

MECHANISM FOR FOLLOW-UP ON THE  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
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DOMINICAN REPUBLIC

FINAL REPORT

(Adopted at the December 7, 2007 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE DOMINICAN REPUBLIC OF THE  
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND  
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY  
IN THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

This report presents, first, a review of implementation in the Dominican Republic of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the report will examine follow-up to the recommendations that were formulated to the Dominican Republic by the MESICIC Committee of Experts in the first round, which are contained in the report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: [http://www.oas.org/juridico/english/mec\\_rep\\_hnd.pdf](http://www.oas.org/juridico/english/mec_rep_hnd.pdf)

**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 of the Dominican Republic**

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Dominican Republic, and in particular from the Office of the Prosecutor General, which was evidenced, *inter-alia*, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Dominican Republic sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Dominican Republic up to May 25, 2007, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

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<sup>1</sup> This report was adopted 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 December 7, 2007, at its Twelfth meeting, held at OAS Headquarters, December 3-7, 2007.

## **2. Documents received from civil society organizations**

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth Meeting,<sup>2</sup> a document from the civil society organization “Participación Ciudadana”.

## **II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**

### **1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)**

#### **SYSTEMS OF GOVERNMENT HIRING**

##### **1.1.1. Existence of provisions in the legal framework and/or other measures**

The Dominican Republic has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Legal provisions applicable to public servants in the Executive branch, such as Law No. 14-91, the Civil Service and Government Career Service Law, Article 1 of which provides that the Law applies to employees and civil servants in the Executive branch, as well as its various official dependencies; Article 2, which lists those to whom the Law does not apply;<sup>i</sup> Article 5, which provides that the President of the Republic, as the head of the Public Administration, is the highest authority of the system, and issues all provisions and executes all actions related to officials and employees; Article 6, which provides that the entities responsible for the administration of the system are (a) the National Office of Administration and Personnel (ONAP), (b) the Personnel Offices of the public dependencies of the Executive branch, (c) the training units of the public service, (d) the personnel committees in the public entities, and (e) the Superior Administrative Tribunal.

Article 7 of the Law provides that ONAP is the central organ of the system, and that the head of ONAP falls under the exclusive and sole supervision of the President of the Republic. In addition, Article 8 provides that the President shall regulate ONAP’s functions.

Article 16 of the Law provides for two categories of posts and employees: (a) posts and employees that are freely appointed are political in nature and are trust positions; and (b) career posts and employees, with permanent functions and subject to the selection, remuneration, promotion and improvement based on merit provided for by the Law and its regulation. In addition, Article 17 lists those posts and employees who are freely appointed.<sup>ii</sup>

Article 19 contains the general requirements for entry into the Civil Service, including having the capacity to properly carry out one’s functions (Article 19(d)), that the functions to be carried out not be incompatible with other responsibilities (Article 19(e)), and not having been dismissed from a public or private post due to dishonesty (Article 19(g)), among others.<sup>iii</sup>

Additionally, Article 31 contains requirements for entry into the Government Career Service, including a requirement that candidates meet the minimum requirements for the post and that they demonstrate, through competition, their suitability for the post. In this regard, Article 32 requires an

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<sup>2</sup> This Meeting was held from March 27 to 31, 2006, at OAS Headquarters in Washington D.C., USA.

entity interested in filling a Government Career Service vacancy, to carry out the recruitment and selection process, with the advice and technical supervision of ONAP, through published competitions, which may consist of proof, (“evaluacion de expedientes”), interviews, and/or other means necessary.

Article 42 of the Law allows those employees who occupy a permanent career service post pursuant to a regular appointment, to enter the career service following verification of their qualifications through examination or through an evaluation of their service and conduct.

With respect to challenge and appeal mechanisms, Article 9 of the Civil Service and Government Career Service Law provides for the creation of a Personnel Committee in each public entity, composed of the highest authority of each entity, a staff representative and the Director of ONAP. Article 9 also provides that the Personnel Committees have conciliatory functions with respect to and receive staff consultations and requests with respect to noncompliance with provisions regarding working conditions, disciplinary matters, evaluation and qualification of personnel, promotions, transfers, training and other personnel matters.

Article 10 of the Law provides that in addition to the Personnel Committees, the Court of Accounts hears contentious-administrative cases arising out of conflicts between the Executive branch and its employees and civil servants under the Law, provided that the recourse referred to by Article 1 of Law No. 1494 has been exhausted.

In addition, Article 1 of Law No. 1494, on the Administrative-Contentious Jurisdiction, allows any natural or legal person to present a complaint against any administrative action that is contrary to law.

- Regulatory provisions applicable to public servants in the Executive branch, such as Regulation No. 81-94, on the Application of the Civil Service and Government Career Service Law, which expands upon the provisions of the Law, and which contains provisions such as Article 34, which requires ONAP to design, implement and administer a uniform and equitable system for classifying posts, set salaries for all Executive branch employees covered by the Law and Article 57, which details the types of appointments in the executive branch, as follows: (a) ordinary appointment, to cover freely appointed posts; (b) career appointments, pursuant to Article 32 of the Law; (c) temporary appointments, to cover career posts for which the requisite competition has not been carried out, and which are not to exceed one year; and (d) honorary appointments, to be issued in order to distinguish a deserving individual or one who will carry out functions in the Public Administration without any financial compensation.

The Regulation also contains various provisions regarding the personnel selection and recruitment process, including Articles 64 through 67, which require the creation of a Register of Eligible Candidates to enter the career service, for candidates to be included in the register in order of their qualifying score, and for candidates to be informed of the results as well as their inclusion or omission from the Register; Article 74, which allows interested parties who consider that their legitimate interests have been unjustly affected, have the right to complain and to be heard; and Article 77, which expands upon Article 42 of the Law, and creates a preference system based on years of service for those appointees who wish to enter the career service. This system first gives priority to those employees who have served for 10 or more years, then to those who have served for more than 5 years, and finally, those employees who have served for a minimum of 2 years.

- Provisions applicable to certain employees within the Judicial branch, such as Law No. 327-98, the Judicial Careers Law, Article 1, which states that the purpose of the law is to guarantee the suitability, stability and independence of those to whom it applies, as well as to establish a system based on merit and free of discrimination. In addition, Articles 1 and 3, respectively, provide that the Law applies to magistrates as well as judges of the Supreme Court of Justice.<sup>3</sup>

Article 4 of the Law provides that the Supreme Court of Justice is responsible for designating all judges, subject to the exception contained in Article 2;<sup>iv</sup> as well as for guiding the judicial career system. In addition, Articles 6 and 7 provide, respectively, that the General Directorate of Judicial Careers is the central organ of the system with functions including, among others, administering all the processes inherent in the career system based on merit, as well as monitoring the application of those technical systems which ensure compliance with the system.

Finally, Article 11 contains requirements for entry into the judicial career, including inter-alia, having gone through a competition, as well as having obtained the “*exequatur*” at least two years before.

- Provisions applicable to employees and officials of the Public Ministry, such as Law 78-03, on the Public Ministry Statute, which contains provisions such as Article 4, which provides that Attorney General’s Office, as the highest authority within the Public Ministry, is responsible for the administration of the career system; Article 5, which provides that with respect to entry, promotion and other situations, administrative and technical support staff are subject to the provisions of Law 14-91 and its Regulation; Articles 21 through 24, which address the appointment of the members of the Public Ministry by the President of the Republic; Article 66, which requires the Attorney General to publish vacancies that arise at any level of the Public Ministry, inviting interested parties to submit their credentials to the National School of the Public Ministry; and Article 97(f), which tasks the National School with measuring and evaluating the quality of Public Ministry officials and employees, as well as those who apply to the Public Ministry.

#### **1.1.2. Adequacy of the legal framework and/or other measures.**

With respect to the legal provisions that refer to the principal systems of government hiring that the Committee has examined, and based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to formulate certain observations on the advisability of developing and complementing certain legal provisions that refer to those principal systems.

- With respect to the Executive branch, the Committee considers it convenient to formulate the following observations:

To begin with, the Committee notes that the Dominican Republic’s response is very forthcoming in that it clearly indicates several areas in which the system for the hiring of public service is deficient. In this regard, the response also notes that *“Many of the exceptions that are evident based on our responses are due to deficiencies both in the text of the Law and the legal tools that have been developed for its application, as well its implementation. It is for this reason that various sectors of*

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<sup>3</sup> Article 2 of the Judicial Careers Law specifically excludes from its scope of application, all those employees who are appointed by another branch of government pursuant to the Constitution.

*the country have advocated for a substantial modification of Law No. 14-91. These requests have become reality with the draft Public Service Law, which has been prepared with the support of the European Union, through the Program in Support of Reform and Modernization of the State, ONAP, and the National Council for State Reform (CONARE). This draft is currently being discussed by the Congress.”<sup>4</sup>*

With respect to the basic requirements for entry into the Executive branch, the Committee observes that the response to the questionnaire notes an absence of mechanisms for verifying the suitability of candidates for posts, and for ensuring that no conflict of interest exists.<sup>5</sup> The Committee considers that the existence of such mechanisms is particularly important given the various Executive branch employees and officials appointed discretionally, as will be discussed below. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.1(a) in Section 1 of Chapter 3 of this report)

In this same connection, the Committee notes that Law 14-91 lacks a specific provision stipulating that entry into public service shall be based on merit, and it will formulate a recommendation in this regard. (See Recommendation 1.1.1(b) in Section 1 of Chapter 3 of this report)

The Committee also notes that although Law 14-91 provides that entry into the government career service shall be via competition, Article 42 of the Law and Article 77 of its Regulation allow for entry into this system by means other than competition, as they provide for entry based on years of service following either a verification of the appointee’s qualifications through examination or through an evaluation of their service and conduct.

In this regard, the Committee notes a certain degree of inconsistency within the Law itself. To begin with, Article 16 of the Law provides for (1) appointments, which are political as well as trust positions; and (2) career service posts and employees. Therefore, pursuant to the Law and subject to any exception thereto, career posts should be filled through competition and not appointment. The exception to this would be Article 57(c) of Regulation 81-94, which allows for temporary appointments for filling career service posts for no more than one year, when it has not been possible to carry out the corresponding competition.

Yet Article 42 of the Law and 77 of the Regulation require, for entry into the career service based on years of service, that the appointee have occupied a permanent post within the career service for a minimum of two years. Therefore, it is unclear how exactly an appointee would be able to legally occupy a career service post for the minimum time required to take advantage of the process provided for by Articles 42 and 77 of the Law and its Regulation, respectively.

In addition, while Article 42 of the Law is labeled as a transitory provision, there is no indication that it is being phased out. Rather, Dominican Republic’s response to the questionnaire notes as follows: *“With respect to the administrative career system, which mandates (article 31) a showing of capacity through a properly published competition, less than 10% of public servants that enter the career system have responded to a competition (with the exception of those special careers to which we made reference in the first paragraph of this chapter). Rather, they are public servants, who after*

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<sup>4</sup> See the Response of the Dominican Republic to the Questionnaire, at p. 11.

<sup>5</sup> Ibid, at p. 2.

*occupying a post in the service (selected discretionally), they are evaluated and in a majority of cases, they enter the career service based on their years of service.”<sup>6</sup>*

The foregoing considerations indicate that there is considerable opportunity for entry into service in the Executive branch based on considerations other than merit. Bearing this in mind, and considering that it has been approximately sixteen years since the entry into force of Law 14-91, the Committee believes that it might be advisable for the Dominican Republic to consider the advisability of derogating this provision, as well as the corresponding Article 77 of Regulation 81-94. (See Recommendation 1.1.1(c) in Section 1 of Chapter 3 of this report)

In this regard, the Committee is also concerned about the possibility of temporary employees temporarily appointed to fill career service posts pursuant to Article 75(c) of Regulation 81-94, exceeding the one year limitation provided for therein, and then being included in the career service in accordance with their years of service, pursuant to Article 77 of the Regulation. The Committee will formulate a recommendation with respect to the foregoing points. (See Recommendation 1.1.1(d) in Section 1 of Chapter 3 of this report)

With respect to the publication of vacancies in the Executive branch, the Committee notes that the Law only provides for publication of career service vacancies (Article 31). Secondly, the response of the Dominican Republic also notes that “...*publication of competitions on many occasions is left to the discretion of the institution carrying out the competition, without mechanisms to determine the objectivity of the selection of career employees. In addition, these publications are only made when there is an external competition...*”<sup>7</sup> The Committee considers that the announcements for all vacancies, including those to be filled by appointees, should be published. Additionally, the Committee considers that all competitions for career service posts should be similarly published. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.1(e) in Section 1 of Chapter 3 of this report)

Regarding appeal mechanisms, Dominican Republic’s response notes as follows:

*“At present there are no direct remedies that may be used by those public servants that disagree with or are suspicious of the evaluation to which they were subject. While it is true that Article 74 of Regulation no. 81-94 indicates that ‘The citizens that belong to a career system or aspire to hold positions of that nature, and who meet the officially established requirements therefore, if they consider that their legitimate interests have been unjustly affected, have the right to complain, to be heard and to receive the benefits established by law in the areas addressed in this Regulation’, the Regulation does not establish a procedure for public servants to direct their complaints. In addition, the procedural routes mentioned in Regulation 81-94 (conciliation before the Personnel Committees, the reconsideration procedure, “jerarquico” and contentious-administrative may only be used by those who are employees of the particular institution.*

*Ordinary citizens who have applied to a position can only complain via the ordinary law, when they can prove damages suffered as a result of the fraudulent selection...”<sup>8</sup>*

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<sup>6</sup> Ibid, at p. 3.

<sup>7</sup> Ibid, at p. 8.

<sup>8</sup> Ibid.

In light of the above considerations, the Committee considers that steps should be taken to expand the opportunities for challenges to be made to the selection process and all of its included elements, by any individual, without regard to their status as a government employee. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.1(f) in Section 1 of Chapter 3 of this report)

- With respect to the Legislative branch, the Committee notes that at the December 6, 2007 Plenary Session of the Committee of Experts, the Delegation of the Dominican Republic informed of the existence of Law No. 02-06 on the Administrative Career in the National Congress.<sup>9</sup> In this regard, the Committee will formulate a recommendation. (See Recommendation 1.1.2 in Section 1 of Chapter 3 of this report)
- With respect to the Judicial branch, the Committee notes that the Judicial Careers Law only applies to judicial magistrates and members of the Supreme Court of Justice. Accordingly, the Committee perceives an absence of provisions addressing the recruitment and selection of other employees and officials that belong to the Judicial branch. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.3 in Section 1 of Chapter 3 of this report)

#### **1.1.3. Results of the legal framework and/or other measures.**

With respect to results in this field, in its response, the Dominican Republic included the following two charts obtained from ONAP, the first of which indicates the number of individuals who have been included in the administrative career service by means of an administrative act, and the second of which indicates the number of individuals who have been included in the administrative career service through competition.

*“According to the information published by ONAP ([www.onap.gov.do](http://www.onap.gov.do)), since 1995, the following number of public employees have been incorporated into the administrative career service through an administrative act:*

| <b>Act</b> | <b>Date</b>   | <b>Place Held</b>                  | <b>Number Incorporated</b> |
|------------|---------------|------------------------------------|----------------------------|
| I          | November 1995 | Center for Events and Conventions  | 300                        |
| II         | October 1999  | National Palace, “Cariatides” Hall | 501                        |
| III        | January 2000  | National Palace, “Cariatides” Hall | 154                        |
| IV         | June 2000     | Palace of Fine Arts, Main Hall     | 368                        |
| V          | November 2001 | Central Bank Auditorium            | 2,488                      |
| VI         | July 2002     | Central Bank Auditorium            | 1,462                      |

<sup>9</sup> Because this information was received after the deadline for submission of the response to the questionnaire, no analysis was carried out with respect to this Law.



|              |               |  |               |
|--------------|---------------|--|---------------|
| VII          | November 2002 | Central Bank Auditorium                | 2,036         |
| VIII         | July 2003     | Central Bank Auditorium                | 1,555         |
| IX           | December 2003 | Central Bank Auditorium                | 2,597         |
| X            | July 2004     | Autonomous University of Santo Domingo | 3,165         |
| XI           | January 2005  | National Palace, "Cariatides" Hall     | 158           |
| XII          | November 2005 | Central Bank Auditorium                | 1,103         |
| XIII         | August 2006   | Central Bank Auditorium                | 352           |
| XIV          | November 2006 | Central Bank Auditorium                | 1,641         |
| <b>Total</b> |               |  | <b>17,880</b> |

*"Similarly, since 2004, as can be seen further on, only 667 public servants have been incorporated through public competition, which is clear evidence that the system has been an exception to the rule since this structure was put into place beginning with the approval and entry into force of Regulation 81-94."*

| Director               | Description                | Date       | Number of Employees |
|------------------------|----------------------------|------------|---------------------|
| Lic. Darío Castillo L. | 2004 Competition           | 26/03/2004 | 406                 |
| Lic. Ramón Ventura C.  | December 2005 Competition  | 01/12/2005 | 12                  |
| Lic. Ramón Ventura C.  | February 2006 Competition  | 13/02/2006 | 57                  |
| Lic. Ramón Ventura C.  | March 2006 Competition     | 15/03/2006 | 6                   |
| Lic. Ramón Ventura C.  | May 2006 Competition       | 09/05/2006 | 3                   |
| Lic. Ramón Ventura C.  | June 2006 Competition      | 07/06/2006 | 17                  |
| Lic. Ramón Ventura C.  | July 2006 Competition      | 07/08/2006 | 2                   |
| Lic. Ramón Ventura C.  | August 2006 Competition    | 14/08/2006 | 21                  |
| Lic. Ramón Ventura C.  | September 2006 Competition | 14/09/2006 | 1                   |

|                       |                           |            |            |
|-----------------------|---------------------------|------------|------------|
| Lic. Ramón Ventura C. | October 2006 Competition  | 10/10/2006 | 64         |
| Lic. Ramón Ventura C. | November 2006 Competition | 10/11/2006 | 4          |
| Lic. Ramón Ventura C. | December 2006 Competition | 19/12/2006 | 74         |
| <b>Total</b>          |                           |            | <b>667</b> |

The foregoing results demonstrate that only 667, or approximately 3.7% of public servants that have entered the public service since 1995 did so by means of a public competition.

This statistic, together with the information presented in the response, in the sense that the majority of those who have entered the career service have done so by means of Article 42 of the Law (Article 77 of the Regulation), discussed above, leads the Committee to believe that only a small percentage of individuals enter the career service based on merit. This is also stated by the Dominican Republic, which notes that *“Paragraph (b) of Article 31 of the Law indicates that entry into the career service requires, as appropriate, a demonstration through competition that the candidate possesses the suitability required to efficiently exercise the post in question. Nonetheless, even though Regulation 81-94 defines certain positions as career positions, this is a little used mechanism for the hiring of public servants, because “clientelismo” and the culture of the State employer have taken away the reality of this provision.”*<sup>10</sup>

In this regard, the Committee considers that the Dominican Republic would benefit from a comprehensive review of the Law and its Regulation as well as the implementation of provisions which ensure that the majority of public servants enter service through competitive means and based on merit.<sup>11</sup> The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.4 in Section 1 of Chapter 3 of this report)

The report presented by “Participacion Ciudadana” also presents objective results with respect to the hiring of public servants. In particular, the report presents the following chart, which indicates the salaries for essentially the same or similar posts in four different Executive branch entities.

In addition to the chart, the report also notes that *“With respect to equity, the system for the hiring of public servants in the Dominican Republic is lacking, as more than 90% of public servants have been appointed based on discretion, without the use of rational methods and techniques. Indisputable proof of the lack of equity is the inexistence of a system of classification of posts, with the result that*

<sup>10</sup> See the response of the Dominican Republic to the questionnaire, at p. 3.

<sup>11</sup> In this regard, the Committee observes that in its response to the questionnaire, the Dominican Republic notes the existence of a Draft Public Service Law, which has been developed with the support of the European Union, and through the Program for Support of Reform and State Modernization, by ONAP and the National Council for State Reform (CONARE). See p. 11.

*a common practice in our institutions is for incumbents to set the salaries for their employees as a result of political, familial, or other relationships and other subjective criteria... ”<sup>12</sup>*

**CHART No.1  
SALARY BY TYPE OF POST AND BY SECRETARIAT/MINISTRY**

| <b>TYPE OF POST</b>      | <b>SPORTS</b> | <b>HEALTH</b> | <b>ENVIRONMENT</b> | <b>INDUSTRY<br/>AND<br/>COMMERCE</b> |
|--------------------------|---------------|---------------|--------------------|--------------------------------------|
| Internal Messenger       | 10,875.00     | 3,314.77      | 7,150.35           | 9,100.00                             |
| Procurement Assistant    | 12,061.00     | 6,361.04      | 14,990.72          | 15,000.00                            |
| Secretary I              | 10,260.00     | 8,360.24      | 14,338.08          | 15,000.00                            |
| Lawyer Assistant         | 14,894.00     | 16,100.73     | 19,978.70          | 28,400.00                            |
| Accountant               | 22,000.00     | 17,490.00     | 23,115.66          | 40,000.00                            |
| Head of Accounting       | 35,147.23     | 30,800.00     | 50,993.58          | 54,979.00                            |
| Head of Procurement      | 35,147.23     | 53,900.00     | 45,060.60          | 82,450.00                            |
| Head of Public Relations | 29,289.40     | 49,566.66     | 37,550.50          | 92,150.00                            |
| Head of Treasury         | 30,420.00     | 55,548.65     | 45,060.60          | -                                    |
| Head of Personnel        | 43,787.21     | 56,092.93     | 50,993.58          | 70,111.00                            |

In addition to the above, “Participacion Ciudadana” attached together with their response, a letter that they received from the Office of the Comptroller General of the Republic, dated April 19, 2007, stating in pertinent part, that “...at present, there is no uniformity nor relativity with respect to salaries for work posts, in other words, there are very pronounced variations between the salaries in one institution and another.”<sup>13</sup>

In a similar sense, “Participacion Ciudadana” notes that “As a result of the absence of rules on the classification of the salaries in the State, certain officials that have the legal authority to set salaries, including their own, or they take advantage of gaps in the law to do so, are treating the treasury as a way to enrich themselves...we are talking about salaries, compensation and incentives which are above half a million Dominican pesos a month (RD\$500,000.00), and which in some cases are as

<sup>12</sup> See the document submitted by Participacion Ciudadana, at p. 10.

<sup>13</sup> See Annex 1 to the document submitted by Participacion Ciudadana.

*much as nine hundred thousand pesos (RD\$900,000.00), in other words, between fifteen thousand five-hundred and twenty-seven thousand [U.S.] dollars a month (US\$15,500.00-US\$27,000.00). ”<sup>14</sup>*

The above deficiencies in the existing law are reflected in the report prepared by the Inter-American Development Bank, on the Situation of the Civil Service in Latin America, Synthesis of the Diagnostic in the case of the Dominican Republic, which highlights the lack of a regime for the classification and remuneration of posts, and which also notes that at the time that the information for the report was gathered, two classification manuals were being prepared.<sup>15</sup>

With respect to the foregoing issues, the Committee notes that Article 34 of Regulation 81-94 charges ONAP, in coordination with Executive branch entities and personnel offices, with the classification of posts and the setting of salaries for all civil servants, whether they belong to the administrative career service or not.

Accordingly, the Committee considers that the foregoing problems might be addressed in large part, by the establishment of a salary policy based on the criteria of equity and efficiency corresponding to the public functions assigned. Bearing in mind the foregoing considerations, the Committee will formulate a recommendation. (See Recommendation 1.1.5 in Section 1 of Chapter 3 of this report)

Similarly, the Committee considers that the strengthening of ONAP’s organic structure might be beneficial for the Dominican Republic, and it will formulate a recommendation in this regard. (See Recommendation 1.1.6 in Section 1 of Chapter 3 of this report)

Finally, the Committee believes that the Dominican Republic might also consider the implementation of systems for entry into public service based on competition and merit within the personal administration systems of the other branches of the state and the autonomous and decentralized institutions. (See Recommendation 1.1.7 in Section 1 of Chapter 3 of this report)

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

### **1.2.1. Existence of provisions in the legal framework and/or other measures.**

The Dominican Republic has a set of provisions related to the above-mentioned systems, among which the following, related to the principal systems, should be noted:

- Legal provisions applicable to all branches of government, among which the following should be noted:

- Law No. 340-06, on Purchasing and the Procurement of Goods, Services, Works and Concessions, which, pursuant to Article 2 thereof, applies to the Executive, Judicial and Legislative branches, the Central Electoral Board, the Court of Accounts, decentralized and autonomous financial and non-financial institutions, public social security institutions, town hall meetings (municipal and of the National District), financial and non-financial public companies, and any entity which contracts for the acquisition of goods, services, works and concessions with public funds. Among the provisions of the Law, the following should be mentioned:

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<sup>14</sup> See the document submitted by Participacion Ciudadana, at p. 12.

<sup>15</sup> See <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=773252>.

- Article 3, which establishes the principles that guide the procurement process, including efficiency (Art. 3(1)), equality and free competition (Art. 3(2)), transparency and publicity (Art. 3(3)), economy and flexibility (Art. 3(4)), equity (Art. 3(5)), responsibility, morality, and good faith (Art. 3(6)),<sup>16</sup> reciprocity (Art. 3(7)), principle of participation (Art. 3(8)),<sup>17</sup> and reasonableness (Art. 3(9)).
- Article 5, which sets forth the processes and persons subject to the Law; Article 6, which excludes certain types of procurements from its scope of application, including (1) international treaties, commercial and integration agreements, loan or donation agreements from other countries and from public international law entities, when the treaties or agreements so specify; (2) operations regarding public credit and public hiring, which shall be governed by their respective laws; (3) purchases made with petty cash; and (4) activities that may be contracted between public sector entities. Article 6, as modified by Law No. 449-06, also provides that the use of the following exceptions shall not be considered a violation of Law 340-06, on the condition that they not be used for the purpose of circumventing its principles and provided that the procedures established by regulation are followed:
  - (1) activities which due to national security, emergency or urgency which might affect the lives or the economy of the country, following qualification and justification made through a decree or resolution, as appropriate;
  - (2) the construction or acquisition of certain scientific, technical or artistic works, or the restoration of historic monuments in certain situations;
  - (3) procurements of goods and service which may only be obtained from one natural or legal person;
  - (4) procurements which due to reasons of urgency cannot be carried out in a timely manner, via another selection procedure. All cases must be based on objective reasons, must be justified in advance and approved via resolution of the highest competent authority. Additionally, the Law specifically provides that neither (i) delays by the officials involved in the process, (ii) the first time that a competition is deserted; nor (iii) a failure to have commenced the procedure for a new procurement sufficiently in advance, prior to the end of a previous contract, shall be considered justification for an allegation of urgency;
  - (5) procurements for the construction, installation or acquisition of offices for the foreign service;
  - (6) rescinded contracts, the termination of which does not exceed 40% of the total cost of the project, work or service.
  - (7) purchases intended to promote the development of micro, small and medium-sized businesses; and
  - (8) the contracting of publicity through social means of communication.

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<sup>16</sup> As modified by Article 2 of Law No. 449-06.

<sup>17</sup> As modified by Article 2 of Law No. 449-06.

- Provisions specifying the requirements for contractors, such as Article 7, which requires all natural or legal persons interested in participating in procurements to be registered in the corresponding national registry of contractors, or to register at the time that they submit their offer;<sup>18</sup> and Article 8, which requires that those wishing to contract with the State demonstrate their capacity by satisfying certain requirements, including possessing the necessary professional and technical qualifications, financial resources, equipment, reliability, experience and personnel necessary to carry out the contract. In addition, Article 14 of the Law contains a listing of those who may not be offerors or contract with the State.<sup>v</sup>
- Article 16, as amended by Article 7 of Law No. 449-06, which sets out the following types of contracting:
  - (1) Public bidding, consisting of a public request for proposals. The selected proposal will be the one most convenient pursuant to the terms of reference;
  - (2) Restricted bidding, consisting of an invitation made to no less than five persons who may meet the requirements due to the specialization of the goods to be acquired, or of the work or services to be performed. Article 16(2) also provides that the invited providers must be registered and that restricted procurements shall be made public through the required means.
  - (3) Drawing for works, consisting of a drawing and subsequent award of a contract from among participants that comply with the necessary measures for the preparation of works, the design and price for which has been predetermined by the contracting entity.
  - (4) Price comparison, which consists of a broad invitation made to the persons contained in the respective registry, and which only applies to the purchase of standardized goods or services, or the acquisition of minor services or works.
  - (5) Reverse auction, which applies to the purchase of ordinary goods with standard specifications carried out through electronic means. In this situation, the contract will be awarded to the offeror submitting the lowest price.
- Article 17, which creates a formula for setting the limits for each of the above types of procurement referred to in Article 16, and depending on whether the procurement is for a work, good or service.<sup>vi</sup>
- Article 18, which requires publication of procurement invitations as follows:
  - With respect to public bidding, invitations must be published for two days in two national newspapers, and at least 30 working days prior to the date scheduled for the opening of bids;
  - With respect to international bidding, the requirements which apply to public procurements also apply, and in addition, invitations must be published in foreign countries, as established by regulation;
  - With respect to restricted bidding, the invitations to present offers must be published on the web page of the institution and on the web page maintained by the Governing Body, or, in

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<sup>18</sup> As modified by Article 5 of Law No. 449-06.

the alternative, for two days in the two largest newspapers, and in both cases, no less than 20 working days prior to the date scheduled for the opening of bids;

- Article 20, which requires the terms of reference to contain all the necessary information related to the purpose of and the contracting process itself.
- Articles 65 and 66, which provide sanctions applicable to public servants and contractors, respectively.
- Article 78, which requires the President of the Republic to issue the respective Regulation of the Law within ninety (90) days following the entry into force of Law No. 340-06

- Legal provisions establishing oversight bodies for the procurement system in general such as Article 35, as modified by Article 19 of Law No. 449-06, which establishes that the General Directorate of Policies and Norms for the Procurement of Goods, Works, Service and Concessions as the entity with overall responsibility for the procurement system, and the operational procurement units in each entity as responsible for the management of procurements.

In addition, Article 36 charges the General Directorate with, inter-alia, recommending the policies for procurements to the Secretary of State for Finances (Art. 36(1)); designing and implementing the Catalog of Commonly Used Goods and Services (Art. 36(2)); designing and implementing a Price Information System (Art. 36(3)); establish the methodology for the preparation of annual procurement plans and programs (Art. 36(4)); designing and implementing a Common Procedures Manual for each type of procurement, to be approved by the Secretary of State for Finances (Art. 36(5)); verifying that entities subject to the Law comply therewith (Art. 36(6)); training its personnel and personnel of the executing units with respect to the operation of the procurement system (Art. 36(7)); maintaining and updating the Registry of State Providers and Consultants (Art. 36(8)); maintaining a special registry of those providers and consultants who have failed to comply with established provisions, including information on any sanctions applied (Art. 36(9)); receive suggestions and complaints from providers and consultants, and take cautionary measures when appropriate, while the resolution of a challenge it pending, in order to preserve the opportunity to correct noncompliance with the Law, which may include the cancellation of a contract award, or the execution of a contract that has already been awarded (Art. 36(10)); suggest regulations for the Law to the Secretary of State for Finances (Art. 36(12)); recommend, when appropriate, the sanctions provided for by law (Art. 36(13)); and administer and guarantee the complete and timely updating of an internet web portal providing information on public procurements, and which would include: related laws, procurement policies, procurement plans, invitations to present offers, results of procurement processes, and the special registry of disqualified providers (Art. 36(14)).

Article 31 of the Law grants the following powers and functions to contracting entities: the interpretation of contracts at the administrative level and the resolution of doubts regarding compliance therewith, subject to the final decision of the oversight body (Art. 31(1)); modification of the amount of contracts up to a maximum of twenty-five percent, in the event that unpredictable circumstances arise and to satisfy the public interest (Art. 31(2));<sup>19</sup> modification of contracts for services up to a maximum of fifty percent for justified reasons to be established by regulation (Art. 31(4)); temporarily suspending contracts due to technical or economic reasons, or due to force

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<sup>19</sup> Article 31(3) expressly provides that there shall be no modification whatsoever with respect to the contracting of goods.

majeure circumstances (Art. 31(5)); administering the technical, administrative and financial aspects of contracts, as well as quality control of works, goods and services (Art. 31(6)); controlling, inspecting and managing contracting (Art. 31(7)); the power to impose the sanctions imposed by law on offeror and contractors (Art. 31(9)); and the power to proceed to direct execution of the contract when the contractor fails to do so in a reasonable time (Art. 31(9)).

Additionally, as noted by the Dominican Republic in its response, the Office of the Comptroller General of the Republic exercises internal control.<sup>20</sup>

- Legal provisions regarding contracting related to public works, such as Article 47 of Law 340-06, which requires public bidding or international public bidding for concession contracts for public works;<sup>vii</sup> and Articles 48 to 64, which provide additional detailed requirements for the contracting, award process and execution of contracts for public works, including Article 53, which requires public hearing to be held prior to the issuance of an invitation or request for proposals;

- Legal provisions related to mechanisms for appealing procurement decisions, such as Article 67 of Law No. 340-06, which requires that all challenges be submitted in writing to the contracting entity, and also sets out a procedure for resolving such challenges; and Article 69, which provides that controversies that are not resolved pursuant to Article 67, shall either be decided by the Administrative Contentious Tribunal, or through arbitration.

In addition, Articles 71 through 76 set out detailed provisions to be applied by the governing body (the General Directorate), with respect to the processing and handling of complaints against offerors, contractors or the administration.

- Resolution No. 2/07 of January 23, 2007, which establishes the procedure for consultations to be submitted to the Directorate General of Public Procurements, regarding the scope and meaning of applicable provisions in this area.

### **1.2.2. Adequacy of the legal framework and/or other measures.**

With respect to the legal and regulatory provisions addressing the principal systems for government procurement of goods and services examined by the Committee, based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to formulate certain observations regarding the advisability for the Dominican Republic to consider complementing and developing the legal framework and the existing measures for the procurement of goods and services, as follows:

Firstly, the Committee notes that although Article 78 of Law No. 340-06 requires the issuance of the corresponding Regulation no more than ninety days following the publication of the Law. Notwithstanding, to date, the Regulation has not been issued.<sup>21</sup> Accordingly, the Committee considers that the Dominican Republic should take the steps necessary to issue the Regulations as

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<sup>20</sup> See the response of the Dominican Republic to the questionnaire, at p. 13.

<sup>21</sup> The Committee observes that the Regulation of Law No. 340-06 and its amendments through Law 449-06 was passed by Presidential Decree 490-07, dated August 30, 2007. Nonetheless, because the Law was enacted after the deadline established for the submission of information, the Committee did not carry out any analysis in this regard.



soon as possible. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2.1 in Section 1 of Chapter 3 of this report)

Secondly, with respect to electronic forms of procurement, the Committee also observes, as noted by the document submitted by civil society,<sup>22</sup> that the General Directorate, as the oversight body for public sector procurement, has not yet created a web portal as required by Article 36(14) of Law No. 340-06, as amended by Law No. 449-06.

In this regard, the Dominican Republic notes in its response, that *“The [draft] regulation also contemplates the use of electronic means, both for information and for processes. The portal for purchases has been developed and is ready to be implemented.*

*There have not been any developments of electronic procurement processes.”*<sup>23</sup>

The Committee considers that it would be beneficial for the Dominican Republic to create such a portal, as well as consider the possibility of developing systems which allow contracting activity to be carried out electronically via the internet. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2.2 in Section 1 of Chapter 3 of this report)

In addition, the Committee observes the statements made by “Participacion Ciudadana<sup>24</sup> to the effect that in many cases, entities carrying out public procurements do not publish the terms of reference for these procurements, in violation of Article 8 of Law No. 449-06. In this regard, the Committee considers that the Dominican Republic might benefit from the implementation of additional training programs, specifically targeted to those responsible for the administration and the day to day management of procurement activity, to ensure proper compliance with Law No. 340-06. The Committee will formulate a recommendation in this regard. (See General Recommendation 4.1 in Section 1 of Chapter 3 of this report)

With respect to paragraph 7 of Article 5 of Law No. 340-06, the Committee notes that given its language, it is not possible to determine the scope of the requirement to promote the development of micro, small and medium sized businesses, which might eventually lead to a wide application of this exception. The Committee will formulate a recommendation in this regard. (See Recommendation 1.2.3 in Section 1 of Chapter 3 of this report)

Similarly, with respect to paragraph 8 of Article 5, the Committee sees no technical rationale or objective basis for the exception contained therein, and it will formulate a recommendation in this regard. (See Recommendation 1.2.4 in Section 1 of Chapter 3 of this report)

Finally the Committee considers that it would be convenient to require the publication of public tender invitations on the website of the System’s Administrative Body, without this preventing them from also being announced on the portal of the institution or in a national daily newspaper. (See Recommendation 1.2.5 in Section 1 of Chapter 3 of this report)

### **1.2.3. Results of the legal framework and/or other measures**

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<sup>22</sup> See the document submitted by Participacion Ciudadana, at p. 34.

<sup>23</sup> See the response of the Dominican Republic to the questionnaire, at p. 13.

<sup>24</sup> See the document submitted by Participacion Ciudadana, at p. 36.

With respect to results in this field, the response of the Dominican Republic notes as follows: *“It is necessary to point out that the new system for purchasing and contracting of Works, Goods, Services and Concessions of the Dominican Republic is in the stages prior to its implementation, and accordingly, we do not yet have official statistical data which can shed clarity with respect to the efficiency of the system. We hope to be able to submit the statistical information when we submit our national progress report this year.*

*As evidenced by the response, the Dominican Republic has provisions in this regard, which has been implemented gradually with a view to leaving in place a transparent, efficient and effective system of public procurement.”<sup>25</sup>*

With respect to the foregoing, the Committee considers that the absence of results precludes an evaluation in this area. Accordingly, the Committee will formulate the appropriate recommendation. (See General Recommendation 4.2 in Chapter III of this Report).

## **2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)**

### **2.1. Existence of provisions in the legal framework and/or other measures.**

The Dominican Republic has a set of provisions and measures related to the above-mentioned systems, among which the following should be noted:

- Article 16 of the Code of Ethics for Public Servants, which provides that *“any measure or retaliation taken by a public official against a subordinate, as a result of the subordinate having divulged or denounced the commission of any acts considered an offense or a crime against the public before any authority, shall be considered a grave violation.”<sup>26</sup>*

- Article 21 of the Code of Ethics for Public Servants, which provides that *“any official who, in a responsible way, has contributed to uncovering or preventing an act of corruption in the public administration, may not be removed from his post for those reasons through any subterfuge, and shall be entitled to a promotion at the institution at which they work.”<sup>27</sup>*

### **2.2. Adequacy of the legal framework and/or other measures**

With respect to the provisions addressing systems for the protection of public servants and private citizens who in good faith report acts of corruption that have been examined, the Committee considers that based on the information available to it, they constitute, as a whole, a set of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee notes an absence of provisions specifically geared to protect those who report acts of corruption in good faith. In this regard, “Participacion Ciudadana” notes that *“In the Dominican Republic, there are practically no mechanisms to protect public officials who report acts of corruption, even though various provisions, specifically Article 264 of the Code of Criminal*

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<sup>25</sup> See the response of the Dominican Republic to the questionnaire, at p. 16.

<sup>26</sup> See the response of the Dominican Republic to the questionnaire, at p. 18.

<sup>27</sup> See the response of the Dominican Republic to the questionnaire, at p. 18.

*Procedures, require them to report all infractions taking place in the public arena of which they are aware.*<sup>28</sup>

In addition, the Committee observes that both the response of the country under review<sup>29</sup> and Participacion Ciudadana<sup>30</sup> acknowledge that there are no mechanisms for the protection of witnesses.

In light of the foregoing, the Committee considers that it would be useful for the Dominican Republic to consider adopting, through the appropriate authority and in accordance with Article III(8) of the Convention, comprehensive regulations on the protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic system of laws. (See the Recommendation in Section 2 of Chapter III of this Report).

### **2.3. Results of the legal framework and/or other measures**

With respect to results in this field, the response of the Dominican Republic notes as follows: *“There are no objective results in this regard, however, there have been no reported cases in which those who complain in good faith have suffered reprisals or threats of any nature from their superiors.”*<sup>31</sup>

In addition, “Participacion Ciudadana” notes that *“As far as is known, of the corruption cases that today exist in tribunals, or of those that investigate in the DPCA, only three have resulted from citizen complaints, and not a single one has resulted from a complaint by a public servant, which speaks for itself as to the work and legislation needed to improve this aspect of the fight against corruption.”*<sup>32</sup>

Considering that the Committee does not have information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this Report).

## **3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)**

### **3.1. Existence of provisions in the legal framework and/or other measures**

The Dominican Republic has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be highlighted:<sup>33, 34</sup>

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<sup>28</sup> See the document submitted by Participacion Ciudadana, at p. 43.

<sup>29</sup> See the response of the Dominican Republic to the questionnaire, at p. 18.

<sup>30</sup> See the document submitted by Participacion Ciudadana, at p. 44.

<sup>31</sup> See the response of the Dominican Republic to the questionnaire, at p. 18.

<sup>32</sup> See the document submitted by Participacion Ciudadana, at p. 45.

<sup>33</sup> The legislation of the Dominican Republic does not provide a definition of the term public servant for the purposes of the acts of corruption contained in Article VI(1) of the Convention. Nonetheless, Article 1 of the Code of Criminal Procedure provides that “In applying the law, tribunals guarantee the effective enforcement of the Constitution of the Republic and the international treaties, as well as their interpretations by entities with jurisdiction created thereby, the provisions and principles of which are directly and immediately applicable to the cases submitted to their jurisdiction and always take precedence over the law.” In this sense, the definition of public servant contained in the Convention, due to its ratification through Resolution No. 498-98 of the National Congress on November 28, 1998, is applicable in the Dominican Republic.

▪ With respect to paragraph (a) of Article VI(1):

- Article 177 of the Criminal Code, which provides that: “An official or public employee from the administrative, municipal, or judicial sphere who, in exchange for a gift or promise, provides his office for the commission of an action that, while lawful, is not covered by his salary, shall be punished by the loss of his civil rights and a fine of twice the monetary value of the gift, reward, or promise; in no case, however, may the fine be less than fifty pesos or the custodial term set by Article 33 of this Code be shorter than six months, and the imposition of the prison term shall in all cases be obligatory.

These same penalties shall apply to public employees, officials, and officers who, in exchange for gifts or promises, fail to perform any due or legal act inherent to their positions.

The same punishments shall apply to any arbiter or expert, appointed by either the court or the parties at trial, who accepts offers or promises, or receives gifts or other considerations, in exchange for giving a decision or opinion that favors one of the parties.”

- Article 178 of the Criminal Code, which provides that: “If the exaction or bribery is associated with a criminal act punishable by penalties higher than those set out in the previous article, the harsher penalties shall invariably apply to the guilty.”

- Article 181 of the Criminal Code, which provides that: “A judge in criminal proceedings who accepts a bribe and thereby favors or harms the accused shall be punished by prison with labor and by the fine established in Article 177.”

- Article 2 of Law No. 448-06, on Bribery in Commerce and Investments, which provides that: “Any public official or person performing public functions who requests or accepts, either directly or indirectly, any item of monetary value as a favor, promise, or benefit, for himself or for another, in exchange for performing or omitting to perform an action related to the exercise of his public functions in matters affecting domestic or international trade or investments shall be considered to have accepted a bribe and, as such, shall be punished by a term of prison with labor of between three and ten years and fined an amount equal to twice the benefits received, requested, or promised, said fine in no instance amounting to less than fifty times the minimum wage.”

▪ With respect to paragraph (b) of Article VI(1):

- Article 3 of Law No. 448-06, on Bribery in Commerce and Investments, which provides that: “Any individual or corporate body that intentionally offers, promises, or provides, either directly or indirectly, a public official or person performing public functions in the Dominican Republic with any item of monetary value or other gain as a favor, promise, or benefit, for himself or for another person, in exchange for the commission or omission by that official of any action related to the performance of his public functions, in matters affecting domestic or international trade or investments, shall be considered to have given a domestic bribe.”

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<sup>34</sup> There is a tripartite division of infractions in the Dominican Republic, established by Article 1 of the Criminal Code, which provides that “*Infractions that the law punishes with police citation are contraventions. Infractions that the law punishes with imprisonment, are crimes (delitos). Infractions that the law punishes with afflictive penalties or the loss of one’s civil and political rights (infamante), are crimes (crimenes).*”

▪ With respect to paragraph (c) of Article VI(1):

- Article 102 of the Constitution of the Dominican Republic, which provides that: “The penalties established by law shall apply to any person who, for his personal gain, embezzles public funds or, using his position within a state agency, office, or autonomous institution, obtains economic benefits. The same penalties shall apply to those who provide benefits for their associates, relatives, partners, friends, or other persons with whom they have ties. No person may be held criminally liable for the actions of another, either in these cases or in any other.”

- Article 171 of the Criminal Code, which provides that: “The appropriation by any official or employee of money, property, supplies, or other valuable for use toward a purpose other than the one for which they were handed over or placed in his custody, or the failure to, negligence in, or refusal to provide due account of money received, postage stamps, internal revenue stamps, stamped paper, land, buildings, provisions, furniture, equipment, materials, supplies, or other items of value, shall be taken as prima facie evidence of embezzlement.”

- Article 172 of the Criminal Code, which provides that: “Any public official or employee convicted of embezzlement pursuant to the provisions of the above articles shall be punished with a fine equal to no less than the amount embezzled and no more than three times that amount, in conjunction with prison with labor. However, if, before the case is reported to the judicial authorities, the damage caused is amended in any way or the embezzled money, items, or real property are returned, the punishment shall be no less than one year correctional imprisonment and disqualification from holding any public position for a period of four years.

If insolvent, in addition to the aforesaid penalty, the convict shall be sentenced to one day of prison with labor or correctional imprisonment for each five pesos of fine, provided that in no case this additional penalty shall exceed ten years.”

- Article 173 of the Criminal Code, which provides that: “A judge, administrator, public official, or officer who destroys, suppresses, removes, or steals documents and titles entrusted to, communicated to, or deposited with him by reason of his functions shall be punished by prison with labor. The same penalty shall apply to agents, assigns, or officials and officers of agencies of the government, of the administrations, of the courts of justice, or of notaries public and public depositories who commit the same offense.”

- Article 174 of the Criminal Code, which provides that: “Public officials and officers, and their assigns, employees, and dependents, and those who receive duties, fees, tax payments, revenues, and public or municipal income, and their employees, assigns, and dependents, who commit the crime of graft by ordering the receipt of funds and valuables not actually owed to the public or municipal coffers, or by demanding or receiving amounts in excess of the legal limits of duties, fees, tax payments, incomes, or revenues, or by collecting salaries or allowances in excess of what is set by law, shall be punished as follows: public officers and officials, by prison with labor; and their employees, dependents, and assigns, by correctional imprisonment of between one and two years, when the total amount unduly demanded or received and the reception of which was ordered is in excess of sixty pesos. Should the total of those amounts not exceed sixty pesos, the public officials indicated above shall be punished by between six months and one year in prison; and their dependents or assigns by between three and six months in prison. Attempts to commit this offense shall receive the same punishment as the offense itself. In all cases in which a prison term is ordered, the guilty may also be denied the rights referred to in Article 42 of this Code, for a period of no less

than one year and no more than five, starting on the day on which they complete the main penalty; the court may also, in the same sentencing, bind the guilty over to police monitoring for a similar number of years. In addition, the guilty shall be fined in an amount no more than one-quarter and no less than one-twelfth of the damages and compensation granted. The provisions of this article shall apply to official and ministerial secretaries when the offense is committed with respect to income entrusted to them by law.”

- Article 175 of the Criminal Code, which provides that: “A public employee, officer, or official, or agent of the government, who openly, by means of pretence, or through a third party, receives an interest or reward not provided for by law in undertakings, awards, or companies overseen or managed by the Secretariat of State or office in which any of the aforesaid persons holds a position when those undertakings, awards, or companies were initiated by or subject to the actions of that Secretariat of State or office in which any of the aforesaid persons holds a position when those undertakings, awards, or companies were initiated by or subject to the actions of that Secretariat of State or office, shall be punished by correctional imprisonment of between six months and one year and by a fine of no more than one-quarter and no less than one-twelfth of the damages and compensation granted. Persons found guilty thereof shall also be permanently disqualified from holding public positions or office.”

- Article 176 of the Criminal Code, which provides that: “The above provisions shall apply with respect to officers or agents of the government who receive any form of reward in business dealings for which they are required to pay on account of their position or in accordance with an order from a superior.”

▪ With respect to paragraph (d) of Article VI(1):

- Article 3 of Law No. 72-02, against Money Laundering, which provides that: “For the purposes of this law, money laundering is committed by a person who, in the knowledge that assets, funds, and instruments are the product of a serious offense:

(a) converts, transfers, transports, acquires, possesses, holds, uses, or administrates such assets;

(b) impedes, hides, or conceals the true identification, nature, origin, location, destination, movement, or ownership of such assets or of rights arising from such assets;

(c) is associated with, provides assistance, incites, facilitates, or advises in the commission of any of the offenses defined in this article, or avoids the legal consequences of his actions.”

- Article 4 of Law No. 72-02, which provides that: “The knowledge, intent, or purpose required as elements in any of the offenses covered by this section, or in cases of increases in net worth arising from the criminal activity described in this law, may be inferred from the objective circumstances of the case.

Paragraph: Persons whose property or assets are associated with breaches of this law and who cannot justify the licit origin thereof shall be punished by the penalties described therein.”

- Article 5 of Law No. 72-02, which provides that: “The offenses described in this law, along with cases of increases in net worth derived from criminal activity, shall be investigated, prosecuted, and

judged as autonomous offenses from the predicate offense and irrespective of whether they were committed in another territorial jurisdiction.”

▪ With respect to paragraph (e) of Article VI(1):

- Article 2 of the Criminal Code, which provides that *“Any attempted crime may be considered as the crime itself, when there is a manifest principle of execution, or when the culprit, in spite of doing his part to consummate the crime, does not achieve his purpose due to causes outside of his control; these circumstances will be taken into account by the judges.”*

- Article 3 of the Criminal Code, which provides that *“Attempted crimes are not the crimes themselves, except in those cases specified by law.”*

- Article 60 of the Criminal Code, which provides that *“Those who, through gifts, promises, threats, abuse of power or authority, or schemes, provoke an action that constitutes a crime or offense, or give instructions for it to be committed, shall be punished as accomplices; those who knowingly provide weapons or instruments, or facilitate the means used to carry out the action; those who knowingly helped or assisted the principal or co-principal in carrying out the action, or those who carried it out, notwithstanding the penalties specifically established by this law, against the principals or crimes committed against the internal or external security of the state, even in the even the conspirators do not carry out the crime.”*

- Article 61 of the Criminal Code, which provides that *“Those who, knowing of the criminal conducts of the wrongdoers who take violent action against the public safety, public peace, persons or property, routinely provide them with accommodation, hiding or meeting space, shall be punished as accomplices.”*

- Article 62 of the Criminal Code, which provides that *“Those who knowingly hid part or all of stolen or removed property, or property acquired as a result of a crime, shall also be considered accomplices and punished as such.”*

- Article 123 of the Criminal Code, which provides that: *“Public officials or employees, corporations, or depositories of public authority that conspire to or agree among themselves on measures and provisions that are in breach of the law, or that with the same aim correspond or exchange personal representatives, shall be punished by between two and six months in prison and absolute disqualification from holding public offices or position for between one and five years.”*

- Article 124 of the Criminal Code, which provides that: *“If the conspiracy of measures carried out by the officials and employees as described in the previous article is intended to hinder the enforcement of the law or of government orders, the guilty shall be punished by the penalty of banishment. If the conspiracy was carried out between civilian authorities and the military and its leaders, those identified as the perpetrators or instigators shall be punished by prison with labor, and the other parties found guilty shall be punished by banishment.”*

- Article 125 of the Criminal Code, which provides that: *“If the conspiracy leads to an attack on the State’s internal security, the guilty shall be punished by twenty years public labor.”*

- Article 265 of the Criminal Code, which provides that: *“Any association created, irrespective of its duration or the number of its members, and any conspiracy established, with the aim of preparing or*

*committing crimes against persons or property, shall constitute a crime against public law and order.”*

- Article 266 of the Criminal Code, which provides that: *“The penalty of public labor shall apply to any person who joins an association or participates in a conspiracy established with the specific purposed indicated in the previous article.*

*PARAGRAPH I: A person guilty of the offense described in this article shall be held free of all punishment if, prior to any prosecution, he reveals to the legitimate authorities the conspiracy created or has informed about the association.”*

### **3.2. Adequacy of the legal framework and/or other measures**

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute a set of provisions relevant to the promotion of the purposes of the Convention.

Nonetheless, the Committee takes note of the statement made by the Dominican Republic in its response, in the sense that *“Although we are aware that the crimes prescribed need to be better adapted to the objectives of the Convention with respect to their definition, scope and consequences, as we note, our country does have certain provisions which bear relation to the text of the Convention.”*<sup>35</sup>

Accordingly, the Committee considers that in order to improve those provisions of its legal framework, the Dominican Republic could complement those provisions by taking the following into account:

With respect to the criminalization of passive bribery contained in Article 177 of the Criminal Code, the Committee notes that it lacks several of the elements of passive bribery contained in paragraph (a) of Article VI(1) of the Convention, including solicitation or acceptance, directly or indirectly, a person who performs public functions, article of monetary value, other benefit, favor, advantage, for another person or entity, and any act or omission in the performance of his public functions. (See Recommendation 3.1(a) in Section 3 of this report)

Similarly, the Committee observes that the definition of passive bribery contained in Article 2 of Law No. 448-06, on Bribery in Commerce and Investments, lacks the elements of gifts and entities, as provided for by Article VI(1)(a) of the Convention. In addition, the Committee notes that while the definition provided in Article 2 is more closely in line with that of the Convention than the definition contained in the Criminal Code, it is somewhat limited in scope, as it applies only to functions related to commerce or to national or international investment. (See Recommendation 3.1(b) in Section 3 of this report)

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<sup>35</sup> See the response of the Dominican Republic to the questionnaire, at p 23. In addition, the Dominican Republic further notes that *“In spite of this, it should be highlighted that in our country, a new Criminal Code has been approved, which was subsequently returned to the National Congress by the President of the Republic in order for certain modifications to be made with respect to abortion. This Code contains a series of provisions that are in harmony with the objectives of the Convention ...”*



With respect to paragraph (b) of Article VI(1) of the Convention, the Committee observes that Articles 3 and 4 of Law No. 448-06 also lack the elements of gifts and entities, and also limit the scope of the offense to actions or omissions related to commerce or investment. (See Recommendation 3.1(c) in Section 3 of this report)

Additionally, the Committee notes that paragraph (c) of Article VI(1) of the Convention goes beyond the crimes typified in the Constitution and Criminal Code provisions cited by the Dominican Republic and referring to, inter-alia, stealing public funds, appropriation of public funds, and embezzlement, in that paragraph (c) makes reference to any act or omission in the discharge of his duties. (See Recommendation 3.1(d) in Section 3 of this report)

The Committee further notes that while the provisions of Law No. 72-02 against Money Laundering, cited by the Dominican Republic in connection with paragraph (d) of Article VI(1) of the Convention, do criminalize various uses of property that are the product of a grave infraction, they are not applicable to passive bribery as defined by article 177 of the Criminal Code, because the latter is not considered a grave infraction. (See Recommendation 3.1(e) in Section 3 of this report)

With respect to paragraph (e) of Article VI(1) of the Convention, the Committee notes that while Article 2 of the Criminal Code provides that attempts to commit a crime (crimen) may be considered the same crime (crimen), Article 3 goes on to provide that an attempt to commit a crime (delito) is not considered an offense unless a specific provision of the law so provides. In this regard, and with respect to Article 177 of the Criminal Code which criminalizes passive bribery, the Committee notes that the attempted commission of the crime of passive bribery is not criminalized, as required by Article VI(1) of the Convention. (See Recommendation 3.2 in Section 3 of this report)

Similarly, the Committee notes an absence of provisions criminalizing a conspiracy to commit any of the offenses provided for by Article VI(1) of the Convention. (See Recommendation 3.3 in Section 3 of this report)

### **3.3. Results of the legal framework and/or other measures**

With respect to results in this field, the response of the Dominican Republic notes that *“At the moment, we have not prepared a chart of statistical data that shows clear and objective results with respect to those submitted to and sanctions that have been applied based on the articles mentioned. However, based on some civil society publications, such as ‘20 years of impunity’, published by the ‘Movimiento Civico Participacion Ciudadana’ from 1983 to 2003, of the roughly 350 cases submitted to justice by the corruption crimes commission, only one has resulted in a firm conviction, which was revoked a year later by a presidential pardon.*

*At present we are gathering the information related to all the cases of corruption that have been initiated by DPCA in the nine years since its inception, and the results of those cases. This project is being supported and coordinated with the Coalition for Transparency and a civil society group that works to fight corruption and bad banking practices.”<sup>36</sup>*

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<sup>36</sup> See the response of the Dominican Republic to the questionnaire, at pp. 23-24. Together with its comments to the draft preliminary report, the Dominican Republic sent a list of cases submitted by the DPCA to date. This list may be consulted at: [https://www.oas.org/juridico/spanish/ac/mesicic2\\_pvt.htm](https://www.oas.org/juridico/spanish/ac/mesicic2_pvt.htm) <[https://mail.oas.org/exchweb/bin/redirect.asp?URL=https://mail.oas.org/exchweb/bin/redirect.asp?URL=https://www.oas.org/juridico/spanish/ac/mesicic2\\_pvt.htm](https://mail.oas.org/exchweb/bin/redirect.asp?URL=https://mail.oas.org/exchweb/bin/redirect.asp?URL=https://www.oas.org/juridico/spanish/ac/mesicic2_pvt.htm)

Considering that the Committee does not have information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (See Recommendation 4.2 in Chapter III of this Report).

### **III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND**

Based on the review conducted in Chapter II of this report, the Committee formulates the following conclusions and recommendations with respect to the implementation, in the Dominican Republic, of the provisions contained in Articles III(5) (systems of government hiring and for the procurement of goods and services); III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

#### **1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)**

##### **1.1. Systems of Government Hiring**

**The Dominican Republic has considered and adopted measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this report.**

In light of the comments made in the above-noted section, the Committee makes the following recommendations to the Dominican Republic:

- 1.1.1. Strengthen the hiring systems for employees of the Executive branch. To comply with this recommendation, the Dominican Republic could take the following measures into account:
  - a. Design and implement mechanisms for the proper verification of the suitability of candidates for all posts in the Executive branch, as well as for determining whether a potential conflict of interest may exist. (See Section 1.1.2 of Chapter II of this report)
  - b. Implement a specific provision, which, subject to exceptions specified by law, establishes that the positions in the Public Administration shall be filled based on the principles of publicity, equity and efficiency enshrined in the Convention, and which establishes competition as the general mechanism for access. (See Section 1.1.2 of Chapter II of this report)
  - c. Consider the derogation of Article 42 of Law 14-91 and Article 77 of Regulation 81-94, so as to reduce the likelihood that individuals will enter the career service based on considerations other than merit. (See Section 1.1.2 of Chapter II of this report)
  - d. Enact guidelines which ensure the proper application of Article 75(c) of Regulation 81-94, so that temporary appointments to fill permanent career service positions do not exceed one year in duration. (See Section 1.1.2 of Chapter II of this report)

- e. Implement provisions requiring the publication of all vacancies in the Executive branch, as well as all competitions for career service posts. (See Section 1.1.2 of Chapter II of this report)
- f. Implement provisions which create additional opportunities at both the administrative and judicial levels, which allow individuals to present challenges with respect to the selection process in the Executive branch. (See Section 1.1.2 of Chapter II of this report)

1.1.2. Strengthen the hiring systems for employees of the Legislative branch.<sup>37</sup> To comply with this recommendation, the Dominican Republic could take the following measure into account:

- Adopt clear and specific provisions that regulate the system for the hiring public servants in the Legislative branch based on the principles of merit and equality, including oversight mechanisms and governing authorities or administrators of the system; mechanisms for disseminating vacancies to be filled; as well as administrative and judicial challenge remedies that seek to clarify, modify, or overturn substantive acts in selection processes. (See section 1.1.2, chapter II of this report).

1.1.3. Strengthen the hiring systems for employees of the Judicial branch, by implementing provisions which apply to employees other than judges. To comply with this recommendation, the Dominican Republic could take the following measure into account:

- Adopt clear and specific provisions that regulate the system for the hiring employees in the Judicial branch based on the principles of merit and equality, including oversight mechanisms and governing authorities or administrators of the system; mechanisms for disseminating vacancies to be filled; as well as administrative and challenge remedies that seek to clarify, modify, or overturn substantive acts in selection processes. (See section 1.1.2, chapter II of this report).

1.1.4. Carry out a comprehensive review the recruitment and selection regime, and based on that review, implement the provisions necessary to ensure that the majority of employees and officials enter the service through competitive means and based on merit, in keeping with the principles of openness, equity and efficiency provided for by the Convention. (See section 1.1.2, chapter II of this report).

1.1.5. Adopt the legislative and administrative measures which lead to the establishment of a salary policy based on equity and corresponding to the public functions assigned. (See section 1.1.2, chapter II of this report).

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<sup>37</sup>At the December 6, 2007 Plenary Session of the Committee of Experts, the Delegation of the Dominican Republic informed of the existence of Law No. 02-06 on the Administrative Career in the National Congress. Because this information was received after the deadline for submission of the response to the questionnaire, no analysis was carried out with respect to this Law.

- 1.1.6. Strengthen ONAP's organic structure, its functions and attributions, in order to guarantee its functional independence and professionalization, giving it a hierarchical level that facilitates the exercise of its functions. (See section 1.1.2, chapter II of this report).
- 1.1.7. Strengthen the implementation of systems for entry into public service based on competition and merit within the personal administration systems of the other branches of the state and the autonomous and decentralized institutions. (See section 1.1.2, chapter II of this report).

## **1.2. Government systems for the procurement of goods and services**

**The Dominican Republic has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this report.**

- 1.2.1. Issue the Regulations to Law No. 340-06, as required by Article 78 thereof.<sup>38</sup> (See section 1.1.2, chapter II of this report).
- 1.2.2. Develop an electronic internet portal, as required by Article 36(14) of Law No. 340-06, and consider the possibility of developing a system which allows contracting activity to be carried out electronically via the internet. (See section 1.1.2, chapter II of this report)
- 1.2.3. Implement provisions that define the scope of the exception contained in Article 5 of Law No. 340-06, on the requisite for promoting the development activities of micro, small and medium-sized businesses. (See section 1.1.2, chapter II of this report)
- 1.2.4. Study the possibility of revoking paragraph (8) of Article 8 of Law No. 340-06. (See section 1.1.2, chapter II of this report)
- 1.2.5. Implement provisions requiring that public invitations to tender be advertised on the website of the System's Administrative Body, without this preventing them from also being announced on the portal of the institution or in a national daily newspaper. (See section 1.1.2, chapter II of this report)

## **2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)**

**The Dominican Republic has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 2 of Chapter II of this report.**

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<sup>38</sup> The Committee observes that the Regulation of Law No. 340-06 and its amendments through Law 449-06 was passed by Presidential Decree 490-07, dated August 30, 2007. Nonetheless, because the Law was enacted after the deadline established for the submission of information, the Committee did not carry out any analysis in this regard.

In light of the comments made in the above-noted section, the Committee suggests that the Dominican Republic consider strengthening the systems for protecting public servants and private citizens who in good faith report acts of corruption. To comply with this recommendation, the Dominican Republic could take the following measure into account:

- Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic legal order, which could include, among others, the following aspects:
  - a) Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings. (See Section 2 in Chapter II of this report)
  - b) Reporting mechanisms, such as with the protection of the reporter's identity, which guarantee the confidentiality of the identity of the public official and private citizens who report acts of corruption in good faith. (See Section 2 in Chapter II of this report)
  - c) Provisions which sanction, both criminally and administratively, the failure to observe the rules and/or duties relating to protection. (See Section 2 in Chapter II of this report)
  - d) A simplified whistleblower protection application process.
  - e) Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.
  - f) Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.
  - g) Mechanisms which facilitate international cooperation in the foregoing areas, when appropriate, including the assistance and cooperation provided for by the Convention, as well as the exchange of experiences, training and mutual assistance
  - h) The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

### **3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)**

**The Dominican Republic has adopted measures intended to criminalize the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this report.**

In light of the comments made in the above-noted section, the Committee formulates the following recommendations to the Dominican Republic:

- 3.1. Consider modifying and/or complementing the existing laws, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption, as follows:

- a. Include the elements of “solicitation or acceptance”, “directly or indirectly”, “a person who performs public functions”, “article of monetary value”, “other benefit”, “favor”, “advantage”, “for another person or entity”, and “any act or omission in the performance of his public functions” in the definition of the passive bribery criminalized by Article 177 of the Criminal Code. (See section 3.2, chapter II of this report).
  - b. Complement the legal provisions which relate to active bribery as defined, by including the elements of “gifts” and “entities”, as well as by implementing provisions which are as broad in scope as the crimes contemplated by paragraph (a) of Article VI(1) of the Convention. (See section 3.2, chapter II of this report).
  - c. Complement the provisions which relate to paragraph (c) of Article VI(1) of the Convention, by including the elements of “gifts” and “entities”, and by implementing provisions which are as broad in scope as the crimes contemplated by paragraph (b) of Article VI(1) of the Convention. (See section 3.2, chapter II of this report).
  - d. Complement the provisions which relate to paragraph (c) of Article VI(1) of the Convention, by implementing provisions which are as broad in scope as the crimes contemplated by paragraph (c). (See section 3.2, chapter II of this report).
  - e. Implement provisions which specifically criminalize the fraudulent use or concealment of the proceeds of the crime of passive bribery criminalized by Article 177 of the Criminal Code. (See section 3.2, chapter II of this report).
- 3.2. Implement provisions which criminalize the attempted commission of the crime of passive bribery provided for by Article 177 of the Criminal Code. (See section 3.2, chapter II of this report).
  - 3.3. Implement provisions which criminalize conspiracies to commit the corruption offenses provided for by Article VI(1) of the Convention. (See section 3.2, chapter II of this report).

#### **4. GENERAL RECOMMENDATIONS**

Based on the review and comments made throughout this report, the Committee suggests that the Dominican Republic consider the following recommendations:

- 4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, managed, and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.

#### **5. FOLLOW-UP**

The Committee will consider the periodic update Reports submitted by the Dominican Republic on their progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress of the Dominican Republic in implementing the recommendations made in this Report, in accordance with Article 29 of the Rules of Procedure and Other Provisions.

#### **IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND**

The Committee offers the following observations with respect to the implementation of the recommendations made to the Dominican Republic in the report from the First Round of review, based on the information available to it:

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

###### **1.1. Standards of conduct to prevent conflicts of interests and enforcement mechanisms**

###### Recommendation 1.1

*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.*

###### Measures suggested by the Committee

- 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- Article 14 of Law No. 340-06, on Purchasing and the Procurement of Goods, Services, Works and Concessions, which contains a list of those who may not contract with the State, including their relatives up to the third grade of by affinity up to the second grade. In addition, Article 14 also prohibits these persons from contracting with the State for six months after leaving their posts.<sup>39</sup>

- The joint preparation by the National Commission of Ethics and the Fight against Corruption (CNECC) and the Department for the Prevention of Administrative Corruption (DPCA), of a proposal for a draft Regulation to bring the disciplinary tribunal into operation, which has been submitted to the Legal Advisor of the Executive branch.<sup>40</sup>

The Committee takes note of the steps taken by the Dominican Republic to proceed with the implementation of the foregoing recommendation through the advances made with respect to measures (a), (d) and (e) thereof. With respect to measure (e), the Committee notes that the limitation on the participation of former public servants only applies to procurement matters, given that the restriction is contained in the procurement Law, No. 340-06. In this regard, the Committee takes note of the need for these steps to continue.

The Committee also takes note of the need for the Dominican Republic to give additional attention to compliance with measures (b), (c), and (f).

Additionally, the Committee takes note of the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>41</sup>

## **1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms**

### Recommendation 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The entry into force of the following laws, which, as noted by the Dominican Republic, “...allows for efficient governmental management and promotes transparency and fiscal discipline...”<sup>42</sup>: the Law on the Organization of the Secretariat of State for Treasury, No. 494-06; the Organic Budget

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<sup>39</sup> See the response of the Dominican Republic to the questionnaire, at p. 29.

<sup>40</sup> Ibid., at p. 30.

<sup>41</sup> Ibid. These are the National Commission for Ethics and the Fight against Corruption (CNECC) and the Department for the Prevention of Administrative Corruption (DPCA).

<sup>42</sup> Ibid., at p. 30.



Law, No. 423-06; the Law of the Treasury, No. 567-05; the Law of Public Credit, No. 6-06; the Purchasing and the Procurement Law, No. 340-06; and the Law creating the Integrated Financial Administration of the State, No. 5-07.

The Committee takes note of the steps taken by the Dominican Republic to implement the foregoing recommendation, without prejudice to the fact, that because it is of a continuous nature, it should continue to be developed.

The Committee also takes note of the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>43</sup>

#### Recommendation 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The modification of the Accounting Law, in order to strengthen the Comptroller General with respect to internal control, as well as the passage of the Law on Internal Control, No. 10-07, which, *inter-alia*, institutes the National Internal Control System, under the oversight of the Comptroller General.<sup>44</sup>

- The preparation of a draft Decree which divides the functions related to the prevention of corruption from investigations, and which *“motivates an increase in the funds that are destined to the DPCA, the definition of the positions, the creation of an organizational manual, the profiles for each post and the work strategy.”*<sup>45</sup>

The Committee takes note of the steps taken by the Dominican Republic to implement the foregoing recommendation, as well as of the need for these steps to continue.

The Committee also takes note of the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>46</sup>

#### Recommendation 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*

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<sup>43</sup> Ibid. These are the Secretary of State for the Treasury and the Secretary of State for Economy, Planning and Development.

<sup>44</sup> Ibid., at p. 33.

<sup>45</sup> Ibid. The Committee notes that this bill became law through Decree No. 324-07 dated July 3, 2007.

<sup>46</sup> Ibid. This includes the Department for the Prevention of Administrative Corruption (DPCA).

*that the development of the functions of this Bureau depends on the discretion of its Director or any other official.*

The Committee notes that the response of the Dominican Republic does not refer to any steps taken with respect to the implementation of the foregoing recommendation. In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

Recommendation 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.*

The Committee notes that the response of the Dominican Republic does not refer to any steps taken with respect to the implementation of the foregoing recommendation. In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

Recommendation 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.*

The Committee notes that the response of the Dominican Republic does not refer to any steps taken with respect to the implementation of the foregoing recommendation. In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

**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**

Recommendation 1.3

*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.*

Measures suggested by the Committee

- 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The installation of complaint and suggestion boxes in all State institutions, which have two locks, one handled by the Department for the Prevention of Corruption, and the other by the Ethics Commission of the particular institution, so that both entities have to concur in order to open the boxes.<sup>47</sup>

- Links on the websites of the Department for the Prevention of Corruption and the National Commission of Ethics and the Fight against Corruption, at [www.dpca.gov.do](http://www.dpca.gov.do) and [www.cnecc.gov.do](http://www.cnecc.gov.do), respectively, which provide a telephone number, a physical address and an email address where complaints may be submitted.<sup>48</sup>

The Committee takes note of the steps taken by the Dominican Republic to implement the foregoing recommendation, through compliance with measures (b) and (c) thereof.

The Committee also notes the advances made with respect to measure (a) of the foregoing recommendation, and of the need for the Dominican Republic to give further attention to compliance therewith.

In addition, the Committee takes note of the difficulties that the Dominican Republic has had with respect to the implementation of the recommendation, due to an absence of mechanisms to guarantee the security of and protection for public servants who report acts of corruption in the event that their identities are revealed, as well as the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>49</sup>

## **2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITITES (ARTICLE III, PARAGRAPH 4 OF THE RECOMMENDATION)**

### Recommendation 2.1

*Consider improving the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication.*

### Measures suggested by the Committee

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<sup>47</sup> Ibid., at p. 35.

<sup>48</sup> Ibid., at p. 36.

<sup>49</sup> Ibid. These are the DPCA and the CNECC.

- 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The July 17, 2006 issuance by the President of the Republic of Decree No. 287-06, which institutionalizes the new digital system and the standard electronic form for presentation of sworn statements of assets, and which also requires all Executive branch officials to electronically update the sworn statement that they submitted upon entry into their post.<sup>50</sup>

The Committee also notes, as also pointed out by the Dominican Republic, that because the new system was implemented by Presidential Decree, it is only applicable to those entities that fall under the hierarchy of the President of the Republic.<sup>51</sup>

In addition, the Committee takes note of the difficulties that the Dominican Republic has had with respect to the implementation of the recommendation, due to the “...*absence of a efficient and sufficient provisions which clarify the topics related to the timing for the presentation of the statements, the universe of officials required to report, the objective and scope of the statements, the governing body, the sanctions applicable to those who do not present or who present false information on the statements, and finally, the issue of publication, which has provoked a debate which has impeded the approval of the new law*”, as well as the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>52</sup>

The Committee takes note of the steps taken by the Dominican Republic to proceed with the implementation of the above recommendation, by the steps taken towards compliance with measures (b), (d), and (h) thereof, and of the need for those efforts to continue.

The Committee also takes note of the need for the Dominican Republic to give additional attention to compliance with measures (a), (c), (e), (f), (g), (i) and (j).

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<sup>50</sup> See the response of the Dominican Republic to the questionnaire, at p. 38. At the subgroup meeting held on November 30, 2007, the Dominican Republic informed that the electronic form for the submission of sworn statements is available on the Internet, and that the form requests information with respect to the declarant's spouse or domestic partner.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid. These are the CNECC, the DPCA, the National Treasury, the General Directorate of Internal Tax, the Superintendence of Banks, the General Directorate of the National Land Registry and the Program for Support for Reform and State Modernization.

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

#### Recommendation 3

*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.*

#### Measures suggested by the Committee

- 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.*

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The passage of the Law on Internal Control, No. 10-07, which gives additional functions to the Office of the Comptroller General of the Republic.

- Law No. 13-07, which “*transferred the functions of the Contentious Administrative Tribunal exercised by the Court of Accounts to the Contentious Tax Tribunal, so that the State's external audit organism can exclusively dedicate its actions to the management and supervision of the use of public funds.*”<sup>53</sup>

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<sup>53</sup> Ibid., at p. 38. In its comments on the draft preliminary report, the Dominican Republic informed that “*the DPCA is currently implementing a Centralized System for the Receipt and Monitoring of Accusations of Acts of*

- The draft decree presented to the Legal Advisor of the Executive branch, which divides the functions related to the prevention and investigation of corruption between the Department for the Prevention of Corruption and the Commission for Ethics and the Fight against Corruption, respectively, and which “...allows the [Commission] to focus on investigating and litigating any case of corruption arising in any public entity before the ordinary courts.”<sup>54</sup>

The Committee takes note of the steps taken by the Dominican Republic towards implementation of the foregoing recommendation, through the advances made with respect to measures (c) and (d) thereof, and of the need for these steps to continue.

The Committee also takes note of the need for the Dominican Republic to give further attention to compliance with measure (a) and (b) of the foregoing recommendation.

In addition, the Committee takes note of the difficulties that the Dominican Republic has had with respect to the implementation of the recommendation, due the fact that a Constitutional reform is necessary in order to change the manner in which the Court of Accounts is designated.<sup>55</sup> The Committee also takes note of the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>56</sup>

#### **4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)**

##### **4.2. Mechanisms for access to information**

###### Recommendation 4.2.1

*Consider moving forward on the implementation of the General Freedom of Public Information Act.*

###### Measures suggested by the Committee

- 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.
- b. Promote a general public awareness program on the rights, provisions and procedures deriving from Law No. 200-04.

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*Corruption, in conjunction with the National Commission for Ethics and the Fight Against Corruption (CNECC), which consists of the creation of a single form for filing accusations, either by public servants or private citizens; and the introduction of an electronic system for following up court cases to keep track of their progress. One of the goals of this system is to make this single accusation form available to all the prosecutors' office in the country.”*

<sup>54</sup> Ibid., at p. 39.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid. These are the DPCA and the CNECC.

- 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.
- 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.

In its response, the Dominican Republic presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- Article 15 of the Regulation of Application of the General Freedom of Public Information Act, No. 130-05, which provides that *“The description of the motivation of reasons why requested information is needed, as provided for by Article 7 of the LGAIP, shall not in any case impeded to broadest access to the [information], nor does it give the official the authority to deny a request. In this sense, it is sufficient for the requester to invoke any simple interest related to the information sought, with the requester being responsible for the use of the information obtained.”*<sup>57</sup>

- The workshop held by CONARE and the Commission for Ethics and the Fight against Corruption, to explain to the leadership of the media and various journalists, the content and scope of the law.<sup>58</sup>

- Invitations to those civil society institutions most representative of the country to the debate regarding the modification of the access to information law, with respect to the creation of an oversight body.<sup>59</sup>

- Invitations to civil society organizations and non-governmental organizations to participate in the May, 2007 International Conference regarding the country’s proposal for an Institute for Access to Information.<sup>60</sup>

- Training provided through 2006 and 2007 to more than 1500 public servants in areas related to transparency and access to information. According to the Dominican Republic, these workshops have been directly focused on members of the Executive branch, although representatives from the Legislative branch and certain municipal entities have also attended.<sup>61</sup>

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<sup>57</sup> Ibid., at p. 41.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid., at p. 42.



- *“The establishment of an intervention protocol which consisted firstly of coordination visits, followed by general workshops at CONARE, followed by the creation of a guide for the installation of the Offices for Access to Public Information, workshops executed in institutions and the support of national consultants for the installation of Offices for Access to Public Information in each public entity. As of the date of the response to this report, 13 Offices have been established, with the respective [entity] Responsible for Access to Public Information, selected based on merit and having the proper background to occupy their position. Within these offices is included the office that belongs to the Supreme Court of Justice, which had been in place prior to the Intervention Protocol and the Attorney General of the Republic. Similarly, preparations are underway [for the creation of offices] in 45 state entities which we hope to have complete before July [2007]”*<sup>62</sup>

The Committee notes the steps taken by the Dominican Republic to proceed with the implementation of the foregoing recommendation, through compliance with measures (a), (b) and (c), notwithstanding the fact that because the latter two measures are continuous in nature, and should therefore continue to be developed.

The Committee also notes the steps taken by the Dominican Republic to proceed with the implementation of the foregoing recommendation, through the steps taken to comply with measure (d), and of the need for those steps to continue.

In addition, the Committee notes the difficulties expressed by the Dominican Republic with respect to the implementation of this recommendation, in the sense that *“Undoubtedly this process would have been more streamlined if we had a governing body with the broad ability to coordinate and implement the policies regarding this topic. Nonetheless we began an international and national consultancy, with the support of the European Union, in order to receive a proposal to debate a model for a governing body.”*<sup>63</sup>

The Committee also takes note of the information provided with respect to the internal entities that participated in the process of implementing the foregoing recommendation.<sup>64</sup>

#### Recommendation 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.*

The Committee notes that the response of the Dominican Republic does not refer to the implementation of the foregoing recommendation. In light of this fact, the Committee takes note of the need for the Dominican Republic to pay further attention to its implementation.

### **4.3. Mechanisms for consultation**

#### Recommendation 4.3

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid., at p. 43.

<sup>64</sup> Ibid., at pp. 41 to 43. These are the National Council for State Reform, the CNECC, the Attorney General of the Republic, and the DPCA, the Presidential Technology Office, Information and Communication (OPTIC), the National Institute for Public Administration (INAP), the National Office of Administration and Personnel (ONAP), and the institutions that form part of the Inter-institutional Committee.

*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.*

Measures suggested by the Committee

- 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.*
- 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.*

The Committee notes that the response of the Dominican Republic states that no progress has been made with respect to the foregoing recommendation.<sup>65</sup> In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

**4.4. Mechanisms to encourage participation in public administration**

Recommendation 4.4

*Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.*

Measures suggested by the Committee

- 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.*

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<sup>65</sup> See the response of the Dominican Republic to the questionnaire, at p. 43.

- 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.*

The Committee notes that the response of the Dominican Republic states that no progress has been made with respect to the foregoing recommendation.<sup>66</sup> In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

#### **4.5. Mechanisms to encourage participation in the follow-up of public administration**

##### Recommendation 4.5

*Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration.*

##### Measures suggested by the Committee

- 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.*

The Committee notes that the response of the Dominican Republic states that no progress has been made with respect to the foregoing recommendation.<sup>67</sup> In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

### **5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)**

##### Recommendation 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.*

##### Recommendation 5.2

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

*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.*

The Committee notes that the response of the Dominican Republic states that no progress has been made with respect to the two foregoing recommendations.<sup>68</sup> In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to their implementation.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

### Recommendation 6

*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.*

The Committee notes that the response of the Dominican Republic does not refer to any steps taken with respect to the implementation of the foregoing recommendation. In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to its implementation.

## **7. GENERAL RECOMMENDATIONS**

### Recommendation 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.*

### Recommendation 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.*

### Recommendation 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.*

The Committee notes that the response of the Dominican Republic does not refer to any steps taken with respect to the implementation of the three foregoing recommendations. In light of this fact, the Committee takes note of the need for the Dominican Republic to give additional attention to their

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<sup>68</sup> Ibid.

implementation. To this end, the Dominican Republic might consider opportunities for technical assistance.

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<sup>i</sup> Article 2 – The following are excluded from the scope of application of this Law:

- a) Members, alternates, and auxiliaries of the Legislative Branch, the Judicial Branch, the Central Electoral Board, the Court of Accounts of the Republic, as well as the technical and administrative staff of those entities;
- b) The personnel of the organisms that are attached to those branches;
- c) The members of the Armed Forces and the National Police, as well as the civil personnel of a technical and administrative nature of those entities;
- d) The personnel that make up the secret and security investigative bodies of the States and their auxiliaries;
- e) The personnel that belong to existing paramilitary and para-police organisms, or those that may be created, such as: the banking police, “guardacampestre”, and similar organisms;
- f) The advisors, consultants, members of boards, councils, commissions and committees, in that capacity and who do not have any other permanent official function;
- g) Personnel contracted for the construction of a specified work or service, or temporary personnel;
- h) The management and alternate personnel of the public companies that belong to the State, of the mixed economy businesses, and other similar organisms, for their legal, administrative and economic formation;
- i) Personnel of the autonomous organisms and municipalities of the State;
- j) Any other personnel, who, in the strict sense, does not depend directly on the Executive Branch, and who, by virtue of this or other laws, are not included in the Civil Service system.

<sup>ii</sup> Art. 17.- The following posts and officials are freely appointed and removed:

- a) Secretaries and Under-Secretaries of State, Legal Consultant of the Executive branch, Ambassadors of autonomous and decentralized State organisms and those of a similar hierarchy or trust personnel of the President of the Republic, and the high executives of public institutions;
- b) National Directors, Generals and Deputy Directors;
- c) The Administrators, Deputy Administrators, Heads or Deputy Heads, Managers and Deputy Managers, and similar positions;
- d) The Civil Governors and other representatives of the Executive branch in the National District and the provinces;
- e) The members of the Public Ministry;
- f) The Secretaries, trust level assistants of the highest executive authorities of the public sector, except for those designated by this law;

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g) The civil servants of the Executive branch with high level management, administrative or advisory functions;

Paragraph – All other positions and officials who depend on the Executive branch are whom are not considered freely appointed and removed, are career employees, subject to the this law.

<sup>iii</sup> Art. 19.- Entry into the Civil Service requires that one:

- a) Be Dominican;
- b) Be allowed to enjoy one's civil and political rights;
- c) Be in good physical and mental condition;
- d) Have the capacity to properly do one's job;
- e) That the functions to be carried out not be incompatible with other tasks of the interested individual;
- f) Not have been sentenced of a crime, nor be incarcerated;
- g) Not have been removed from a public or private position due to dishonor;
- h) Have reached the age legally required, in each case;
- i) Be regularly appointed by the competent authority, swear the oath and take possession of the post, pursuant to the Constitution and the law;
- j) Have observed good public and private conduct;

<sup>iv</sup> Article 2. – *The organisms of the public sector that form part of the following institutions are subject to the regulation provided for by this law:*

- 1) *The Central Government;*
- 2) *The decentralized and autonomous financial as well as non-financial institutions;*
- 3) *Public social security institutions;*
- 4) *Municipal and National District city councils;*
- 5) *Public financial and non-financial companies;*
- 6) *Any entity that contracts for the acquisition of goods, services, works and concessions with public funds;*

<sup>v</sup> Article 14, amended by Article 6 of law No. 449-06 provides that the following can not offer to nor contract with the state:

- 1) *The President and the Vice President of the Republic, the Secretaries and Under Secretaries of State, the Senators and Representatives of the Congress of the Republic, the Magistrates of the Supreme Court of Justice, those of the other judicial tribunals, of the Court of Accounts and the Central Electoral Board \*\* heads of*

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*Municipal Councils and of the National District; the Comptroller General of the Republic and the Sub Comptroller; Director and Deputy Director of Budgets; the National Director and Deputy Director of Plannification; the Attorney General of the Republic; and the other members of the Public Ministry; the National Treasurer and Deputy Treasurer and other officials of the first and second hierarchical level of the institutions included in Article 2 paragraphs 1-5;*

*2) The heads and deputy-heads of the Armed Forces, as well as the head and deputy-head of the National Police;*

*3) Those public officials with decision-making power in any stage of administrative contracting;*

*4) All personnel of the contracting entity;*

*5) The relatives up to the third degree of consanguinity or by affinity up to the second grade, including officials related to contracting covered by the prohibition, as well as their spouses, couples in free unions, persons associated by cohabitation or those who have had children, and their descendants;*

*6) The legal persons in which the natural persons referred to in Paragraphs 1 through 4 have participation of more than 10%, within the six months prior to the date of the invitation;*

*7) Legal or natural persons that have intervened as advisors in any stage of the contracting process or who have participated in the preparation of the technical specifications or the respective designs, except in the case of supervision contracts;*

*8) The natural or legal persons that have been condemned and there has been a final judgment for crimes related to fraud or against property, or for crimes involving bribery, misuse of public funds, trafficking in influence, prevarication, revelation of secrets, use of privileged information or crimes against the public treasury, until a period of time equivalent to double the punishment has elapsed. If the punishment was against the public administration, the prohibition against contracting with the state shall be for life;*

*9) The companies whose directorships have been condemned for crimes against the public administration, crimes against the public trust crimes contained in the international conventions in which the country is a signatory;*

*10) The natural or legal persons that are ineligible pursuant to any legal framework;*

*11) The persons that provide false information or who participate in illegal or fraudulent activity related to contracting;*

*12) The legal or natural persons that are under administrative sanction including temporary or permanent ineligibility to contract with public sector entities, pursuant to this law and its regulations;*

*13) The legal and natural persons that are not current in the fulfillment of their tax or social security obligations, pursuant to that established by applicable laws;”*

<sup>vi</sup> Article 17 of Law No. 340-06, amended by Law No. 449-06, provides that “In order to determine the applicable type of selection for a contracting or purchasing process, the following levels, calculated by multiplying the Budget of Common Income of the Central Government, approved by the Congress of the Republic, by the factors included in the following table, depending on whether it corresponds to works, goods or services:

| <b>WORKS</b> | <b>GOODS</b> | <b>SERVICES</b> |
|--------------|--------------|-----------------|
|--------------|--------------|-----------------|

|                       |                |           |           |
|-----------------------|----------------|-----------|-----------|
| 1) Public Bidding     | 0.00060        | 0.000020  | 0.000020  |
| 2) Restricted Bidding | 0.00025        | 0.000008  | 0.000008  |
| 3) Drawing for works  | 0.00015        | No Aplica | No aplica |
| 4) Price Comparison   | 0.00004        | 0.0000015 | 0.0000015 |
| - Minor Purchases     | Does not apply | 0.0000002 | 0.0000002 |

<sup>vii</sup> Article 46 of Law No. 340-06 defines concession as the authority given to legal or natural persons by the State, to construct, install, improve, add, conserve, restore, produce, operate or administer a public work, good, or service, at their own expense and risk, under the supervision of the corresponding public entity. In exchange, the person has the right to recover their investment and to obtain a reasonable profit or to charge users of the work, good or service a reasonable fee in order to maintain service at satisfactory levels and for a specified duration or period, following the justification and priority established by the planning and strategic development of the country.