

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Seventh Meeting of the Committee of Experts
March 7-12, 2005
Washington, DC

SG/MESICIC/doc.138/04 rev.4
12 March 2005
Original: Spanish

DOMINICAN REPUBLIC

FINAL REPORT

(Approved in the plenary session held on March 12, 2005)

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON THE IMPLEMENTATION IN THE
DOMINICAN REPUBLIC
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK
OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

The Dominican Republic is on the island of Hispaniola, which it shares with the Republic of Haiti. The island is part of the Greater Antilles, set between the Caribbean and Atlantic Oceans.

Its territory comprises 31 provinces and a National District, which is home to its national capital, Santo Domingo de Guzmán. Each province has a civil governor appointed by the President of the Republic, with few gubernatorial functions. The provinces are divided into 146 municipalities (counties), which in turn are divided into municipal districts, sections and hamlets.

The Dominican Republic is a unitarian republic with a civilian, democratic and representative government. The latter is divided into the legislative branch, the executive branch and the judicial branch, all three of which are independent in the performance of their functions.

The Congress of the Republic, which is composed of the Senate and the House of Deputies, exercises the powers of the Legislative Branch. The members of these two houses are elected by popular elections held every four years, timed to occur two years after the presidential elections.

The powers of the Executive Branch are exercised by the President of the Republic, who is elected by popular elections held every four years, and which are held separately from the congressional and county elections. The President may be re-elected for only one additional term. The Executive Branch also has a Vice President, elected in the same manner as the President.

The President of the Republic is the head of government and commander-in-chief of the armed forces and the police. He appoints the Attorney General of the Republic, the Deputy Attorneys General and the other members of the Justice Department, based on suggestions made by the National Board of Prosecutors.

¹ This report was approved by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on March 12, 2005, at its seventh meeting, held at OAS Headquarters in Washington D.C., United States, March 7 to 12, 2005.

² Response from the Dominican Republic to the questionnaire approved on May 24, 2002, on provisions selected by the Committee of Experts for analysis within the framework of the First Round, document updated on August 30, 2004, pp. 1, 2 and 3, hereinafter referred to as the *Dominican Republic's response to the questionnaire*.

At the Dominican Republic's request, its response to the questionnaire, its appendices and relevant additional information, and the documents sent by civil society in keeping with the Rules of Procedure and Other Provisions, are posted at the following web site: http://www.oas.org/juridico/spanish/corresp_repdom.htm

Disputes between civil servants and government agencies, and those between government agencies and private parties, are settled by the Superior Administrative Tribunal, composed of judges who sit on the bench of the Dominican Republic's Court of Accounts.

The Comptroller General, who is appointed by the President, exercises internal control of the administration and of public funds. The Court of Accounts, whose judges are nominated by the President and elected by the Senate, exercises external control. The President must submit each year's accounts to the National Congress, which either approves or rejects the statement of earnings from taxes and fees and investment of revenues that the Executive Branch must submit to it.

The Judicial Branch consists of the Supreme Court of Justice, elected by the National Council of the Judiciary chaired by the President of the Republic and composed of four lawmakers and two members of the Supreme Court. In accordance with Law No. 76-02 of July 2, 2002, the National Congress instituted the Code of Criminal Procedure, enacted by the Executive Branch on July 19th of that same year, and whose final phase of implementation was carried out in September of 2004. This Code modified some of the courts and current Supreme Court of Justice, as well as the competences expressly attributed to the Supreme Court by the Constitution and the laws, granting it jurisdiction to hear and decide on motions for repeal or nullification (*casación*), to reopen a case (*revisión*) and to resolve jurisdictional conflicts between the Courts of Appeal or between Judges and Courts in different departments, as well as to conduct proceedings in the case of extradition requests.

The Dominican State also comprises decentralized and autonomous agencies. The latter include the local county governments, administered by a supervisor or mayor who enforces the resolutions and ordinances of the *sala capitular* and County Council, and who is popularly elected every four years.

Presiding over the electoral bodies is the Central Elections Board (*Junta Central Electoral – JCE*) and the county elections boards, which answer to the Central Elections Board. The Central Elections Board is divided into two chambers, one contentious and the other administrative. Each chamber is composed of four judges who, together with the President of the *JCE*, are appointed every four years by the Senate of the Republic.

Recently, the Ombudsman's Act created the Office of the Ombudsman. It is an independent body whose function is to monitor to ensure that public functions are correctly discharged and to be the watchdog of the citizenry's personal and collective rights and entitlements. The Ombudsman has not yet been selected.

The fundamental individual and social, civil and political rights are recognized by the Constitution, the laws and the international instruments approved by Congress. The legal certainty of cases decided under a previous law is guaranteed by the Constitution. Similarly, laws cannot be applied retroactively, except when the convicted person or person on trial would benefit.

Due process of law is established in both the Constitution and the laws. There are a variety of remedies, such as mechanisms to defend and guarantee one's fundamental rights. Any interested person may file a direct action with the Supreme Court challenging the constitutionality of any law, decree or resolution, where the party makes its case as to why the law, decree or resolution in question is in violation of the Constitution.

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the OAS General Secretariat, the Dominican Republic ratified the Inter-American Convention against Corruption (IACC) on March 29, 1996, and deposited the respective instrument of ratification on June 8, 1999.

Similarly, the Dominican Republic signed the Declaration on the Mechanism for Follow-Up of Implementation of the IACC on June 4, 2001, during a regular session of the OAS General Assembly held in San José, Costa Rica.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response from the Dominican Republic

The Committee would like to acknowledge the cooperation received from the Dominican Republic throughout the entire review process, especially the cooperation received from the Department for the Prevention of Corruption in Government, which is a coordination unit under the Attorney General's Office. This cooperation was made apparent by the timely submission of the Dominican Republic's response to the questionnaire and by the Department's willingness to make itself available to clarify questions or complete the content of the response.

The Dominican Republic affixed to its response those documents and legal provisions that it considered relevant, a list of which is appended to this report.

For its review, the Committee took into account the information supplied by the Dominican Republic as of August 30, 2004, and the information subsequently provided to the Secretariat and to the members of the review subgroup to enable them to perform their functions, in accordance with the Rules of Procedure and Other Provisions.

2. Document submitted by civil society

The Committee also received, within the time period it established during the course of its Sixth Regular Meeting,³ the document titled "*Movimiento Cívico Participación Ciudadana*" [Citizen Participation Civic Movement] as a civil society organization and on behalf of the "*Comisión de la Sociedad Civil de Seguimiento a la Aplicación de la CICC. República Dominicana*" [Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption. Dominican Republic] which is a group of more than 34 Dominican civil society organizations. That document appears as an appendix to this report.⁴

³ Decision on "Updating of Responses to the Questionnaire." This decision was adopted by the Committee of Experts at its meeting of July 30, 2004, during its Sixth Regular Meeting, held July 26 through 30, 2004, at OAS headquarters in Washington D.C.

⁴ This report was received within the time frame set by the Committee. In addition, during an informal meeting with the members of the Committee, "Citizen Participation Civic Movement" (*Movimiento Cívico Participación Ciudadana*), made a presentation on this document.

II. REVIEW OF THE IMPLEMENTATION IN THE DOMINICAN REPUBLIC OF THE PROVISIONS SELECTED

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. CONFLICTS OF INTEREST

1.1.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

As stated in the response to the questionnaire, the Dominican Republic does have a set of standards of conduct for the correct, honorable and adequate fulfillment of public functions and designed to prevent conflicts of interests. Within that framework, there are standards at the constitutional, legal and statutory levels, and mechanisms and other measures intended to prevent conflicts of this type.

The Constitution sets forth a number of general provisions which refer to conduct incompatible with the functions of certain high government offices; for example, the posts of senator and deputy are incompatible with any other public office or employment (Article 18 of the Constitution).

Among those provisions that are generally applied to all public servants, Article 102 of the Constitution provides that anyone who takes public funds for his own personal gain and anyone who uses his position within the branches of government, their offices or autonomous institutions to obtain economic advantages, shall receive the punishment that the law prescribes. Persons who provide advantages to their associates, family, close friends, friends or relations shall also face the penalties that the law prescribes. Similarly, Article 100 of the Constitution prohibits any privilege obtained, no matter what the situation, that violates the equality of citizens.

Other important provisions appear in the Code of Ethics for Public Servants (Law No. 120-01), the main purpose of which is to establish standards to govern the conduct of public servants based on the principles of ethics that they must follow in the exercise of their functions, so as to guarantee and promote the highest degree of honesty and decency in discharging the functions of the State (Article 2). These standards are applicable to the military system (Article 3). This Code provides that every public servant's conduct must be informed by the principles of honesty, loyalty, honor, probity and transparency, among others (Article 4).

Under the Code of Ethics, public officials or employees, regardless of rank, are prohibited from using their position to realize advantages, benefits or privileges not permitted by law, either directly to further the official's or employee's own private interests or those of any family member, business or entity. The Code features other general prohibitions as well, including prohibitions against: disclosing or misusing confidential information acquired by reason of their position; using economic advantages or benefits to further their own private interests or those of any family member, business, or entity; and accepting employment or establishing contractual relations with any person, business or enterprise that does business with the government institution for which the official or employee concerned works, when said official or employee is somehow party to the institution's decisions or can influence the agency's official dealings with the person or business in question (articles 8 *et seq.* of the Code of Ethics).

The Code of Ethics also prohibits public officials from taking part in or having a stake in the profits or earnings derived from a contract with any public or private institution; and the provision of advice to entities having any type of relationship with the services or functions of the institution where they work. The Code further stipulates that no more than three family members or relatives of the head of a public institution or of any other official with command and decision-making authority may work in that public institution.

The Code of Ethics also sets out the procedures to be followed and the penalties to be applied when public officials or employees violate the Code. The disciplinary sanctions include private and public reprimand; suspension of salary from one to three months; and definitive removal from post (articles 9 *et seq.*).

Criminal sanctions of a general nature include those which are applied to public officials or civil servants who, whether openly, in disguise or through third parties, receive some gain or remuneration not allowed by law (Article 175 of the Penal Code).

In order to enforce these standards, the Department for the Prevention of Corruption in Government is required to adopt rules of procedure in order to organize a disciplinary tribunal to consider and impose the disciplinary sanctions mentioned in the Code of Ethics, pursuant to paragraph III thereof.

Under Law 14-91 of March 20, 1991, on Civil Service and Government Career Service and its Regulations, the conduct of public servants must conform to work standards and the principles of ethics in public service; prohibits remunerated work in more than one position and contemplates hypothetical situations and incompatibilities applicable to those public servants that fall under this regime (Articles 20 and 130).

There are also regulations and executive orders governing the conduct of specific types of public services, which contain provisions related to this section of the report and which are mentioned by the Dominican Republic in its response to the questionnaire. They include Regulation No. 395 of September 26, 1966, on public works and construction contracts, which states that no person in State service nor any business, company or organized group having direct or indirect ties to a public official or employee may bid on construction contracts; Regulation 81-94 governing the Civil and Government Service Act, provides that a civil servant's participation in government activities in which that civil servant has some economic, ownership or political stake that in any way creates conflicting attributions, rights or interests shall be incompatible with public service; Law 78/03 of July 27, 2003, which creates the Statute of the Justice Department, establishes certain prohibitions in order for its members to represent the public's interests in legal actions (articles 67 to 69); and Regulation 262-98 of July 10, 1998, which regulates government procurement and government contracting of goods and services, and which prohibits bidding on such contracts by an identified group of public officials, and also disqualifies juridical persons in which those officials or any of their relatives have a direct stake and those who have served as advisors at any stage of the contracting process (Article 27).

Lastly, note should be made of those provisions in the Dominican legal system which set forth prohibitions and incompatibilities in specific public offices, such as the Regulations of the Judicial Service; Law 78-03 instituting the Statute of the Justice Department; the Dominican Monetary Financial Code, Law 183 - 02 and Decree 121-01.

With respect to the mechanisms by which these laws are enforced, the Dominican legal system has mechanisms regulating any criminal, administrative or disciplinary responsibility a public servant incurs as a result of violation of the prohibitions described in the preceding paragraphs. As a result, the law contemplates a system of disciplinary sanctions ranging from private reprimand to termination of the appointment, depending upon the seriousness of the offense.

It is necessary to note that the work carried out by different State institutions in applying the measures to create, maintain and strengthen standards of conduct designed to prevent conflicts of interests. This includes the internal and external auditing carried out by the Comptroller General and by the Court of Accounts, in the follow-up of the administrative actions of each public entity; the work of the Justice Department and the Common Law Courts charged with channeling cases against and prosecuting public officials who are derelict in their duties; and the work done by the Attorney General's Office in deciding, in cases of doubt, whether any public official has brought influence to bear in the purchase of goods and services.

In addition to the above-mentioned institutions, other institutions within the Dominican legal system also engage in activities related to the matter at hand. These include the procurement commissions that are part of every public institution; the Bidding Commission created under Regulation 395 of 1966 to oversee compliance with the rules on the subject; and the Department for the Prevention of Corruption in Government, which audits public bidding and disseminates the standards of conduct and duties of public servants.

1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms that the Committee reviewed in the area of conflicts of interest, based on the information made available to it, are pertinent for promoting the objectives of the Convention. However, the Committee has a number of observations with respect to aspects of these standards and mechanisms, which it will formulate in the final chapter of this report.

The Committee notes that there are a number of general standards and principles of conduct that apply to all public servants, for the correct, honorable and proper fulfillment of public functions and that espouse the principles established in the Convention. As stated in the previous section, this system is made up of rules intended to prevent conflicts of interest, articulated mainly in the Constitution, the Code of Ethics for Public Servants and in certain regulations and executive orders governing the conduct of specific categories of public servants.

The Committee observes that one of the principal bodies of law on this subject is the Code of Ethics for Public Servants. In this regard, the Committee would like to point out that the provisions of this Code apply to a broad range of subjects. Under Article 2 of that Code, the terms "public servant," "public employee" and "public official" are equivalents. Article 3 establishes that the provisions of the Code apply to employees and officials of the Secretariats of State, their offices, and to autonomous, decentralized institutions, and to "other organs of the State whose legal constitution is regulated under public law." The Committee believes that this is consistent with Article 1 of the Inter-American Convention against Corruption and constitutes an in implementing the Convention.

With respect to the system for access to and entry into the public service and the existing system of incompatibilities and disqualifications, the Committee notes an absence of preventive provisions and mechanisms that can provide assurance to Government that those entering its service do not have interests or relationships that, under the laws in force, could constitute a conflict of interest. The

Committee notes that the Code of Ethics allows for the head of a public institution to employ up to three family members or relatives in that same institution and considers that such a provision should be eliminated to ensure an effective prohibition on nepotism. This suggests the importance of creating or strengthening such mechanisms. In this respect, the Committee will make a recommendation.

The Committee also finds that it might be of benefit to the Dominican Republic to cultivate other mechanisms intended to identify and detect supervening legal situations that might arise during the exercise of public office and which might create a conflict of interest. This might help to resolve the difficulty expressed by the Dominican Republic in its response to the questionnaire, regarding the existing difficulty in detecting conflicts of interest.⁵ The creation and maintenance of databases might facilitate this task. Taking into account the above considerations, the Committee will formulate recommendations in the final chapter of this report.

The Committee also observes that the main legal text of general applicability to all public servants, i.e. the Code of Ethics of Public Servants, lists a wide array of hypothetical situations that could create conflicts of interest. These encompass interference in the official business of a public official or persons with whom that official is related by marriage or consanguinity or with whom that official has a particular interest or business relationship; the Code also prohibits employment and professional activities considered incompatible with public service. The Committee considers that these standards might benefit from the implementation of measures to address effectively a wide variety of conflict of interest situations, even situations that are not foreseen. In this regard, based on the information at its disposal, there appears to be a gap in the provisions on conflicts of interests applied to the Legislative Branch, particularly those related to senators and deputies, and the corresponding consequences and penalties in cases of noncompliance. The Committee will formulate a recommendation in this regard.

The committee also considers that the provisions regulating this matter be complemented by other mechanisms, in addition to those already in place, which are capable of detecting or identifying any supervening causes that arise during the exercise of public function and which might give rise to conflicts of interest. The Committee will formulate a recommendation in this regard.

With respect to these mechanisms, the Committee recognizes the importance of the disciplinary tribunal in the consideration and application of disciplinary sanctions against civil servants that violate the Code of Ethics. In light of paragraph three of that Code, the Department for the Prevention of Corruption in Government is required to organize this tribunal through adoption of its rules of procedure. In this connection, the Committee urges the state under review to move forward with the creation and strengthening of this organ as an effective mechanism for the implementation of the Code of Ethics, and to ensure, inter alia, adoption of its rules of procedure and its provision with the human and financial resources necessary to fulfill its functions. The Committee will formulate a recommendation in this regard.

The Committee also notes an absence of provisions regulating the activities in which former public servants may engage after they leave government service. In this respect, the Committee believes it would be advisable to take into account the importance of addressing situations in which a former public servant could take undue advantage of his former position; the time period on this limitation or prohibition must be specified and it should not completely curtail the constitutional right to work. The Committee will formulate a recommendation in this regard.

⁵ Updated Response from the Dominican Republic to the Questionnaire, p. 11.

1.1.3. Results of the legal framework and/or of other measures and enforcement mechanisms

With respect to the results of the legal framework and of other measures and mechanisms designed to ensure their enforcement, the Dominican Republic wrote the following in its response to the questionnaire:

“Although no statistics on this point are available, a survey that the Department for the Prevention of Corruption conducted among public ethics commissions found that construction contracts and procurements were mentioned as two of the main sources of corruption... However, the laws now in force allow many exceptions to the rules. Contracts for construction work can be done from stage to stage, by special competitions, on force account or by lots, which defeats the purpose of public competitive bidding per se. Similarly, competitive bidding is done only in the case of procurements in excess of seven million pesos, which means that the bulk of transactions are not as transparent as they might be and conflicts of interest are difficult to spot”.⁶

The Committee considers that general and limited nature of the information provided does not allow a comprehensive assessment of results in this area. In this regard, the Committee considers that it would be advisable for the Dominican Republic to consider compiling information on conflict of interest cases, with a view to establishing evaluation mechanisms, which allow verification of the results in this area. Bearing these considerations in mind, the Committee will formulate a recommendation.

With respect to the difficulties expressed by the country under review in detecting conflicts of interest in government procurement procedures, the Committee refers back to the observations it made in the previous section, on the adequacy of the juridical framework.

1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The rules of conduct and the mechanisms for ensuring the preservation and proper use of resources entrusted to public servants that the Committee has examined, based on the information available, are relevant for promoting the purposes of the Convention.

The Committee notes that the Dominican legal system contains rules of a general nature that require public servants to conduct themselves in a manner that serves the public interest, and establish administrative and criminal liability in the case of those whose conduct does not comport with the established standards and principles.

⁶ Updated Response from the Dominican Republic to the Questionnaire, pp. 10 an 11. During the course of the meeting, the Dominican Republic brought to the attention of the Committee that the threshold for competitive bidding is in excess of three million pesos rather than seven million pesos as erroneously stated in the response to the questionnaire.

Some provisions of a general nature have already mentioned in section 1.1.1. of this report. However, it is worth noting that Article 102 of the Constitution states that anyone who takes public funds for his own personal gain and anyone who uses his position within the branches of government, their offices or autonomous institutions to obtain for himself economic advantages, shall receive the punishment prescribed by law.

Similarly, there are other provisions of a general nature, which require civil servants to abide by the letter of the law and to oppose any act of corruption. One such law is No. 672 of 1982, which establishes a code of conduct for law enforcement personnel, requiring them to confront all acts of corruption and encouraging them to prosecute them. The Penal Code also criminalizes and penalizes conduct of civil servants who misuse public funds, such as articles 169 and 176.

The Dominican legal system establishes a number of bodies and agencies charged with monitoring to ensure that public resources are preserved and put to good use. These include the Court of Accounts, a technical body that enjoys administrative and budgetary independence charged with the examination of the general and specific accounts of the Republic, through audits, studies and special investigations and submitting reports as appropriate. Its members are elected by the Senate from slates nominated by the Executive Branch (articles 78 to 81 of the Constitution and article 10 of Law No. 10-04 on the Courts of Account of the Republic).

In addition to establishing the functions of the Court of Accounts, Law No. 10-04 also: harmonizes the legal standards relating to this system; identifies the institutions responsible for applying those standards and ranks their respective authority; facilitates institutional coordination; promotes ethical, efficient, effective, and financial management by administrators of public resources; and facilitates a transparent rendering of accounts by those who exercise a public function or who receive public resources. The Court of Accounts presents an annual report on the results of the analysis and assessment of the execution of the budget income and the law on public spending approved for the previous year, in addition to the results of the audits, studies and special investigations carried out in the previous year (Article 1 and 43 of Law No. 10-04).

The National System of Audit Oversight includes the set of principles, standards and procedures that regulate both internal institutional control and external control with regard to administration by those who are in entities within the scope of the law, and who manage or receive public resources. Its purpose is to ensure an ethical, efficient, effective, and proper economic use of those resources. The Court of Accounts is the highest organ within this system (Article 5 of Law No. 10-04).

The Office of the Comptroller General of the Republic answers to the President of the Republic. Its principal legal origin is Accounting Law No. 3894 of August 9, 1954, and Law No. 54, of November 13, 1970. The control function that this office is called upon to perform is done by recording all budgetary and financial transactions of the Dominican State and by conducting audits and reviews of the financial registries of Central Government institutions and organs, counties, decentralized and autonomous agencies, and of any natural or legal person that administers or manages public funds or property.

Law No. 3893 provides that the National Treasury is an office of the Secretariat of State of the Treasury and Public Credit, and is responsible for exercising the rights and enforcing the obligations regarding the collection, custody, disbursement and accounting of public funds. This Office of the Treasury is charged with the faithful custody of those funds (articles 1 *et seq.*, Law No. 3893).

Other entities also monitor for the proper administration and preservation of public resources, such as the Bureau of State Property, (Law No. 1832), and the State Property Leasing Act, (No. 1421 of November 22, 1937).

With respect to government procurement and contracting, Decree 262-98 established the Regulations on Government Procurement and Contracting of Goods and Services and created the General Provisioning Bureau, whose function is to enforce the contracting standards and methods prescribed for the Central Government and decentralized institutions. This system promotes, among others, the principles of publicity, transparency, equal opportunity for interested parties and bidders, the promotion of competition, and the public nature and responsibility of those public servants charged with its operation (articles 2 *et seq.* Regulations on Government Procurement and Contracting of Goods and Services).

Among the principal mechanisms enabling compliance with these provisions are the procurements committees that exist in every public institution and which enforce procurement-related laws; the public bidding procedures; the work of the Attorney General's Office when there is doubt as to whether a public official has brought influence to bear on the purchase of some good or service (Article 29 of decree 262-98); the standards of conduct for public servants, which bar them from participation in certain contracting or bidding on construction work contract (Article 3 subparagraph (f) of Regulation 395); the internal and external audits conducted by the Office of the Comptroller General of the Dominican Republic and by the Court of Accounts; and the work done by the Justice Department and the common-law tribunals charged with (channeling) and prosecuting public servants who have violated the rules and standards described above.

In its response to the questionnaire, the country under review also mentions other mechanisms to enforce compliance with these standards, including: application of current international standards promoted through the cooperation of such organizations as the World Bank, the Inter-American Development Bank, the United Nations, the International Monetary Fund, etc.; and the inspections performed by the Office of the Superintendent for Banking for the purpose of verifying that the entities under its oversight have complied with the law.⁷

1.2.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms for the preservation and proper use of resources entrusted to public servants, as reviewed by the Committee based on the information at its disposal, are pertinent for promoting the objectives of the Convention.

As described in the previous section of this report, in the Dominican Republic's legal system, these rules appear mainly in the Constitution, the Law on Courts of Accounts of the Republic, Accounting Law No. 3894 of August 9, 1954, Law 54 of November 13, 1970, and Law No. 3893 on the National Treasury.

Judging from the information available to it, it would appear to the Committee that the main control bodies for management and auditing of public works and resources, such as the Office of the Comptroller General and the Court of Accounts, could use further strengthening, based on the analysis of these bodies set out in section 3.2, which concerns the oversight bodies examined in this first round.

⁷ Updated Response from the Dominican Republic to the Questionnaire, pp. 8, 9 and 10.

In the information provided to it, the Committee has not been able to find any administrative provision –either legal or regulatory- describing in detail the acts or omissions on the part of public servants that could be detrimental to proper preservation and management of public property; provisions for the corresponding sanctions for culpable public servants or individuals; nor mechanisms to obtain redress or compensation for any pecuniary damages that such conduct may cause to the State. The Committee does observe general principles regarding that responsibility, such as the provision in Article 102 of the Constitution, which might serve as the basis for the development of a more detailed body of standards that lists the grounds giving rise to a public servant’s disciplinary and administrative liability and that spells out the corresponding penalties and the means by which to redress the State for the damages caused. The Committee will formulate a recommendation in this regard.

With respect to the Government Provisioning Commission that is attached to the Office of the President of the Republic and the functions of which include monitoring compliance with government procurement standards and procedures, the response to the questionnaire states that the Commission “is not in operation.”⁸ In spite of this, as indicated in the response, there is a procurements commission in every public institution, which enforces the existing provisions on the subject. In this regard, the Committee believes that it is relevant to encourage the country under review to examine and determine the importance of reactivating the Commission or, failing that, to ensure that the functions that Law No. 295 assigns to it are being fully performed, whether by the procurements commissions mentioned above or by other public institutions. Taking the foregoing into account, the Committee will formulate a recommendation.

Concerning the rules regulating public bidding and calls for public proposals, the Committee notes the existence of exceptions that could adversely affect the sound management, administration and use of public resources.

With respect to the mechanisms to ensure enforcement of these standards, the Committee notes that there are bodies, organs and procedures to apply the provisions in force and that ultimately make it possible to achieve, to some extent, the ends pursued.

1.2.3 Results of the legal framework and/or other enforcement mechanisms

With respect to the results of the juridical framework and other measures or mechanisms designed to ensure its enforcement, in its response to the questionnaire the Dominican Republic refers to issues having to do with the operation and functioning of certain bodies with authority in the area of preserving and conserving public resources. While this information is relevant, in keeping with the method the Committee adopted for preparation of reports and that it followed with regard to the reports already adopted, these issues will be examined in the third section of this document, which concerns oversight bodies.

With respect to the audits carried out by the Comptroller General and the Department for the Prevention of Corruption in Government, the response of the country under review to the questionnaire notes that “*they contribute to the preservation of public resources. However, the extension of the State and the operating limitations prevent complete coverage and more frequent inspections*”⁹.

⁸ Updated Response from the Dominican Republic to the Questionnaire, p. 8.

⁹ Updated Response from the Dominican Republic to the Questionnaire, p. 12.

The foregoing facts suggest the need to strengthen the operating capacity of these two entities, so that they may overcome the present difficulties that prevent the carrying out of a greater number of audits, as the Comptroller General is authorized to do by Articles 22 to 24 of the Accounting Law. According to the information provided, this is a mechanism that contributes to the preservation of public resources.

Pursuant to Law 1832, the General Bureau of National Assets is charged with monitoring the conservation of the State's real and personal property and creating and maintaining an up to date inventory of that property (Article 14). The response of the country under review to the questionnaire notes that: "*With respect to the State's real and personal property, the General Bureau of National Assets, on a constant basis, though at some times more than others, performs tasks related to reorganizing, titling, and recovering that property. There is no property registry, nor has a nationwide audit been conducted to inventory the property of the Dominican State*".¹⁰

The foregoing suggests the need for the Dominican Republic to consider strengthening this entity, so that it may fully comply with the responsibilities related to the creation and maintenance of an inventory of the public property for which it is responsible. This might serve as a valuable instrument for the preservation and administration of public resources. Taking the above into account, the Committee will formulate a recommendation.

Law 126-01, which creates the General Bureau of National Assets, also charges that entity with organizing the nationwide audit of the State. In this regard, the country under review notes "*This activity has not yet commenced*".¹¹ The committee encourages the State to continue and improve the work carried out by the Bureau in this regard, and will formulate a corresponding recommendation.

The response of the country under review also refers to the work carried out by various entities with respect to the recovery of public property, including the Dominican Agricultural Institute (IAD), the Department for the Prevention of Corruption in Government, the Secretary of State for Education, the Technical Office for Ground Transportation, among others. The committee urges the country under review to continue taking measures of this nature, in order to ensure the proper preservation and use of public resources. Taking the above into account, the Committee will formulate a recommendation.

The limited nature of the existing information does not allow the Committee to make a comprehensive assessment of the results in this field. Bearing this circumstance in mind, the Committee will formulate a recommendation.

1.3 MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Dominican Republic has a set of standards requiring public servants to report to appropriate authorities any acts of corruption of which they become aware.

¹⁰ Updated Response from the Dominican Republic to the Questionnaire, p. 12.

¹¹ Updated Response from the Dominican Republic to the Questionnaire, p. 12.

Law 76-02, which institutes the Code of Criminal Procedure, promulgated on July 19, 2004, provides at Chapter 2, Section 1, Article 262, that the authority to file a complaint corresponds to “Any person who becomes aware of a violation of public law.” Such complaints are filed with the Department of Justice (*Ministerio Público*), the police, or any executive agency that engages in supplementary investigative activities. Article 264 of that law expressly mentions the duty of civil servants to report any violation of public law that comes to their attention in the course or as a result of the performance of their functions.

The Law against the Laundering of the Proceeds of Illegal Trafficking in Drugs and Controlled Substances and Other Serious Violations, Law No. 72-02, was enacted on June 7, 2002, and also contains relevant provisions. The legal or natural persons to which the law refers – (natural or legal persons, who pursuant to this law have the obligation to prevent, hinder, and detect the laundering of assets – have the obligation to report to the Financial Analysis Unit for the purposes of investigation, those transactions which by their very nature may be associated with the laundering of assets and communicating, by their own initiative, any fact or operation which appears to be or which is related to laundering of assets (Articles 38 and 41, paragraphs 5 and 6).

With respect to the enforcement mechanisms, in its response the Dominican Republic notes the authorities that the Justice Department has in this regard. It reports that under Article 6 of Law 4378, a Secretary of State has the duty to “bring to justice any official or employee in his department who commits a crime or offense that is related to that department’s services”; the authorities that Article 28 of Law 3894 gives to the Comptroller and Auditor General, through the Secretary of State of Finance, to report to the President any expenditure or contract done by any department or office in violation of the law; the “Anti-Corruption Boxes” that the Department for the Prevention of Corruption in Government, working in coordinating with the public ethics commissions, has set up in every office of the Central Government for public servants and the general public to report acts of corruption committed in the respective institution; and the work being done by the Financial Analysis Unit, which is responsible for enforcing the Law against the Laundering of Proceeds from Illegal Trafficking in Drugs and Controlled Substances and Other Serious Offenses, and the monitoring to ensure compliance throughout the national economic system, public or private.¹²

1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms related to the measures and systems that require public servants to report to the competent authorities any acts of corruption in public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for promoting the objectives of the Convention.

However, it should be taken into account that the main provision in force on this subject Law 76-02, which instituted the Code of Criminal Procedure, Articles 262 and 264 limits this obligation to the filing of complaints with the prosecutor’s office thus making it necessary to establish norms on the form, manner and place for the filing of complaints via administrative channels. This could encumber the filing of such complaints, especially in those cases in which the public servant is not familiar with the types of conduct that constitute acts of corruption. Similarly, this provision is worded in such a way that it might exclude any requirement to report conduct that, although not necessarily a crime, is nonetheless in violation of government standards and provisions designed to fight and sanctions acts of corruption in the public service.

¹² Updated Response from the Dominican Republic to the Questionnaire, p. 14.

In addition, it is advisable to consider that the prospect of going to a public prosecutor's office to report a crime may be intimidating for some public servants. In its response the State reports that: "*However, it cannot be claimed that prosecutors, although an integral part of the Justice Department, have become a credible or effective mechanism for receiving complaints of corruption or for following them up on their own initiative.*"¹³

Based on the above, one might infer the need to strengthen the Prosecutor's Office so that it fully serve as an effective institution for receiving and following-up on complaints filed. This issue will be examined in greater detail in Chapter Three of this report, on the subject of the oversight bodies.

In this sense, the Committee acknowledges the work being done by the Department for the Prevention of Corruption, in coordination with the public ethics commissions operating in each office of the Central Government. The response of the country under review notes that working together, they have installed "Anti-Corruption Boxes" through which public servants and the general citizenry can report acts of corruption committed within their respective institutions.¹⁴ Nonetheless, the Committee notes the absence of provisions within the legal framework that expressly state those public servants are obligated to file their complaints through those boxes. Notwithstanding, the Committee recognizes the existence of standards authorizing the Department for the Prevention of Corruption in Government to investigate all incidents of corruption that it learns of, as expressly provided for by Article 3 paragraph c) of Decree No. 322-97, which created that Office. There is, however, no express obligation on the part of a public servant to file complaints with this Department or with any office other than the Prosecutor's Office.

Taking the foregoing into account, the Committee considers that the Dominican Republic might benefit from a broader standard that enables public servants to file complaints via administrative channels and which establishes filing requirements that do not intimidate potential complainants. For example, working through administrative channels, the identity of the complainants could be kept confidential. The use of appropriate means of communication and computers might also facilitate the filing of complaints of this type. The Committee will formulate recommendations in this regard.

In addition, the Committee notes an absence of effective protections against any threats or reprisals against a public servant who files a complaint. The Committee considers that the Dominican Republic benefit from the existence of a system which protects public servants who file complaints, guarantees job stability and assures that filing a complaint in good faith will not result in reprisals or other negative consequences. Should the Dominican Republic so deem, the system could also afford greater protections to public servants who report illegal acts in which their superiors may be involved. The Committee will formulate a recommendation in this regard.

1.3.3. Results of the legal framework and/or other measures and enforcement mechanisms

With respect to the results of the legal framework and/or other measures, the Dominican Republic stated the following in its response to the questionnaire:

¹³ Updated Response from the Dominican Republic, p. 14.

¹⁴ Updated Response from the Dominican Republic, p. 14.

“The gradual enforcement of these provisions has made it possible to detect a number of acts of corruption and to prosecute and imprison the guilty parties. This was true of some cases prior to August 16, 2000, but has become even more so since then. In the last four years, more than 30 complaints alleging acts of corruption were filed by public servants and received by the Attorney General’s Office and its Department for the Prevention of Corruption (DPC).

*More than 28 audits have detected accounting and financial irregularities that the Office of the Comptroller General of the Republic and the Legal Advisor to the Executive Branch have referred to the DPC. Those cases are under investigation.”*¹⁵

The Committee urges the Dominican Republic to continue strengthening and enhancing efforts and experiences such as those described in the preceding paragraphs, through the development and enforcement of standards and mechanisms similar to those suggested by the Committee in the previous section of this report.

Furthermore, the limited nature of the foregoing information and the lack of additional information does not allow a comprehensive assessment of the results in this field. With that consideration in mind, the Committee will formulate a recommendation.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

2.1 EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

In the Dominican legal system, the obligation of certain officials to declare their income is currently provided for and regulated by Law No. 82 of December 16, 1979.

The scope of the application of the duty or obligation to declare is defined by Article 2 of that law, which sets out the government posts that are subject to the declaration requirements. They include the following: the President and Vice President of the Republic; senators and deputies; secretaries and under secretaries of State; the Governor and Deputy Governor of the Central Bank; the administrators and managers of the State banks; county supervisors and county councilmen; the directors general and deputy directors general, chairmen and vice chairmen of State agencies; governors of the provinces; chairmen and vice chairmen, administrators and deputy administrators general of the businesses controlled by the Corporation of State Enterprises; the Comptroller and Auditor General of the Nation; the National Treasurer, internal revenue collectors and customs collectors.

The declaration of income, assets and liabilities is filed with the National Treasurer. The latter is to withhold the salary of any official required to file until such time as that official has complied with the filing requirement. This office must also send a copy of every “inventory” or declaration to the Attorney General of the Republic, from whom interested third parties may obtain copies (articles 4 and 5 of Law No. 82).

In terms of content, Article 1 of Law No. 82 provides that the public officials required to file declarations have the duty to “*prepare a detailed inventory, legalized by a Notary Public, under oath.*”

¹⁵ Updated Response from the Dominican Republic, p. 14.

The Dominican legal system also establishes two different times when these declarations are to be filed: the first within one month of taking office, and the second within one month of the official's departure from office (Article 1, Law No. 82). Failure to perform this obligation has results, as previously reported, in the withholding of the official's salary until he/she has complied with this obligation. Furthermore, any acquisitions made by the public official and not declared are presumed to be illicit under the terms of Article 6 of Law No. 82.

2.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

Based on the information at the Committee's disposal, the standards and mechanisms that the Committee has reviewed concerning systems for disclosing income, assets and liabilities regulated by Article III, paragraph 4 of the Convention, are pertinent for promoting the objectives of the Convention.

Law No. 82 contains the rules governing declarations of income, assets and liabilities. The various aspects of that law were described in the preceding section of this report.

The Committee acknowledges that the list of public officials required to file these declarations is broad-ranging. The Committee also notes that the law dates back to 1979, and that since that time, it is likely that the Dominican government has undergone changes in its organizational structure, with the creation of new posts and the elimination of others which, applying the logic explained above, should be either added to or even removed from that list.

The Committee believes that the Dominican Republic might benefit from broadening the number of public officials required to comply with this obligation, if a study identifies the existence of other posts not included in the list, but which carry similar degrees of responsibility in the management and administration of public funds. The Dominican Republic might also consider whether additional criteria should be used to identify posts whose incumbents should be required to file declarations based on considerations of importance, necessity and advisability of requiring such a filing, and perhaps substitute the name of the of the position with the principles or parameters that identify it, or through a combination of both systems. One advantage of this would be that the list would not have to be revised every time the organic structure of the government changes. The Committee will formulate a recommendation in this regard.

The creation of a register that is periodically updated and that contains the list of public officials required to file declarations could be a useful tool to properly follow-up on the submission and management of filings. In this regard, the Committee recognizes the work done by the Department for the Prevention of Corruption which, as noted by the country under review in its response, digitally enters the information into a network. It would be convenient for these improvements to continue so that progress can be made toward creating and updating the register being suggested. The Committee will formulate a recommendation with these considerations in mind.

With respect to the content of these declarations, the Committee notes that no details or specifications have been provided. The Committee believes it advisable for the Dominican Republic to consider developing rules clarifying the information that these declarations must contain, specifying the assets and liabilities that must be listed. For example, real estate should be included, as should any improvements made to that real estate. The list of assets could also include property that must be registered; capital invested in stock, shares, and other securities –exchange listed or unlisted-, or vestments in personal or corporate ventures; accounts with banks or other financial institutions; loans, liens or mortgages –chattel mortgages or other types- etc., and their economic value.

This might also help to overcome one of the weaknesses of this instrument mentioned by the Dominican Republic in its response to the questionnaire, which is that objective economic and accounting-related criteria are not currently being weighed when the declaration is evaluated.¹⁶ The Committee will formulate a recommendation in this regard.

In addition, the Committee also believes that the Dominican Republic might benefit from expanding the content of these declarations so that they include a detailed description of the income, assets and liabilities of the spouse, those that are community property shared with the spouse or partner, and the income, assets and liabilities of dependents. In this regard, the Committee will formulate a recommendation.

In relation to the purpose of these declarations and taking into account that they might serve in promoting transparency in civil service, identifying conflicts of interest, and/or detecting cases of illicit enrichment or other criminal conduct, the precise purpose of the declaration should to be spelled out and other filing times established, in addition to those already provided by law. Reasonable time periods should be given to allow declarations to be updated and the circumstances when such declarations should be expressly provided for, so that they can best serve their intended purpose. The Committee will formulate a recommendation in this regard.

Law 82 establishes that the agency charged with receiving the declarations of income, assets and liabilities is the office of the National Treasurer, which then sends them to the Attorney General to be made public. First, the Committee believes that the Dominican Republic might benefit from the designation of a single organ or office as responsible for the administration and verification of these declarations. This is with the understanding that this single organ or body coordinate properly with the National Treasurer and any other relevant entity, so that steps can be taken to suspend salaries when called for, should the Office of the National Treasurer not be the one selected to perform these functions. Second, the information that the Committee has had at its disposal reveals that at the present time, the office in charge of the administration of these declarations is the Attorney General's Office, through its Department for the Prevention of Corruption. However, the Committee notes an absence of provisions in the legal framework, which expressly gives that office jurisdiction over this matter. Taking this into account, the Committee suggests that the country under review expressly designate which organ, office or agency is to have jurisdiction over this matter, as well as take ensuring that it has the material and human resources necessary to perform the work associated with the administration of the system. The Committee will formulate a recommendation to this effect.

In relation to the process involved in verifying these declarations, the Committee notes that there is no system in place for the timely and opportune analysis of the contents of these declarations and, when necessary, verification to detect and prevent conflicts of interest and/or to detect cases of illicit enrichment or other crimes. The Dominican Republic has acknowledged this in its response to the questionnaire.¹⁷ Thus, the Committee believes that the Dominican Republic might benefit from the establishment of a system that effectively and efficiently facilitates the verification process, sets fixed times and occasions for the presentation of declaration, and measures which allow fluid and efficient cooperation between the office in charge of the administration of the declarations and other sectors, such as the financial and tax areas, in order to facilitate an exchange of information aimed at verifying the content of the declarations. The Committee will formulate a recommendation on this matter.

¹⁶ Updated Response from the Dominican Republic, p. 16.

¹⁷ Updated Response from the Dominican Republic, p. 16.

With respect to the existing system of sanctions, the Committee notes that the only provision is the failure to file a declaration. The only sanctions currently provided for are reprimand, withholding of salary, and a presumption that the property of any official who fails to file is illicit property.

The system does not contemplate the possibility of declarations being filed late, the filing incomplete or false information. Thus, provision might be made for other sanctions which ensure effective compliance with the declaration filing requirements, such as the establishment of fines or financial penalties, or a ban on reentry into public service, especially with regard to the declaration that the public official files upon leaving office. The proposed strengthening appears to be particularly relevant considering the comments made by the Dominican Republic's statements to the effect that the presumption that an official's undeclared assets are ill-gotten gains is never invoked. In its response to the questionnaire, the country under review stated: "*For logistical and legal reasons and owing to the Justice Department's indecision, not one of all these public officials has ever been investigated Were such an investigation to be undertaken, it could be brought to an immediate end with the aforementioned declaration. This is why the law needs to be improved. A bill to that effect has already been introduced in the National Congress.*"¹⁸ The Committee will formulate a recommendation in this regard.

With regard to the publication of these declarations, Article 5 of Law No. 82 provides that third parties may obtain copies of them. The response to the questionnaire indicates that the Department for the Prevention of Corruption digitizes enters the declarations into a computerized system.¹⁹ However, there does not appear to be any procedure dictating the conditions, procedures and other aspects related to providing appropriate access to these declarations, whenever appropriate and in accordance with the Constitution and the basic principles of the legal system. In addition, the scope and objectives of the network mentioned in the response is unclear. The Committee will formulate a recommendation in this regard.

Finally, taking into account, among other factors, the importance that public officials required to file declarations be aware of and familiar with Dominican laws on this subject; and the importance that public servants charged with enforcing this system do so effectively, the Committee considers that the Dominican Republic (might benefit from) devising dissemination mechanisms aimed to improve compliance with obligations through enforcement of the system. In this sense, the Committee will formulate a recommendation.

2.3 RESULTS OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

With respect to the results of the legal framework and other measures, the Dominican Republic's expanded response to the questionnaire provides the information transcribed below:

"At the start of his term in August 2000, the President of the Republic ordered the National Treasury to withhold the salaries of dozens of officials who, within several months of being sworn in, had not filed their declarations. The result was that 100% of the Central Government officials required to file that declaration did as the law prescribes. So did the judges.

¹⁸ Updated Response from the Dominican Republic, p. 16.

¹⁹ Updated Response from the Dominican Republic, p. 16.

*The lawmakers, on the other hand, are very tardy in filing their declarations. In the 1998-2002 term, and in the term that began on August 16, 2002, hundreds of municipal councilmen did not file their declarations. By August 2004, the Department for the Prevention of Corruption had received only 815 declarations from public servants, many of whom were not required to file.”*²⁰

In relation to this issue, the document supplied by the Civil Society Commission for Follow-up of Implementation of the Inter-American Convention against Corruption, *Dominican Republic*, states that:

*“The inquiries done by the group of NGOs found that the declarations filed in 2000-2004 represented barely 10% of the total that should have been filed. The result has to do with inconsistency and the fact that when declarations are filed, important data relating to income and liabilities are often missing. In many cases, only assets are declared. This means property may have been acquired by borrowing, but since the borrowing is not disclosed, the value of the official’s assets on paper is the same, as no debts are shown that would detract from that value.”*²¹

It follows, then, that the system of declarations of income, liabilities and assets now in force in the Dominican legal system could be strengthened by the implementation of measures such as those suggested in the preceding section of this report, which refer to the need to optimize and improve the level of compliance with the obligations associated with this system.

The limited nature of the information that the Committee has had at its disposal does not allow a comprehensive assessment of the results in this field. The Committee will formulate a recommendation in this regard.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

3.1 EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The Dominican Republic has a series of standards and measures with respect to oversight bodies charged with the responsibility of ensuring compliance with the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention, consisting of various types of provisions.

The main oversight bodies include the Office of the Attorney General of the Republic; the Court of Accounts; the Office of the Comptroller General of the Republic; and the Department for the Prevention of Corruption in Government.

The Office of the Attorney General was created by Law 821 on the Structure of the Judiciary, which dates back to November 21, 1927. The functions of the Attorney General’s Office include the following: management and oversight of the Justice Department and representing the State before the Supreme Court of Justice.

²⁰ Updated Response from the Dominican Republic, pp. 16 and 17.

²¹ Document presented by the *Comisión de la Sociedad Civil de Seguimiento a la Aplicación de la CICC. República Dominicana*” [Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption. Dominican Republic], p. 13.

The Court of Accounts was created through bylaws, which institutionalized the national system for audit oversight to better control the management and disbursement of public funds. It is authorized, *inter alia*, to bring to the attention of the Justice Department or of the specialized agencies for prevention and investigation of corruption, those cases which, in its opinion, give rise to administrative, civil or criminal responsibility.

The main functions of the Office of the Comptroller General of the Republic, created under Law 3894 of August 9, 1954, include oversight of the collection and investment of the revenues of the public administration's various departments –autonomous and otherwise- and counties; inspection of accounts; and review and settlement of accounts.

The Department for the Prevention of Corruption in Government was established by Decree No. 322-97 as a unit of the Attorney General's Office. Its functions include the development of policies that change the public attitude about corruption, investigating acts of corruption of which it has knowledge, and bringing cases of suspected corruption to the attention of the courts.

Other State oversight bodies include the General Bureau of National Assets, created by Law No. 1832 and which is a dependency of the Secretary of the Treasury and Public Credit; the Ombudsman's Office, established by Law No. 19-01; the *General Government Accounting Office*, created under Law 126-01.

As the Dominican Republic indicated in its response to the questionnaire: "*In relation to subparagraph eleven (11), there is no oversight mechanism whose function is to facilitate the role of civil society with respect to public administration. Instead, there are multiple organs and mechanisms covering a wide range of topics and sectors, which facilitate the participation of civil society. There are a number of bills prepared by the National State Reform Commission that make provision for nationwide oversight bodies involving civil society.*"²²

3.2 ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The standards and mechanisms in the area of oversight bodies in relation to the selected provisions that the Committee has examined, based on the information at its disposal, are relevant for promoting the purposes of the Convention. The series of standards that the Dominican Republic has in the area of oversight bodies responsible for functions relating to compliance with the provisions contained in paragraphs 1, 2, 4 and 11 of Article III of the Convention, cover said provisions.

With respect to the Ombudsman's Office, the response of the country under review to the questionnaire points out that under the Ombudsman's Act, this office is an independent body whose function is to monitor to ensure that public functions are correctly discharged and to safeguard the personal and collective rights and entitlements of citizens. However, the response also points out that the Ombudsman has not yet been selected.

²² Updated Response from the Dominican Republic to the Questionnaire, p.18. During the course of the meeting, however, the Dominican Republic brought to the attention of the Committee that the Department for the Prevention of Corruption in Government and the Ombudsman's Office are two examples of bodies responsible for promoting the participation of civil society in efforts to prevent corruption.

In this regard, the Committee believes that the Dominican Republic might benefit from the appointment of this official, especially taking into account the authority and independence granted to this office under Law No. 19-01, for the purposes of safeguarding citizens' rights and the proper functioning of the public administration. The Committee will formulate a recommendation in this regard.

With respect to the Public Prosecutor's Office, the country under review's response to the questionnaire notes: *"However, it cannot be said that prosecutors, although an integral part of the Justice Department, have become a credible or effective mechanism for receiving complaints of corruption or for following them up on their own initiative. This is one of the reasons why the Department for the Prevention of Corruption in Government was created in the Dominican Republic and why in the year 2000 the President of the Republic introduced a bill in Congress to create the National Anti-Corruption Prosecutor's Office..."*²³

The inference that might be drawn from that response is that this oversight body needs to be strengthened so that it can perform its functions in receiving and following up on complaints regarding exercise of public office, public property and, in general, standards to safeguarding compliance with the rights and duties associated with the issues being analyzed within the framework of this first round of analysis.

The Committee recognizes the progress made in this area by the state under review, in particular the efforts to improve the capacity of the justice department following the entry into force in July 17, 2004, of Law 78-03, which the Dominican Republic mentions in its reply to the observations of the review subgroup.²⁴

In relation to the oversight bodies that perform functions related to the administration, inspection and auditing of the State's assets and resources, such as the Office of the Comptroller General and the Court of Accounts, the information at the Committee's disposal would seem to suggest a need to strengthen these bodies even more, to give them greater independence in discharging their respective functions. The Committee notes, as indicated in section 1.2.1 of this report that these bodies are in one way or another dependent on the Executive Branch, especially as regards the appointment of their members. The foregoing is demonstrated by the authority that the Executive Branch has to submit to the Senate the slates of candidates from which the members of the Court of Accounts are to be elected.

With respect to the Office of the Comptroller General, the Committee observes that pursuant to Accounting Law No. 3894, both that office and the Office of the Auditor General are offices of the Executive Branch, and are subordinate to the Secretariat for the Treasury and Public Credit. The Comptroller General's Office is also in charge of the State's accounting, and the inspection of the books of all government departments, municipal governments and those autonomous agencies that receive or handle public funds (Article 1 of Law No. 3894).

²³ Updated response from the Dominican Republic to the Questionnaire, p. 15.

²⁴ That document contains the comments of the Dominican Republic on the Preliminary Draft Report and on the observations of the review subgroup. Comment on p.24, section 3.2, paragraphs 4 and 5 of the version prepared by the Secretariat.

It would be appropriate for the proposed strengthening to include, *inter alia*, an appointments system that ensures that these bodies will be functionally independent of the executive branch of government, thereby ensuring greater impartiality in performance of functions associated with monitoring and auditing public funds. The Committee will formulate a recommendation in this regard.

3.3 RESULTS OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

In its response to the questionnaire, the Dominican Republic's response presents a statistical table covering the period from 2000 to 2004 and depicting the number of files on corruption cases, interrogations, requests for information, investigations, searches, closed cases, cases recommended to go to trial, and cases that were dismissed.²⁵

The response also mentions training courses and workshops on the civil service, careers in government, ethics, transparency and criminal responsibility, in which more than 2000 public servants participated. The response also mentions courses and workshops organized by the *Instituto Nacional de Administración Pública* [National Public Administration Institute], aimed at more than twenty-five thousand public servants and dealing with issues related to ethics in government.²⁶

The response also notes that since its creation, the Anti-Corruption Complaints Office has received sixty complaints alleging acts of government corruption.²⁷

Finally, with respect to the Court of Accounts, the response indicates that *"in 2001, a total of 21 audits were presented to the Congress, the results of which have not yet been processed. In 2002, nine (9) new audits of as many institutions were conducted, and twenty-seven (27) audits are underway. In 2003 and thus far in 2004, over fifty (50) audits and inspections have been conducted."*²⁸

With this consideration in mind and in view of the limited nature of the information made available to the Committee, the latter has been unable to carry out a comprehensive assessment of the objective results in this field. Taking the foregoing into account, the Committee will formulate a recommendation.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

4.1. GENERAL PARTICIPATION MECHANISMS

4.1.1 Existence of provisions in the legal framework and/or other measures

The Dominican Republic has provisions and measures of varying nature, characteristics and scope with respect to the participation of civil society and nongovernmental organizations in public activities.

²⁵ The Dominican Republic's updated response to the questionnaire, pp. 19 and 20.

²⁶ The Dominican Republic's updated response to the questionnaire, p. 20.

²⁷ The Dominican Republic's updated response to the questionnaire, p. 20.

²⁸ The Dominican Republic's updated response to the questionnaire, p. 20.

The Constitution enshrines certain principles, rights and individual rights and guarantees that permit, facilitate or protect that participation. These include freedom of thought (Article 8, paragraph 6); freedom of association and the right of assembly (Article 7); media access to all sources of news, public and private (Article 8, paragraph 10); and the right to vote and to be elected to certain public offices (Article 13).

Other provisions and measures mentioned by the country under review in its response to the questionnaire, include special laws and executive orders that recognize opportunities for participation by civil society in various areas.

Among the special laws mentioned are Law No. 124-01, which creates the Development Fund, whose numbers include the association of entrepreneurs and a delegation representing the unions; and Law No. 10-04 on the Court of Accounts, Article 7 paragraph 4 of which creates a means for channeling observations and suggestions on the issue of the fight against corruption, through the institute of “Social Control,” to civil society organizations.

The executive orders include No. 322-97, which creates the Department for the Prevention of Corruption in Government. Its functions include preparing and developing policies for changing the public’s attitude on the subject of corruption in government and for combating that kind of corruption; Executive Order No. 407-01, which establishes the National Board to Monitor Non-profit Associations, through which it is expected that appropriations in the National Budget will be allocated according to professional and technical standards, as a means to rid the National Budget of patronage spending; Decree 783-01, which creates the Presidential Anti-Corruption Advisory Board, whose membership includes six civil society organizations;²⁹ and Executive Order No. 39-03, creating the Social Auditing Commissions which were conceived as vehicles through which citizens can become the watchdogs and supervisors of government construction projects conducted in their sectors, and instituting a mechanism for broad participation by community organizations.

The response of the Dominican Republic also mentions the Ethics and Transparency Certification Program [*Programa de Certificación en Ética y Transparencia* – PROCET], whose Certification Board includes one representative of social organizations. That program is run by the Department for the Prevention of Corruption in Government. The program’s existence represents institutional recognition of a temporary nature that endows an institution –or one of its areas- with the authority to enforce pre-established administrative standards.

Finally, the response refers to the Project for Modernization of the National Congress, sponsored by the Inter-American Development Bank, which makes provision for citizen oversight of Congressional activities; and the Social Participation Bill, which promotes active citizen participation in the follow-up of public administration.³⁰

²⁹ Decree 783-01 was repealed by Decree 101-05, which created the National Commission on Ethics and the Fight against Corruption.

³⁰ The Dominican Republic’s updated response to the questionnaire, pp. 20 and 21.

4.1.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of participation by civil society in general that the Committee has examined, based on the information made available, are relevant for promoting the purposes of the Convention. These standards and measures will be taken into account when analyzing each of the participation mechanisms indicated in the classification provided in the methodology³¹ for review of the implementation of Article III, paragraph 11 of the Convention.

4.1.3 Results of the legal framework and/or other measures

In its response to the questionnaire, the Dominican Republic states that: *“one of the great weaknesses of these mechanisms has been that most are not fully functional and have made little headway in the roles that they were intended to serve, even though a number of meetings have been held and most have been in existence for more than one year.”*³²

This weakness, which will be discussed at length in sections 4.2 to 4.5 of this report, combined with the absence of information on the results in this field, do not allow a comprehensive assessment of the results. Bearing in mind this circumstance, the Committee will formulate a recommendation.

4.2. MECHANISMS FOR ACCESS TO INFORMATION³³

4.2.1. Existence of provisions in the legal framework and/or other measures

The Dominican Republic has a series of provisions related to mechanisms that guarantee the right of citizens to access public information, consisting of various types of provisions, notably the following.

The Constitution provides that *“all information media shall have access to official and private news sources provided such access does not violate public law and order or endanger national security”* (Article 8, paragraph 10 of the Constitution).

The principal body of law regulating access to public information is Law No. 200-04, “General Freedom of Public Information Act,” enacted on July 28 of 2004. This law provides that every person has the right to request and receive complete, accurate, adequate and timely information from any organ of the State and from any corporation and company of which the State is part owner. The right guaranteed applies to all documents and files of the public administration, both original and those recorded in writing or by optical, acoustical or any other means. The law also protects the right to make inquiries of public entities and civil servants, with the limitations and exceptions established by law (articles 1 and 2 of Law No. 200-04).

³¹ Methodology for the review of the implementation of the provisions of the Inter-American Convention against Corruption selected within the framework of the First Round, Chapter V, D (Document SG/MESIC/doc.21/02).

³² The Dominican Republic’s updated response to the questionnaire, p. 22.

³³ The Committee notes that many of the recommendations contained in this section have been addressed by Decree 130-05 of February 25, 2005, which corresponds to the Regulations to the General Freedom of Public Information Act.

This law also states that all documents and activities of the public administration, both centralized and decentralized, including the administrative business of the legislative and judicial branches, are subject to disclosure. Under the existing provisions, to achieve this end the Dominican State should establish an internal organization that systematizes information of public interest, both in order to make it accessible to interested parties and to publish it by the available means, including the Internet, for the purpose of guaranteeing direct public access to State information (articles 3, 4 and 5 of Law No. 200-04).

The second chapter of this law regulates the procedures through which this right is exercised, the time periods in which the information must be supplied, the consequences of the failure to respond to requests for information, the form in which the information should be supplied to the party requesting it, the penalties that will be applied to civil servants who obstruct the exercise of this right, the remedies that the governed may exercise when their right is denied or somehow obstructed, the cost and limitations on the exercise of this right (articles 7 to 22, Law No. 200-04).

With respect to the cost of accessing information, the law provides that in principle access shall be free of charge, provided no copying services are required. Any charges that are established must not be so excessive as to impair the exercise of this right (articles 14 to 16 Law No. 200-04).

In relation to the limitations on the exercise of this right, Article 17 specifically singles out twelve hypothetical situations in which the State would not be required to disclose the information. These include considerations of national defense or security; when the disclosure of the information would be detrimental to the banking system; when the procedural strategy planned by the State in prosecuting a court case would be compromised; when the information is classified as secret; when the principle of the equality of bidders would be compromised; when trade secrets are involved; when a person's right to privacy is at stake; when public health is put at risk, etc. (Article 17 Law No. 200-04).

Prominent among the mechanisms to enforce the exercise of this right to freedom of information are the administrative and judicial remedies that the law provides, such as the right to appeal judicial decisions through motions such as opposition (*Oposición*), appeal (*Apelación*), repeal or nullification (*Casación*) and motion to reopen a case (*Revisión*), among other remedies, as established in the Code of Criminal Procedure, which guarantee due process and legality. In any situation where information is denied for confidentiality reasons, legal reasons should be given for that refusal, and the interested party has the right to appeal the decision to a higher authority in the organ or agency in question. If the interested party is not satisfied with that decision, said party may file an appeal with the Administrative Superior Court within 15 days. The interested party always has the option of filing a petition of *amparo* with the Contentious Administrative Court (articles 26 to 29, Law No. 200-04).

In addition to Law No. 200-04, the country under review has other mechanisms to enforce this right. In its response to the questionnaire, it points out that civil society has recourse to a set of tools, including the following: i) the Web sites of various government agencies, where information on contracting, calls for proposals and bidding is provided; ii) monthly publication of the execution of the national budget; iii) publications of reports and accounts from various State offices; iv) the news bulletin published by the Department for the Prevention of Corruption in Government; v) the direct telephone lines that the public can use to request and provide information, such as the direct lines of the Internal Revenue Service; vi) the meetings organized by the Department for the Prevention of Corruption in Government as opportunities to exchange ideas with and get feedback from civil society; vii) evaluation of the National Prevention Plan, with civil society participating; viii) participation in the communications media; ix) the Project for Reform and Modernization of the

Executive Branch, which plans a computerized information network; x) the constitutional guarantee provided under Article 8, paragraph 10; and xi) Law No. 82-79, requiring public officials to disclose their holdings, which reports are then made available to the public.

Article 32 of Law No. 200-04 provides that within 90 days of the publication of that law, “*The Executive Branch shall issue the regulations governing its enforcement. Within that same time frame, it shall take the necessary steps to establish the conditions to guarantee application of all provisions of this law.*”

4.2.2 Adequacy of legal framework and/or other measures

The standards with respect to access to information that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

The Dominican legal system contains a series of provisions that guarantee the public’s right to information on the activities of any organ of the State, its corporations and companies. Any individual may exercise this right.

The regulations on this subject are contained in Law No. 200-04, described in the preceding section of this report. This law comprehensively regulates all substantive and procedural aspects of this system, such as the principle of maximum disclosure, the use of broad definitions regarding the type of information to which the public has access, the rates that can be charged, reasonable time periods for the exercise of this right, the guarantee that refusals to disclose information will be given independent review, and the establishment of criminal and administrative penalties for public officials who fail to comply with the provisions of this law. The Committee recognizes the effort made by the country under review demonstrated by the enacting of a law that, in an integrated and effective manner, recognizes and guarantees access to information as another expression of a transparent democratic system.

Nevertheless, the Committee observes that under Article 32 of Law No. 200-04, the executive branch must still fulfill its obligation to issue, within ninety days of the publication of the law (July 28, 2004), regulations to govern the law and to take the measures necessary to establish the conditions to guarantee its application. The Committee urges the Dominican Republic to act swiftly to fulfill any outstanding obligations with regard to Law No. 200-04. The Committee also recognizes the progress already achieved through preparation of the *Preliminary Draft Regulations Governing the General Freedom of Public Information Act*. According to the information made available to this Committee, this preliminary draft is being submitted for public consultation and debate. The Committee will formulate a recommendation in this regard.

The Committee also recognizes the broad definition that Article 2 of Law No. 200-04 gives for the term “*information*” which, according to that article, encompasses any type of data storage or retrieval system, including microfiche, video, films, photographs, etc.

Requests for access to information must be filed in writing and contain, among other required data listed in subparagraph d) of Article 7, “*the reasons why the data are being requested.*” In this regard, the Committee considers that persons exercising this right should not to be required to show that they have a specific interest in the information, as this could be an obstacle to the exercise of this right. In this sense, the Committee is pleased to note that Article 15 of the Preliminary Draft Regulations Governing Law 200-04 states that under no circumstances shall the reasons stated for requesting the information in any way obstruct full access to that information; any explanation of the

applicant's interest in the information should suffice. The Committee will formulate a recommendation in this regard.

In relation to the exceptions to the exercise of this right or subjects where exercise of this right is precluded, the Committee recognizes the fact that there are legitimate State objectives that might be compromised by disclosure of particularly sensitive information and that a citizen's right to freedom of information should be reconciled with other considerations of the general welfare, such as national defense or security, health, public law and order, individual privacy, and so on. However, it also recognizes that these exceptions be expressly defined by law and fall into one or several of the above categories, issues which are regulated by articles 17 to 19 of Law No. 200-04.

The Committee is also pleased to note that the time period for delivering the requested information to the citizen, as set forth in Article 7 paragraph 3 of Law No. 200-04, is a reasonable one.

The Committee also observes that there are criminal and administrative penalties in place, which can be applied to civil servants who deny, obstruct, delay or otherwise impair access to information (chapter V of Law No. 200-04).

Another aspect that seems to be important if Law No. 200-04 is to be correctly implemented, concerns the political willingness to assign public funds to ensure that it is properly applied. In this sense, the institutions provided for by law should be created and endowed with the human, technical and financial resources they need to function properly. Also, the public should be made aware of the system and services offered, which include, among others, those provided for in articles 4 *et seq.* of Law No. 200-04, regarding the creation and use of an internal organization for which no provision has been made thus far; the obligation of all centralized and decentralized public agencies of the State to publish their Web pages; and the creation and start-up of centers where information can be shared with clients or users and their needs addressed, and others. The Committee will formulate a recommendation in this regard.

Taking into account the recent enactment of Law No. 200-04, the Committee considers that it might be useful to publicize the scope and procedures of this new body of law. Equally important is training for the public officials in the State agencies that will apply this law.

In this sense, the Committee considers that the Dominican Republic might benefit from implementing training programs and refresher courses for public servants, including those in the judicial branch, who will ultimately be responsible for enforcing this law. Through these courses, the appropriate personnel could receive instruction in how to properly and promptly apply the provisions that protect freedom of information and have clear knowledge of the limits of this right and of the consequences of the unwarranted refusal to provide the requested information. They can also be taught how and what to use to organize the information and keep it up to date, as required under Article 4 of Law No. 200-04. The Committee will formulate recommendations in this regard.

One of the principal mechanisms for guaranteeing access to public information is the protection that the contentious administrative courts afford to the citizen in the form of the remedies of appeal and *amparo*, provided for in articles 27 *et seq.* of Law No. 200-04.

With respect to these mechanisms, the document presented by the representatives of Dominican civil society points out that with limited exceptions, the central government's Web sites offer only basic information on the institutions' structures and functions and feature no current or useful information or data that would make government more transparent, such as plans, budgets, and execution of

budgets. It also points out that of the fifteen Cabinet Secretariats, four do not have Web pages, while others have access problems. It states that the monthly publication of budget execution is not detailed and includes only general information regarding expenditures. The document states that the monthly publication lists only the name of a State agency and the amount spent, and usually without detailing how appropriations will be spent. The document points out that this gives the authorities of these agencies discretion in reporting the funds spent. Lastly, with regard to the publication of reports and accounts filed by State agencies, the document points out that few such reports and accounts are published and their contents are, as a rule, more self-promoting than informative.³⁴

The Committee acknowledges the aforementioned observations and notes that the weaknesses mentioned could be overcome, in great measure, through appropriate implementation of the Law and regulations that govern this matter, aspects of which were referred to in previous paragraphs.

Finally, the Committee notes, with pleasure, of the strides that the Dominican Republic has made in this area with passage of Law No. 200-04, which gives the citizen broad access to public information in the State's possession and that governs both the substantive and procedural aspects of the exercise of this right.

4.2.3 Results of the legal framework and/or other measures

In relation to the results of the legal framework, the information that the Dominican Republic reported states that: *“Access to information has enabled civil society to monitor important transactions, and cases of corruption have been uncovered thanks to the information the public has reported, such as the case of the housing arrangement by the National Housing Institute in 2002.”*³⁵

Given the importance that the country under review attaches to Dominican civil society's access to information, the Committee urges the State to consider continuing to improve and advance the implementation of Law No. 200-04, as stated by the Committee in the preceding section of this report.

Aside from the foregoing, the absence of additional information on the objective results in this field and the recent enactment of the law regulating this area, does not allow a comprehensive assessment of the results. Bearing this circumstance in mind, the Committee will formulate a recommendation.

4.3. CONSULTATIVE MECHANISMS

4.3.1. Existence of provisions in the legal framework and/or other measures

The Dominican Republic has provisions and mechanisms that enable those who perform public functions to consult with civil society and nongovernmental organizations on matters relating to the activities within their competence. They include the following:

Within the framework of the National Congress, there is a mechanism for Public Hearings which provide an open forum for consultation and exchange with respect to the issues under its charge. These hearings are held within the framework of the permanent and special commissions of the House of Deputies, which listen to the opinions of all legal or natural persons interested in the topic

³⁴ Document presented by the Civil Society Commission for Follow-up of Implementation of the Inter-American Convention against Corruption –representing civil society in the Dominican Republic, pp. 24 and 25.

³⁵ The Dominican Republic's updated response to the questionnaire, p. 23.

under discussion. These public hearings are optional and they are not permanent. They are convened through an announcement in a nationally circulated newspaper (Chapter III, Article 142.11 of the Rules of the House of Deputies).

The response of the country under review to the questionnaire notes the work of the Development Councils, which were created as a consultation mechanism on the various aspects of public administration carried out by the provinces, President and the Ministers; the Presidential Anti-Corruption Advisory Board, created by Decree 783-01,³⁶ whose functions include that of “*formulating specific proposals as to the tools, mechanisms and procedures necessary to increase the efficiency and effectiveness of the efforts in the fight against corruption in government*”; the public hearings and committee meetings that the National Congress holds and through which citizens may voice their views on the various bills that Congress has under consideration; and the National Anti-Corruption Plan, conceived as a tool through which the Dominican State, operating through the Department for the Prevention of Corruption in Government, seeks to enlist and include civil society in the effort to reduce corruption, using consultation, participation and coordination to develop educational programs, complaint systems and the preparation of instruments that make public and private administration more transparent.³⁷

The response of the country under review to the questionnaire also highlights some existing regulations at the county level that are premised on the general principle of promoting active public participation in local government decisions. The information provided reports on a number of similar experiences, including the work being done by a number of local governments, holding public county meetings to discuss county issues. For example, the local governments of the cities of La Vega and Villa González have passed resolutions regulating and institutionalizing the participation of social organizations in county government.³⁸

4.3.2. Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of consultation that the Committee has examined are, based on the information available to it, are relevant for promoting the purposes of the Convention.

The Committee notes that the Dominican legal system provides opportunities for citizen participation in the passage of laws, through the participation of the commissions which discuss bills before the National Congress, and which are mentioned by the State in its response to the questionnaire.

However, the information made available to the Committee suggests that these opportunities are neither permanent nor mandatory. In this regard, the Committee believes that the Dominican Republic might benefit from a system that enables it to give civil society an even broader role in the process of preparing legislation. Such a system might create more opportunities for the public to express its opinion during the process. Some thought might also be given to the possibility of making those opportunities for participation mandatory when certain subject matters are under discussion, where greater interests are at stake or that have a greater impact on civil society. However, care must always be taken to maintain a proper balance between the need to foster that participation and the importance to avoid encumbering the efficiency with which the legislative branch should operate.

³⁶ Decree 783-01 was repealed by Decree 101-05, which created the National Commission on Ethics and the Fight against Corruption on February 16, 2005.

³⁷ The Dominican Republic’s updated response to the questionnaire, p. 24.

³⁸ The Dominican Republic’s updated response to the questionnaire, p. 24.

This would make it possible to take greater account of the interests of social groups when it comes to creating, amending or abolishing a legal provision. The resulting decision would also enjoy greater social support and would give the community a stronger sense that it can influence the decision-making process when it comes to passing or amending legislation. The Committee will formulate a recommendation in this regard.

The Committee also notes that local governments offer opportunities that allow civil society to participate and become part of the decision-making process. The Committee is pleased to learn from the response of the country under review that certain local governments have regulated and institutionalized that participation. The Committee encourages the Dominican Republic to promote and foster these efforts even more, normalizing and regulating them as an effective means for citizen consultation, both locally and nationally.

Thus, consideration could be given, within the framework of the existing laws, to the possibility of formulating specific provisions that, on the one hand, would promote the creation and recognition of bodies representative of civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas and, in addition, would incorporate, organize and recognize urban community institutions (neighborhood councils or committees) into the process, endowed with the authority and the right to propose initiatives and present requests for municipal works and services for their neighborhoods.

The foregoing would constitute a major step forward in strengthening policies for giving civil society greater opportunities and mechanisms for participation in public affairs. This would not only reinforce the political system but would also create a closer relationship between the exercise of state power and the real needs of the community. The Committee will formulate recommendations in this regard.

Nationwide application of these mechanisms might also be beneficial considering there do not appear to be similar opportunities for citizen consultation on issues related to national public administration. The Committee also believes that the Dominican Republic might benefit from considering and implementing mechanisms triggered by public initiative, at both the local and national levels, on those subject matters where the Dominican Republic believes such citizen-driven mechanisms might be useful.

In relation to those mechanisms, it might also be convenient to incorporate into the Dominican legal system, other measures that serve to strengthen, complement and build upon the consultation measures already in place, especially at the county level, so as to promote greater citizen participation in the initiatives and decisions related to their collective interests.

In addition, it might be advisable to for the measures suggested here to be supported through the design and implementation of programs publicizing these consultation mechanisms and, where appropriate, to train and equip civil society, nongovernmental organizations, public officials and civil servants for their proper use. Bearing this circumstance in mind, the Committee will formulate recommendations.

4.3.3 Results of the legal framework and/or other measures

The objective results presented by the Dominican Republic include the following, among others: i) the emergence of social organizations dedicated to preventing corruption, such as the *Voluntariado Nacional de Prevención de la Corrupción* [National Volunteer Movement for the Prevention of Corruption], *Participación Ciudadana* [Citizen Participation] and the *Fundación Institucionalidad y Justicia* (FINJUS) [Foundation for Institutionalidad and Justice], among others; ii) the signing of a cooperation agreement between the Attorney General's Office and the Department for the Prevention of Corruption in Government (DPC), and Citizen Participation, the Dominican Federation of Counties, the National Distance-Education Center, the Dominican Broadcasters Association, etc.; iii.) the preparation of a national diagnostic study on corruption; v) additions to the DPC's proposal on Social Auditing Commissions, and the preparation of a draft order that will establish them; iv) the improvement of preliminary bills and bills such as the Social and Citizen Participation Act, the Nonprofit Organizations Act, the Code of Criminal Procedure, etc.; and v) the consultations with civil society that made it possible for the National Council of the Judiciary to elect a qualified bench for the Supreme Court, which in turn had the effect of improving the administration of justice, reducing corruption in the courts and strengthening juridical certainty in the country.³⁹

With respect to these results, the document presented by the "Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption - Dominican Republic" points out that a number of anti-corruption social organizations emerged as a result of initiatives on the part of certain business sectors, churches, and NGOs, "*separate and apart from governmental institutions.*"⁴⁰

In relation to the agreements that various organizations concluded with the Attorney General's Office, it is reported that while they do exist on paper, "*their impact has been marginal.*"⁴¹ The national diagnostic study on corruption was reportedly "*advisory in nature and produced no visible results.*"⁴² With respect to the Anti-Corruption Advisory Council, created by Decree 783-01, the Civil Society Commission reports the following: "*three years after the establishment of the Council, it has yet to fulfill its intended mission; in fact, its failure to do anything led Participación Ciudadana to resign its seat on the Council, after making a number of efforts to get the Council to perform its assigned function of compiling information on the modalities of corruption in government, with the goal of presenting recommendations to the Executive and proposing mechanisms, laws and regulations which allow greater efficiency in the fight against corruption.*"⁴³ With respect to the DPC proposal and the bills that the State mentions in its response to the questionnaire, the Civil Society Commission points out that "*the additions to the proposal can be regarded as a result. However, for more than one year the proposed decree was in the hands of the Executive Office's*

³⁹ The Dominican Republic's updated response to the questionnaire, pp. 24 and 25.

⁴⁰ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 28 and 29.

⁴¹ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 29

⁴² Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 29.

⁴³ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 20.

Legal Advisory Service and was never issued.”⁴⁴ In relation to the improvement of the preliminary draft laws and bills mentioned in the response, the Civil Society Commission observes that “of the examples cited, at least four are proposals originating from civil society organizations, not government institutions. Of the five mentioned, three have become law; of those three, civil society objected to the Justice Department Act; and while the Ombudsman Act became law two years ago, it has still not been implemented.”⁴⁵ Finally, with regard to the consultations with civil society that made it possible for the National Council of the Judiciary to elect a more qualified bench for the Supreme Court, the Civil Society Commission points out that: “although in 1997, civil society did participate and its views were taken into account during the National Council’s election of the Judiciary, when new members were added in 2003, civil society’s views were not taken into account and objections to the new members selected were voiced because of their well-known association with a particular political party.”⁴⁶

For its part, the Dominican Republic stated the following in its response to the questionnaire: *“one of the great weaknesses of these mechanisms has been that most of them are not functional and have made little headway in the roles that they were intended to serve, even though a number of meetings have been held and most have been in existence for more than one year.”⁴⁷*

Taking into account the information provided, both by the country under review and by civil society, the Committee urges the Dominican Republic to move forward with implementation and enhancement of the existing opportunities, complementing them with the measures suggested by the Committee in the preceding section of this report. Care should be taken to ensure that these opportunities for participation operate effectively, thereby guaranteeing civil society’s active participation in public administration, in efforts aimed at preventing corruption And establishing the weight to be attached to these consultations. The Committee will formulate a recommendation in this regard.

4.4 MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

4.4.1. Existence of provisions in the legal framework and/or other measures

The Dominican Republic has a series of different types of provisions on mechanisms to encourage active participation in public administration. Of these, the following should be mentioned.

In its response to the questionnaire, the country under review refers to a series of general mechanisms, including the work of the Social Cabinet Advisory Office, through which organizations have been consulted on issues related to the implementation of social and anti-corruption policies; the consultation done by the judicial branch; the Prosecutor/Community workshops, a civil society initiative supported

⁴⁴ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 28.

⁴⁵ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 28.

⁴⁶ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, pp. 28 and 29.

⁴⁷ The Dominican Republic’s updated response to the questionnaire, p. 22.

by the Public Prosecutor's Offices, the Consultative Council of the Community Development Office, the Advisory Board on reports of the State Reform and Modernization Council, and the Program for Reform and Modernization of the Congress and the Court of Accounts.⁴⁸

Other provisions for the participation of civil society organizations cited in the response of the country under review include: Decree 20-91, which creates the National Population and Family Council; Decree 308-97, establishing the Executive Commission for Health Sector Reform; Law 14-94, which creates a steering body for the Child and Adolescent Protection System; Law 6160, which authorizes the Engineers and Architects Association to advise the State on construction-related matters; Decree 685-00, which creates the Regional Development Councils and Assemblies; Decree 613-96, establishing the Provincial Development Council; Decree 313-97, which establishes the Presidential Commission for Provincial Development; Decree 311-97, which creates the Presidential Commission for Neighborhood Development; Decrees 261-98 and 318-98, establishing the Executive Board for the Community Projects Development Fund; and the decree that creates the National Commission for State Reform.⁴⁹

The Committee also observes that the Ombudsman's Office, created by the Ombudsman's Act as an independent organ to monitor to ensure that the public administration functions properly and to safeguard citizens' personal and collective rights, is another mechanism that promotes and facilitates citizen participation in public administration.

4.4.2. Adequacy of the legal framework and/or other measures

The standards and mechanisms for encouraging active participation in public administration that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

The Committee observes that the majority of the mechanisms for citizen participation in public affairs are not permanent, as noted by the country under review in its response to the questionnaire. The Committee would therefore urge the State, in its efforts to combat corruption in government, to move to consider institutionalizing these as permanent mechanisms and to regulate them. The Committee will formulate recommendations in this regard.

The Committee also notes that some of these mechanisms, such as the councils and commissions that the country under review mentions in its response to the questionnaire, are purely advisory or deliberative bodies, which means that civil society in fact has far fewer mechanisms through which to participate in the actual decision-making process. Moreover, these mechanisms appear to be aimed at fostering participation on general themes and were not specially created or conceived as instruments to strengthen efforts aimed at the prevention of administrative corruption. The Civil Society Commission said as much in its response to the questionnaire.⁵⁰

⁴⁸ The Dominican Republic's updated response to the questionnaire, pp. 25 and 26.

⁴⁹ The Dominican Republic's updated response to the questionnaire, pp. 25 and 26.

⁵⁰ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 31.

Given the foregoing, the Committee considers that the Dominican legal system might benefit from the incorporation of new mechanisms that strengthen civil society's participation in public administration, especially in efforts aimed at preventing corruption and which define their contribution as being vital input into the public decision-making process. The Committee will formulate recommendations in this regard.

Taking into account the important role these mechanisms can play in the prevention, reporting of, punishment and eradication of administrative corruption and the recent implementation of some of these mechanisms, the Committee considers that the Dominican Republic might benefit from the design and implementation of awareness programs to make the public aware of these mechanisms and, when appropriate, to train and enable civil society, nongovernmental organizations, public officials and civil servants in their use, equipping them with the necessary tools to do so. Taking this circumstance into account, the Committee will formulate a recommendation.

4.4.3. Results of the legal framework and/or other measures

In relation to the results of the legal framework and other measures, the Dominican Republic states in its response to the questionnaire: *"many of these mechanisms do not operate systematically, and some are responses to existing circumstances and therefore not permanent; still others, like the Social Audit Commissions and the Ethics and Transparency Certification Program, are of such recent creation that we cannot get an objective measurement of results. Nevertheless, one may rest assured that avenues have been opened up in recent years to enable civil society in the Dominican Republic to participate in different public mechanisms. Clearer regulations are needed, which the Social Participation Act is expected to provide. That bill is currently in Congress."*⁵¹

The Committee observes that the main weaknesses regarding these mechanisms referred to in the preceding paragraph can be overcome through the implementation of the recommendations made in this regard, in the preceding section of this report.

The Committee also notes what was said by the Civil Society Commission regarding its contribution in the effort to combat corruption: *"Dominican civil society has made notable efforts to play an active role in the adoption of policies that prevent and punish administrative corruption. These range from the Movimiento por la Moralidad Pública [Public Morality Movement] that emerged in 1986 to combat corruption, to more recent initiatives such as those proposed in the anti-corruption platform put forward by the Fundación Institucionalidad y Justicia, and the ten steps to combating corruption presented by Participación Ciudadana in January 2003."*⁵²

In this regard, the Committee recognizes the Dominican Republic's efforts to create and foster opportunities for citizen participation in various parts of the public sector and it urges it to continue to promote and improve them, as expressed in the recommendations corresponding to this section.

Aside from the foregoing, a comprehensive assessment cannot be made without more information on objective results. Taking this into account, the Committee will formulate a recommendation.

⁵¹ The Dominican Republic's updated response to the questionnaire, p. 26.

⁵² Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 31.

4.5 MECHANISMS FOR PARTICIPATION IN THE FOLLOW UP OF PUBLIC ADMINISTRATION

4.5.1. Existence of provisions in the legal framework and/or other measures

The Dominican Republic has a series of provisions relating to mechanisms in the follow-up of public administration, consisting of various types of provisions. The following are to be noted.

First, Article 55 paragraph 22 of the Constitution provides that the President shall render accounts each year to the National Congress, by presenting a report accompanied by submissions from the Cabinet Secretaries concerning the previous year's administration. Article 79 provides that the Court of Accounts shall examine the general and particular accounts of the Republic.

In its response to the questionnaire, the country under review also makes reference to a number of bodies, agencies and councils that afford civil society a role in follow-up of the public administration. These include the National Board of Education, Regional Boards of Education, the District Boards of Education, the School Boards, the Executive Commission for Health Sector Reform, the Regional Councils on the Rights of Children and Adolescents, and others related to the modernization of the State, environmental protection, sports and tourism.⁵³

There are other mechanisms that might also be effective in the follow-up of public administration, such as legal remedies challenging constitutionality and the remedy of *amparo*, both of which are filed with the Supreme Court and which may prove to be effective in the follow-up of public administration (Article 67 of the Constitution and Congressional Resolution No. 739 of December 25, 1977).⁵⁴

Similarly, in its response to the questionnaire, the country under review mentions the election-observation activities that civil society has performed since 1996 and the role that civil society can play through the political parties.⁵⁵

4.5.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of participation in the follow-up of public administration that the Committee has examined, based on information available to it, are relevant for promoting the purposes of the Convention.

Chief among the general participation instruments that make it possible for civil society to monitor government business is the executive branch's obligation to submit an annual report to the National Congress; the opportunity for civil society participation in various organs and bodies of the public administration, and the constitutionality and *amparo* remedies.

However, the existing mechanisms do not appear to form part of a complete, permanent system in this area, which appears to be the country under review's own assessment in its response to the questionnaire: "*many of these mechanisms do not operate systematically, and some are responses to existing circumstances and therefore not permanent.*"⁵⁶ Similarly, the documents submitted to the

⁵³ The Dominican Republic's updated response to the questionnaire, pp. 27 and 28.

⁵⁴ The Dominican Republic's updated response to the questionnaire, pp. 27 and 28.

⁵⁵ The Dominican Republic's updated response to the questionnaire, pp. 27 and 28.

⁵⁶ The Dominican Republic's updated response to the questionnaire, p. 26.

Committee by representatives of civil society indicates that: “...*this type of mechanism has failed repeatedly because they are structured to ensure that government representatives take the ultimate decisions*”.⁵⁷

Taking into account this circumstance as well as the need to advance the implementation of additional forms of participation, as well as the design and implementation of a comprehensive system of participatory follow-up mechanisms that remedies the existing situation, the Committee will formulate a recommendation.

It would be convenient for the implementation of the system being suggested here to be supported by a program to raise awareness of these mechanisms. This would further stimulate civil society’s participation in the follow-up of public administration. The program should also train and enable civil society, nongovernmental organizations, public officials and civil servants, in their use, equipping them with the tools needed to use these mechanisms properly, as appropriate. Furthermore, the Committee considers that the Dominican Republic could benefit from the presentation of periodic reports by the government in order to raise awareness of its efforts. The Committee will formulate a recommendation with this consideration in mind.

4.5.3 Results of the legal framework and/or other measures

In its response to the questionnaire, the Dominican Republic stated that: “*Although no exhaustive study on the subject has been conducted, the existing forms of participation appear to be unstable. There is progress, stagnation, and setbacks . Civil society organizations, working with the National Commission for State Reform (CONARE), introduced a bill in Congress on Social Participation, which expands, focuses and regularizes civil society’s participation.*”⁵⁸

In relation to the shortcomings that the Dominican Republic described in its response to the questionnaire, the Committee refers to the comments and suggestions made in the preceding section of this report.

However, the absence of additional information does not allow a comprehensive assessment of the objective results in this field. The Committee will formulate a recommendation in this regard.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

5.1. MUTUAL ASSISTANCE

5.1.1. Existence of provisions in the legal framework and/or other measures

The Dominican Republic has a set of provisions and measures for the mutual legal assistance referred to in Article XIV paragraph 1 of the Convention. These include Law No. 72-02 of July 7, 2002, on the laundering of the proceeds of illegal trafficking in drugs and controlled substances and other serious violations. A considerable number of agreements have been concluded and are in force in this regard, which the country under review lists in its response to the questionnaire.⁵⁹

⁵⁷ Response to the questionnaire presented by the Civil Society Commission for Follow-Up of the Implementation of the Inter-American Convention against Corruption, representing civil society in the Dominican Republic, p. 32.

⁵⁸ The Dominican Republic’s updated response to the questionnaire, p. 28.

⁵⁹ Updated Response from the Dominican Republic to the Questionnaire, pp. 28 and 29.

In that respect, Chapter 4, Article 155 of the new Code of Criminal Procedure mentions the importance of international judicial cooperation; in urgent cases, the judges or public prosecutors, as appropriate, may submit, by any means, requests for cooperation from any judicial or administrative authority, in which case they should subsequently notify the Ministry of Foreign Affairs.

The Code of Criminal Procedure also provides the possibility for joint investigations and at Article 159 mentions that, subject to the control of the courts, the body responsible for coordination of the investigation with the authorities of the state concerned, is the Public Ministry, subject to judicial control.

In its response to the questionnaire, the country under review states that it has not received any requests for mutual assistance.

5.1.2. Adequacy of the legal framework and/or other measures

The standards and mechanisms in the area of mutual assistance reviewed by the Committee, based on the information at its disposal, are relevant for promoting the objectives of the Convention, and may serve those objectives of the Convention related to the investigation and prosecution of acts of corruption, to the extent that they are used to that end.

According to the information provided by the country under review, no requests for mutual assistance have been received. Taking into account the agreement by the country under review to improve mutual assistance mechanisms through measures such as the bill creating the National Anti-Corruption Prosecutor's Office,⁶⁰ as reported in its response to the questionnaire, the Committee believes that the Dominican Republic could benefit from deepening and expanding the relationships, obligations and actions to which it is committed in accordance with the international agreements it has signed on the subjects examined by the Committee and which have been selected for review during this first round. Bearing this consideration in mind, the Committee will formulate a recommendation.

5.1.3. Results of the legal framework and/or other measures

In its response, the country under review states that it has not received requests for mutual assistance.⁶¹

5.2. MUTUAL TECHNICAL COOPERATION

5.2.1. Existence of provisions in the legal framework and/or other measures

In response to the questionnaire, the Dominican Republic reports that suitable mechanisms which allow for mutual technical cooperation with other States Parties to the Convention on the most effective ways and methods of preventing, detecting, investigating and punishing acts of corruption, are channeled and materialize through the Department for the Prevention of Corruption, the Office of the Comptroller General of the Republic, the Court of Accounts, the Office of the Superintendent of Banking, the Office of the Director General of Domestic Taxes, and the Technical Secretariat of the Office of the President.⁶²

⁶⁰ Updated Response from the Dominican Republic to the Questionnaire, p. 29.

⁶¹ Updated Response from the Dominican Republic to the Questionnaire, p. 30.

⁶² Updated Response from the Dominican Republic to the Questionnaire, p. 29.

5.2.2. Adequacy of the legal framework and/or other measures

The mechanisms on mutual technical cooperation reviewed by the Committee based on the information at its disposal are pertinent for promoting the purposes the Convention.

The Committee believes that a useful measure that might enable the Dominican Republic to further strengthen its capacity to continue to prevent, detect, investigate and punish acts of corruption, would be to continue to determine and prioritize those specific areas in which it would be helpful to receive technical cooperation from other States and from financial institutions or agencies involved in international cooperation in the required areas; and to continue its efforts to exchange technical assistance with other States Parties on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. The Committee will formulate a recommendation to make in this regard.

The Committee is pleased to learn that the Dominican Government has named the Department for the Prevention of Corruption, which is part of the Attorney General's Office, as the office in charge of coordinating international technical cooperation in the framework of the issues covered by the Convention. Nonetheless, the Committee notes that the appointment has not been officially communicated to the OAS General Secretariat. It would therefore urge the country under review to do so formally. The Committee will offer a recommendation in this regard in the general section concerning central authorities.

5.2.3. Results of the legal framework and/or other measures

In relation to concrete results on the Dominican Republic's participation in mutual technical cooperation activities, the Committee notes that the State has implemented projects of this nature, such as the project developed with support from Argentina, the United States and the European Union and which is mentioned in the response to the questionnaire. As indicated, these activities have contributed to the training of investigators, and the instruction of public servants and leaders of civil society about experiences in the fight against corruption, within the framework of promoting reform and modernization of the State. This has resulted in an increase in the operational and institutional capacity of public agencies and a better partnership with civil society for the promotion of transparency in government.

The Committee also observes that other cooperation projects have been implemented with the participation of the Government, the IDB, the UNDP and AID, which the country under review also describes in its response to the questionnaire. These projects, in a similar manner to those referred to in the preceding paragraph, are framed in terms of the fight against corruption and the strengthening of public institutions.⁶³

The foregoing mechanisms are adequate for implementation of the Convention and constitute progress in its implementation. However, the limited nature of the information available to the Committee does not allow a comprehensive assessment of the results from the legal framework and other measures. Bearing this in mind, the Committee will offer a recommendation in the final chapter of this document.

⁶³ Updated Response from the Dominican Republic to the Questionnaire, pp. 30 and 31.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

6.1 EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The Dominican Republic has designated the Department for the Prevention of Corruption in Government, which is under the Attorney General's Office, as the central authority for purposes of the assistance and cooperation provided for in the Convention. This designation has been duly communicated to the OAS General Secretariat.

6.2 ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The standards and mechanisms in the area of central authorities reviewed by the Committee, based on the information at its disposal, are relevant for promoting the objectives of the Convention.

The Committee notes that the Dominican Republic has complied with Article XVIII of the Convention by adopting measures regarding the appointment of the Department for the Prevention of Corruption in Government -which comes under the Attorney General's Office- as the central authority for the purposes of the assistance and cooperation provided for in the Convention.

Similarly, the country under review's response to the questionnaire would seem to indicate that limited resources are available to enable the Department for the Prevention of Corruption in Government to prepare and receive requests for assistance and cooperation. In this regard, the response states: "At the present time, the resources available are technical in nature, and in some areas such as development of anti-corruption plans, inter-institutional coordination, research experiences and coordination with civil society."⁶⁴

Taking that statement into account, the Committee suggests that the Dominican Republic consider the possibility of further strengthening that department, by giving it greater resources as necessary to enable it to carry out its function. Taking into account the foregoing, the Committee will formulate a recommendation.

6.3 RESULTS OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

With respect to the results of the legal framework and of other measures, the country under review notes the following in its response to the questionnaire: "*A technical assistance project was prepared to be presented to the Inter-American Development Bank (IDB) from which a technical cooperation was received. At the present time, the Department for the Prevention of Corruption in Government is included in the Project to Support Reform and Modernization of the Executive Branch, to conduct the institution-building with implementation of the Program for Certification in Ethics and Transparency, in order to apply Decree 39-03 on the Social Auditing Commissions and for preparation of a new National Plan to Prevent and Combat Corruption 2004-2008.*"⁶⁵

The limited nature of the information provided to the Committee does not allow a comprehensive assessment of the results of the legal framework and other measures. Bearing this in mind, the Committee will formulate a recommendation in the section of this report that concerns general recommendations.

⁶⁴ Updated Response from the Dominican Republic to the Questionnaire, p. 33.

⁶⁵ Updated Response from the Dominican Republic to the Questionnaire, p. 33.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review done in Chapter II of this report, the Committee is drawing the following conclusions and making the following recommendations regarding the implementation, in the Dominican Republic, of the provisions contained in Article III, subparagraphs 1 and 2 (standards of conduct and mechanisms to enforce them); Article III, subparagraph 4 (systems for disclosing income, assets and liabilities); Article III, subparagraph 9 (oversight bodies, but only as pertains to the oversight bodies' exercise of functions as regards the provisions of subparagraphs 1, 2, 4 and 11 of Convention Article III); Article III, subparagraph 11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (assistance and cooperation); and Article XVIII (central authorities) of the Convention, which were selected for review within the framework of the first round.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

The Dominican Republic has considered the applicability of and adopted measures to establish, maintain and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter 2, Section 1.2 of this report.

In view of the comments made in that section, the Committee suggests that the Dominican Republic consider strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics. To comply with this recommendation, the Dominican Republic could consider the following measures:

- a. Strengthen the existing rules on incompatibilities and disqualifications, taking into account the following considerations, in light of the scope of legislation and the positions identified by law:
 - Develop other mechanisms that identify or detect supervening causes that might occur during the exercise of public functions and which might result in a conflict of interest.
- b. Consider broadening the existing rules on incompatibilities and disqualifications to applicable public servants of all public branches, including those of the Legislative, Judicial and Executive Branch and members of the oversight bodies.
- c. Consider removing the provisions contained in the Code of Ethics that allow the head of a public institution to employ three family members or relatives in that public institution.
- d. Implement such measures as it deems appropriate to bring into effect the disciplinary tribunal mentioned in paragraph III of the Code of Ethics.

- e. Consider the possibility of incorporating into the legal system a rule that limits participation by former public servants, including those of senior rank, in situations that could involve taking undue advantage of one's status as a former public servant, for a specified period of time and without resulting in an absolute restriction on their constitutional right to work.
- f. Compile information on cases of conflicts of interest so as to establish evaluation tools with which to verify results on this issue.

1.2 Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials in the performance of their duties

The Dominican Republic has considered the applicability of and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their duties, as mentioned in Chapter 2, Section 1.2 of this report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Dominican Republic consider the following recommendations:

- 1.2.1 Further advance the development of the existing general principles on this subject, promoting administrative, legal and regulatory provisions that articulate more detailed standards of conduct designed to ensure the preservation and proper use of the resources assigned to public servants in performance of their functions. The provisions should set forth a detailed description of the grounds that cause a public servant to incur disciplinary and administrative liability, define the corresponding sanctions, and provide for mechanisms for paying damages to the State, when appropriate.
- 1.2.2 Strengthen the operating capacity of the Office of the Comptroller General of the Republic so that it can surmount the obstacles that presently hinder the processing of a greater number of audits and from fully discharging the authorities and functions conferred to it by articles 22 to 24 of Accounting Law No. 3894.
- 1.2.3 Strengthen the operating capacity of the General Bureau of National Property, in order for it to fully discharge its responsibilities under the law with regard to the creation and maintenance of an inventory of real and personal property. As well, promote measures that, among other things, prevent that the development of the functions of this Bureau depends on the discretion of its Director or any other official.
- 1.2.4 Continue and improve the work of the General Accounting Office with respect to the organization of State accounting, ensuring that it has the material and human resources necessary to perform its work.
- 1.2.5 Continue to take measures to recover, preserve and guarantee proper use of public resources, such as the measures being taken by the Dominican Agrarian Institute, the Department for the Prevention of Corruption in Government, the Secretary of State for Education and the Technical Office for Ground Transportation, as stated in section 1.2.3 of this report.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

The Dominican Republic has considered the applicability of and adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require government officials to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware, in accordance with the comments in Chapter 2, Section 1.3 of this report.

In light of the comments made in the above section, the Committee suggests that the Dominican Republic consider strengthening existing mechanisms requiring public servants to report to the appropriate authorities any acts of corruption in the public service of which they are aware. To comply with this recommendation, the Dominican Republic might consider the following measures:

- a. Examine the possibility of implementing provisions and measures that enable public servants to file complaints via administrative channels, for example, by creating a unit within each government institution charged with receiving, investigating and following-up on complaints, or by creating a national institution charged with those same functions. It might also consider the possibility of expanding the scope of the complaints beyond conduct classified in law as crimes, to include those that constitute breaches of administrative standards and provisions, and which are aimed at preserving trust in the integrity of public officials and government.
- b. Regulate the filing of these complaints in such a way that filing becomes even easier, by establishing requirements that do not inhibit potential complainants. Implement mechanisms that effectively protect those who report acts of corruption, in good faith, as well as the possibility of maintaining the confidentiality of the complainant's identity, with respect to complaints filed through administrative channels.
- c. Facilitate the procedure for filing complaints by using the means of communication and data processing deemed appropriate.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

The Dominican Republic has considered the applicability of and adopted measures designed to establish, maintain and strengthen systems for registering income, assets and liabilities of persons who perform public functions in certain posts as specified by law, in accordance with the comments in Chapter 2, Section 2.1 of this report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Dominican Republic consider improving the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication. To comply with this recommendation, the Committee suggests that the Dominican Republic consider the following recommendations:

- a. Take the decisions necessary so that the obligation to file declarations of income, assets and liabilities and the mechanisms for effective enforcement of that obligation, can be extended to include other public servants in posts that, by their nature, should be included because of the degree of responsibility required in the performance of those functions. Consider the possibility of establishing –either in lieu of or in addition to the list of specific posts- general criteria that serve to identify those posts even when the organizational structure of government undergoes modification, as discussed in section 2.2 of this report.
- b. Improve the efforts aimed at the implementation of a register of public servants who are obliged to file sworn declarations of income, assets and liabilities, while also providing mechanisms by which to periodically update those lists, so as to facilitate the administration and management of those declarations.
- c. Complement the rules on the content of public servants’ sworn declarations of income, assets and liabilities so that those statements include a description of the nature or characteristics of the properties which the public servant must itemize on the list of his property, assets and liabilities, and establish the criteria by which to determine their economic value.
- d. Implement a system for the declaration of property, assets and liabilities designed to detect, avoid and punish conflicts of interest and cases of illicit enrichment or other illicit acts expressly setting forth this objective in the provisions regulating this subject.
- e. Consider the advisability of requiring a sworn declaration of property, income, assets and liabilities, including a detailed description of the income, assets and liabilities of the spouse, those that are community property shared with the spouse or partner, and the income, assets and liabilities of dependents, at times other than those already prescribed by law, establishing reasonable time periods to update those declarations or spelling out the circumstances in which a mandatory declaration is advisable.
- f. Specify, within the legal framework related to this topic, the office, organ or agency that will handle these declarations, ensuring that it has the material and human resources necessary to process them efficiently.
- g. Establish systems for the effective and efficient verification of the contents of the sworn declaration of wealth, income, assets and liabilities, establishing the deadlines and filing times; strengthening the authorities that the office, entity or organ in charge of operating this system has for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between that office or agency and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.

- h. Expand the existing system of sanctions and penalties applicable to those public servants who violate the standards; including situations which give rise to its application, such as late filing of declarations or the omission of information; and establish additional sanctions –over and above those already prescribed- to ensure effective compliance with the rule requiring the filing of declarations, including fines or financial penalties, as well as a ban on reentry into public service, in the case of former public officials who fail to comply with the established filing obligations after leaving office.
- i. Regulate the conditions, procedures and other relevant aspects regarding publication, when necessary, of the declarations of income, assets and liabilities, subject to the Constitution and the basic principles of the Dominican Republic’s legal system.
- j. Implement programs to train public servants on the provisions governing application of the system of declarations of income, assets and liabilities; and design and introduce mechanisms to disseminate the system among the public servants who are required to enforce compliance with the obligation, in order to ensure that they are thoroughly familiar with the existing standards.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2 4 and 11 OF THE CONVENTION)

The Dominican Republic has considered the applicability of and has adopted measures designed to create, maintain and strengthen oversight bodies that perform functions related to effective compliance with the provisions selected for review in the context of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as stated in Chapter II, section 3 of this report.

Taking into account the considerations expressed in that section, the Committee suggest that the Dominican Republic consider the following recommendations:

Strengthen the Office of the Comptroller General and the Attorney General’s Office as oversight bodies, to ensure that they are able to effectively perform their functions related to matters addressed by Article III, paragraphs 1, 2, 4 and 11 of the Convention; endow them with the resources needed to discharge their functions, while also endeavoring to ensure that they enjoy greater support; and establish mechanisms for effective institutional coordination of their activities, as appropriate, and for their continuous evaluation and follow-up. In this strengthening effort, the following should be among the measures and provisions that the Dominican Republic should consider implementing:

- a. Appoint the Ombudsman, taking into account the importance of the prerogatives and independence that Law No. 19-01 gives to this office to protect citizens’ rights and to ensure that the public administration functions properly.
- b. Push for the measures deemed necessary to foster the effectiveness of the functions the Attorney General’s Office discharges in receiving and following up on complaints relating to effective compliance with the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention.

- c. Promote greater functional, administrative and budgetary independence, with respect to the functions performed by the Office of the Comptroller General of the Republic and the Court of Accounts. Among the measures that should be considered are those intended to guarantee an appointments system over which the executive branch has little or no influence, as a means to ensure that these offices will be more impartial when auditing and controlling public funds; and measures to lessen or eliminate their accountability to the executive branch when exercising functions and authorities such as reporting or denouncing irregularities they detect in the handling of public funds, as stated in section 3.2 of this report.
- d. Adopt such measures as it deems appropriate to establish a competent body responsible for the prevention and investigation of corruption.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

The Dominican Republic has considered and adopted measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

In light of the observations that appear in that section, the Committee suggests that the Dominican Republic consider the following recommendations:

4.1 General participation mechanisms

No recommendations were considered in this section.

4.2 Mechanisms for access to information

4.2.1 Consider moving forward on the implementation of the General Freedom of Public Information Act. To comply with this recommendation, the Dominican Republic might consider the following measures:

- a. Ensure that the requirement established in Article 7 subparagraph d) of Law No. 200-04, on the need to include in a request for information the motive or reasons why the information is required, does not constitute an impediment to the full exercise of freedom of information; the mention of a general interest should suffice to satisfy this requirement.⁶⁶
- b. Promote a general public awareness program on the rights, provisions and procedures deriving from Law No. 200-04.⁶⁷

⁶⁶ In the case of recommendation 4.2.1(a), this is addressed by Article 15 of the Regulations to the General Freedom of Public Information Act, which were enacted by Decree 730-05 of February 25, 2005.

⁶⁷ In the case of recommendation 4.2.1(b), this is addressed by Chapter VIII of the Regulations to the General Freedom of Public Information Act, which were enacted by Decree 730-05 of February 25, 2005.

- c. Implement training programs and refresher courses targeted at the pertinent civil servants, including those in the judicial branch, to instruct them in the proper and timely application of the provisions protecting access to information and so that they are clear on the limits of this right and the consequences that can result from an unwarranted refusal to provide requested information. They can also be trained on how and what to use to organize the information and keep it up to date, as required under Article 4 of Law No. 200-04.⁶⁸
- d. Assign public funds to ensure the proper application of Law No. 200-04 and that, *inter alia*, make it possible to: i) create the bodies provided for in that law, endowing them with the human, technical and financial resources they need to function properly; ii) make the public aware of the system and services offered, by creating and using an internal organization for which no provision has been made thus far; iii) comply with the obligation incumbent upon all centralized and decentralized public agencies of the State to publish their Web pages, so as to widely publicize the business of government; and iv) create and put into operation centers where information can be shared with clients or users and their needs addressed.

4.2.2 Consider developing a mechanism that follows up on the objective results from the application of Law No. 200-04 and its regulations, and which ensures its circulation.

4.3 Consultative mechanisms

Complement the existing consultation mechanisms by establishing, where appropriate, procedures that will offer civil society and nongovernmental organizations greater opportunities for public consultations before the design of public policies and the final approval of laws. To comply with this recommendation, the Dominican Republic might consider the following measures:

- a. Encourage greater opportunities within the framework of the National Congress for civil society to express an opinion during debate on and passage of legislation, and consider the possibility of making these opportunities mandatory when the matters discussed are sufficiently important or sensitive.
- b. Promote and foster the practice that some local governments have introduced of institutionalizing opportunities for civil society to advise in government decision-making as an effective means of combating corruption, and make this practice universal.

⁶⁸ Recommendations 4.2.1(c) and (d) are addressed by various provisions of the Regulations to the General Freedom of Public Information Act, such as Articles 7, 15, 16 and 17, as well as Chapters II, IV, V, VIII, among others, which were enacted by Decree 730-05 of February 25, 2005.

- c. Consider the application of consultation mechanisms at the national level. They might be similar to those used at the county level, where civil society is authorized to review and propose certain public policies; as well as the possibility of these mechanisms being convoked by popular initiative, both at the local and national levels and in connection with those issues on which the Dominican Republic believes such consultations might be constructive.
- d. Design and implement programs to raise awareness of the mechanisms for consultation on public affairs and, where appropriate, instruct civil society, nongovernmental organizations, public officials and civil servants in their proper use and equip them to do so.
- e. Advance the implementation and the improvement of existing opportunities for participation, while ensuring that they function effectively and that they assure civil society's active participation in public affairs and in efforts aimed at preventing corruption; a determination should be made as to the weight that these mechanisms will carry.

4.4 Mechanisms to encourage active participation in public administration

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration. To comply with this recommendation, the Dominican Republic might consider the following measures:

- a. Establish additional mechanisms that strengthen the participation of civil society organizations in public administration, especially in efforts to prevent corruption, and advance the institutionalization and regulation of these mechanisms, in comprehensive and permanent system.
- b. Resolve that the results obtained from the use of these mechanisms will be taken into account in the decision-making process.
- c. Design and implement programs to raise awareness of these mechanisms and stimulate participation in public affairs as a means to combat corruption and, when appropriate, instruct civil society, nongovernmental organizations, public officials and civil servants in their proper use and equip them with the tools necessary to do so.

4.5 Mechanisms for participation mechanisms in monitoring public administration

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Dominican Republic could consider the following measures:

- a. Promote, as appropriate, additional means of participation that will allow, facilitate and assist civil society organizations in the development of activities for the follow-up of public administration, and make advances toward institutionalizing and regulating the new methods with a view to ensuring that some of them become permanent mechanisms.

- b. Consider the implementation of awareness and training programs targeted at civil society and nongovernmental organizations. Furthermore, the Committee considers that the Dominican Republic could benefit from the presentation of periodic reports by the government in order to raise awareness of its efforts, as suggested in section 4.5.2 of this report.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Dominican Republic has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter II, Section 5 of this report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Dominican Republic consider the following recommendations:

- 5.1 Consider the possibility of further deepening and expanding the relationships, obligations and actions that stem from the international agreements signed on the subjects examined by the Committee and which have been selected for review within this first round, in order to promote greater mutual assistance for the investigation or prosecution of corruption cases.
- 5.2 Continue to determine those specific areas in which the Dominican Republic sees the need for technical cooperation with other States party in order to strengthen its capability to prevent, detect, investigate and punish acts of corruption. The Dominican Republic should also continue to determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Committee notes that the Dominican Republic has complied with Article XVIII of the Convention by designating the Department for the Prevention of Corruption in Government as the central authority for the purposes of the assistance and cooperation provided for in the Convention.

The Committee suggests that the Dominican Republic consider the following recommendation:

Ensure that the Department for the Prevention of Corruption in Government, as the central authority designated by the country under review as the central authority for the purposes of the Convention, has the resources necessary to discharge its functions.

7. GENERAL RECOMMENDATIONS

Taking into account the comments made throughout this report, the Committee suggests that the Dominican Republic consider the following recommendations:

- 7.1. Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of assuring adequate knowledge, handling, and implantation of the above.

- 7.2. Select and develop procedures and indicators, as appropriate, that enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, it may take into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3. Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

8. FOLLOW-UP

The Committee will consider the periodic update reports submitted by the Dominican Republic concerning progress in implementing the above recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 30 of its Rules of Procedure.

The Committee will also analyze progress in implementing the recommendations formulated in this report, in accordance with Article 31 and, as appropriate, Article 32 of its Rules of Procedure.

The Committee wishes to place on record the request made by the Dominican Republic to the Secretariat to publish this report to the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

**APPENDIX TO THE REPORT ON THE IMPLEMENTATION BY THE DOMINICAN
REPUBLIC OF CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE
FRAMEWORK OF THE FIRST ROUND**

The DOMINICAN REPUBLIC sent a series of provisions and documents to its response, as follows:

CONSTITUTION

- Constitution of the Dominican Republic
- Articles from the Constitution and the Penal Code that concern misconduct by public officials and civil servants.

LAWS

- Law on the Court of Accounts of the Republic (No. 130), December 2, 1942, Official Gazette No. 5837.
- Treasury Act No. 3893, Official Gazette No. 7730, August 18, 1954.
- Accounting Act No. 3894 - Official Gazette 7730, August 18, 1954.
- Bylaws of the Cabinet Secretariats No. 4378, February 10, 1956, Official Gazette No. 7947.
- Law No. 1832, creating the General Bureau of National Assets.
- State Property Leasing Act No. 1421, November 22, 1937.
- Government Provisioning Act No. 295, Official Gazette No. 8994 of June 30, 1966.
- Law No. 105, which requires public calls for proposals and competitive bidding on all engineering and architecture contracts valued in excess of RD\$10,000.00
- Law No. 82, December 16, 1979, which requires public officials to make an itemized inventory, given under oath before and certified by a Notary Public, of all assets in their estates as of that time. (Official Gazette No. 9518, December 29, 1979)
- The Budget Act No. 531, December 11, 1969
- Law No. 101, which requires the National Budget Office to publish, at the end of every month and within the next 30 days, an itemization of all revenues and expenditures.
- Law No.130 of March 14, 1975, which provides that before traveling abroad, any public official and civil servant who handles public funds must have special authorization from the executive branch.
- Law No. 14-91, Civil Service and Government Career Service Act, Official Gazette No. 9808, May 30, 1991.
- Law No. 1901, which creates the Public Defender's Office, enacted on February 1, 2001.
- Law No.126-01 of July 27, 2001, creating the Government Accounting Office.
- Law against Laundering of Proceeds from Illicit Trafficking in Drugs and Controlled Substances and Other Serious Offenses.

DECREEES

- Decree No. 322-97, creating the Department for the Prevention of Corruption in Government.
- Decree 149-98, creating the Public Ethics Commissions
- Decree No. 121-01, regulating the appointment of pensioners or retired persons in autonomous or decentralized agencies of the State or enterprise in which the State is a shareholder.
- Dec. No. 1284-00, establishing the follow-up and evaluation meetings in every cabinet secretariat, national and general bureau, executive office, general administrative office, management office, superintendent's office, or in any other office of equal rank within the central, decentralized and autonomous public administration.
- Dec. No. 614-01, establishing the Planning System for Financial Execution of the Budget and other provisions.

- Decree 783-01, creating the Presidential Anti-Corruption Advisory Board.

REGULATIONS

- Regulation No. 73, for the Accounts Inspection Service. Official Gazette No. 7730, August 18, 1954.
- Regulation No. 395, governing the award of construction contracts for projects by the State, counties or other official agencies and institutions.
- Government Procurement and Contracting Regulations (Decree 262-98).

CIRCULARS

- Circular No. 05/98
- Circular No. 10-2000
- Circular No. 000011
- Circular No. 16-2000
- Transitory regulations and procedures for processing and registering extra-budgetary revenues (self-generated revenues)
- Circular No. 000018
-

OTHER LAWS REQUESTED BY THE TECHNICAL SECRETARIAT

- Regulation of the House of Deputies, Chapter III, Article 142, numeral 1.
- Law No. 72-01 Against the Laundering of Proceeds from Illicit Trafficking in Drugs and Controlled Substances and Other Serious Offenses.
- Regulation of Application of Decree No 20-03
- Law 200-04 Free Access to Public Information in the Dominican Republic.
- Decree No. 39-03 and the rules for its application created by the Social Audit Committees.
- Directive for the Application of Decree No. 39-03 creating the Social Audit Committees.