

THE DOMINICAN REPUBLIC AND THE UN HUMAN RIGHTS TREATY SYSTEM

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The Preamble to the Charter of the United Nations begins: “We the people of the United Nations [are] determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”¹ The Charter of the United Nations goes on to articulate one of its purposes as “encouraging respect for human rights and for fundamental freedoms all without distinction as to race, sex, language, or religion.”² In order to achieve its purpose, the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948.³ The declaration, however, did not have a binding effect on member states and contained no enforcement procedures.⁴ Therefore, in order to ensure cooperation with the purposes underlying the Universal Declaration of Human Rights it was necessary to draft and have member states sign binding conventions. It wasn’t until 1976 that the General Assembly finally approved and permitted member states to sign the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, thereby encouraging the respect articulated by the Universal Declaration of Human Rights.⁵

Within the United Nations Human Rights Treaty System, there are a total of seven principal (United Nations sponsored) human rights treaties. These treaties stipulate that States Parties submit periodic reports to the respective treaty monitoring bodies on the implementation of their treaty obligations. Following the review of a report, the treaty body in question issues a set of concluding observations, containing its collective assessment of the state's record and recommendations for enhanced implementation of the rights in question. Arguably, the issuance of concluding observations is the single most important activity of human rights treaty bodies. It provides an opportunity for the delivery of an authoritative overview of the state of human rights in a country and for the delivery of forms of advice which can stimulate systemic improvements.

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¹ U.N. Charter Preamble.

² *Id.*

³ G.A. Res. 217A, U.N. GAOR, 3rd Sess., Pt. I, at 71, U.N. Doc. A/810 (Dec. 10, 1948).

⁴ *Introduction to the UN Human Rights Treaty System*, at <http://www.bayefsky.com/introduction.php> (last visited Feb. 2008).

⁵ *International Covenant on Civil and Political Rights*, Mar. 23, 1976, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights*, Jan. 3, 1976, 993 U.N.T.S. 3.

The Dominican Republic is a party to the United Nations and Organization of American States human rights treaties and covenants. These conventions have been ratified by the Dominican Congress and therefore have the force of domestic law, in accordance with the Constitution.⁶ The Dominican Republic has ratified a large majority of the Human Rights Treaties. These Treaties include the International Covenant on Civil and Political Rights, which was ratified on January 4, 1978, the Committee on Economic, Social and Cultural Rights, which was also ratified on January 4, 1978, the Convention on the Elimination of All Forms of Discrimination against Women, which was ratified on September 2, 1982, the International Convention on the Elimination of all Forms of Racial Discrimination, which was ratified on May 25th 1983, and the latest treaty to be ratified by the Dominican Republic: the Convention on the Rights of the Child, which was ratified on June 11, 1991.⁷ The only two treaties that the Dominican Republic has yet to ratify (although they did indeed sign the following two) are the Committee against Torture and the Committee on the Protection of the Rights of all Migrant Workers.

The Dominican Republic, at first glance, seems to have done their job of producing state reports for most of the ratified treaties.⁸ We will now take a deeper look at the reports that the country has issued regarding some of the treaties that present the more pressing matters for the country, the United Nation's concluding observations on each of these reports, and whether the country has actually answered the important and pressing matters that were supposed to be addressed in each of the treaties.

First, let us look at the report issued by the country addressing the International Covenant on Civil and Political Rights, (CCPR) treaty. Generally, the government of the Dominican Republic states that the rights which are specifically recognized by the CCPR are afforded protection and that such protection is detailed in the country's

⁶United Nations, International Covenant on Civil and Political Rights (CCPR/C/DOM/99/3 (1999)), *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant – Dominican Republic* 9 (Apr. 27, 2000), at http://www.bayefsky.com/docs.php/area/reports/treaty/ccpr/opt/0/state/52/node/4/filename/dominicanrepublic_ccpr_c_dom_99_3_1999 (last visited Aug. 2007).

⁷*Dominican Republic: Ratification History*, at http://www.bayefsky.com/html/dominicanrepublic_t1_ratifications.php (last visited Aug. 2007).

⁸*Dominican Republic: Reporting History*, at <http://www.bayefsky.com/docs.php/area/rephistory/state/52> (last visited Aug. 2007).

Constitution as adopted in the year 1966.⁹ Further protection is afforded by several of the country's laws (which will be detailed *infra*).¹⁰ Within the Dominican Republic, the office of the Procurator-General of the republic is the body that has full competence to ensure that human rights are fully respected within the country.¹¹

The Dominican Constitution addresses relevant matters (relevant for the purposes of the CCPR) such as the type of punishment that shall be applied to a public official or other agent of the Dominican government that commits an act that infringes upon a citizens' individual freedoms or political rights or orders such an act to be committed upon such citizen.¹² As previously mentioned, the Dominican government has made it a constitutional matter to protect the human rights of the country's citizens. A large portion of these rights are addressed in Article 8 of the Constitution.¹³ Article 8 states that "[t]he effective protection of the rights of the human person and the maintenance of the means for his progressive development within a system of individual liberty and social justice compatible with public policy, the general well being and the rights of all are recognized as the principal aims of the state..." This part of the Constitution then details the norms that are laid down in order to ensure the accomplishment of the preceding aims.¹⁴ The Constitution addresses various extreme circumstances where these rights may be impaired. These circumstances include situations where the natural sovereignty of the country is in both serious and imminent danger, where public order is disrupted or when a natural disaster occurs.¹⁵

Article 8 of the Dominican Constitution goes on to discuss another very important issue, the issue of torture, in particular the prohibition thereof.¹⁶ Specifically stated in this section of the Constitution is that "torture or any other penalty or procedure harmful to, or entailing the loss

⁹ United Nations, Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Third Periodic Reports of States Parties due in 1991* (CCPR/C/70/Add. 3) – *Dominican Republic* Nos. 2, 3 (Dec. 4, 1992), at http://www.bayefsky.com/reports/dominicanrepublic_ccpr_c_70_add.3_1992.pdf (last visited Aug. 2007).

¹⁰ *Id.* at No. 3.

¹¹ *Id.* at No. 6.

¹² *Id.* at No. 6.

¹³ *Id.* at No. 6.

¹⁴ *Id.* at Nos. 6, 7.

¹⁵ *Id.* at Nos. 7, 8.

¹⁶ *Id.* at No. 12.

or diminution of, the physical integrity or health of the individual may in no circumstances be established, imposed or enforced.”¹⁷ Also addressed in Article 8 of the Constitution is the concept of freedom of religion. Dominicans are allowed to freely practice any religion that they choose as long as they do not act “improperly and disrespectfully” in doing so.¹⁸

Article 11 of the Civil Code discusses the rights of aliens.¹⁹ Aliens residing within the Dominican Republic enjoy the same rights as the country’s citizens.²⁰

Now that we have seen the country’s address to the CCPR committee, let us discuss what the committee had to say about these reports. The first thing noted in this observation is the fact that the Dominican Republic was extremely delayed in producing the state’s first CCPR state report.²¹ The Committee also expressed extreme disappointment because the reports that were submitted were very general and lacked the most basic of the committee’s requirements set forth in the guidelines.²² Furthermore, the committee expressed much concern about the reported human rights violations that were occurring involving the Haitian immigrants in the Dominican Republic, thus requesting more information about the situation and what was being done to remedy this.²³

Overall, the members of the committee determined that there was not enough awareness of the provisions of the covenant in the Dominican Republic, and that very little was being done in the country in order to make people better aware.²⁴ Concern was expressed with the police’s treatment of detainees, such concern arising due to evidence that the police did not adhere to the covenants.²⁵

Clearly, the state reports are nothing more than a reiteration of the Dominican Constitution and do not shed light on the real situation going on in the country. Although the Dominican Constitution seems to go

¹⁷ *Id.* at No. 12.

¹⁸ *Id.* at Nos. 20, 21.

¹⁹ *Id.* at Nos. 25, 26.

²⁰ *Id.* at No. 25.

²¹ United Nations, *Concluding Observations: Dominican Republic* (CCPR A/40/40 (1985)) No. 383, at http://www.bayefsky.com/html/dominicanrepublic_t4_ccpr.php (last visited Aug. 2007).

²² *Id.* at Nos. 385, 387.

²³ *Id.* at Nos. 430, 437.

²⁴ *Id.* at No. 449.

²⁵ *Id.* at No. 451.

along with the provisions of the covenants of the CCPR, it is also apparent that neither the Constitution nor the covenants of the CCPR are followed in the Dominican Republic. As can be seen in the committee's observation, despite the committee constantly reminding the Dominican representative of the problems that need to be addressed, one such problem being the ill treatment of Haitian workers/immigrants, nothing has been done to remedy it.²⁶

Evidence shows that the Dominican Republic's constitutional provisions are swept aside without any repercussions. For example, although torture is prohibited in Article 8, Section 1 of the Dominican Constitution, there is evidence that torture is widespread in the country, such torture being used by the same people who are hired to uphold the Constitution (the police) and occurring in places where individuals do not pose a significant threat, such as in prisons.²⁷ There are even reports of torture in the country not being investigated!²⁸ The police in the country seem to be more like henchmen than the upholders of the law in the country. One can come to this conclusion after familiarizing oneself with the case of Mojica v. Dominican Republic.²⁹ In this case, Rafael Mojica disappeared shortly after receiving death threats from government officials for his presumed communist inclinations.³⁰ When the committee confronted the Dominican Representative as part of the examination of the merits of the case, the Representative did not deny that the disappearance of Mojica was caused by individuals belonging to the Government's security forces.³¹

In 2003, the Dominican Republic issued a follow up state report responding to the issues raised by the committee's CCPR concluding observations. In this follow up, the country asserted that extensive structural changes have been made in order to strengthen the legal order and to achieve more effective protection of the country's citizens' human

²⁶ *Id.* (In entirety).

²⁷ *Id.* at No. 9.

²⁸ *Id.* at No. 9.

²⁹ *Mojica v. Dominican Republic*, Communication No. 449/1991, U.N. Doc. CCPR/C/51/D/449/1991, No. 2.2 (U.N. Human Rights Committee, Aug. 10, 1994), at <http://www1.umn.edu/humanrts/undocs/html/vws449.htm> (last visited Aug. 2007).

³⁰ *Id.*

³¹ *Id.* at No. 5.6.

rights.³² The country emphasized that there have been no more cases of enforced disappearances, that there has been a decrease in ill treatment of detainees in police custody, and that there has been a significant increase in the amount of members of the state security forces who have been tried in ordinary courts (as opposed to trying these members in special “military” courts).³³ The country stated that to alleviate the prison overcrowding problem, they were to begin construction of two modernized prisons.³⁴ Importantly, the country stated that now it was made clear that habeas corpus proceedings were to be heard as soon as possible and the repercussion for a judge not doing this is suspension of that judge.³⁵ In response to the Haitian immigration and treatment situation in the country, besides mentioning a preliminary draft of a migration law, the Dominican Republic simply stated that they are a poor country and do not have enough resources for even their own citizens.³⁶

One would assume, taking into account the country’s 2003 follow up state report, that presently, almost sixteen years after the Mojica case, significant steps have been taken addressing the human rights violations exerted by the Dominican security forces. This is clearly not the case though as can be seen by the fact that in recent years the security forces continue their unlawful killings, including extrajudicial executions.³⁷ Furthermore, “[t]he security forces... have consistently defended their agents’ conduct, maintaining that most of the deaths occurred in exchanges of gunfire with armed criminal suspects. However, in numerous cases their account was contradicted by witness testimony or other evidence.”³⁸

Instead of improving, the situation is getting worse as the security forces have over the recent years taken their violations of articles six and seven of the convention a step further. This can be seen by the emerging “cases of alleged unlawful killings of demonstrators and bystanders by

³² United Nations, *Follow-up to Concluding Observations: Dominican Republic* (CCPR A/58/40 vol. 1 (2003)) No. 2, at http://www.bayefsky.com/pdf/dominicanrepublic_ccpr_follow_report.pdf (last visited Aug. 2007).

³³ *Id.* at No. 18.

³⁴ *Id.* at No. 24.

³⁵ *Id.* at No. 36.

³⁶ *Id.* at Nos. 39, 42.

³⁷ Amnesty International, *Dominican Republic Human Rights Violations in the Context of the Economic Crisis: Introduction* (Mar. 2, 2004), at <http://web.amnesty.org/library/index/engamr270012004> (last visited Aug. 2007).

³⁸ *Id.*

law enforcement officials; reported excessive use of force; alleged arbitrary arrest of activists and protest organisers [sic]; and unlawful curbs on freedom of expression in the context of the crisis.”³⁹

Now, let us switch gears and discuss another pressing issue in the Dominican Republic that issue being the discrimination against the women in the country. In the year 1979, the United Nations adopted the International Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). One of the main purposes of CEDAW is to ensure de jure and de facto equality for women.⁴⁰ CEDAW has been ratified by almost all of the countries in the world and has become a solid driving force for the promotion and defense of women’s rights at a global level. The Dominican Republic has to date produced a total of five reports to the CEDAW. Let us take a moment and look to see what these reports entail. First, it is important to note that although the discrimination against any group within a country is an important issue to address, the discrimination against women in the Dominican Republic is an especially important issue because this gender makes up a bulk of the Dominican Republic’s population.⁴¹

The country begins discussion of the issue by stating all of the steps that have been taken to develop and increase public awareness of the disadvantaged situation of women.⁴² Unlike the state reports for the CCPR (where just a series of Constitutional passages were stated without mentioning the problems that exist), the country immediately mentions that serious obstacles stand in the way of fully implementing the CEDAW guidelines.⁴³ Also, note is made that “despite the efforts set forth by various sectors of Dominican society...no amendments to establish equal

³⁹ *Id.*

⁴⁰ CEDAW, *State Report: Dominican Republic* (A/59/38 part II (2004)) No. 315, at http://www.bayefsky.com/pdf/dominicanrepublic_t4_cedaw_31.pdf (last visited Aug. 2007) [hereinafter A/59/38 part II (2004)].

⁴¹ United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of Reports Submitted by States Parties under Article 18 of the Convention: Second and Third Periodic Reports of States Parties: Dominican Republic* (CEDAW/C/DOM/2-3) No. 12 (May 12, 1993), at http://www.bayefsky.com/reports/dominicanrepublic_cedaw_c_dom_2_3_1993.pdf (last visited Aug. 2007) [hereinafter CEDAW/C/DOM/2-3].

⁴² *Id.* at No. 19.

⁴³ *Id.* at No. 20.

rights for women were made to the current laws...owing to the indifference of the legislature.”⁴⁴

Details are then discussed regarding a series of conventions that were instituted in order to increase awareness of the issues as well as possible solutions to the issue.⁴⁵ A discussion regarding another problem, adherence to Article 9 of the convention, then takes place. Article nine states that “women shall have equal rights with men to acquire, change or retain their nationality and the nationality of their children...in particular; marriage to an alien shall not automatically affect the nationality of the wife.”⁴⁶ This problem was addressed in the first state report, yet the country itself admits that there have been absolutely no amendments to the provisions that were referred to in the first report that were regarded as discriminatory against women and that “no new measures relating to the nationality of women and their children have been introduced into [Dominican] laws on international relationships.”⁴⁷

The country then goes on to discuss the issue of women engaging in prostitution in the Dominican Republic as well as women migrating into European countries in order to engage in prostitution.⁴⁸ The country at first does not propose a solution to this, instead stating that the country is passing through a severe economic and social crisis.⁴⁹ The Dominican Republic acknowledges that the issues of prostitution and trafficking of women pose very complex problems since these issues are linked to the country’s socioeconomic conditions.⁵⁰ The best that the country could do was to eventually impose Article 334 which introduces the offense of procuring and makes this offense punishable by law.⁵¹

⁴⁴ *Id.* at No. 36.

⁴⁵ *Id.* at Nos. 48, 49.

⁴⁶ *Id.* at No. 50.

⁴⁷ *Id.* at No. 52.

⁴⁸ *Id.* at Nos. 88, 89.

⁴⁹ *Id.* at No. 90.

⁵⁰ United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all forms of Discrimination Against Women: Fourth Periodic Report of States Parties: Dominican Republic* (CEDAW/C/DOM/4) No. 173 (Nov. 10, 1997), at http://www.bayefsky.com/reports/dominicanrepublic_cedaw_c_dom_4_1997.pdf (last visited Aug. 2007) [hereinafter CEDAW/C/DOM/4].

⁵¹ *Id.* at No. 175.

Next, the country states that women have a say in politics, as shown by the fact that a handful have held a number of high-ranking posts.⁵² Another problem that the country points out (without pointing to a proposed solution) is that, despite the fact that over forty eight percent of the voting public is made up of women, women's "underrepresentation [sic] in Congress has prevented them from having a major influence on decision-making concerning measures and laws for their benefit."⁵³

When it comes to violence against women, amazingly enough the Dominican Republic does not have any overall statistics.⁵⁴ The reason why the country states that it does not have any reliable statistics is because "women are socialized to look upon [being abused] as natural and are therefore afraid to report [abuse] so as not to be blamed...."⁵⁵ It is estimated however that a rape occurs in the country once every six hours.⁵⁶ It is also estimated that one in every six Dominican women is or will be the victim of physical violence in her lifetime.⁵⁷

The Dominican Republic then goes on to state the steps taken in order to remedy the persecution against women that occurs in the country. The Department for the Advancement of Women (DGPM) was implemented to be used (among other things) as the "steering organization for public policies in favor of women."⁵⁸ The DGPM has conducted many activities in order to increase awareness about the situation, especially the fact that what many women believe to be an acceptable and natural part of their lives is in fact considered to be abuse.⁵⁹ The DGPM also has headed activities to make the general public aware of the steps that can and that should be taken if they themselves are or know of a woman that has been a victim of abuse, one such activity being the nationwide campaign, "There is no reason for abuse," whose goal is to heighten awareness about intra-family violence and sexual persecution.⁶⁰

The Dominican Republic also states that in furtherance of the effort, there are about twelve non governmental organizations (NGOs) that

⁵² CEDAW/C/DOM/2-3, *supra* note 36, at Nos. 108-09.

⁵³ *Id.* at No. 110.

⁵⁴ CEDAW/C/DOM/4, *supra* note 45, at No. 151.

⁵⁵ *Id.* at No. 153.

⁵⁶ *Id.* at No. 151.

⁵⁷ *Id.* at No. 152.

⁵⁸ *Id.* at No. 154(c).

⁵⁹ *Id.* at No. 154 (c).

⁶⁰ *Id.* at No. 154.

“[give] legal and psychological assistance to women who are victims of intra-family and sexual violence.”⁶¹ Other efforts that have been taken in order to address the stereotyping and prejudices against women that take place in the country include the creation of the Department of Education for the Advancement of Women, whose major goal is to “guarantee access to and improve the quality of education for girls and women and to remove any obstacles there may be...and remove all sex stereotyping in education.”⁶²

When it comes to the education of women, illiteracy is higher among men than women; it is estimated that there are one hundred and twenty five women for every one hundred men enrolled at secondary and university level education facilities.⁶³ Interestingly, in one of the major universities in the country, the Universidad Autonoma, “in the late 1980s, women accounted for sixty five percent of the graduating class in teaching, eighty percent in pharmacy, chemistry and bioanalysis, sixty five percent in nursing, and more than eighty percent in psychology.”⁶⁴

In the latest CEDAW state report (April 11, 2003), the country details the progress that has taken place towards the elimination of discrimination against women in the Dominican Republic. Four categories are discussed.

Firstly, the country states that legal and judicial reforms have been implemented through the enactment and application of laws to strengthen and broaden women’s rights.⁶⁵ The country states in this latest report that “[s]even laws were enacted between January 1998 and September 2001 to promote the implementation of [CEDAW] relating in particular to the situation of the migrant population, health, social security and political participation by women.”⁶⁶ Secondly, the country states (and goes ahead to detail) that it created mechanisms and programs relating directly or

⁶¹ *Id.* at No. 155.

⁶² *Id.* at No. 167.

⁶³ *Id.* at No. 225.

⁶⁴ *Id.* at No. 239.

⁶⁵ United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all forms of Discrimination Against Women: Fifth Periodic Report of States Parties: Dominican Republic* (CEDAW/C/DOM/5) ch. III (Apr. 11, 2003), at http://www.bayefsky.com/reports/dominicanrep_cedaw_c_dom_5.pdf (last visited Aug. 2007).

⁶⁶ *Id.*

indirectly to improving the situation and status of women.⁶⁷ Thirdly, the country details the design and elaboration of instruments for action (discussed supra).⁶⁸ Fourthly, concrete actions for the protection and promotion of women's human rights, "such as the creation of women's protection squads in some cities...have led to significant improvements in women's rights from the legal standpoint, as have various activities and campaigns to promote awareness of women's rights, particularly in relation to violence and political participation."⁶⁹

In regards to domestic violence against women, the country states that during the second half of the 1990's, domestic violence against women became more visible and that legislation and mechanisms for the prevention and eradication of such violence were established.⁷⁰ Furthermore, the country specifies that there has been an increase in the number of NGOs running specialized programs relating to domestic violence and that the then existing programs have been strengthened as well.⁷¹

Although the country attempts to show that improvements have taken place, they then detail the difficulties that have arisen when attempting to enforce the Act, a majority of these difficulties stemming from the same root: a lack of resources and money.⁷²

In this latest CEDAW report, the country continues to battle the problem of prostitution and, interestingly enough, the country has yet to develop an accurate count of the number of women engaging in prostitution.⁷³ The Center for Overall Guidance and Research does estimate that the number of sex workers in the country has gone up by an alarming 40,000 women in a period of two years.⁷⁴ The Dominican Republic details the efforts that are being taken in order to combat prostitution and the trafficking of women, these efforts including raising awareness among the government officials that deal with the problems of trafficking persons and prostitution.⁷⁵

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at §3.3.1.

⁷¹ *Id.* at §3.3.1.

⁷² *Id.* at §3.3.2.

⁷³ *Id.* at §3.6.

⁷⁴ *Id.* at §3.6.

⁷⁵ *Id.* at §3.6.

When it comes to teenage pregnancy, the rates continue to be significantly less than ideal in the country. According to this report, although the adolescent pregnancy rate did fall two percent in a four year period, it still remains very high at twenty one percent.⁷⁶ Among the less educated, that percentage leaps to an alarming thirty percent of adolescent women having been pregnant.⁷⁷ The country does not state any efforts taken in order to remedy this situation and instead mention that “[t]he situation is worsened by the fact that very little sex education is provided by the schools.”⁷⁸

The Committee on the Elimination of Discrimination against Women considered the CEDAW reports of the Dominican Republic and, in response to these reports, issued a concluding observation. The committee was pleased that the Dominican Republic followed the general guidelines in their CEDAW reports.⁷⁹ It welcomed the extremely well structured reports that “provide clear and frank information on the situation of women in the Dominican Republic.”⁸⁰ Furthermore, the committee was convinced that “although the country suffered from many constraints and a lot remained to be done, the women’s movement had made big strides.”⁸¹ The committee was also impressed with the fact that the Dominican government, despite the fact that they were undergoing a period of change, made great efforts to ensure the systematic inclusion of a gender perspective in many of its new policies and programs.⁸² Furthermore, the committee also noted that the Dominican Republic did indeed pass new laws and legal revisions that in effect brought the domestic situation into greater conformity with the convention.⁸³

Despite being impressed by the Dominican Republic’s state reports, the situation is still not the perfectly ideal situation that the committee seeks. The committee was quick to note that the extremely high poverty levels, with fifty seven percent of the Dominican population living below

⁷⁶ *Id.* at §3.12.1.

⁷⁷ *Id.* at §3.12.1.

⁷⁸ *Id.* at §3.12.1.

⁷⁹ United Nations, *Concluding Observations: Dominican Republic* (CEDAW A/43/38 (1988)) No. 132, at http://www.bayefsky.com/pdf/dominicanrepublic_t4_cedaw.pdf (last visited Aug. 2007) [hereinafter CEDAW A/43/38 (1988)].

⁸⁰ *Id.* at No. 321.

⁸¹ *Id.* at No. 132.

⁸² *Id.* at No. 323.

⁸³ *Id.* at No. 325.

the poverty line, most affect women, thus aggravating the discrimination and inequality imposed on the women in the country.⁸⁴ Furthermore, the committee also discusses how the poverty problems mostly affect women due to sex trafficking and prostitution that deeply inflict the country.⁸⁵ The committee expresses much concern about the fact that, although the Dominican Republic has taken measures to combat the trafficking of women, a growing number of women and girls are indeed victims of trafficking and the country is not really paying any mind to the problem of exploitation and prostitution or the causes for this exploitation and prostitution.⁸⁶

The committee also notes that “notwithstanding legislative achievements, discriminatory provisions continue to exist, including in the civil code, the nationality law and marriage and family laws....”⁸⁷ Note is made that the fact that working women suffer extreme discrimination in wages and benefits is very worrisome.⁸⁸ Also, the committee sees trouble in the “obvious persistence of stereotyped and conservative attitudes, behaviours [sic] and images regarding the roles and responsibilities of women and men which reinforce the inferior status of women in all spheres of life and hamper the practical realization of equality between women and men.”⁸⁹ The committee then suggests that, in order to remedy some of these trouble spots, the main thing that the Dominican government needs to do is to make women a priority in its poverty eradication strategy.⁹⁰

In comparing the country’s CEDAW and CCPR reports, one can come to the conclusion that based on the faces of these reports, the Dominican Republic has put a lot more effort and time into the issues revolving around women’s rights than those issues in the country involving civil and political rights. Although this may be true and although the committee seems to overall be pleased with the country’s response to the situation, alternate sources suggest that there is much that goes on in the country that infringes on the woman’s human rights and

⁸⁴ *Id.* at No. 330.

⁸⁵ *Id.* at No. 333.

⁸⁶ A/59/38 part II (2004), *supra* note 35, at No. 296.

⁸⁷ CEDAW A/43/38 (1988), *supra* note 74, at No. 332.

⁸⁸ *Id.* at No. 336.

⁸⁹ A/59/38 part II (2004), *supra* note 35, at No. 292.

⁹⁰ CEDAW A/43/38 (1988), *supra* note 74, at No. 341.

that this ongoing situation is not being adequately addressed by neither the committee nor the country.

One such issue is the pregnancy-based sex discrimination that occurs within the Dominican Republic. A relatively recent article, published after the latest state report, emphasizes that “women in...the Dominican Republic face widespread sex discrimination on the basis of their reproductive status.”⁹¹ It has been documented that nearly two thirds of a group of thirty one women free trade zone workers reported being subjected to mandatory pregnancy testing as a condition for both accessing new work and for keeping their current employment.⁹² It has also been documented that “[t]he Dominican Government has done little to curb or end this practice, and certainly nothing that would compel companies to stop mandatory pregnancy testing.”⁹³

Both the Dominican Republic’s laws and many of the international human rights treaties that the Dominican Republic is a part of prohibit sex discrimination in the workplace, especially such blatant discrimination as the one at hand.⁹⁴ For the most part, the companies that participate in these mandatory pregnancy tests deny work to all of the women that are determined to be pregnant.⁹⁵ The pregnant women are not told of the reason why they are being denied work; they are simply told that no work is available for them.⁹⁶ This may lead a person to inquire as to how then women know that they are being denied work due to their pregnant status. The answer to this is clear as the laboratories that carry out the pregnancy tests (when confronted) do not hide the fact that they test for pregnancy at the request of these companies.⁹⁷

This type of practice clearly creates a chilling effect where women that know they are pregnant stop looking for jobs because of the fear that they will be subject to a pregnancy test and denied work due to their

⁹¹ Human Rights Watch, *Pregnancy-based Sex Discrimination in the Dominican Republic’s Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA): A Human Rights Watch Briefing Paper* (Apr. 2004), at http://hrw.org/backgrounder/wrd/cafta_dr0404.htm (last visited Aug. 2007).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

pregnant condition.⁹⁸ It is very clear that, in general, pregnancy testing discourages females seeking a job in the Dominican Republic, not only at the companies that are known for sure to test, but also at those companies that might test. This “chilling effect exacerbates an already unusually large gender gap in employment figures [and] in fact, women are twice more likely to be unemployed than men.”⁹⁹

Discrimination against women infected with the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) also poses a serious hindrance on the Dominican Republic’s achievement of the CEDAW goals. Women who seek work in the tourism industry or the export processing zones (the two main employers of women in the Dominican Republic) are often tested for HIV as a condition to getting a job, in violation of their right to nondiscrimination on the basis of health status in access to work and in the workplace. This practice also constitutes a violation of the Dominican Republic’s domestic AIDS law.

The independent nongovernmental organization Human Rights Watch has conducted research on the human rights violations suffered by women in the Dominican Republic that have tested positive for either HIV or AIDS...and the results are alarming.¹⁰⁰ The NGO has documented violations of the rights to bodily integrity, nondiscrimination, the highest attainable standard of health, work, information on health, and privacy. Even more disturbing is the fact that “[t]hese violations occurred in the form of involuntary and mandatory HIV testing, unauthorized disclosure of confidential HIV test results, and denial of work or adequate health services because of women’s HIV status.”¹⁰¹ It has been duly noted by this NGO that “[t]he Dominican government has not provided adequate remedies for these abusive practices, allowing private employers to continue mandatory HIV testing with impunity...the [Dominican] government has failed to convey to the general public that job seekers and employees have a legal right to refuse HIV testing and that the Ministry of

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Human Rights Watch, *Dominican Republic Discriminates Against Women with HIV: Letter to CEDAW Committee Members*, at <http://hrw.org/english/docs/2004/05/25/domini8617.htm> (last updated 2006).

¹⁰¹ *Id.*

Labor could provide legal assistance in cases of alleged discrimination on the basis of HIV status.”¹⁰²

Human Rights Watch is not the only group that has taken notice of the apparently occult situation in the country. Amnesty International tells the story of a woman named Rita who lives in the slums of Batey in the Dominican Republic.¹⁰³ Rita found out that she was HIV positive when she was subjected to an involuntary HIV test by her employer. The news of Rita’s disease was shocking enough, but when the employer fired Rita due to her then newly discovered ailment this was surely enough to shock Rita’s senses.¹⁰⁴ The hospitals confirmed that Rita is infirm with the disease, but that is as far as the diagnosis went; the hospitals had nothing else to offer Rita. It is clear that Rita is not an isolated case as “HIV positive people from other towns reportedly had similar experiences, suggesting that discrimination in the labour [sic] market is common.”¹⁰⁵ Because of the treatment that the situation has received in the country, it has been stated that “[i]n the Dominican Republic, many women suffer double discrimination, both as women and as people living with HIV”¹⁰⁶

After perusing the Dominican Republic’s state reports and the concluding observations from the committee, the average reader would assume that everything is on track to get women equal treatment in the Dominican Republic. NGOs such as Human Rights Watch demonstrate otherwise. The CEDAW reports that the Dominican Republic has submitted may be accurate when taken into consideration as a whole, but are incomplete. The reports fail to address the issues of discrimination against pregnant and HIV/AIDS positive women, issues that should be taken very seriously because AIDS is an epidemic affecting millions of lives, not just an isolated few. Amazingly enough, the CEDAW did not discuss the above mentioned issues in their concluding observation to the country; thus they did not issue recommendations as to what steps have to

¹⁰² *Id.*

¹⁰³ Amnesty International, *Poor and HIV-positive in the Dominican Republic* (May 2006), at <http://web.amnesty.org/wire/May2006/HIV> (last visited Aug. 2007).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Human Rights Watch, *Dominican Republic: Women with HIV Doubly Abused: HIV-positive Women Denied Work, Medical Treatment* (July 13, 2004), at <http://hrw.org/english/docs/2004/07/13/domini9054.htm> (last visited Aug. 2007) (this statement was made by LaShawn R. Jefferson: Executive Director of the Women’s Rights Division of the Human Rights Watch).

be taken in order to remedy these obvious CEDAW violations occurring within the Dominican Republic.

The situation has obviously not improved as much as the state reports and observations show. There are still situations that clearly and blatantly violate women's rights within the country and that do not adhere to the international regulations that CEDAW has put forth, situations (such as the two previously mentioned) that have yet to be dealt with by either the CEDAW or the Dominican government. Although the government may have recently implemented a number of measures that contribute to the prevention of HIV/AIDS, it has failed to take women's inequality and discrimination seriously as a contributing factor in the spread of the disease.¹⁰⁷

Furthermore the situation is that "the government of the Dominican Republic has demonstrated no political will to provide redress for the rampant discrimination suffered by women workers living with HIV or AIDS, or to establish a credible and independent oversight mechanism to identify and remedy violations in the health care system."¹⁰⁸

Although the domestic AIDS law states that sanctions are to be imposed for the unauthorized release of HIV test results, these sanctions are simply not applied in the Dominican Republic (despite rampant abuse). The Dominican Republic's Ministry of Women's Affairs hit the nail right on the head when she stated to CEDAW that "[d]espite its achievements in improving [the] status of women in the Dominican Republic, [the country] must do more..."¹⁰⁹ Although the issue of AIDS in the Dominican Republic was raised to CEDAW orally, it seems as if not enough attention was given to this very serious situation, a situation so severe that it alone is enough to thwart all efforts taken by the country to implement the convention.¹¹⁰

Now on another note, the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and its lack of

¹⁰⁷ See "A Test of Inequality: Discrimination Against Women Living with HIV in the Dominican Republic" (July 2004), available at <http://hrw.org/reports/2004/dr0704/> (last visited Aug. 2007).

¹⁰⁸ See *id.* at Section V: Conclusion.

¹⁰⁹ Science Blog, *Despite Its Achievements in Improving Status of Women, Dominican Republic Must Do More, Its Representative Tells Monitoring Committee* (Feb. 3, 1998), at <http://www.scienceblog.com/community/older/archives/L/1998/A/un980093.html> (last visited Aug. 2007).

¹¹⁰ *Id.*

implementation in the Dominican Republic is definitely an important topic that should be analyzed. Despite the fact that CERD was ratified by the country in the year 1983, only one state report has been produced to date. In looking at this very brief report, one of the main things that should strike the reader is the very bold statement by the country that “there is no racial prejudice....”¹¹¹ The country goes on to state that “there is absolutely no foundation for the belief that there is discrimination against Haitians living in the country.”¹¹² The country also expresses that in the history of the Dominican Republic, there has never existed any legislation that establishes racial discrimination, and thus the country does not feel that there is a need to condemn racial discrimination within the meaning of Article II of the convention.¹¹³ This is about all of the relevant information that the Dominican Republic has submitted to CERD regarding the elimination of racial discrimination. The report then goes on to introduce what can be seen as filler - information that has nothing to do with the situation at hand.

Now, let us examine how CERD responded to the Dominican Republic’s report. The committee expressed much regret at the brief and vague nature of the report.¹¹⁴ The committee especially wanted an explanation as to why the Dominican Republic states that there is no form of racial discrimination within the country’s borders.¹¹⁵ Also, concern is expressed that there are reports which point to Haitians being discriminated against within the Dominican Republic, along with darker skinned Dominicans.¹¹⁶ The committee then concludes with, among other things, a recommendation to the Dominican Republic that they take the necessary steps needed in order to meet the requirements of articles two and five of the convention.¹¹⁷

¹¹¹ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Eighth Periodic Report of States Parties due in 1998: Dominican Republic (Addendum)* (CERD/C/331/Add.1) No. 6 (Feb. 11, 1999), at http://www.bayefsky.com/reports/dominicanrepublic_cerd_c_331_add.1_1998.php (last visited Aug. 2007).

¹¹² *Id.* at No. 6.

¹¹³ *Id.* at No. 27.

¹¹⁴ CERD, *Concluding Observation: Dominican Republic* (CERD A/45/18 (1990)) No. 232, at http://www.bayefsky.com/html/dominicanrepublic_t4_cerd.php (last visited Aug. 2007).

¹¹⁵ *Id.* at No. 232.

¹¹⁶ CERD, *Concluding Observation: Dominican Republic* (CERD A/54/18 (1999)) No. 510, at http://www.bayefsky.com/html/dominicanrepublic_t4_cerd.php (last visited Aug. 2007).

¹¹⁷ *Id.* at No. 512.

The committee could only do so much with what the Dominican Republic gave them in terms of CERD reporting. The bottom line is that most of the inhabitants of the Dominican Republic truly believe that they live in a non-racially discriminatory country. Racism is as real in the Dominican Republic as is sexism. One black woman describes her experience in the Dominican Republic as a “double-edged sword of racism and sexism that unmercifully pricked [her] throughout [her] journey.”¹¹⁸ Some of the racism that the author experienced in the country included watching men asking her white friends to dance while no one asked her to dance, a host mother emphasizing that the author not refer to herself as black but to call herself Indian instead, and a trip where the host family was afforded the opportunity to decide who went away for the night...needless to say, the author’s white friends got to go.¹¹⁹

Once again, the previously mentioned author’s experience is not an isolated one. In an article by Amnesty International, it is stated that “[o]fficials use racial profiling to intercept undocumented migrants...[y]oung black men are the main victims of such speedy operations in which even those holding a valid visa, or proof of permanent residence or Dominican nationality are deported to Haiti because the authorities automatically deem their documents to be forged.”¹²⁰ In the article, one Dominican of Haitian origin who himself was deported to Haiti despite his Dominican citizenship is quoted as stating that “[i]f you are black, with identification card or without it, with birth certificate or without, it is the same, it has no value...[i]n the streets, with migration officials, you don’t have any rights.”¹²¹

It is obvious that the Dominican Republic’s CERD brief, extremely vague and inaccurate state report does not even begin to scratch the surface of the racial discrimination problems that are present within the country, the same problems that CERD was originated to protect. The committee did the best that they could with the information that they received from the country and set forth some very good recommendations as a starting point for the country’s implementation of the CERD convention. Unfortunately, there is only so much that the committee can

¹¹⁸ Kiini Ibura Salaam, *There’s No Racism Here? A Black Woman in the Dominican Republic* (1994), at <http://www.nathanielturner.com/kiiniiburasaalam2.htm> (last visited Aug. 2007).

¹¹⁹ *Id.*

¹²⁰ Amnesty International, *No Better Life for Haitians in Dominican Republic* (Dec. 1, 2006), at <http://web.amnesty.org/library/Index/ENGNWS210112006> (last visited Aug. 2007).

¹²¹ *Id.*

do to ensure that the implementation of the CERD convention is established within the Dominican Republic. That the country's own government does not believe that racism exists within its borders demonstrates the implausible situation that the committee is presented with in getting the Dominican Republic to implement a system that will ensure adherence to the CERD convention guidelines.

All things taken into consideration, the system is making some progress in bringing to light the country's human rights record. As can be seen by the previous discussion, it is inarguable that, thanks to the United Nation's treaty system, the human rights situation in the Dominican Republic has definitely improved. However, the discussion also demonstrates that for every area where improvement has been made another area where significant attention is needed surfaces.

As has been shown, the system is not doing an ideal job of pinpointing the exact areas where improvement is most needed. Non-Governmental Organizations and intergovernmental bodies are the ones that have really exposed the situation of immigrants and women (among other issues) in the Dominican Republic: inhumane working environments; unhealthy housing conditions; limited freedom of movement; constant surveillance by armed guards; threats; and physical violence. For years, there was actual slavery: future emigrants were brought into the Dominican Republic by smugglers and then literally sold, these emigrants mostly consisting of prostituted women or Haitians. For the most part, this system is no longer in operation, but the situation of the immigrants remains almost unchanged.

This discussion on a couple of the treaties ratified by the Dominican Republic provides an example of what one can expect if one were to delve into the remaining ratified treaties: some improvement but a need for much more improvement. Things would go much more smoothly if the United Nations had a way to penalize a non-conforming country. To simply say "this is the way that things should be and this is what you should do to make things this way" does not provide enough incentive for the non-conforming country to conform. This type of system tends to lead to situations such as the one illustrated by the Dominican Republic, a situation where the country chooses the areas they want to improve and simply ignores those areas they do not even want to discuss.