration office on the grounds that they were Haitian. An appeal of this decision before the Court of First Instance in October 2002 was rejected on the grounds that the parents were illegally in the country and thus considered “in transit”. In May 2003, this case was brought to the Supreme Court, but no ruling has been issued yet.

60. Two children of the Saint Jean-Bazil family in Santo Domingo, born in the Dominican Republic, were denied registration on the same grounds as in the above case. In December 2003, the Court of First Instance ordered the registration of the children in the civil registry office noting that: “1) For the purposes of the case, the court is indifferent to the situation of supposed illegality of the parents who are acting in representation of their minor children, who are in fact those that may be negatively affected or may benefit from the outcome of the *recurso de amparo*

(amparo proceedings); 2) The court considers inappropriate to qualify as “in transit” the parents of the minors, on the grounds that Dominican legislation establishes that persons “in transit” are those persons entering the Dominican Republic with the principal purpose of continuing on to another destination outside the country, setting a period of ten days that applies for the qualification of “in transit”, which is not the case of petitioners who are permanently in the country; 3) the court establishes that the principle of effective nationality must be recalled, which notes that nationality is characterized by the real and effective bond of the minors with the Dominican State, on the basis of permanent link, place of living, including education”. The Central Electoral Board appealed the decision, but the Supreme Court has not yet pronounced itself on the case.

1. Migration Law No. 285-04

61. In August 2004, the Dominican Senate approved Migration Law No. 285-04, which inter alia introduced substantive and procedural changes to the regime for registering the births of children born on Dominican territory. Law No. 285-04 is being implemented de facto, notwithstanding that its accompanying regulations have not yet been approved by the President.

62. Law No. 258-04 creates the categories of “resident migrants” and “non-resident migrants.” The latter category includes those temporary workers residing in the Dominican Republic and those who are illegal. Under this law, the category of “non-resident” is conflated with the concept of “in transit” status, thus all non-resident migrants and undocumented migrants are considered to be “in transit” and their children born on Dominican soil are denied citizenship. Further the assumption is being made that if you have no documents and appear to be or have a name that is Haitian, you are an illegal migrant. While the Government reports that a large percentage of all Dominicans have no identification documents, in practice, this presumption of illegality is applied only to people with dark skins and Haitian features.

63. Civil society groups claim that Law 258-04 is discriminatory in both purpose and effect. They claim that it is unconstitutional in that it contravenes article 11 of the Dominican Constitution.⁸ In effect the law means that children born to parents of Haitian heritage who have no legal documents are not granted Dominican citizenship or nationality, despite being born in the Dominican Republic, their parents being born there or the fact that their parents may, in some cases, have been settled in the Dominican Republic for decades. Thus, the undocumented status of Haitians is inherited by their children.

64. NGOs equally note that the new Migration Law is being applied retroactively to those born in the Dominican Republic prior to the adoption of the law, which will affect the status of many thousands of those of Haitian descent. They state that the actions of the Government and the Central Electoral Board in implementing the law are in direct contravention of the ruling of the Inter-American Court of Human Rights in the case of *Yean and Bosico vs. the Dominican Republic* (see paragraphs 67-69).

⁸ Also Law 659 on Acts of Civil Status, which dates from July 17, 1944, and provides that all children should be registered before an official of the civil registry office of the place where the child was born.

2. Birth registration

65. The Government previously allowed Dominican birth certificates to be issued to children of Haitian workers who declared their children on the basis of *fichas*. Haitian migrant workers employed by sugar companies were previously issued with a *ficha*, a document which gave them limited temporary permission to remain in the Dominican Republic on the basis of their employment contract. Despite the fact that these children were registered as Dominican nationals, they are now unable to obtain *cédulas*, copies or renewals of identity documents, due to new laws and policies that are seeking to retroactively change their civil status.

66. Under article 28 of Law No. 258-04, children of non-legally resident mothers are now subject to a separate birth registration regime under which they are provided with a pink declaration of birth (*constancia de nacimiento*) - white declarations of birth are assigned to all other children born on Dominican territory. Such cases are entered in the “foreigners’ book”, operational since August 2007.⁹ If the father is Dominican, the child can be registered as Dominican with the local registry office. But, if the father is not Dominican, the mother must then register the child with the relevant foreign embassy rather than the Dominican registry office.

67. Civil society organizations expressed concern that this procedure has been established for the purpose of denying such children a Dominican birth certificate. Since the creation of the foreigners’ book, only two hospitals have begun issuing such documents and only two foreigners (one American and one Chilean) have been registered in it. The Central Electoral Board states that the system should be functioning in 35 hospitals in six months. Concerns exist that many children of Haitian parents or Dominicans of Haitian descent, who may have no other possibility than to be officially registered under this regime, may be left unregistered and effectively stateless.

3. Yean and Bosico vs. the Dominican Republic

68. A legal case of pivotal significance was concluded before the Inter-American Court of Human Rights in 2005. *Yean and Bosico vs. the Dominican Republic* concerns the children, Dilcia Yean and Violeta Bosico, born in the Dominican Republic in 1996 and 1985 respectively and having grown up and lived exclusively in the Dominican Republic. The children’s mothers were Dominican and their fathers Haitian. The Inter-American Commission on Human Rights submitted the case to the Inter-American Court alleging refusal by the State to issue birth certificates in conformity with the constitutional principle of *jus soli*, thus producing a situation of continued illegality and social vulnerability. The Commission argued that the children were denied their right to Dominican nationality and were effectively stateless and consequently suffered the effects, including the inability to attend school due to lack of identity documents.

⁹ With the adoption by the Central Electoral Authority of resolution No. 02-2007 authorizing the new *Libro de Registro del Nacimiento de Niño(a) de Madre Extranjera No-Residente en la República Dominicana* (Birth registry of children of non-resident, foreign mothers).

69. The Inter-American Court of Human Rights found that the Dominican Republic had violated the rights of children of Haitian ancestry and rendered them stateless by refusing to issue birth certificates and denying basic citizenship rights on the grounds of race. The Court recognized the right to nationality as the gateway to the enjoyment of all other rights and found that children who are denied birth certificates are also denied membership of a political community. The Court ordered the Government to: pay damages to the Yean and Bosico children; issue a public apology and publish the sentence; provide human rights training for State officials and adopt legislative and administrative measures to ensure equal access to birth certificates and school enrolment for all children in the country. As of December 2007, the Government had paid damages but had failed to comply with the other parts of the Court's order.

70. The Dominican Government, in its consideration of the legal status of children born to Haitian parents, highlights the decision of the Dominican Supreme Court of 14 December 2005 in response to an appeal brought by a group of NGOs challenging the constitutionality of the Migration Law. This was equally considered to be a response to the Inter-American Court decision in the Yean and Bosico case. The Supreme Court held inter alia: "That the Constitution does not grant Dominican nationality indiscriminately to all persons born on Dominican soil, as the *jus soli* provision, which establishes the system to grant Dominican nationality, together with the *jus sanguini*, has two exceptions, which exclude the legitimate children of foreign diplomats and the children of foreigners in transit"; ... "this implies that persons in transit have been in some way authorized to enter and stay for a certain period of time in the country; in this circumstance, which is obviously legitimate, the child of a foreign mother giving birth on national soil, as established by the Constitution, is not Dominican by birth..."; "Considering that the only case in which the Dominican Republic could be forced to grant Dominican nationality to a foreigner who is in breach of the law with respect to his/her situation in the country or a person that is born in the Dominican territory, who otherwise would be stateless, would be in application ... of the Convention on the Reduction of Statelessness, adopted by the United Nations on 30 August 1961, which is not applicable in this case, as the persons concerned have, through the provision of *jus sanguini*, the nationality of their country, which excludes any possibility foreseen by the above-mentioned Convention with respect to statelessness, and thus the obligation on the Dominican State to grant its nationality to those citizens in the hypothesis set out in the Convention; that, in that respect, article 11 of the Haitian Constitution establishes categorically that 'Any person born in Haiti, or in a foreign country, of a Haitian father or Haitian mother, is Haitian'".

4. Circular 017

71. On 29 March 2007, the Central Electoral Board issued a document entitled Circular 017 to all civil registry officers requesting them to remain vigilant for fraudulent documents, abstain from issuing, signing or providing copies of such documents and to refer any such cases to the Administrative Chamber of the Central Electoral Board in Santo Domingo, on the grounds of "complaints indicating that some civil registry offices had in the past issued birth certificates in an irregular manner to children of foreign parents that did not prove their legal status or residence in the Dominican Republic".

72. There is a widely held belief, supported by NGO research and interviews with civil registry officials, that those instructions to staff have specifically stated that they are not to issue

any documents to “Haitians” or those of Haitian descent even when they have documents attesting to their Dominican nationality.

73. The experts were informed about written correspondence between the President of the Administrative Chamber of the Central Electoral Board and local civil registry officers reiterating the necessity to strictly comply with the terms of Circular 017, “whose aim is to detect the commission of irregularities in the Civil Registry, thus preserving Dominican identity”. Individuals whose documentation was subject to investigation provided copies of written correspondence from civil registry officers to the National Director of the Civil Registry in the Central Electoral Board explicitly asking for investigation of birth declarations on the grounds that “parents, according to the documents presented, are of Haitian descent, despite being born in the Dominican Republic and in possession of birth certificates”.

74. Many NGOs and community members indicated that, on the basis of this circular, *cédulas* have been denied to children of Dominicans of Haitian descent in possession of a Dominican birth certificate – even to those that had obtained a birth certificate through late registration, a procedure which requires approval and signature from a judge of first instance. Numerous cases were also reported to the experts of the refusal by the Central Electoral Board to renew documents or provide copies of previously issued documents, even to Dominicans of Haitian descent in possession of Dominican birth certificates, *cédulas* and electoral identification documents, attesting to their Dominican citizenship.

75. The experts were informed that in 2006 the Central Electoral Board granted a two year automatic extension to all *cédulas* in response to its own review and reform process and administrative improvements. NGOs expressed concern that in 2008 hundreds of thousands of *cédulas* would be due for renewal. Given current regulations and the practice of denying renewal to Dominicans of Haitian descent, many thousands may find that they are unable to obtain *cédulas* and thus effectively have their legal status revoked.

76. In a meeting with judges of the Central Electoral Board, the experts were informed about false claims, and high numbers of fraudulent papers which complicate the task of distinguishing legal residents from illegal migrants. The judges explained that the Central Electoral Board is only legally allowed to issue a *cédula* to those in possession of valid documents including a birth certificate, and that thousands of investigations are currently underway. The judges noted that the Dominican Republic has a legal procedure for the granting of nationality and that they maintain the principle that “illegality” in respect to parents cannot produce “legality” in respect to the status of a child born in the Dominican Republic.

77. The experts submitted in writing to the Central Electoral Board the cases of individuals they had encountered during the visit. These cases included denial of *cédulas* to Dominicans of Haitian descent who have Dominican birth certificates due to their parents having declared them with *fichas*; denial of *constancias de nacimiento* to children of Dominican mothers of Haitian descent who have a Dominican birth certificate; denial of birth certificates to children born in the Dominican Republic to Dominican parents of Haitian descent; and denial of copies or renewals of identity documents to Dominicans of Haitian descent. The judges undertook to examine these cases before presentation of this report to the Human Rights Council.

B. Implications of denial or deprivation of civil status or citizenship

78. The following section considers briefly some of the aspects of life without documentation for people of Haitian descent living in the Dominican Republic.

1. Deportations and expulsions

79. Civil society representatives and community members highlighted a number of serious concerns regarding Government deportation practices of people they claim are illegal migrants. Particularly in border areas, a degree of chaos is permitted by security and border guards because it gives cover to their discriminatory actions and corrupt practices. The colour of one's skin is the primary determinant of the ease with which you can cross the border without documents or fall victim to deportation or expulsion. There is consistent testimony of indiscriminate and arbitrary deportations, lacking in the protection of due process. Dominican citizens of Haitian descent and long-settled Haitians are as likely as recent migrants to be deported without adequate opportunity to argue any distinctions. Deportations occur so rapidly that family members are not informed. Parents are deported leaving children unaccompanied. Ill-treatment and abuse during deportation is reportedly common. Legitimate identification documents, including *cédulas* and birth certificates are confiscated by authorities conducting deportation "sweeps" and deportees are generally not given opportunities to secure their housing and property. Accounts are given of deportations being arranged between employers and authorities to enable employers to avoid paying wages. Particular concern was expressed at the practice of collective or mass expulsions.

80. Article 137 of Migration Law No. 258-04 establishes that deportations and expulsions have to be on proper grounds and those detained informed of legal remedies. It further notes the requirement to adhere to the principle of due process, to be specified in the regulations governing the implementation of the law. Since regulations implementing Law No. 258-04 have not been promulgated, the experts were informed of the principles governing deportation procedures under previous migration regulation No. 279.¹⁰ The experts seek clarification as to which regulations are currently in operation.

81. The General Director of Migration informed the experts of the legal framework for deportation and repatriation and the 1999 memorandum of understanding with the Government of Haiti. He noted that those detained, if they do not have documentation with them, are given the opportunity, via a third party, to locate their documentation. He noted an express mandate from the President to act against those who have fraudulently acquired Dominican documents. He emphasized that those who can demonstrate family ties in the Dominican Republic will not be repatriated by the migration authorities: "Our approach is that we do not agree with family separation. The migration authority will not repatriate those with roots in the Dominican Republic".

¹⁰That regulation establishes that migration officials can initiate an investigation into an individual's immigration status if they have reason to believe that the person is deportable. The investigation official must then request an arrest warrant from the Director General of Migration, noting the facts of the case and the specific grounds for deportation. If the suspect does not admit to the charges of deportability, the investigation official must present proof of his or her deportability. The suspect must have an opportunity to rebut that proof. The proof presented by the immigration official and the suspect's rebuttal must be transmitted to the Secretary of State of the Interior and Police, who will render a final decision.

2. Education

82. Numerous young people of Haitian descent, born in the Dominican Republic reported that it is not possible for them to obtain the required *cédula*, and hence impossible for them to pursue their education beyond the sixth^s grade or enter university. There is also some indication that a birth certificate is requested of students who register for primary school. Some expressed deep frustration, noting that they wanted to study, gain skilled work and make a full contribution to Dominican society as Dominicans, but were being prevented from doing so, with implications for their sense of identity as Dominicans, despite having spent their lives in the Dominican Republic.

83. A student of Haitian descent in Santo Domingo reflected a concern raised by numerous individuals: “I have asked for a *cédula* several times. My father is Haitian but legally in the country for 35 years. My mother is Dominican and I was born here. I want to go to university and work but I can’t without a *cédula*. I don’t know any more whether I am Dominican or Haitian”.

84. Representatives of the Ministry of Education and the National Council for Childhood and Adolescence highlighted the legal framework governing the right to education for all children in the country under the General Education Act, No. 66-97. Representatives of the Ministry highlighted that the same provisions were applied everywhere in the Dominican Republic. The Ministry of Education acknowledged that at the age of 18 years a *cédula* is required to continue in formal education and to enter university. They noted that the lack of documentation necessary for university entrance is a problem that also affects many undocumented Dominicans and that the Government is working to address such documentation issues.

3. Employment

85. The experts were informed that demand for Haitian labour continues to be high in such sectors as construction and that large numbers continue to enter the Dominican Republic with the unofficial sanction of authorities or via the activities of traffickers.

86. In the visit undertaken by the experts to *bateyes*¹¹ in the region of San Pedro de Macorís, currently owned by private sugar companies, community members described problems related to lack of documentation noting that *fichas* are not officially recognized as valid, for example for those who wish to claim a pension after years of work and compulsory contributions from their wages. Elderly community members, some who had worked up to 40 or 50 years as sugar cane cutters, explained that having given their lives to the sugar cane firms they are left in conditions of extreme poverty, with no access to a pension or social security due to the refusal to accept their *fichas* as valid documents.

87. Workers in the *bateyes* visited by the experts live in pitiable conditions with no access to running water, sanitation or electricity. They live far from health-care facilities or schools and lack transportation of any kind. They live in informally constructed shelters with dirt floors.

¹¹ The communities attached to the sugar cane plantations, where the cane cutters live.

They can find work only in dirty, dangerous and degrading jobs for substandard pay and without contracts. All social and legal forces, private and public, converge to lock them in a status of inescapable illegality which generates extreme vulnerability and social exclusion. They are a permanently exploitable underclass.

V. ANALYSES AND CONCLUSIONS OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE INDEPENDENT EXPERT ON MINORITY ISSUES

A. Analysis of the Special Rapporteur

88. The analysis of the views and information provided by all the parties concerned led the Special Rapporteur to conclude that racism and racial discrimination do exist in the Dominican society. The vehement denial of the existence of these phenomena, as manifested in the reactions of Government officials, the Dominican Senate and the Archbishop of Santo Domingo, is in itself a clear illustration of the depth and sensitivity of the issue in the Dominican Republic and constitutes a fundamental obstacle for the implementation of effective measures to prevent and eliminate racism and racial discrimination.

1. The historical and cultural depth of the racial paradigm in the construction of the national identity of the Dominican Republic

89. As is the case for all countries in the region, the Dominican Republic is deeply marked by the legacy of racial prejudice that has structured the northern hemisphere during the last five centuries. The founding system of colonization and slavery is based on an intellectual and ideological construction of racism by the European intellectual and religious elites. This construction, which has profoundly impacted the mentality and societal structures of the country, is anchored in the concept of the ethnic and cultural inferiority of the enslaved Africans as the basis and legitimization of slavery.

90. Since the colonial period, the factors of race and colour have been a central paradigm in the construction of the national identity and the development of all societies in the hemisphere, including Dominican society. The northern hemisphere is the region where the racial paradigm has been most profoundly and enduringly implemented. Nowhere in the world has language and vocabulary so richly and creatively expressed the nuances and distinctions of racial colour. The communities that have historically and lastingly been victims of the racial paradigm are chronologically the indigenous people and the enslaved Africans. The historical and cultural depth of this legacy of racism and racial discrimination in the Dominican Republic needs to be analysed in light of the developments that have marked the country's history over the last five centuries.

91. Anti-Haitianism, which has a strong but not exclusively racial component, has played a very important role in this process. Anti-Haitian feelings can already be traced back to the Santo Domingo revolt of August 1791, which profoundly shook the slavery system, and the independence of Haiti from France in 1804, which created an extreme and enduring fear and the cultural and political demonization of Haitians in the whole hemisphere. Following Haitian

independence, the Spanish ruling elites in Santo Domingo continued to foster the Hispanic identity that had been promoted against the western part of the island by presenting the colony as white, Catholic and of Hispanic roots vis-à-vis Haiti, presented as black, voodoo practitioners and with an African culture with French influence. These dichotomies are fundamental in the analysis of the depth of the rejection of the African heritage in Dominican society.

92. A major historical episode in the analysis of anti-Haitianism is the political unification of the island, by Haiti, from 1822 to 1844, following which the Dominican Republic gained its independence. The Special Rapporteur observes that this period in history has remained profoundly present in the collective consciousness of the Dominicans, to the point that nationalist political parties with racist and xenophobic platforms consistently refer to it in order to create a sense of fear of “peaceful invasion from Haiti” among the population, in particular, in the light of the current situation in Haiti and the significant migration flows into the Dominican Republic.

2. The modern political expression of racism and racial discrimination

93. During the regime of Rafael Leónidas Trujillo, from 1930 until 1961, the combination of the ideology of racial prejudice and anti-Haitianism in the construction of the national identity of the Dominican Republic reached its strongest expression. Two key developments of violence of both a physical and symbolic nature enshrined the racial paradigm in the Dominican Republic and the psyche of Dominican society: the killing of thousands of Haitians around the border in 1937, and the implementation of an ideology of national identity built around the denial and rejection of the black African roots of Dominican society and the worship of the country’s mainly Hispanic and symbolically Amerindian roots. The Amerindian roots were a convenient ideological construct - given the almost total disappearance, long before, of the Taino people - directly legitimizing the multiculturalism of the society and indirectly but profoundly de-legitimizing its African roots. Several official programmes, mechanisms and practices materialized this ideology, including the promotion of immigration from Europe and other regions as a means of “whitening” the population; the omission in history books of references regarding the contributions of the enslaved Africans and their descendents in the country; or the creation of an official registration system that classified Dominicans according to their Hispanic and Amerindian roots and negated any colour reference that could link them to blackness and to Haiti. The classification of many Dominicans under the term “Indian” or its many variants - “light Indian”, “dark Indian” amongst others - implicitly created a construct of national identity in which most Dominicans could fit.

94. In that context, with the support of influential intellectual and religious figures, Trujillo, himself of clearly mixed racial origin, developed a comprehensive anti-Haitian ideology that indistinctly used the terms “race” and “nation” in order to show that Haitians and Dominicans not only belonged to different nations, but also to different races. With Haitians considered as a threat to the culture and to the social and ethnic identity of Dominican society, measures were implemented to legitimize and institutionalize this racist ideology, including legislation imposing fines, jail terms and sometimes deportation for those practicing voodoo.

95. That legacy continued to prosper after the end of Trujillo’s dictatorship, especially through the consolidation of a certain narrative presenting the Dominican Republic as a country

predominantly populated by European descendents and whose survival was jeopardized by the mixture with the blood of non-white races. Joaquin Balaguer, an influential intellectual and political figure who dominated the political scene in the country for decades until his death in 2002, played a considerable role in the entrenchment of racial prejudices in the Dominican Republic through his writings,¹² political thought and actions.

96. The Special Rapporteur was deeply concerned by the manifold contemporary manifestations, as testified by the communities affected, of this historical legacy throughout Dominican society at the social, economic, political and cultural levels.

97. First of all, these manifestations are of a social and economic nature, as reflected in the convergence of the map of social and economic marginalization with the map of communities of African descent. The Special Rapporteur welcomes the Dominican Government's acknowledgment in its 2007 report to CERD¹³ that Dominicans of African origin are among the main victims of failure to enjoy economic, social and cultural rights, and highlights that this reality demonstrates the existence of persistent structural and systemic racism and racial discrimination. Poverty cannot be considered per se as the root cause of social and economic exclusion and inherent by nature to particular ethnic communities. Poverty disproportionately experienced by such communities is in fact the consequence of lasting racially discriminatory practices. If not corrected and discontinued, this will in turn aggravate and perpetuate the conditions of poverty, marginalization and exclusion of those communities. Particularly worrying are the difficulties faced by black Dominicans, as recognized by the Government, in areas such as access to skilled employment.

98. Manifestations of that heritage are also of a political nature. Meetings with political parties revealed that anti-Haitianism remains a powerful force in the Dominican political culture. A clear example of the depth and complexity of this phenomenon can be observed through an analysis of the political discourse during the 1990s, characterized by tones of overt racism and anti-Haitianism, in particular when José Francisco Peña Gómez, black Dominican and reputedly of Haitian descent, became a popular presidential candidate. In the view of the Special Rapporteur, the racial and political components of anti-Haitianism, which perpetuate the dichotomy between black Haitians and white, Hispanic or Indian Dominicans, are a major obstacle for Dominicans in recognizing the three roots – Amerindian, Hispanic and African – of their multicultural identity.

99. Finally, the cultural manifestations of racism and racial discrimination touch the central issue of national identity. The Special Rapporteur welcomes the elaboration for the first time in the history of the country of a cultural policy that acknowledges the African contribution in the Dominican Republic. He hopes that this policy will be a first step towards restoring the place that Africans and their descendents ought to have in the national memory of the country and counter the invisibility and silence that black Dominicans face in all spheres of society.

¹² His ideas are notably reflected in his books *La realidad Dominicana* (Dominican reality), from 1943, and *La isla al revés: Haití y el destino dominicano* (The island upside down: Haiti and Dominican destiny'), from 1983.

¹³ CERD/C/DOM/12.

B. Analysis of the independent expert

100. Based on consultations held during the course of her visit the independent expert on minority issues makes the following analysis of the situation of persons belonging to minorities in the Dominican Republic. The legal framework for the analysis is the Universal Declaration of Human Rights, the treaty obligations of the Dominican Republic and the Declaration on the Rights of Minorities.

101. The independent expert is concerned by Government references to upwards of one million Haitians living in the Dominican Republic as if they are a monolithic group without distinction. She notes that this is patently not the case. While there are many recent migrants, many others have lived in the Dominican Republic for decades and formed settled communities. There are now second and third generations born in the Dominican Republic at a time when it was widely understood that the Constitution's *jus soli* provision granted them citizenship. The vast majority have been employed and contributed economically to Dominican society over many decades, having developed strong social and economic ties with the country.

102. All Haitians living in the Dominican Republic, regardless of distinctions, are now having their presence questioned, even if they have been issued with official documents in the past. They complain that they currently live in a climate of uncertainty and fear over their future. The independent expert has found that by failing to make distinctions in the status of persons of Haitian descent, Government officials treat them all as illegal migrants, subject to discriminatory practices, unjustified expulsions, denial of their rights and ultimately also denial of legitimate expectations of citizenship.

103. The independent expert considers persons of Haitian heritage living in the Dominican Republic to be persons belonging to a minority group with rights as elaborated in the 1992 Declaration on the Rights of Minorities. They have that status regardless of whether they are duly recognized as citizens by the Dominican Republic or not. It is now recognized that the obligation of States with respect to the rights of minorities is not limited solely to its citizens. Non-citizens, including migrants, may under circumstances such as those in the Dominican Republic make legitimate claims to government to respect and protect their rights as minorities.¹⁴ States owe a duty to respect, protect and promote the full panoply of human rights of all within their territory with only a few limitations attaching to the status of non-citizens (certain political rights, access to public service, consular protection, the right to enter and remain in the country). Of critical importance is the right to non-discrimination on prohibited grounds as it applies to nationality. Once citizenship is acquired, it cannot be arbitrarily withdrawn collectively on the basis of minority status or national origin.

104. The independent expert is in total agreement with the analysis of the Special Rapporteur regarding the deeply rooted societal prejudice in the Dominican Republic against people with dark skins and African features and that for historical reasons racial prejudice and anti-Haitianism have been conflated. The independent expert believes that these attitudes have provided a kind of moral license for harsh discriminatory policies and practices toward Haitians,

¹⁴ See full discussion in the 2007 annual report of the independent expert (A/HRC/7/23).

the unjust denial of their rights to legal status and citizenship, disregard for their inhumane living conditions, for example on the *bateyes* and the hyper-exploitation of their labour.

105. The independent expert fully supports the findings and judgement of the Inter-American Court in the case of *Yean and Bosico vs. the Dominican Republic* and its observations inter alia that: nationality is the legal bond that guarantees individuals the full enjoyment of all human rights as a member of the political community; although States maintain the sovereign right to regulate nationality, their discretion must be limited by international human rights standards that protect individuals against arbitrary State actions; States are particularly limited in their discretion to grant nationality by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness; in granting nationality, States must abstain from producing and enforcing regulations that are discriminatory on the face of it or that have adverse discriminatory effects on certain population groups.

106. Nationality is a fundamental human right and if there is no other nationality available at birth, to avoid statelessness there is a right to the nationality of the State in which the person is born. No person should be arbitrarily deprived of their nationality.

107. Furthermore, while States may create distinctions in the enjoyment of certain benefits between citizens, non-citizens with lawful status and non-citizens without lawful status, the content of the distinction must comply strictly with human rights norms. Under no circumstances can those distinctions be allowed to create an adverse impact on a certain category of people, by intention or consequence, based on race, colour or national origin.

108. While the possession of identity documents does not ipso facto determine status, lack of documents creates extreme vulnerability to arbitrary denial of rights and legal personality, particularly procedural due process. In this case, there is sufficient evidence that documents are being denied or withheld on racially discriminatory grounds. Ultimately, persons of Haitian descent are being denied the full enjoyment of their right to citizenship on a racially discriminatory basis.

109. As concluded by the Inter-American Court of Human Rights, the “in transit” exception in the Constitution to the granting of citizenship based on *jus soli* cannot be interpreted to include illegal migrants and there is no requirement that legality is a precondition to exercising the right of nationality by birth. The independent expert concludes, therefore, that the Migration Law No. 285-04 is in conflict with article 11 of the Dominican Constitution. She is concerned that there are indications that it will be given retroactive application and that will have far-reaching discriminatory effects on the legal status of Dominicans of Haitian descent and Haitian migrants in regard to access to citizenship. Application of this law to persons born in the Dominican Republic when the Constitution’s *jus soli* provision was interpreted to grant them nationality would be manifestly unjust and discriminatory against this particular minority group. It will render them stateless.

110. Measures undertaken by the Government and implemented by the Central Electoral Board, including via the establishment of a separate birth registration regime for newborns of Haitian descent, onerous requirements for late registration of births, or denial or revocation of *cédulas* belonging to people born in the Dominican Republic, constitute acts which deny

constitutionally granted citizenship to persons belonging to this minority group, along with their children, thus rendering them stateless. Other administrative measures currently employed in the Dominican Republic to deny or challenge on a discriminatory basis the status of others of Haitian descent also violates their rights and leaves them in legal limbo.

111. The independent expert, while recognizing the Government's achievements in offering education to all children up to the sixth grade, considers that Dominicans of Haitian descent are being denied equal treatment and discriminated against in regard to their access to higher education and university, since they are unable to obtain the required *cédula*. Dominicans of Haitian descent who are unable to obtain documents are also effectively excluded from skilled labour markets and relegated to irregular jobs in such fields as agriculture, construction or domestic service.

112. Having visited the border area around Dajabón and *bateyes* in the San Pedro de Macoris region, the independent expert found that Haitians in long-term settled communities as well as Dominicans of Haitian descent live and work in fear and conditions of vulnerability, extreme poverty and super-exploitation of their labour. While they are being administratively denied documentation, all their other rights are subject to arbitrary rejection and abuse by low-level officials, police and military who have power, operate with limited instructions and have little accountability. In these environments the situations faced by minority women are of particular concern. Since they are denied the opportunity to work, their status as non-working dependents creates significantly greater vulnerability.

113. The Government's exercise of deportation and expulsion procedures is considered by the independent expert not to conform to fundamental rights of due process, as mandated under international law and the domestic law of the Dominican Republic, particularly with respect to the right to a fair hearing and to appeal a decision of deportation to a court of law. Information provided strongly supports allegations that there have been summary expulsions where people are arbitrarily stopped on the roadside based on little more than their skin colour and, if they fail to present unquestionable documents, they are loaded onto a truck and dropped on the other side of the border. Reportedly, these kinds of indiscriminate sweeps have caught in their nets black Dominican citizens as well as Haitian migrants.

VI. JOINT RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE INDEPENDENT EXPERT ON MINORITY ISSUES

114. **The Special Rapporteur and the independent expert submit a number of joint recommendations on issues relating to political and legal, intellectual, cultural and ethical strategies to be implemented to tackle the existence of racism and racial discrimination and protect and promote the rights of minorities in the Dominican Republic.**

Recommendations on racism and racial discrimination

115. The experts call upon the Government to officially recognize and publicly acknowledge the existence and the historical and cultural depth of racism and racial discrimination in Dominican society, and express, in the strongest and most determined terms, its political will to combat it. Political and legal strategies are required to fully address the manifestations and expressions of racism and racial discrimination.

116. The Government should recognize the Amerindian, Hispanic and African roots of the multicultural identity of the Dominican Republic and accordingly explicitly inscribe this multicultural identity in the Constitution.

117. The experts call on the Government to initiate a wide and inclusive debate on issues of racism and discrimination within the country, particularly in regard to affected groups, to rebuild confidence across and within communities that there is not a policy of discrimination and exclusion targeted at them.

118. At the institutional level, the Government should establish a consultative body including representatives of State institutions, democratic political parties, non-governmental organizations, community representatives, intellectuals and academics, and trade union and employers' organizations to assess the situation of racism and racial discrimination in the Dominican Republic. This body should formulate a national plan of action against racism, racial discrimination and xenophobia inspired by the Durban Declaration and Programme of Action and aimed at uprooting the scourges of silence and invisibility of the victims and promoting their representation and participation at all levels of society.

119. An independent national institution for the promotion and protection of human rights should be established and empowered, in accordance with the Paris Principles,¹⁵ with the independent authority to work to combat all forms of discrimination in a holistic manner, including on all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. The experts note Law No. 19-01 in this respect, establishing a human rights ombudsman's office (*Defensor del Pueblo*) and urge the implementation of this law in practice.

120. The Government should fulfil its obligations under anti-discrimination provisions of all international and regional human rights treaties to which it is a party including the International Convention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights. In this respect, and in conformity with international law, at the domestic level the Government should sponsor comprehensive legislation aimed at combating racism, racial discrimination and xenophobia, and protecting and promoting the rights of minorities. The Government should rigorously implement such legislation and undertake firm measures to prevent discriminatory practices.

¹⁵ General Assembly resolution 48/134.

121. The collection of data regarding the socio-economic status of the population disaggregated by racial or ethnic identities, national origin and gender lines is recommended as an essential tool to reveal the full extent of social problems experienced by persons including those belonging to different minority groups. Such data will assist in the development of appropriate and effective policies and practices to combat the effects of discrimination.

122. In parallel with a political and legal strategy, the Government should adopt an ethical and cultural strategy that tackles the deepest roots of racism and racial discrimination. Such a strategy should be built around the promotion of reciprocal knowledge of cultures and values, of interaction among the different communities, and of the link between the fight against racism and discrimination and the long-term construction of a democratic, egalitarian and interactive, multicultural society. The rich legacy and depth of multicultural interactions that have influenced Dominican society during its history must be a strategic point of entry in that regard.

123. Education must play a vital role in sensitizing the Dominican population to the historical legacy of colonization and slavery and the complex history that has characterized the relations between the Dominican Republic and Haiti. This is essential to eliminate the negative stigma and stereotypes constantly experienced by black persons – be they Dominicans, Dominicans of Haitian descent or Haitians. The Government is encouraged to revise school curricula and textbooks, including history books, to ensure the appropriate reflection of issues related to the human, cultural and social advantages of multiculturalism and the contributions of the different ethnic groups to the construction of the national identity of the Dominican Republic.

124. The media should initiate a broad and institutional process aimed at both assessing its role in the formation of perceptions, images and thus prejudices and promoting the important role of the media in the fight against racism and xenophobia and the promotion of tolerance and living together. The experts recommend that the media adopt a code of conduct and take steps to reflect the ethnic, cultural and spiritual diversity of the Dominican Republic in both their programmes and their organizational structure.

Recommendations relating to documentation of civil status and citizenship

125. In accordance with article 11 of the Dominican Constitution, the Government of the Dominican Republic should recognize the right of all persons born on Dominican territory, including the children of a Haitian parent, to Dominican citizenship without discrimination on the grounds of the nationality or status of the parents. Considering that it is the State's obligation to grant citizenship to those born on its territory, the Government must adopt all necessary positive measures to guarantee that Dominican-born children of Haitian heritage can access the late registration procedure in conditions of equality and non-discrimination and fully exercise and enjoy their right to Dominican nationality. The requirements to prove birth on Dominican territory should be reasonable and not represent an obstacle for acceding to the right of nationality.

126. The Government should act swiftly to bring its Migration Law No. 285-04 into conformity with article 11 of the Constitution and promulgate regulations that appropriately implement the law in a manner that protects the right to non-discrimination enjoyed by every person within Dominican territory and the imperative to avoid statelessness.

127. The status of all migrants who have been resident in the Dominican Republic should be regularized as soon as administratively possible. Those who have been in the country for an extended period, including Haitian migrants, and who have established family and community ties should be naturalized regardless of inability to prove prior lawful status. The Government should urgently establish a process of nationalization for those who seek Dominican citizenship that is easily accessible, reasonable and affordable for people of limited means.

128. The Government should take effective measures to ensure that all future migrants are given documents at entry points and that employers are held responsible for complying with labour laws with respect to all employees and respecting the human rights of all employees in all situations. The Government should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and harmonize its national legislation accordingly.

129. The Government should put in place effective measures to stop discriminatory practices linked to granting citizenship and civil status registration, including birth certificates and *cédulas*, and to bring administrative procedures in this regard into conformity with due process requirements. In particular, oversight over local civil registry offices should be dramatically increased; Circular 017 of the Central Electoral Board should be withdrawn and replaced with one which encourages an official attitude of facilitation and trust; officials should be given notice that acts of racial discrimination in the exercise of official functions will be severely punished; any denial of request to issue documents should be in writing and contain a full explanation for the denial; all denials of documentation or orders for deportation should be subject to appeal to the courts of general jurisdiction.

130. The experts call upon the Government of the Dominican Republic to fully comply with the judgment and findings of the Inter-American Court of Human Rights in the case of *Yean and Bosico vs. the Dominican Republic*. In particular the Dominican Republic should implement both legislative and administrative measures to ensure non-discriminatory issuance of birth certificates and access to schools.

131. The Dominican Government has a duty to guarantee that private actors do not violate the human rights of persons within Dominican territory. The State has a responsibility to monitor private companies and employers involved in agriculture, construction and related industries, in which many Haitians and Dominicans of Haitian descent are employed.

Recommendations of a general nature

132. **The situation of multiple discrimination facing minority women, particularly those who are black or of Haitian heritage, presents specific challenges, including in the fields of education, employment and housing, which require targeted attention and dedicated resources within relevant ministries and local and regional authorities. The Government should take immediate steps to eliminate the gender bias in the Migration Law that denies Dominican women the ability to pass their nationality on to their children unless the father is Dominican. All women should have equal rights to work, including those whose status is dependent on their migrant husband.**

133. **The Government should fully implement the provisions of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.**

134. **The experts urge the Government to fully conform with its obligations under the Convention on the Rights of the Child for all children, irrespective of nationality, race or ethnic origin. Particular attention in this regard should be paid to children in vulnerable circumstances including those living in the *bateyes* or plantations, or otherwise in conditions of poverty and disadvantage.**

135. **The experts recognize the human, cultural, economic and social complexities and tensions inherent in the historical legacy, the sharing of a border and the different levels of development and political stability between the Dominican Republic and Haiti. They also note the positive measures taken by the Dominican authorities in the area of humanitarian assistance including, for example, the provision of health-care facilities to Haitian migrants. They believe that the promotion of the following principles may contribute not only to the solving of the actual problems but to the strengthening of the relations between the two countries and people: the centrality of their profound and lasting interdependence through geography, history and people; the historical truth based on a joint work of memory; shared political responsibility; reciprocal knowledge of values and cultures; human and cultural interactions between people; recognition and respect of cultural and ethnic diversity; and full adherence and respect of international and regional human rights instruments. The experts call upon the international community to fully support a process of mutually beneficial development.**

136. **Taking into account the requirement of mandate holders to identify possibilities for technical cooperation by the Office of the High Commissioner for Human Rights (OHCHR), the experts recommend the Government to support the establishment of an OHCHR presence within the United Nations Country Team in Santo Domingo.**
