



**Report on the occasion of the Universal Periodic Review of the Dominican Republic.
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Presented by the Coalition on Democracy and Transparency (CDaT)

Participación Ciudadana is a civil movement which is not linked to a political party and pressures, builds concession, and links the social spheres with public power and political parties. It is constituted with the aim to promote the participation under the wings of the civil society and to incentive the participation of the citizens; in order to successfully reform politics, institutions, and democracies required by the Dominican Republic. Additionally, it has the aim to develop the social spheres just and equal by making rational and efficient use of public resources.

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The **Fundación Comunidad Esperanza y Justicia Internacional (FUNCEJI)** is an institution based upon the principles of international relations with the aim to educate and promote human rights in the Dominican Republic. It has presented reports to the Human Rights Committee, the Committee on the elimination of racial discrimination, the first Universal Periodic Review of the Human Rights Council, the Committee on the elimination of discrimination of women, and the Inter-American Committee of Human Rights.

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Ciudadanas Contra la Corrupción (C3) is the effort of a group of people, to create efficient controls in the battle against corruption and impunity in the Dominican Republic.

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A. Politics to eradicate Poverty

1. The Dominican government's politics during this period have caused more poverty, seeing the increase of parties receiving funds from the Conditional Monetary Transferences Programs (CMTP), which has become the preponderant state method for patronage and inequality. If the CMTP were used with transparency and the ends for which they were created; their impact would have been beneficial, however, they produce a multiplier effect and a political situation with patronage effects in favor of the person or clerk that leads his party. Such programs are the programs: Progression, Aim Solidarity, Eating is First, Incentive to School Assistance, Nutrition Supplement for the Aging, Medication Supplement for the Aging, Incentive to higher education, Bonogas Home, Bonogas Chauffeur, Incentive for the Prevention Police, and Bonoluz. These were implemented from the dispatch of the First Lady and currently from the cabinet of social politics, under the supervision of the vice-presidency of the Republic. It has been concluded that an 14% of the of the electives to the electoral register represent the direct beneficiaries of the CMTP; a vulnerable situation because this group is suspects to manipulation for political ends and thus constitute a threat to the Dominican democracy.ⁱ
2. The considerable components that are dedicated to the CMTP and the limited resources of the (potential) beneficiaries, call for the necessity of the implementation of governance mechanisms, monitoring, and the yielding of money accounts. These mechanisms could help reducing the errors of exclusion, prevent patronage and power misuse, and strengthen the efficiency of the programs to eradicate the levels of poverty in the most vulnerable sectors.

B. Transparency

3. Over the course of the last years, the Dominican Republic has advanced in the adoption of a normative constitutional mark of various laws to make the moving of funds in the public administration more transparent. Not particularly in the compliance and implementation where low levels of institutionalism are registered; an absent transparency of the public expenses, a high perception of corruption, and impunity.
4. The Global Competition Index puts the Dominican Republic as 142 in squandering, 141 in favoritism to public clerks, and 141 in aberration of public funds.ⁱⁱ The Barometer of the Americas, in its work on Political Culture, identified that of the 26 countries considered, the Republic occupied the sixth in the area of most corrupt in Latin America.ⁱⁱⁱ This result was reached through surveys realized in February 2012 and published January, 10 2013.
5. The constitutional principle of separation of powers is inexistent when observing the representation of the Senate as the Chamber of Deputies of the party that makes up the Presidency of the Republic. Tangible evidence in the manner that members of the Central Elective Council (CEC) were gathered, the Chamber of Commerce, the members of high courts, and the selection of the post of the Ombudsman; where mayor parties and their allies influenced in the selection of abovementioned members.^{iv}
6. The position of the ombudsman is incorporated as an independent constitutional organ and autonomous under the principal functions of the defense of the fundamental interests, liberties, and rights of the people facing governmental actions in their diverse manifestations. Nevertheless, there has not been a firm decision taken by the state on the functioning of this positions, since it has been 12 years since the creation of the law (01/02/2001) there have been six public considerations for gathering of the eligible candidates, deputies, and functionaries by the Chamber of Deputies. Once selected by the Chamber of deputies to be on the candidates list, the Senate selects a commission that will interview the selected candidates, listen to references given by the civil society, and finally present a report to the entire senate. This report was

received as good and valid and after considerations the ombudsman Doctor Zoila Martínez and her allies was elected with 15 votes in favor and 7 against.^v

7. An important element within the Dominican democratic game is the crisis in which the political parties are functioning. For instance, the PRD reached 46% of the votes during the last elections and currently they are unable to form a real opposition due to their internal division; a situation that impedes the party to play the part of the opposition against the high concentration of power that the PLD enjoys.
8. All these elements together have contributed to the fact that the public finances of the Dominican Republic have been treated without any type of control and certain schemes of discretion that led to the registration of a public deficit of 8,5% of the GDP in 2012; the highest deficit in the history of the country.

C. Protocol for the Transparency and Institutionalism

9. The Protocol for Transparency and Institutionalism of the Dominican Republic,^{vi} signed by master of science Danilo Medina Sánchez, candidate of the Dominican Liberation Party (PLD) during the general elections of 2012 (on May 7th and August 16th) Danilo Medina swore himself as the Constitutional president of the Dominican Republic; a formal act with bound him to the terms and conditions of compliance to the 21 fundamental points in international conventions on the corruption, constitution, and legitimate laws on, inter alia, the following subjects: public purchases and procurements, the access to public information, public functions, treasury, illicit enrichment, unique account of the treasury, wage regulations and public administration, judicial welfare declarations, official publicity, and transparency of over active companies.

D. Corruption and Impunity

10. The corruption within the public and private administration is a freight which affects and slows down the development of the Dominican society. This has been one of the principal factors contributing to the diminishing prestige of the political activities and public functions. The determination of the government to face corruption, stays embodied in the agendas of the eligible candidates for the presidency every 4 years. These election programs, when they are received by the party leaders and their partners in public functions, stay relegated early onwards, and after the first half of the period has pasted they are nearly entirely buried. This is one of the most offensive problems of the Dominican society, which has been sees during decades.^{vii} Every time a bigger predation of the public finances, since those institutions responsible to sanction the practices harmful to the national patrimony, do not produce forceful action with which they sent a clear message with the intention of punishing those responsible.
11. Corruption in the Dominican Republic is characterized by: a) the extend of the phenomenon defined by the number of cases, the involved dimensions, and the diversity of the assumed expressions; b) the profoundness of corruption is closely linked to the protection –in sentiment and in reality – the public clerks enjoy due to the impunity; c) the distance between those responsible for the public administration and those responsible for the population, which is constantly ignored by the power structures and the lack of confidence in the organs of the judicial power responsible for the sanctions of the acts of corruption.
12. The Dominican Republic has ratified the Inter-American Convention against Corruption and the UN Convention against Corruption, as well as the Constitutions and its article 46 which establishes the prohibition of corruption. There is an existing law on the sworn statements of property, additionally there have been decrees submitted on the ethical behavior and the austerity for a period of a year. This has resulted in the administrative strengthening of governmental

ethics through the General management through the General Direction on the Governmental Ethics and Integrity. However, all these efforts have not enabled the persecution, investigation, judging, and sanctioning of the public clerks. In spite of the accusations done in the media after journalistic investigation and complaints and accusations filled against public clerks under the General Direction of the Persecution of Corruption admitted before the public attorney's office of the Republic. ^{viii}

13. The organs responsible for the persecution to combat corruption are unable to rely upon an independent facility, since the inexistence of an judicial administration with spine and willingness to rapidly act and without contemplations, without importing the names not the implicated last names. The number of complaints by the civil society and the media is the most eloquent evidence of the absence of political willingness to combat corruption and impunity.

E. Fiscal Deficit, Budget Execution, Judicial Marks, and Consequential System.

14. Since 2008 a deficit marathon commenced, culminating in a fiscal deficit of 8.5% of the GDP in 2012; appreciated as the largest fiscal deficit seen in the registered history of the Dominican Republic. This deficit serves as proof for the absolute irresponsible management of public finances, which, above all did not contribute to a proportional reduction in poverty.
15. Examining the budgetary management of the last few years, leads to the conclusion that from 2008 onward, when public expenses overflowed due to an increase of 5.1% of the income leading to a 29.8% income in expenses and thus initiating the continuous annual deficit marathon of an estimated 3.0% of the GDP on the fiscal accounts.
16. The causes of the deficit ^{ix} have been recognized by those taking the leading decisions, where the principal and most significant, although not the sole, deficit generating action is constituted by the large expenses made in addition to the estimated budget; as has been set out by the FMI. In other words, the vast increase in the public expenses, as admitted by the Minister of Finance, Planning, and Development under both the former and the current government in an interview published in 'El Diario Libre' (15 October 2012): the quantities of actions which were understood by president Leonel Fernández to terminate before his end of term, which expanded the expenses of the public administration with more than 2% of the GDP, had culminated into a deficit of at least 3.3% of the GDP by the end of June, and this deficit rapidly grew with the termination of the aforementioned actions. ^x
17. The judicial structure has repeatedly been violated by the actions that caused the deficit faced by the country. There have been at least twenty-four violations of various dispositions of nine different laws, including the Constitution of the Republic. ^{xi} However, not only should there be dependence on the existent legal and constitutional dispositions that regulate the correct functioning of the financial management of the State; there should also be a dependence on a regime of effective consequences that discourages the violation of these dispositions.
18. The Chamber of Accounts of the Republic deposited a report on the budgetary execution of 2012 where it stated that the accountants could not verify the legitimacy of capital investment of RD\$101,104 million, nor the legitimacy of expenses of RD\$84,000 million related to the remuneration of employees; because they were not accompanied by documents. ^{xii}
19. Even though the regime of consequences is legitimate, the responsibility is assumed to be administrative, civil, and public; until now there has not been one sole responsible held liable before justice or before the Dominican Senate preliminary to the accusation before the Chamber of Deputies; as prescribed by articles 80.1 and 83.1 of the Constitution, as well as mentioned by the National Congress on the management of the public funds. In spite of having the competence to control the finances themselves.

F. Electoral Political Reforms

20. In May 2012 the Dominican Republic held the presidential elections without having reformulated the Law on Elections, functioning under the new Constitution of 2010. Neither had the Dominican Republic accepted a law on political parties, nor a financial regulations. Resulting in propaganda and the extension of the elective campaigns, which has been the subject of consensus and pacts made twelve years ago.
21. The Central Elective Council (CEC) presented a project on the Law of Political Parties and Groups to the National Congress in June 2011. However, this project has not been approved. For over a decade, the National Congress, has seen various proposals on a law on political parties without any of these developing into laws.
22. The civil society continues to demand a legal framework regulation political parties and contributing to the strengthening of the democracy, both within the parties as throughout society.
23. The CEC presented the Project on the Organic Law of the Elective Regime before the National Congress in December 2011. Yet, the National Congress has not taken the decision to approve this project.

G. Superior Elective Tribunal

24. With the Constitutional reform of 2010, a Superior Elective Tribunal (SET) was created in 2011. Considered to be a significant advance, even though the elections of its members met with critique from political parties.^{xiii}
25. The TSE sentence of March 9th 2012, No. TSE-012-2012, declared the annulment of the register established by the XXXV Convention on the National Party of Veterans and Bourgeois (CNPVB), because it differed from the register used under the XXXIV Convention of the CNPVB; without there being evidence demonstrating the irregularities in the inclusion procedures of the new individuals in the register used under the XXXV Convention.
26. The president of the SET produced a convincingly dissident vote, when it seemed that the majority vote of the SET entailed severe ignorance towards the electoral dynamics. Which leads to the logic assumption that there are differences between the registered members and their registration lists which are distanced by a timespan of approximately two years. The decision of the majority of the SET,^{xiv} constituted a violation of the fundamental right to suffrage of the party members in the modality of alliance. The magistrate president ruled negatively towards this precedent because: “with the decline of the census of the delegates, submitted by the CEC and consequently the annulment of the XXXV Convention, without the provision of the documents sustaining said pretenses. Not only is there a precedent set on the CNPVB, also on all organizations that conform the Dominican political system.”^{xv}
27. The decision taken by the SET with regards to the CNPVB created space for a constitutional action and a demand of suspension before the Constitutional Tribunal (CT). This demand led to the CT sentence, No. TC-0006-12, that declared the inadmissibility of the demand of suspension, for the lack of objective reason; since the object to be suspended had already been executed. With this decision, the TC clearly departed from its obligation to be the gatekeeper of the Constitution and, above all, to protect the fundamentals rights stated in the Constitution.
28. In this case, the president of the TC intervened by opinionating that the arguments to declare inadmissibility, given by the majority, are properties of civil law, however peculiar to the Constitution and the application would be: “as if kicking in the face, the person who claimed to have a right to the constitutional jurisdiction and set a disastrous precedent for the protection of fundamental rights”.^{xvi}

H. Elective Observation

29. The elective observation in the Dominican Republic dates five years back and thus allows for the evaluation of what prioritizes the democracy.
30. The elective processes of 2010 and 2012 have been a high downfall to the Dominican democracy; as a product of the irregular or illegal financing of the elections, the corruption, the abuse and inadequate use of State resources, and additionally of the interest inversion that afterwards connected the governors and the representatives. Such circumstances constitute inequalities towards the emerging parties or the minority representation, since the major parties have access to such an amount of finance that it forms an obstacle to the access of political participation and inequality of conditions.^{xvii}
31. The elections of the congress and municipalities of 2010 and the presidential elections of 2012 saw a State interference in the electoral campaigns where government officials were participating, including ministers, who without taking responsibility of their posts assumed the leadership over campaigns throughout the country. This constituted a violation of the Law on Public Functioning (41-08), which in article 80, paragraph 13, states it to be prohibited to public officials to: “Serve the interests of the party while exercising his function, and consequently, organize or direct demonstrations, declare party discourses, distribute propaganda of a political nature of apply to funds for the same ends, as well as using the parties estate and funds for these ends.” The Law on Elections, in article 173; on elective crimes, establishes in article 18 that those who mingle in elective acts using their official influence, will be punished by correctional imprisonment or fining.
32. There were sufficient reasons identified to proclaim the preliminary process severely reprobated, during the 2012 presidential elections. Amongst the violations, that allowed for the questioned of the legitimacy of the democracy, there is the interference of State resources and an elective arbitration by the CEC.^{xviii}
33. The most relevant irregularity observed during the 2012 elections, of which the first complaints date back to the eve of the voting, was the market of buying and selling identity card that was present on the entire national territory,^{xix} with the aim to reduce the amount of electors. Even though the complaints intricated agents of the two principal opposing parties, in general they were directed to the official party, since the agents enjoyed protection; including those cases where police and military authorities were mingled. This practice was denounced by national and international journalists and by one of the observers in the city of Azua who was followed while taking pictures and encountered the camera being destroyed.^{xx}
34. There was no justification for the persecution of political agents, military ex-officials, and police men linked to the Partido Revolucionario Dominicano (PRD), who disrespected the Constitution and its adjectival laws. There were numerous arrests, some as massive as 13 individuals in Cotuí, which generated a critical situation that endangered their liberties. Arbitrarily and disproportionately was this military operation to close a national television channel due to a pretended infraction.^{xxi}
35. The interruption of the president of the Republic in the elective campaign; conditioning public politics to the interests of the party, was of such magnitude that it could not be ignored by the diplomatic observation of the Organization of the United States (OUS).^{xxii}
36. Evidence of the reproachable partiality of the elective authorities simultaneously forms the discriminations that affected four participating parties: Alianza por la Democracia, Dominicanos por el Cambio, Frente Amplio, and Alianza País. The candidates of these parties were not only victims of an unjust election system in respect to the distribution of resources and promotion opportunities, they were also victim of abuse of a CEC that did not take them into account and ignored their rights; reaching the extreme where they were not responded in time.^{xxiii}

I. Pending Institutions as the Mandate of the Constitution: Social Spheres and the Democracy of Rights

37. The Dominican Republic promulgated a new Constitution on January 26, 2010. The Constitution redefines the fundamental rights and includes substantial principles and values that constitute a new point of reference for each politics, program, and public projects or incentives that deal with state organs and social sectors.
38. Nevertheless, until 2012, the process of adapting the laws to the new Constitution continue to be postponed, which hinders the advance of a more participative democracy, and institutions with better practices and possibilities to comply with their aims and objectives. Amongst these pending laws are those that regulate the direct mechanisms of participation, such as the aforementioned, the plebiscite and normative municipal incentive, the economic and social council, habeas data, witness protection, control on the legality of the public administration, the prescription and processing of the crime of corruption, rendering of the accounts of the judicial power, views of the extinction of the dominium, and the penitentiary rights. Equally, the organic laws related to the Chamber of accounts, the armed forces, the National Police, the Ministry of Foreign Affairs, Environment, the elective Laws, and other ministries should be adapted. Another lacking figure of regulation, certainly in the Constitution, is the popular legal incentive through which the number of citizens (no less than 2% of those registered in the elective registers) may present law project to the National Congress.
39. For the first time the Dominican Republic is recognized as a Social Democratic State of right, based on the fundamental rights, the separation of powers, and respect for human dignity by the Constitution. Nevertheless, the Dominican population participates passively as benefitting from the goods and services and does not exercise an active role in the formulation of public and social politics and the distribution of said food and services envisaged by the State. The poverty index in the Dominican Republic increased to 42,2% from 2010 to 2011. ^{xxiv} This situation reveals the failure of those governing a country that in the last six decades has approximated one of the fastest growing economies of the continent, but without adequate health care services, education, energy, drinking water, transport, and security.
40. The concept of citizenship is broadened in the new Constitution, recognizing major rights of those who choose and are chosen, the right to vote in referenda is added, as well as the right to exercise popular incentives, be it legislative or municipal, the right to petition, and the right to denounce errors committed by public officials.
41. Popular elections before international parliaments are incorporated. However, the regulation for the selections coordinated by the CEC, was a dragging an proportional system; leaving the chosen in the function of an established order. Additionally, the lists were prepared by the political parties; who did not submit the candidates to internal elections.
42. The right to personal intimacy and honor, sacred in the Constitution, was violated of leaders of the opposition in the process of the 2012 elections. Their phone calls we intercepted without the corresponding legal authorization, ^{xxv} and spread in the media. ^{xxvi}
43. The rights of the consumer have a Constitutional range, even though state actions to guarantee these rights have mostly been plausible, for example the creation of the Dominican Institute for the Protection of the Consumer. It is imperative that the State develops programs and incentives that diffuse the rights of the consumer or users of the goods and services, and that allows this state organ to establish sanctions imposed upon violation of these rights.
44. With respect to the National Judiciary Council, the license given to the Public Prosecutor of the Republic is being modified. This reinforces the influence and preponderance of the Executive power. Additionally, it amplifies his designating functions of the members of the Superior Elective Tribunal, the Constitutional Tribunal , and the evaluation of the accomplishments of the

Supreme Court of Justice judges. Which in practice unveils the appointment of individuals linked to political parties.

Recommendations:

One of the biggest challenges of the Dominican Republic is the strengthening of its institutions, to the point where the State overcomes patronage and will be able to concentrate on the social spheres and the democracy of rights. To reach these objectives:

- a) Reduce administrative corruption and strengthen the system of consequences.
- b) Strengthen the independence of the powers of the State, as well as the functional independence of the Public Ministry, and the judicial administrative system: judicial, elective, and constitutional.
- c) Adapt the laws to the Constitution of 2010.
- d) Strengthen the political party system to obtain a system of weights and counterweights.
- e) Improve the fiscal systems and control the public funds of the National Congress, the Chamber of accounts, and the Public ministry.
- f) Contribute to the empowerment of the civil society for the social control, the rendition of public official's accounts, and the transparency of public policy.

Endnotes

i <http://www.lalupa.com.do/> Margarita politiza solidaridad. Periódico Hoy article of the 7th of Abril, 2013: RD\$40mil MM para mantener la pobreza. <http://www.pciudadana.org/> Programa de Transferencia Condicionada Solidaridad. Informes: Fase I y Fase II.

ii <http://www.acento.com.do/index.php/news/21270/56/Republica-Dominicana-ratificada-campeona-mundial-en-corrupcion.html>

iii

http://www.transparency.org/news/pressrelease/20121205_comunicado_de_prensa_indice_de_percepcion_de_la_corrupcion_2012

iv <http://www.hoy.com.do/el-pais/2010/10/6/344892/PC-critica-partidos-se-repartan-la-JCE>

v <http://www.elnacional.com.do/nacional/2013/5/15/159666/Senado-elige-a-Zoila-Medina-Defensora-del-Pueblo>

vi Protocolo por la Transparencia e Institucionalidad en la República Dominicana: www.pciudadana.org .

vii http://www.pciudadana.org/documentos/publicaciones/13/18_20_anos_de_impunidad.pdf

ix Report of the Technical Committee to the Economic and Social Council. See: www.pciudadana.org

xi Violated norms: A) With respect to the Dominican constitution, articles 146, 236, 238, and 247 were violated. B) With respect to the Organic law on Budget for the Public Sector, No. 423-06 of November 17th, 2006, article 8.m was violated, articles 11 b,e,g and j, and articles 44,47,48,50 and 51. C) With respect to decree No. 1524-04 which establishes the system of program of the budget execution, articles 19 and 28 were violated. D) With respect to the law on the organization of the ministry of estate, No/ 494-06, dating 27 December 2006, articles 3.5, 3.12, 3.15, 3.21, ad 3.24 were violated. E) With respect to the Law on Planification and Public Inversion, No.498-06, dating 28 December 2006, the basic principles of this law were violated; article 3,d,f,i, and articles 33, 37, 39, 44, and 48. F) With respect to Law No. 567-05 of the National Treasury, articles 8.f and 13 were violated. G) With respect to the Law of the general Control of the Republic, No. 10-07, dating 8 January 2007, article 14.2.e was violated. H) With respect to the Law on Public Functioning, No. 41-08, dating 16 January 2008, articles 79.1 and 80.13 were violated. I) With respect to the Law on Public Credit, No. 6-06, dating 20 January 2006, article 21 was violated.

xii http://www.acento.com.do/index.php/uploads/595/_InformeCCalCongreso2012-pdf.pdf

xiii See the 3th report of the electoral observatory, February 2012. Various members of this tribunal are know to have ties with the governing party and other traditional parties.

xv See the 5th report of the electoral observatory, April 2012. Sentence No. TSE-012-2012 del 9 de marzo de 2012.

xvi See the 5th report of the electoral observatory, April 2012. Sentence No.TC-0006-12.

xvii See the 1st report of the electoral observatory. Newspapers: El Diario 3-11-11; El Día 3-11-11; El Caribe 3-11-11; Hoy 3-11-11La Información 3-11-11

xviii See reports by the Electoral Observatory on Citizen participation.

xix <http://www.noticiassin.com/2012/05/participacion-ciudadana-dice-compra-de-cedulas-empana-proceso-electoral/>

xx www.hoy.com.do/el-pais/2012/5/20/428456/Hombres-armados-quitan-camara-fotografica-a-un-observador-de-PC-en-Azua

xxi Final report by the Electoral Observatory on Citizen participation. See: www.pciudadana.org

xxii Listín Diario 21-5-12. See also, report by the OSA on the Electoral Observatory, 2012 in the Dominican Republic.

xxiii Reports of Participación Ciudadana on the Electoral Observatory: See: www.pciudadana.org.

xxiv CEPAL report and the UNFPA, November 2012.

xxv <http://www.hoy.com.do/el-pais/2012/4/18/423750/EspionajeQuien-ordeno-interceptar-telefonos-a-Pepe-y-a-Guido>

xxvi <http://www.hoy.com.do/el-pais/2012/5/20/428456/Hombres-armados-quitan-camara-fotografica-a-un-observador-de-PC-en-Azua>