

# DOMINICAN REPUBLIC

## EXECUTIVE SUMMARY

The Dominican Republic is a representative constitutional democracy. In 2008 voters elected President Leonel Fernandez of the Dominican Liberation Party (PLD) for a third term, and in 2010 elections the PLD and its allies won majorities in both chambers of Congress. Impartial outside observers assessed these elections as generally free and fair. There were instances in which elements of the security forces acted independently of civilian control.

The most serious human rights problems were lack of respect for the rule of law, manifested by extrajudicial killings and beatings and other abuse of suspects; violence and discrimination against women, including domestic abuse, rape, and femicide; and severe discrimination against Haitian migrants and their descendants, including the retroactive application of a new immigration policy resulting in de facto statelessness for persons who have lived in the country for generations.

Other human rights problems involved widespread corruption, arbitrary arrest and detention, fair to harsh prison conditions, harassment of certain human rights groups, child prostitution and other abuses of children, trafficking in persons, violence and discrimination against persons based on sexual orientation, ineffective enforcement of labor laws, and child labor.

Although the government took some steps to prosecute and punish police and security officers who committed abuses, there was a widespread perception of impunity afforded to senior officers and other government officials.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

The government or its agents did not commit any politically motivated killings; however, there were numerous reports that security forces were involved in many killings that were unlawful, unwarranted, or involved excessive use of force.

Between January and July police killed 154 persons, according to the Office of the Prosecutor General and Amnesty International (AI), an increase from 125 over the same period in 2010. AI noted that government statistics showed that police

committed 10 percent of all the killings in the country that year. According to the police's Center for Statistics and Cartography, 263 civilians died during legal police action during the year, nine more than in 2010, while 47 police officers lost their lives in the line of duty and 23 died while off-duty.

However, the National Human Rights Commission (NHRC), a nongovernmental organization (NGO), reported 300 police killings, although the methodology used to arrive at this figure was unclear. Lack of training, lack of accountability, and inadequate supervision by superiors contributed to these police killings. Human rights NGOs asserted that, as in previous years, the police continued to employ unwarranted deadly force against criminal suspects. The National Police regularly justified the use of deadly force by claiming that the deaths occurred during an "exchange of gunfire."

According to AI, police shot and killed 21-year-old Luis Alfredo Dominguez Rodriguez (known as "Felo") on January 26 in Nagua. His friend Henry Ortiz, who was injured in the same incident, reported that four officers in a patrol car stopped them and without saying a word, shot him five times. Ortiz said an officer then shot Dominguez after one of the officers said they did not want a witness to the killing. The police then took both men to a hospital, where Dominguez died a few hours later. Ortiz remained hospitalized for 20 days. The police officers claimed the incident was an exchange of gunfire, producing as evidence an illegal firearm allegedly seized from Ortiz. Authorities detained one of the four officers, released two on bail, and dropped charges against the fourth. At year's end the Public Ministry reported that the first preliminary court hearing to determine if the case should go to trial was scheduled for January 2012, but it had been postponed several times.

A court sentenced police officer Manuel de Jesus Martinez German to 20 years' imprisonment and a fine of 5 million pesos (\$131,000) for the June 2010 killing of Abraham Ramos Morel and absolved the other officer accused of charges related to the death. The trial of five police officers (Mayor Jose Estrella Fernandez, Second Lieutenant Carlos Alberto Peguero Ortiz, Sergeant Edwin Galvez Fernandez, Sergeant Major Richard Urbaz Gomez, and Sergeant Major Miguel Antonio Frias de Jesus) charged with murder for the July 2010 killing of Elio Reyes Severino was set for March 26, 2012.

## **b. Disappearance**

There were no reports of politically motivated disappearances.

In October the Rio Piedras, Puerto Rico, chapter of the Dominican Committee of Human Rights (DCHR) stated that the former Chief of the National Police Rafael Guillermo Guzman Fermin and General Juan Manuel Fructuoso Heredia were responsible for the torture and subsequent disappearance of Juan Almonte Herrera in September 2009. As in previous years, authorities denied the charges and asserted that Almonte was a fugitive from justice, since he was suspected of complicity in the 2009 kidnapping of Eduardo Baldera Gomez. The DCHR and Almonte's family members asserted that the government failed to comply with Inter-American Commission on Human Rights requests to investigate the whereabouts of Almonte and to provide adequate protection for his family.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

Although the law prohibits torture, beating, and physical abuse of detainees and prisoners, members of the security forces, primarily police, continued such practices. The NHRC reported that the police continued to be involved in incidents that resulted in maiming or severely injuring unarmed civilians. It brought five cases against police officials on charges of mistreatment of detainees, but none of the accused officers were prosecuted during the year. However, the NGO also reported a general improvement in the treatment of detainees during the year, noting that the problem of mistreatment seemed to stem from a lack of compassion on the part of the officers and a lack of awareness or training in the laws and proper methods of treatment. Nonetheless, there were also reports of use of excessive force against demonstrators and protesters by members of the security forces. Human rights organizations stated that uniformed vigilantism persisted on a nonlethal level.

The law provides penalties for torture and physical abuse, including sentences from 10 to 15 years in prison. Civilian prosecutors sometimes filed charges against police and military officials alleging torture, physical abuse, and related crimes. Authorities sent abuse and torture cases to civilian criminal courts rather than police tribunals.

In March the District Attorney's Office called for investigation of four police officers on charges of brutally beating Romero Omar Pena Baez. Pena accused Corporal Victoriano Castro Lazala, Private Raul Antonio Benavides Javier, First Lieutenant Franklin Casimiro Soto Ramirez, and Corporal Jonathan Arache Rodriguez, of acts of barbarism and torture, voluntary assault and battery, unlawful

arrest and imprisonment, abuse of authority, and violation of freedom, after they pulled him from his vehicle and beat him when he yelled at them for hitting his car with a billy club. On March 16, the Police Chief fired three of the four officers, saying that they reacted excessively and with a lack of tact to hit a man driving his vehicle with his family, and that they would be prosecuted.

Senior police officials treated the prohibition on torture and physical abuse seriously, but lack of supervision and training through much of the law enforcement and corrections systems undercut efforts to contain the problem. Physical abuse of detainees, most commonly beatings, as well as the use of different types of torture to obtain confessions from detained suspects, continued to be a problem.

Lawyers from the National District prosecutor's office were supposed to monitor the investigative process to ensure that detainees' rights were respected in high-volume police stations and in several National Drug Control Directorate (DNCD) offices. Assistant prosecutors at times reportedly acquiesced in improper police practices rather than insisting they be changed to conform to constitutional standards.

### **Prison and Detention Center Conditions**

While prison conditions ranged from fair to extremely harsh, the government made advances with newer "model prisons" known as Correctional and Rehabilitation Centers (CRCs) where prisoners experienced improved conditions in comparison with other facilities. The CRC program had 14 model prisons, based on the concept that most detainees will eventually return to their communities, and thus the CRCs should serve to prepare them for a second opportunity in life. The CRCs, which held 19 percent of all prisoners, strove to provide educational, labor, and artistic opportunities necessary to rehabilitate detainees in a setting of respect and discipline. In contrast to the traditional prisons, the model prisons were run entirely by trained civilian guards, were not overcrowded, and met the basic nutritional needs of inmates.

According to the director of prisons, per capita expenditure for CRC prisoners was three times more than that spent in conventional prisons. However, this improvement for some prisoners came at the expense of others in the system, because when a facility was converted to a model prison, excess or dangerous inmates were transferred to other locations, increasing the strain on the already overcrowded prison system.

According to the Directorate of Prisons, there were 21,610 prisoners and detainees--of whom 604 were female--held in 41 prisons, with an intended capacity of 11,055. Of the 41 prisons, 27 were traditional prisons and 14 were model prisons. The new CRCs held 4,208 of these prisoners. Virtually all prisons, other than the CRCs, experienced extreme overcrowding. La Victoria prison, the largest in the country, held 5,390 prisoners in a facility designed for 2,000. Najayo men's prison, the second largest in the country, was built for 950 prisoners and held 2,893 prisoners. La Romana appeared to be the most overcrowded prison, holding 719 inmates in a prison with an intended capacity of 91. Air circulation was a problem, and the danger of a fire was high.

Reports of mistreatment and inmate violence in prisons were common, as were reports of harassment, extortion, and inappropriate searches of prison visitors. Health and sanitary conditions were poor, and some prisons effectively were out of the control of authorities and run by criminal gangs of armed inmates. A common sentiment among prison wardens at conventional prisons was that while the wardens may control the perimeter, inmates often ruled the inside with their own rules and system of justice. In general this situation differed from the CRCs, where specialized prison guards increased control of prison areas. The attorney general, who oversaw the model prisons, reported that the incidence of corruption within the CRCs remained minimal.

Most inmates in conventional prisons begged for or purchased food from persons in the vicinity of the prison or obtained it from family members. However, the Director of Prisons indicated that a sufficient amount of food was provided to the prisons for each inmate, but in most prisons it was served earlier than the prisoners were accustomed to eating. Prisoners often were not taken to their trials unless they paid bribes to the guards, and visitors frequently had to bribe prison guards in order to visit prisoners. Similarly, detainees had to pay bribes to be allowed to attend vocational training offered at some facilities. Prison officials accepted money in exchange for a recommendation that a prisoner be furloughed or released for health reasons. There were credible allegations that prisoners could obtain early release on parole for a bribe.

Conventional prisons often did not provide adequate medical care to inmates. According to the Directorate for the Control of Sexually Transmitted Diseases and HIV/AIDS, only three prisons in the system provided HIV/AIDS treatment and care services as of June 2010. However, according to the director of the CRCs, out of the 14 model prisons, 13 had inmates with HIV/AIDS and all 13 provided

HIV/AIDS treatment and care services to those inmates. Inmates in the model prisons who had severe cases of HIV/AIDS or terminal illnesses were transferred to hospitals temporarily and often benefitted from requests made to change penalties to house arrest.

No information was available about prisoner deaths during the year. In 2010 none of the reported prisoner deaths was attributed to guards and most were related to various illnesses, including tuberculosis and HIV/AIDS.

Although a warden who reports to the attorney general was technically responsible for running each prison, in practice police or military officers (generally appointed for a period of only three to six months and responsible for providing security) were usually in charge of most conventional prisons. In 2010, approximately 80 percent of prison guards were military or police officers rather than civilian correctional officers, who were employed exclusively at the CRCs.

There were continued allegations of drug and arms trafficking, prostitution, and sexual abuse within prisons. There continued to be special sections within prisons where police officers convicted of criminal activity, including a few known human rights abusers, were held.

Female inmates generally were separated from male inmates. Half of all female inmates were held in prisons only for women, and three of the 14 CRCs were female-only. Conditions in the prison wings for women generally were better than those for men. Female inmates were allowed conjugal visits, and those who gave birth while incarcerated were permitted to keep their babies with them for up to a year.

Juveniles were processed using specialized juvenile courts and generally were held in one of seven juvenile facilities, although the press reported that some juveniles were being held in regular prisons.

Although the law states that prisoners must be separated according to the severity of the criminal offense, in general authorities did not attempt to do so. Pretrial detainees were held together with convicted prisoners in most cases, although in the CRCs convicted felons were separated from those in preventive custody. The number of prisoners in preventive custody was difficult to verify, as many prisoners were still considered to be in preventive custody after an initial conviction because they were awaiting an appeal. The law states that the pretrial

waiting period should not exceed three months, but it can be extended up to 18 months in certain complex cases.

There were also insufficient efforts to segregate and provide services to mentally ill prisoners, except in the case of the CRCs in which the mentally ill were separated and received medical treatment, including therapy, for their illnesses.

Prisoners had access to visitors and were permitted religious observance. Prisoners could submit complaints about their treatment verbally or in writing, and most often did so through family members, lawyers, or human rights defenders. Complaints were referred to the prison director and, if necessary, to the Directorate of Prisons. Contrary to prior reports, NGOs indicated that representatives from district attorney offices rarely visited the prisons.

The government permitted prison visits by independent human rights observers and the media, and such visits took place during the year.

#### **d. Arbitrary Arrest or Detention**

The criminal procedures code (CPC) prohibits detention without a warrant unless a suspect is apprehended during the commission of a criminal act or in other limited circumstances. By law authorities may detain a person without charges for up to 48 hours. However, arbitrary arrest and detention continued to be problems, and there were numerous reports of individuals held and later released with little or no explanation for the detention.

#### **Role of the Police and Security Apparatus**

The National Police, the National Department of Intelligence (DNI), the DNCD, the Airport Security Authority (CESA), the Port Security Authority (CESEP), the frontier guards (CESFRONT), and the armed forces (army, air force, and navy) form the security forces. The Secretariat of Interior and Police is responsible for making policy decisions affecting the police force. The military, CESA, CESEP, and CESFRONT are under the minister of the armed forces; the DNI and the DNCD, which have personnel both from the police and military, report directly to the president.

Authorities fired police officers or prosecuted them in the criminal justice system when found to have acted outside of established police procedures. The police statistics center reported that authorities dismissed 357 police officers as a result of

bad conduct, fired 17 for misconduct requiring litigation within the police judicial system, dishonorably discharged three others, and dishonorably discharged 38 officers whose cases were prosecuted through the civilian judicial system.

The Internal Affairs Unit effectively investigated charges of gross misconduct by members of the National Police. These cases involved physical or verbal aggression, death threats, improper use of a firearm, muggings, and theft. Internal Affairs conducted 1,092 investigations during the year. Of these, 301 were for excessive use of force, 296 for aggression, 251 for death threats, and 244 for police corruption. The investigations resulted in 209 dismissals and 725 sanctions. Prosecution or investigation of high-level officials suspected of involvement in illicit activities was not pursued.

Training for military and DNCD enlisted personnel and officers, as well as members of the national police, included instruction on human rights. A total of 2,422 police officers underwent human rights training during the year. The NHRC provided its annual training on human rights to a group of 25-30 police officers. The Director of the Graduate School of Human Rights and International Humanitarian Rights reported that the school trained 1,310 persons, of whom 1,145 were military and 165 were civilian, during the year. The school also has postgraduate programs in which military members and civilians from Congress, district attorney offices, the Supreme Court, government ministries, the National Police, and the Central Electoral Board participate.

### **Arrest Procedures and Treatment While in Detention**

Similar to its predecessor, the 2010 constitution provides that an accused person may be detained for up to 48 hours without a warrant before being presented to judicial authorities. It also provides for recourse to habeas corpus proceedings to request the release of those unlawfully held. The CPC establishes a more restrictive 24-hour time limit in which to make formal charges, which was generally observed. Any prisoner detained for more than 48 hours without being formally charged is entitled to file a motion of habeas corpus. The presiding judge at the habeas corpus hearing is empowered to order the prisoner's release when the prisoner has been detained for more than 48 hours without being formally charged or when there is insufficient evidence that the arrestee committed a crime that warrants further detention. The judge's decision to release a prisoner is subject to appeal by the district attorney.

The law also permits police authorities to apprehend without an arrest warrant an accused person when the person is caught at the moment of committing a crime or could be reasonably linked to a crime (e.g., escaped from prison or detention facility, hot pursuit).

Despite the foregoing provisions, at times the police detained suspects for investigation or interrogation longer than 48 hours. Police often detained all suspects and witnesses in a crime and used the investigative process to determine the individuals who were innocent and merited release and those whom they should continue to hold. Even so, successful habeas corpus hearings reduced these abuses significantly.

Although previously granted only to a few defendants, bail became more common under the CPC, which requires judicial review of detentions at an earlier point in a criminal case, but the system proved inadequate to prevent defendants from going into hiding. In some cases observers suspected that the granting of bail and subsequent disappearance of the suspect were due to corruption or inefficiencies within the judicial system.

The 2010 constitution gives public defenders constitutional recognition, and the law requires provision of counsel to indigent defendants. However, most detainees and prisoners unable to afford defense services did not have prompt access to a lawyer. The National Office of Public Defense provided legal advice and representation to indigent persons, but resource constraints resulted in inadequate levels of staffing. Nationwide there were 22 public defense offices, with 145 public defenders (down from 171 public defenders in 2010 due to unfilled vacancies), 21 part-time defense lawyers, and eight investigators. The government continued its program to train public defenders on relevant changes caused by implementation of the CPC and expanded training for prosecutors.

Police continued the practice of making sporadic sweeps or roundups in low-income, high-crime communities, during which they arrested and detained individuals without warrants, allegedly to fight delinquency. During these sweeps police arrested large numbers of residents and seized personal property allegedly used in criminal activity.

The law prohibits interrogation of juveniles by the police or in the presence of police. Prosecutors and judges handled juvenile interrogations.

Pretrial Detention: Many suspects endured long pretrial detention. Under the CPC the judge has authority to order a detainee to remain in police custody between three months and one year. According to the Directorate of Prisons, average pretrial detention typically was between three and six months. Time served in pretrial detention counted toward completing a sentence. The Public Ministry continued implementing an automated case-tracking system that permitted prosecutors to adhere more effectively to pretrial detention regulations and thereby reduce the number of occasions when the CPC time limits were exceeded. This system covered the 32 district attorney offices.

The failure of prison authorities to produce the accused for court hearings caused a significant percentage of trial postponements. Inmates often had their court dates postponed because they were not taken from prison to court or because their lawyer, codefendants, or witnesses did not appear. The government did not provide funding to transport all defendants between prison and court. Despite additional protections for defendants in the CPC, in some cases authorities continued to hold inmates beyond the mandated deadlines even though there were no formal charges against them.

The judiciary opened model judiciary offices in La Vega, Santiago, Moca, Bonao, Constanza, San Juan de la Maguana, and Puerto Plata. Created to handle urgent matters in need of a judge (such as obtaining an arrest or search warrant and conducting arraignments), these judicial service offices were part of an effort to increase efficiency and reorganize the courts so they operate in conformance with the CPC. This reorganization proceeded at a steady pace.

#### **e. Denial of Fair Public Trial**

The law provides for an independent judiciary; however, despite increasing independence in the judiciary, instances of political influence in decision making were still evident. Interference by public entities, when it occurred, tended toward public pronouncements regarding active cases and selective prosecution, as opposed to direct intervention in existing cases. On occasion, however, it appeared that judges in superior courts attempted to influence lower-court decisions. In addition corruption continued to be a serious problem (see section 4).

The 2010 constitution mandated the creation within one year of a Constitutional Tribunal composed of 13 judges to review the constitutionality of laws and decrees, and on December 21 the National Judicial Council (CNM) announced the selection of judges to serve on it. The tribunal was a brand new institution, and its

members had not yet determined how they would operate, structure themselves, or agree on procedures. The CNM also will select Supreme Court and Constitutional Court justices based on factors such as general reputation and time in service, although the politicized composition of the council leaves open the possibility for appointments based on political loyalties. Lower-court judges were appointed following passage of rigorous entrance examinations, completion of a training program, and successful completion of an examination. Public defenders and public prosecutors were typically well qualified; their particular organizations required passage of objective examinations for employment.

### **Trial Procedures**

The law provides for a presumption of innocence, the right of appeal, and the right to confront or question witnesses. The law establishes a citizen's right not to be deprived of liberty without trial or legal formalities or for reasons other than those provided by law, the right against self-incrimination, and the right to a defense in an impartial and public trial. Defendants have the right to remain silent. The law also provides for a public defense attorney for every person that cannot afford an attorney, but staffing levels were inadequate to meet demand. Trials are public, but no juries are used. According to the constitution and the law, defendants have the right to be present and consult with an attorney in a timely manner.

There were credible allegations that authorities violated these rights in some cases, but there was improved adherence to due process as authorities became increasingly familiar with the modifications to the CPC. The district attorney's office must notify the defendant and attorney about the criminal charges as well as the evidence the district attorney's office will present in court. Defendants and attorneys have access to government-held evidence, but only after the preliminary hearing, when the indictment is approved by the judge.

Military and police tribunals shared jurisdiction over cases involving members of the security forces. While the tribunals have jurisdiction over cases involving breaking internal rules and regulations, civilian criminal courts handled cases of killings and other serious crimes allegedly committed by members of the security forces.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Regional Human Rights Court Decisions**

Since 2005 the government has refused to comply with a ruling by the Inter-American Court of Human Rights that held that the country had the legal obligation to recognize the citizenship of Dominican-born children of migrants under its existing constitution, as well as under international conventions. The government made the court-ordered payments to the two petitioners but did not provide them with birth certificates.

In May 2010 the Inter-American Commission of Human Rights sent the case of journalist Narciso Gonzalez, who disappeared in 1994, after allegedly criticizing the government, to the Inter-American Court of Human Rights, which heard the case on June 28-29. According to Gonzalez's wife, the court had not rendered a decision as of December 29.

## **Civil Judicial Procedures and Remedies**

There are separate court systems for claims under criminal law, commercial and civil law, and labor law. Commercial and civil courts reportedly suffered lengthy delays in adjudicating cases, although their decisions were generally enforced. As in criminal courts, undue political or economic influence in civil court decisions remained a problem.

Citizens had recourse to the remedy of amparo, an action to seek redress of any violation of a constitutional right, including violations by judicial officials. Although this remedy was rarely used, except by those with sophisticated legal counsel, civil society and journalists sought amparo in some major cases during the year.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The law prohibits arbitrary entry into a private residence, except when police are in hot pursuit of a suspect or when a suspect is caught in the act of committing a crime. The law provides that all other entries into a private residence require an arrest warrant or search warrant issued by a judge. In practice, however, the police conducted illegal searches and seizures, including raids without warrants on private residences in many poor Santo Domingo neighborhoods.

Although the government denied using unauthorized wiretapping or other surreptitious methods to interfere with the private lives of individuals and families,

human rights groups and opposition politicians alleged that such interference continued.

Unlike previous years, no reports were received of cases in which law enforcement officials punished family members for alleged crimes committed by individuals.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

#### **Status of Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights in practice.

Freedom of Speech: Individuals or groups generally were able to criticize the government publicly and privately without reprisal, although a national journalists' association reported threats against and physical intimidation of journalists.

A group of journalists protested the government's 2010 closing of Television Channel 53 as being politically motivated, and the owner won an initial court victory; however, the government appealed, and the owner did not pursue the matter.

Violence and Harassment: The National Journalists' Union reported that civil, police, and military authorities, criminals, and other persons assaulted or threatened more than 70 journalists during the year.

On February 16, six months after the closing of the weekly newspaper *Clave* and its sister Internet publication *Clave Digital*, Fausto Rosario Adames launched a new digital newspaper *Acento.com* with the dual mission of reporting the news and encouraging reader interaction via social networking software and reader contribution. Upon closing the *Clave* group, Rosario Adames asserted that he had received numerous death threats and had been the target of assassination attempts, allegedly because of the controversial nature of the *Clave* group's reporting critical of the police as well as narcotics trafficking organizations.

On August 9, a police spokesman announced that the police had identified a suspected drug trafficker, Avelino Castro, as the instigator of the August 2 killing of Jose Silvestre Herasme, an investigative journalist who frequently reported on

drug trafficking and the complicity of government officials in it. At year's end Castro remained at large, although accomplices to the killing had been taken into custody.

Also in August the Superintendent of Insurance, Euclides Gutierrez Felix, threatened to sue advertisers on journalist Nuria Piera's television program after she alleged that the official had refused to pay his electricity bill. The threat prompted an outcry from local journalists' organizations. Piera subsequently obtained a court injunction ordering Gutierrez to desist from such actions against her or any other journalist.

Censorship or Content Restrictions: The 2010 constitution provides complete protection of the confidentiality of journalists' sources and introduced a "conscience clause" allowing journalists to refuse assignments. Nonetheless, local journalists continued the practice of self-censorship, particularly when coverage could adversely affect the economic or political interests of media owners.

### **Internet Freedom**

There were no government restrictions on access to the Internet. However, organizations that make up the Movement for a Civil Registry Free of Discrimination complained that their Internet and e-mail servers were hacked and telephone services interrupted in the most decisive moments of their denouncement of denationalization policies executed by the Central Electoral Board.

Individuals and groups could engage in the expression of views via the Internet, including by e-mail.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The law provides for freedom of assembly, but outdoor public marches and meetings require permits, which the government usually granted. On several occasions police officers used force to break up demonstrations and killed or injured demonstrators or bystanders.

**Freedom of Association**

The law provides for freedom of association, and the government generally respected this right in practice.

**c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/rls/irf](http://www.state.gov/j/drl/rls/irf).

**d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice; however, there were some exceptions.

In-country Movement: Local and international human rights groups reported that potentially hundreds of thousands of persons without proper documentation, including Haitian migrants and persons of Haitian descent born in the Dominican Republic, faced obstacles in traveling both within and outside of the country.

The Migration Directorate refused to release statistics on the number of persons expelled to Haiti during the year. Throughout the year government agents continued to violate due process or internal human rights guidelines, despite the terms of a bilateral agreement with Haiti regarding repatriation of undocumented Haitians and express instructions from the Director of Migration to follow the guidelines.

On October 19, President Fernandez promulgated regulations that partially implement the 2004 Migration Law. The new regulations define the bureaucratic bodies that handle migration issues, call for the registration of all foreigners in the country, mandate the registration of babies born to nonresident foreigners in a special registry (the pink book), set forth the requirements for obtaining legal residency status, lay out a scheme for importing temporary labor (making employers responsible for the return of workers they bring in), and explicitly reiterate existing policy that subjects all illegal migrants to deportation/expulsion.

The new migration regulations were most noteworthy, however, for what they do not address: the provision in the 2004 Migration Law that requires the government to develop a National Regularization Plan aimed at regularizing the immigration status of illegal migrants who have resided in the country for a significant amount of time. Nor do the regulations address a possible “path to citizenship” for the Dominican-born children of illegal migrants, as an earlier draft did.

### **Protection of Refugees**

Access to Asylum: The government established a system for providing protection to refugees but has not implemented it effectively. An applicant for refugee status must be referred by the National Office of Refugees in the Migration Directorate to the Technical Subcommittee of the National Commission for Refugees, which is chaired by the Foreign Ministry. The subcommittee has the responsibility of making a recommendation to the commission, consisting of members from the Foreign Ministry, the DNI, and the Migration Directorate. The full commission has the responsibility for the final decision on the application but met only twice during the past 16 years. Despite a commitment from the government to officially reactivate the commission, no action was taken during the year. At the UN High Commission for Refugees (UNHCR) ministerial meeting in December, the government again pledged to continue the work of the commission and to continue collaborating with UNHCR in evaluating asylum claims.

The UNHCR estimated that there were between 400 and 600 pending asylum cases, nearly all made by Haitians. Some of these cases had been awaiting decision since 2000, but five cases were approved (three Russians, one Haitian, and one Guatemalan) in 2009, and 25 new cases were filed during the year. According to NGOs, hundreds of other asylum seekers submitted claims that had not been processed, leaving those individuals in a state of legal limbo for years. Most of these individuals lacked documentation sufficient to obtain permission to work legally and to exercise other rights, such as obtaining documentation for their children. In addition to the pending asylum seekers, UNHCR estimated that there were approximately 100 Haitian refugee families recognized by UNHCR who were granted residency and refugee documentation by the government. Since 2000, there have been allegations that the rights of these refugees have been gradually withdrawn as a result of the government’s failure to renew refugee documentation.

Nonrefoulement: Although the government provided some protection against the expulsion or return of persons to countries where their lives or freedom might be

threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion, there was still a risk of deportation. Protection generally applied to individuals who gained access to the refugee process and had been issued proof that they were refugees or had applications pending. The documents provided do not bestow significant legal rights, such as residency, nor do they prevent disruption of educational studies past eighth grade to children of refugees. Due to lack of training, these documents may not be recognized by all officials who might apprehend such a person.

Children born to Haitian refugees--even those born to holders of migration documents--were routinely denied birth certificates as well as education, health, and security documentation.

### **Stateless Persons**

The 2010 constitution provides that anyone born in the country is a Dominican national, except children born to diplomats, children born to parents who are “in transit,” or children born to parents who are in the country illegally. The exception for children of parents illegally in the country was an addition to what the previous constitution provided and reflected a 2004 migration law and a 2005 Supreme Court ruling that children born to parents who were in the country illegally did not qualify as citizens. Thus, even before implementation of the new constitution, authorities denied children of illegal migrants Dominican nationality. Before 2004, however, migration laws granted “in transit privileges” to foreigners who entered the country “with the principal intention of proceeding through the country to an exterior destination.” The regulations further specified that a “period of 10 days will normally be considered sufficient to allow passage through the Republic.”

Adoption of the 2004 General Law on Migration redefined the phrase “in transit.” Under this law, the constitutional exception that denied nationality to Dominican-born children of persons in transit no longer applied just to parents that were transiting through the country for a period of 10 days or less, but instead considered all nonresidents as being in transit. The law broadly defined nonresidents to include not only tourists and temporary foreign workers, but also persons with expired residency visas and undocumented migrant workers. It not only affected the prospective right of Dominicans of Haitian descent to Dominican nationality, but also affected Dominicans of Haitian descent who already had Dominican nationality. This is because the civil registry began retroactively applying the law to Dominican citizens, interpreting the in transit exception to the

detriment of thousands of Dominican families of Haitian origin. Prior to that, children of Haitian migrant workers born in the country were issued birth certificates and other identity documents. In 2006 government policy directives formalized the retroactive application of the 2004 Migration Law and the denial of identity documents to formerly recognized Dominicans of Haitian descent. As a result, the descendants of Haitian migrants who worked and settled in the country throughout the 20th century--who were born in the country prior to 2010 and enjoyed a right to Dominican nationality--faced an increased risk of becoming stateless.

Haitian consulates reported that they were legally authorized to register only those births that were declared within two years of a child's birth. Parents declaring a birth were required to submit valid forms of identification in order to file a claim. These requirements could not be met by a significant number of persons of Haitian descent in the country, and thus their children remained undocumented. Consequently, potentially hundreds of thousands of Dominican-born persons of Haitian descent were de facto stateless.

In 2009 the government informed the UN Human Rights Council that an estimated 900,000 to 1.2 million undocumented immigrants, mostly of Haitian descent, were in the country, although some officials asserted that the actual number may be closer to 2 million. The International Organization for Migration estimated that following the January 2010 earthquake in Haiti, there was an influx of approximately 130,000 additional undocumented migrants, and the Migration Directorate estimated that the number was closer to 200,000.

At the UN Universal Periodic Review in 2009, the government asserted it was a "moot point" whether children born of Haitian parents who were legal permanent residents in the country could be registered as Dominican nationals because the Haitian government did not recognize dual nationality. The Haitian Constitution establishes that any person born to Haitian parents is a Haitian citizen and prohibits dual citizenship, calling for the automatic revocation of Haitian citizenship upon acquiring citizenship from another country--the exception being children who may retain dual nationality until a certain age when they must choose a nationality.

Dominican-born persons of Haitian descent who lacked citizenship or identity documents faced obstacles in traveling both within and outside of the country. In addition undocumented persons cannot obtain the national identification card (cedula) or a voting card. Persons without a cedula had limited access to formal sector jobs, public education past the eighth grade, marriage and birth registration,

formal economy services such as banks and loans, access to courts and judicial procedures, and ownership of land or property.

Government officials continued to take strong measures against citizenship for persons of Haitian descent born in the Dominican Republic, including refusing to renew or cancelling birth and identity documents, many pertaining to persons of Haitian descent. The government stated that such cancellations were based on evidence of fraudulent documentation, but advocacy groups alleged that the revocations targeted persons whose parents were Haitian or whose names sounded Haitian and constituted acts of denationalization. Two human rights NGOs, MUDHA and SJRM, identified 457 and 1,584 cases, respectively, of denationalization in four municipalities and indicated that in many of these cases the laws were being implemented retroactively.

On October 28, the Central Electoral Board (JCE) announced that birth certificates could be issued to those persons whose documentation was under investigation, until the courts reached a decision on validity. NGOs reported varying degrees of implementation of this new policy, possibly due in part to limited publication. Additionally, NGOs indicated that this policy applied only to persons requesting documents to be able to attend school and not to those requesting birth certificates in order to obtain other national identity documents. After a November 2 Supreme Court ruling in which the court refused to hear the appeal of Emildo Bueno Oguis, born in the country in 1975, in his case against the JCE for refusal to issue him his birth certificate, the JCE reverted to its previous policy of non-issuance.

In 2007 the JCE also created a registration system known as the pink book that allowed children born in the country of parents who were not legal residents to receive a special birth certificate. Such children whose parents had documentation from their home country may be registered in the book, after which the parents would be given an official report of birth, which does not confer citizenship. Local and international NGOs reported that since implementation of the pink book, hospitals and civil registries did not register numerous children of Haitian migrants and their descendents. An estimated 10,000 to 20,000 children are born to Haitian migrants and their descendants each year, but few of the children registered in the pink book are of Haitian descent. NGOs reported that some Haitian parents who were in the country legally, and whose children were Dominican nationals under Dominican law, were required to register their children's births in the foreigner's book.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of nearly universal suffrage. Active-duty police and military personnel may not vote or participate in partisan political activity.

#### **Elections and Political Participation**

Recent Elections: In May 2008 PLD candidate Leonel Fernandez won the presidency in an election described as generally free and fair by the Organization of American States, other independent observers, and the government electoral board. Observers also described the May 2010 congressional and municipal elections as generally free and fair.

The next presidential elections are scheduled for May 2012, and on December 21 the National Judicial Council named three new members to the five-person Supreme Electoral Tribunal, which has final authority to adjudicate questions over election issues.

Participation of Women and Minorities: By law parties must reserve for women 33 percent of positions on their lists of candidates for the House of Representatives and city councils. There were four women in the 32-member Senate, 37 women in the 183-member House of Representatives, two women in the cabinet, and four women on the 17-seat Supreme Court. The law requires each party's candidates for mayor and deputy mayor to be of different genders, and there were 12 female mayors and 145 female deputy mayors.

### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and administration officials who engaged in corrupt practices were not prosecuted, although some were removed from office and others were submitted to the Department for Prosecution of Corruption for investigation. The World Bank's worldwide governance indicators continued to reflect that government corruption was a serious problem, and the World Economic Forum Global Competitiveness report also listed corruption as the most problematic factor for doing business in the country.

Government officials continued to be reluctant to investigate seriously and prepare for trial cases involving senior government officials of either the current or former government. The Attorney General concluded 25 corruption cases against lower- and mid-level officials, either by conviction or acquittal.

On many occasions police officials attempted to solicit bribes from individuals facing arrest or imposition of fines. Local human rights observers reported on a few occasions that immigration and police authorities rounded up undocumented construction workers and other manual laborers of Haitian origin or descent to extort money from them. NGOs alleged corruption among the military and migration officials stationed at border posts and checkpoints. These allegations were substantiated in October when authorities arrested 14 immigration inspectors and military personnel on charges of extorting money from Haitian migrants. NGOs working along the border indicated that bribes had returned to average levels of 3,000 to 5,000 pesos (\$79 to \$131).

The Court of Accounts submitted more than 10 audit reports to Congress with significant findings of misuse of public funds and lack of proper procedures. These reports corresponded to actions taken between 2006 and 2009 and implicated both municipal authorities as well as members of the central government. Some of the implicated persons have been brought before the courts, while other cases were still under investigation. The use of nonjudicial sanctions continued. These measures included the dismissal or transfer of armed forces members, police officers, judges, and other minor government officials engaged in bribe-taking and other corrupt behavior. Society's widespread attitude of tolerance toward at least some forms of corruption complicated the effort to reduce corruption.

The Commission for Ethics and Combating Corruption continued to operate, although with minimal practical results as it lacked well-defined authorities and decision-making structures.

The law requires that the president and vice president, members of Congress, some agency heads, and other officials such as mayors and council members, as well as income tax and customs duty collectors, make declarations of their personal and real property within a month of being hired, as well as when they "end their responsibilities." The new constitution further requires public officials not only to declare their property but also to explain its provenance, and government officials generally complied with the law. The Department for Prosecution of Corruption, an office within the Public Ministry, is in charge of reviewing these declarations.

There are no criminal penalties for breaches of this law, and the power given to administrative authorities to withhold wages can only be applied to those agencies that depend on the executive branch, not to various other institutions with budgetary independence. On the whole, judges were not effective in punishing those responsible for corruption.

The 2010 constitution provides for public access to government information. The law places limits on the availability of such information only under specified circumstances (such as to protect national security). It also provides for penalties of up to two years in prison and a five-year ban from positions of public trust for government officials who obstruct access to public information. A court may review the decision of an agency to deny access to information. While often timely, responses were also often incomplete, and the government rejected subsequent requests. Moreover, there was little consistency in the determination of what was considered public information and what was not, due to the lack of a single oversight agency, and statistics on the number and outcome of requests were difficult to find.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. While government officials generally were cooperative and responsive to their views, human rights groups who advocated for the rights of Haitians and persons of Haitian descent were an important exception and faced occasional government harassment and threats. Furthermore, certain groups were relegated to operating without the use of government funding, often as a result of their perceived antagonistic nature towards the government.

Government Human Rights Bodies: The 2010 constitution establishes the position of ombudsman, although the government never implemented a 2001 law mandating the creation of a human rights ombudsman's office. The ombudsman's functions as outlined in the constitution are to safeguard the fundamental human rights of persons and to protect collective interests established in the constitution and the law.

### **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

Although the new constitution prohibits discrimination based on race, gender, disability, language, and social status, such discrimination existed, and the government seldom acknowledged its existence or made efforts to address the problem.

## **Women**

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and provides penalties for rape ranging from 10 to 15 years in prison (or 10 to 20 years in cases of rape of a vulnerable person, a child, or if rape occurred under other egregious circumstances) and a fine of 100,000 to 200,000 pesos (\$2,620 to \$5,240). Despite the law, rape was a serious problem. Survivors of rape often did not report the crime, due to fear of social stigma, fear of retribution, and the perception that the police and the judicial system would fail to provide redress. The state may prosecute a suspect for rape even if the victim does not file charges, and rape victims may press charges against spouses. However, police were reluctant to handle rape cases and often encouraged victims to seek assistance from NGOs.

Despite some government efforts to improve the situation, violence against women continued to be pervasive and increased during the year. The Santo Domingo District Attorney's statistics office reported 7,112 cases of violence against women in the National District alone. In 2010 there were more than 62,000 gender violence complaints reported to authorities nationwide. Under the Law against Domestic Violence, the state can prosecute rape, incest, sexual aggression, and other forms of domestic violence. Penalties for these crimes range from one to 30 years in prison and fines from 700 to 245,000 pesos (approximately \$18 to \$6,420). A local NGO estimated that 20 percent of women between the ages of 15 and 49 had been victims of physical abuse at some point in their lives.

Assistant prosecutor for women's affairs Roxanna Reyes said that the number of cases of violence against women has exceeded the prosecutor general's capacity to deal with the situation and that the number of femicides indicated an emergency situation that required attention and a resounding response. She stated that more than 1,200 women lost their lives in gender-based violence during the last five years, 80 percent of whom had never filed a complaint with the prosecutor general. As of August, 157 women had died as victims of violence, of which 86 occurred due to violence in the home. In October a women's rights organization, the Center for Legal Services for Women, reported 130 women killed as a result of domestic

violence since the beginning of the year, while media reports stated that there were 226 women killed during the entire year.

The Attorney General's Office oversees the specialized Violence Prevention and Attention Unit, which has 14 satellite offices in the 32 provinces in the country. At these offices survivors of violence could file criminal complaints, obtain free legal counsel, and receive psychological and medical attention. Police were instructed to forward all domestic violence and sexual assault cases to these offices. Each office had professional psychologists on staff to counsel victims of violence and to assess the threat of impending danger associated with a complaint. These offices had the authority to issue temporary restraining orders immediately after receiving complaints and to serve as messengers for the victims, which prevented contact between the victim and the abuser.

The National Directorate for Assistance to Victims coordinated efforts of official and nongovernmental institutions offering services to survivors of violence. It had three offices in Santo Domingo and two others elsewhere. These offices not only accepted criminal complaints from survivors of violence throughout the country but also provided counseling and protection services and, when necessary, referrals to medical or psychological specialists. The Secretariat of Women and various NGOs conducted outreach and training programs on domestic violence and legal rights.

The Secretariat of Women operated two shelters for domestic violence survivors in undisclosed locations, where abused persons could make reports to the police and receive counseling. The shelters provided women with short- and mid-term assistance to escape violent situations. In addition the Secretariat of Women oversaw 61 legal support offices, nine of which were in the National District, to provide legal assistance to women with gender-based violence and discrimination cases.

Sexual Harassment: Sexual harassment in the workplace is a misdemeanor and carries a possible penalty of one year in prison and a fine of up to 10,000 pesos (\$262); however, union leaders reported that the law was not enforced, and sexual harassment remained a problem.

Sex Tourism: Sex tourism existed throughout the country, particularly in Las Terrenas, Cabarete, Sosua, and Boca Chica. NGOs conducted education and awareness programs on the problem for hotel and industrial zone workers, male and female prostitutes, and other high-risk groups.

Reproductive Rights: Couples and individuals had the right to decide the number, spacing, and timing of children and generally had the information to do so free from discrimination, coercion, and violence. When available, contraceptives were provided without charge; however, many low-income women used contraceptives inconsistently due to both irregular availability of contraceptives from public agencies and to social and religious bias against family planning. The Population Reference Bureau reported a 60 percent rate of modern contraceptive use among married women ages 15-49. Maternal mortality remained high (at 100 deaths per 100,000 live births according to 2008 UN data), yet 98 percent of deliveries were attended by skilled personnel. Despite the high percentage of hospital deliveries, there were groups of women with limited access to qualified care.

Most maternal and neonatal deaths were due to poor quality of care and failure to adhere to standard norms and protocols, resulting in mismanagement of both normal and complicated deliveries. Most women had access to some postnatal care, although the lack of postnatal care was higher among young, uneducated women and those in the lowest economic quintiles. In 2010 reports indicated that in poorer provinces such as Pedernales, 29 percent of women received no postnatal care. Access to diagnostic services and treatment of sexually transmitted infections was limited by technical, financial, and management issues, which equally affected both men and women. Approximately 15,500 persons living with HIV/AIDS--the majority of whom were women--had access to antiretroviral treatment.

Discrimination: Although the law provides women and men with the same legal rights, in practice women did not enjoy social and economic status or opportunity equal to that of men. Men held approximately 70 percent of leadership positions in all sectors. On average women received 44 percent less pay than men in jobs of equal content and requiring equal skills. Some employers reportedly gave pregnancy tests to women before hiring them, as part of a required medical examination. Although it is illegal to discriminate based on such tests, NGO leaders reported that pregnant women often were not hired and that female employees who became pregnant sometimes were fired. There were no effective government programs to combat economic discrimination against women, and wage equality and estimated earned income fell during the year.

## **Children**

Birth Registration: Citizenship is acquired by birth in the country, except by children born to diplomats, to those who are in transit, or to parents who are illegally in the country (see section 2.d.). A child not registered at birth is undocumented until a late declaration is made, and there were limitations on late declarations. The most recent report from 2009 by the NGO Profamilia and the UN Children's Fund indicated that 13 percent of children under age 15 were not registered. Undocumented children, particularly those of Haitian descent, faced challenges in accessing primary public education.

Child Abuse: Abuse of children, including physical, sexual, and psychological abuse, was a serious problem. The Attorney General's Office has a special Children and Adolescents Unit, which maintained a hotline where persons may call to report cases of child abuse. Few such cases reached the courts, due to fear of family embarrassment, lack of economic resources, or lack of knowledge regarding available legal assistance. The Santo Domingo district attorney's office reported that in most abuse cases, the accused was a person close to the child, such as a family member or close family friend. The law provides for removal of a mistreated child to a protective environment.

In July following media reports that CESFRONT members sexually assaulted an 11-year-old girl in the border town of Jimani, the attorney general and the Jimani prosecutor announced a joint investigation with the leadership of the border corps. Reports indicated that the girl received medical treatment and counseling following the revelation; and authorities took three CESFRONT personnel, whom the girl identified, into custody and held them for trial. There was no indication that the authorities attempted to identify or prosecute civilian perpetrators also alleged to be involved.

Local observers believed that instances of child abuse were underreported because of the widespread belief that such problems should be dealt with inside the family. The law contains provisions concerning child abuse, including physical and emotional mistreatment, sexual exploitation, and child labor. The law provides penalties of between two and five years' incarceration and a fine of three to five times the monthly minimum wage for persons found guilty of abuse of a minor. The penalty is doubled if the abuse is related to trafficking. The government's National Directorate for Assistance to Victims coordinated efforts of official entities and NGOs to assist children who were victims of violence and abuse.

Sexual Exploitation of Children: The law defines statutory rape as sexual relations with anyone under the age of 18. Penalties for statutory rape are 10 to 30 years in

prison and a fine of 100,000 to 200,000 pesos (\$2,620 to \$5,240) if rape is committed against a child or adolescent. The law also contains specific provisions that prohibit child pornography and child prostitution, prescribing penalties for sexual abuse of children of 20 to 30 years' imprisonment and fines from 100 to 150 times the minimum wage.

The government conducted several programs to combat the sexual exploitation of minors, including notices in airports and targeted programs in popular tourist locations. The Ministry of Labor continued a program to combat such exploitation in popular tourist destinations such as Boca Chica, Sosua, and Las Terrenas. These programs provided psychological support and medical assistance, returned children to classrooms, and reunited children with their families and communities whenever possible. The programs also provided legal assistance to child victims and their families to arrest and convict exploiters.

International Child Abductions: The government is a party to the 1980 Hague Convention on International Child Abduction.

### **Anti-Semitism**

The Jewish community was very small, approximately 300-350 persons, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

Although the law prohibits discrimination against persons with disabilities, these individuals encountered discrimination in employment and in obtaining other services. The law provides for physical access for persons with disabilities to all new public and private buildings, but the authorities did not enforce this provision. The Dominican Association for Rehabilitation, which had 23 branches around the country, received a large subsidy from the Secretariat of Public Health and from the Presidency to provide rehabilitation assistance to persons with physical and learning disabilities. The association cited the lack of accessible public transportation for persons with disabilities as a major impediment. The 2000

disability law states that the government should ensure that people with disabilities have access to the labor market and cultural, recreational, and religious activities.

Discrimination against persons with mental illness was common across all public and private sectors, and there were few resources dedicated to the mentally ill.

### **National/Racial/Ethnic Minorities**

There was significant evidence of racial prejudice and discrimination against persons of dark complexion, but the government denied that such prejudice or discrimination existed and, consequently, did little to address the problem.

There were also strong prejudices against Haitians, which disadvantaged many Haitians and Dominicans of Haitian ancestry, as well as other foreigners of dark complexion. Few government officials acknowledged the existence of this discrimination; others regularly and publicly denied that it existed.

Local NGOs reported incidents where darker-skinned persons were denied access or services in banks, service in restaurants and stores, entry into nightclubs, enrollment in private schools, and birth registration in hospitals. The government's 2009 UN Universal Periodic Review presentation asserted that the JCE's identity document rulings focused on fraud and that Haitians in the country could receive their identity documents in Haiti. The government also claimed there were no grounds to state that black Dominicans were being repatriated to Haiti and noted that authorities suspended repatriations on Fridays to prevent employers from using this as a tool to avoid paying laborers for the week's work.

Haitians continued to immigrate to the country in search of economic opportunity and relief, especially following the January 2010 earthquake. However, the Migration Directorate continued to carry out "devoluciones" or "returns" of undocumented Haitians to Haiti. Officials claimed that these removals should not be considered repatriations or deportations, although the distinction between the two was unclear. Some of those removed from the country reported that they were denied the opportunity to demonstrate that they were legal residents, to make arrangements for their families or property, or to express a credible fear of persecution or torture if returned to Haiti. NGOs reported that migration officials and security forces sometimes confiscated and destroyed expellees' residency documents and passports despite standing government orders to respect the human rights of the expellees. In some cases expellees with appropriate legal documents received permission to return.

Some Haitian immigrants and others lived in shantytowns or sugarcane work camps known as bateyes. As in many poor areas in other parts of the country, these were harsh environments with limited or no electricity, running water, sanitary facilities, or adequate schooling. In many bateyes medical assistance either was rudimentary or not readily available, and clean water was rarely available. Many batey residents, lacking documentation, felt they had little choice but to remain in their communities, where they felt relatively safe from the risks of deportation and harassment that existed elsewhere in the country.

Private enterprises in the sugar sector continued to make improvements at their facilities, a process that began in 2007, including new schools and both new and renovated housing. In the Barahona area, the sugar consortium opened the first phase of a new housing facility for its seasonal employees. The first phase provided secure housing for 280 employees, and a second phase is to double this, providing safe housing for 560 employees. The facility is for employees only and has a 24-hour medical clinic, a secure cashier from which the employees can receive their wages, individual lockers and locks assigned to each employee, restroom and shower facilities, a multipurpose area for dining and training, and a recreation field.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

Treatment of lesbian, gay, bisexual, and transgender (LGBT) individuals ranged from ambivalent tolerance to staunch homophobia. While no law criminalizes same-sex consensual activity, members of the LGBT community continued to be discriminated against in all areas of society, including health, education, and work. No law protects individuals against discrimination based on sexual orientation or gender identity. Transgender individuals were particularly at risk of being victims of violence.

NGOs reported widespread social discrimination against persons based on sexual orientation. Numerous credible reports indicated members of the LGBT community were expelled from public school, arrested without reason, fired from work, or denied access to rent or own homes.

LGBT persons faced physical attacks, intimidation, harassment, and threats of violence. NGOs reported that these groups were reluctant to file charges or

complain to authorities due to fear of reprisal or humiliation. Several killings during the year were linked to the victims' sexual orientation or gender identity.

During the year authorities often refused to allow LGBT individuals to gather in public spaces, in particular the Duarte Park area of the colonial zone in Santo Domingo. Government and community leaders condemned gatherings of such persons, and police officials harassed them when they attempted to gather.

Since the first gay pride celebration in 2001, authorities rejected or delayed all other parade requests by gay and lesbian organizations. Activists reported that these organizations substituted small informal gatherings in recreational spaces, which did not require any type of permission from authorities, for marches and other such gatherings.

### **Other Societal Violence or Discrimination**

On a number of occasions in previous years, citizens attacked and killed alleged criminals in vigilante-style reprisals for theft, robbery, or burglary. These incidents were attributed to an increase in crime and the inability of security forces to stem or combat it. Although no specific cases attracted national attention during the year, given the common perception that crime continued to rise, it is likely that episodes of vigilante violence continued.

Persons living with HIV/AIDS faced discrimination in the workplace and elsewhere. According to the UN agency UNAIDS, an estimated 62,000 people were infected with the disease in 2007. A 2008 study by the Network of Persons Living with HIV, Profamilia, and Alianza Solidaria revealed that, among the sample of persons with HIV who were interviewed, 62 percent reported being the subject of gossip, 30 percent the victims of verbal aggression, 27 percent the victims of verbal threats, and 14 percent the victims of attacks or physical threats.

According to Human Rights Watch and AI, workers in many industries faced obligatory HIV testing in the workplace or when seeking medical care or medical insurance. Many workers or patients found to have the disease were not hired or were fired from their jobs or denied adequate health care. Although the law prohibits the use of HIV testing to screen employees or for medical services unrelated to the disease, there were no known instances where this was enforced, despite reports that official complaints had been filed.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides workers with the right to form and join unions of their choice, strike, and organize and bargain collectively. However, it places several restrictions on these rights. The law prohibits members of the military and police from forming and joining unions.

Although the law requires that unions be registered by the Ministry of Labor in order to be legal, it provides for automatic recognition of a union if the ministry has not acted on the application within 30 days. Public sector workers are allowed to form associations registered through the Office of Public Administration, not the Ministry of Labor. The law requires that 40 percent of civil servant employees agree to join the union in a given government entity for it to be formed. The law allows unions to conduct their activities without government interference.

Formal requirements for a strike to be considered legal include the support of an absolute majority of all company workers whether unionized or not, a prior attempt to resolve the conflict through mediation, written notification to the Ministry of Labor, and a 10-day waiting period following notification before proceeding with the strike.

Government workers and essential public service personnel are not allowed to strike. The law defines essential public service personnel as those working in communications, water supply, gas and electricity supply for domestic and street lighting, and hospital pharmacists.

While the law requires that collective bargaining be used in firms in which a union has gained the support of an absolute majority of the workers, it does not allow for collective bargaining unless a trade union represents an absolute majority of the workers and prohibits the use of negotiations in general terms if the union does not represent an absolute majority. The International Labor Organization (ILO) considered this requirement to be excessive and an impediment to collective bargaining. The ILO noted that the law did not specifically address the right to collective bargaining of public servants not engaged in the administration of the state.

The law prohibits antiunion discrimination and forbids employers from dismissing an employee for organizing union activities, being a member in a union or a committee discussion of a collective agreement, or being part of a committee of a

union in formation. Persons who join unions must have legal documentation, although Haitian and other migrant workers are covered by the labor code regardless of legal status.

The labor code applies to foreign workers, those working as domestics, and workers in the free trade zone, but restricts their rights to certain employee benefits (see section 7.d).

The government failed to effectively enforce the law in many cases. In June 2010 the National Council of United Unions brought a complaint against the government before the ILO for obstructing the right to unionize and to register unions in several companies. After reviewing the case, the ILO requested that the government register several of the unions, assuming all procedural requirements were met, and recommended that the government amend legislation in order to allow unions of self-employed workers or of contract workers to be founded and registered.

Following the filing of the ILO complaint, the ministry approved the Workers Union of the Barrick Gold Corporation and other unions whose registrations had previously been rejected. Although Barrick recognized the union, the matter of collective bargaining remained pending at year's end. Similarly, in the Frito Lay case, the company had not responded to the union's request to use collective bargaining by year's end.

The process for dealing with disputes through labor courts was often long, with cases remaining pending for several years. Although the government stated that there have been some improvements in this process, unions noted that the process remained long. In smaller municipalities the system could be shorter, taking about one year, but in the more populated cities, including Santiago and Santo Domingo, the process continued to take several years. Public officials continued to report that the ministry's nonbinding conciliation process was the most effective method for resolving worker-company disputes though other sources reported that the conciliation process's effectiveness had diminished. Various NGOs reported that companies took advantage of the slow and ineffective legal system to appeal cases, which left workers without labor rights protection in the interim.

There were some reports of violence against union members. In particular, at IMT, a subcontractor of Barrick, workers were confronted with guns, tear gas, sticks, and stones. Dozens of workers were reportedly arrested, wounded, and fired, allegedly because they attempted to form a union.

The law forbidding companies from firing union organizers or members was enforced inconsistently, and penalties were insufficient to deter employers from violating worker rights. Some NGOs continued to report that workers who tried to form unions were routinely fired. There were reports of harassment and intimidation by employers in an effort to prevent union activity, especially in the free trade zones (FTZs). In practice formal strikes were not common.

During the year there were reports of intimidation, threats, and blackmail by employers to prevent union activity, as well as reports of firing of workers for union activity and blacklisting of trade unionists. Workers were often asked to sign documents agreeing not to participate in union activities. Companies often created and supported “yellow” or company-backed unions to counter free and democratic unions. In addition the use of short-term contracts and subcontracting increased--often making union organizing and collective bargaining more difficult. Few companies had collective bargaining pacts, partly because companies created obstacles to union formation and could afford to go through lengthy judicial processes that nascent unions could not afford.

According to the National Council of Labor Unions, unions were active in only 20 businesses out of approximately 200 companies in the FTZs, and only six unions had established collective bargaining rights. Unions in the FTZs reported that their members hesitated to discuss union activity at work, even during break time, for fear of losing their jobs. Unions accused some FTZ companies of discharging workers who attempted to organize unions. The Dominican Federation of Free Trade Zone Workers (FEDOTRAZONAS) reported that the management of several companies or their subcontractors conducted public antiunion campaigns, which included threats to fire union members, and engaged in activities to forestall attainment of union membership sufficient to establish collective bargaining rights under the labor code.

Various NGOs continued to report that many Haitian laborers and Dominicans of Haitian descent in the agricultural and construction industries did not exercise their rights, fearing firing or deportation. Enforcement of documentation rules for union members was lax, and a few labor unions represented a small number of Haitian workers.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor but was not effectively enforced. There were reports of forced labor of both children and adults within the country, including reports that both adults and children were forced to work as domestic servants. There were reports of forced labor of adults in the service, construction, and agricultural sectors. According to the Solidarity Center's 2010 *Survey on Household and Agricultural Work* there were reports of forced labor, including debt bondage, as well as other exploitive labor practices such as the use of payment in vouchers.

Haitian workers' lack of documentation and legal status in the country often placed them in a tenuous situation and made them vulnerable to forced labor. Although specific data on the issue were limited, there continued to be reports that some Haitian nationals may have been subjected to forced labor in the service, construction, and agricultural sectors.

There continued to be differing reports regarding whether or not forced labor was still used in the production of sugar. NGOs and other stakeholders stated that forced labor continued to occur, citing the continuation of deceptive recruiting practices, nonpayment or payment in vouchers that were difficult to convert into cash, and restrictions on some workers' ability to leave plantations--including threatening workers with deportation or imprisonment if they left the plantation, withholding portions of pay, and/or withholding identity documents. In contrast, an NGO that studied the sugar sector presented its preliminary findings and noted that it had not found evidence of forced labor, although it found that labor rights violations occurred and extremely harsh working conditions on the sugar plantations existed. Analysis of the data continued at year's end.

Also see the Department of State's *Trafficking in Persons* Report at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits employment of children younger than 14 years of age and places restrictions on the employment of children under the age of 16, limiting their working hours to six hours per day. For those under age 18, the law limits night work and prohibited employment in dangerous work, such as work involving hazardous substances, heavy or dangerous machinery, and heavy loads. Minors are also prohibited from selling alcohol, certain work at hotels, handling cadavers, and various tasks involved in the production of sugarcane. Fines and legal sanctions may be applied to firms employing underage children.

The Ministry of Labor in coordination with the National Council for Children and Adolescents (CONANI) is responsible for enforcing child labor laws. While the ministry and CONANI effectively enforced regulations in the formal sector, child labor in the informal sector was a problem largely beyond regulatory reach.

The National Steering Committee against Child Labor's plan to eliminate the worst forms of child labor set objectives, identified priorities, and assigned responsibilities to combat exploitive child labor. Several government programs focused on preventing child labor in coffee, tomato, and rice production; street vending; domestic labor; and the sex industry. In the most recent information available (2010), the Ministry of Labor reported that such programs helped reduce the number of children exposed to the worst forms of child labor from 9.3 percent in 2004 to 6.4 percent in 2008.

Child labor remained a serious problem. In 2010 one NGO estimated that 364,000 minors between five and 17 years of age worked illegally. Child labor took place primarily in the informal economy, small businesses, private households, and agriculture. In particular, there were reports that children worked in the production of garlic, potatoes, coffee, sugarcane, tomatoes, and rice.

NGOs and the Ministry of Labor also reported that many children worked in the service sector in a number of jobs including as domestic servants in households and as street vendors, as well as in shoe shining and washing car windows. Children often accompanied their parents to work in agricultural fields. The commercial sexual exploitation of children remained a problem, especially in popular tourist destinations and urban areas (see section 6, children).

Children also worked as domestic servants, and many were victims of forced labor. There were credible reports that poor Haitian families arranged for Dominican families to "adopt" and employ their children. In some cases adoptive parents reportedly did not treat the children as full family members, expecting them to work in the households or family businesses rather than to attend school, which resulted in a kind of indentured servitude for children and adolescents.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <http://www.dol.gov/ilab/programs/ocft/tda.htm>.

#### **d. Acceptable Conditions of Work**

There were 14 different minimum wages, depending on the industry. The minimum wage for workers in free trade zones was 6,376 pesos (\$1,674). The minimum wage for workers outside the zones ranged from 6,035 pesos (\$158) to 9,400 pesos (\$247). The minimum wage for the public sector was 5,117 pesos (\$134) per month. The daily minimum wage for farm workers covered by minimum wage regulations, which included all agricultural products except sugarcane, was 175 pesos (\$4.60) based on a 10-hour day. Sugarcane workers were subject to a special, lower minimum wage for the sugar industry of 110 pesos (\$2.88) per 8-hour workday, an increase from 2009. Although no official estimate of the poverty income level was available, one estimate put the cost of the cheapest common basket of goods at over 10,000 pesos (\$262) per month. All workers, including migrants, are covered by minimum wage provisions.

The law establishes a standard work period of 44 hours per week and stipulates that all workers are entitled to 36 hours of uninterrupted rest each week. The law includes paid annual holidays and requires premium pay for overtime, although enforcement was ineffective. The law prohibits excessive or compulsory overtime. While the law requires that employers provide a safe working environment, in practice workers could not remove themselves from hazardous working situations without losing their jobs, and employers may terminate an employment contract at will. The labor code covers domestic workers, but does not provide for them the payment of notice, severance, or bonus, and they are only guaranteed the payment of two weeks' vacation after one year of continuous work and the Christmas bonus. Workers in the free trade zones are also covered by the labor code, but are not entitled to the payment of bonuses.

In practice the Ministry of Labor did not always enforce the minimum wage. The Dominican Social Security Institute (IDSS) sets workplace safety and health conditions. Both the IDSS and the Ministry of Labor had a small corps of inspectors charged with enforcing standards. In 2010 the Ministry of Labor employed 222 labor inspectors. Workers complained that workplace safety and health inspectors were not trained, did not respond to their complaints, and more quickly responded to requests from employers than workers.

According to the 2007 National Urban Labor Force study completed by the Central Bank, the most recent national estimate available, about 54 percent of the workforce is in the informal sector, often outside the reach of government enforcement efforts.

Mandatory overtime continued to be a common practice in factories and was sometimes enforced through loss of pay or employment for those who refused. The FEDOTRAZONAS reported that some companies set up “4x4” work schedules, in which employees work 12-hour shifts for four days. With some exceptions, employees working the 4x4 schedules were not paid overtime for hours worked in excess of maximum work hours allowed under labor laws. The Ministry of Labor took no corrective action to address this issue. Some companies also started a practice to pay every eight days instead of every seven days, which resulted in a loss of wages for workers.

On sugar plantations cane cutters usually were paid by the weight of cane cut rather than the hours worked. Cane cutters continued to suspect fraud by weigh station operators, although company officials denied it. The amount of cane a worker could cut varied, but most young able-bodied workers were able to cut two to three tons of cane in a workday, yielding a daily wage of 160-240 pesos (approximately \$4.19-\$6.29). Less able-bodied workers, who were often older, were paid only for the amount of the cane they actually cut, even if the amount was less than the minimum wage. During the six-month off-season, some workers in sugar plantations remained in their communities and worked part-time jobs clearing land or cleaning sugarcane. Such workers generally were not paid the legally mandated minimum wage.

Conditions for agricultural workers were poor, with many workers working long hours and exposed to hazardous working conditions including the exposure to pesticides, excessive exposure to the sun, and use of sharp and heavy tools. According to the Construction Worker’s Federation there were 939 reported accidents during the year, an increase from 537 reported in 2010. Sugarcane workers often did not receive medical services or pensions due to the lack of documentation even though deductions were taken from their pay.

During the year, there were accidents that caused injury and death to workers. Although comprehensive data were not available, there were some reports of specific injuries of workers due to lack of sufficient safety controls, including injuries due to a bale of raw materials falling on an employee and machines falling on top of a worker.