



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
30 May 2013
English
Original: Spanish

Implementation Review Group

Resumed fourth session

Panama City, 26-27 November 2013

Agenda item 2

**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary.....	2
Dominican Republic.....	2



II. Executive summary

Dominican Republic

1. Introduction: Overview of the legal and institutional framework of the Dominican Republic in the context of implementation of the United Nations Convention against Corruption

The Dominican Republic signed the Convention in Merida, Mexico, on 10 December 2003 and ratified it in October 2006. The Dominican Republic deposited its instrument of ratification with the Secretary-General of the United Nations on 26 October 2006.

Under the law of the Dominican Republic, international treaties ratified by the public authorities form an integral part of the domestic legal order and invalidate any provision to the contrary.

The Dominican legal order is in the European continental legal tradition. The Criminal Code follows the French model and is largely based on the original version adopted in 1802. Since the entry into force of the Code of Criminal Procedure (Act No. 76/2002) in 2004, criminal proceedings have been conducted in accordance with the adversary system. Criminal proceedings begin with the preparatory procedure conducted by the Public Prosecution Service. Once that preparatory procedure is completed and charges are laid, the trial stage, which is public and oral, commences.

The institutions that are most important in the fight against corruption are the National Directorate for the Prosecution of Corruption in Administration attached to the Office of the Attorney-General of the Republic, the Government Ethics and Integrity Department, the Office of the Comptroller-General of the Republic, the Court of Accounts of the Republic, the Superintendent of Banks and the Financial Analysis Unit.

2. Chapter III: Criminalization and law enforcement

2.1 Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Article 179 of the Criminal Code of the Dominican Republic criminalizes active bribery. Indirect bribery, however, or bribery that benefits another person or entity, is not covered by this article. Article 3 of the Bribery in Trade and Investment Act No. 448-06 also contains a relevant provision. The provision refers only, however, to matters that affect national or international trade and investment.

Article 177 of the Criminal Code criminalizes passive bribery. Indirect bribery, bribery that benefits another person or entity and solicitation of an undue advantage are not covered by this article. Similarly, the meaning of the phrase “an act that, although lawful, is not subject to salary” is not clear. Article 2 of Act No. 448-06 also contains a provision in this regard, again in relation to matters affecting trade or investment.

The Dominican Republic has criminalized active transnational bribery through article 4 of Act No. 448-06. The Dominican authorities have stated that the

reference in article 4 to benefits for an official or other person is interpreted to include legal persons.

Transnational passive bribery, trading in influence, whether active or passive, and bribery in the private sector, whether active or passive, which are optional requirements under the Convention, are not characterized as offences.

Money-laundering; concealment (arts. 23 and 24)

Article 23, paragraph 1 (a), of the Convention is implemented through article 3 (a) and (b) of Act No. 72-02 on the Laundering of Assets Obtained from the Illegal Trafficking of Drugs and Controlled Substances and Other Serious Offences. Paragraph 1 (b) of the Convention is implemented through article 3 (a) and (c) of Act No. 72-02. Attempted money-laundering is covered by article 6 of the Act.

Any predicate offence of money-laundering is categorized as a “serious offence”. It is considered a serious offence under article 1, paragraph 7, of Act No. 72-02, which relates to offences in the context of drug trafficking. The Act also covers the offences of defrauding the State, defalcation, extortion and bribery related to drug trafficking, and all offences subject to not less than three years’ imprisonment. It cannot be confirmed that the Dominican Republic applies the offence of money-laundering to a comprehensive range of criminal offences established in accordance with the Convention. There is also no provision that predicate offences should include offences committed either within or outside Dominican jurisdiction. The Dominican Republic does not exclude the criminalization of so-called “self-laundering”.

Article 3 (a) and (b) of the Money-Laundering Act No. 72-02 criminalizes concealment, with the same predicate offences as money-laundering.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 170 of the Criminal Code covers the majority of the offences under article 17 of the Convention. It does not, however, apply to all public officials, only to those who are depositaries or administrators of a public asset.

The Dominican Republic has not criminalized abuse of functions across the board.

Illicit enrichment does not constitute an offence in the Dominican Republic, but a bill has been drafted to address the issue.

Articles 406 and 408 of the Criminal Code relate to embezzlement in the private sector.

Obstruction of justice (art. 25)

Article 361, paragraph 2, of the Criminal Code relates to various forms of conduct described in article 25 (a) of the Convention involving complicity in perjury. However, Dominican legislation does not cover interference in the giving of testimony or the production of evidence or the use of force. A person inducing another person to give false testimony is considered to be not a perpetrator but an accessory.

Articles 223, 225, 230 and 233 of the Criminal Code, which follow on from article 228, contain provisions relating to the conduct described in article 25 (b) of the Convention.

Liability of legal persons (art. 26)

The legal system of the Dominican Republic does not contain the concept of the criminal liability of legal persons. Civil liability exists, however, and there are administrative sanctions against legal persons involved in public works contracts.

Participation and attempt (art. 27)

Articles 59 and 60 of the Criminal Code govern all forms of participation, whereas articles 2 and 3 of the Code provide for the criminalization of attempt. The criminal categories relating to corruption offences do not, however, contain a specific definition of attempt. The Dominican Republic does not criminalize the preparation of a corruption offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Dominican legislation is considered appropriate as regards legal immunities and privileges, although it has not been applied in corruption cases.

The principle of discretion to prosecute cannot be applied to corruption offences committed by public officials, since this is considered the most effective way of dealing with corruption offences committed by public officials.

Article 226 et seq. of the Code of Criminal Procedure sets out the enforcement measures available to ensure the presence of an accused person during the proceedings, including preventive detention and other such measures. The Dominican authorities have stated that such measures are frequently used in corruption cases.

Article 444 of the Code of Criminal Procedure provides for the gravity of an offence to be taken into account when the possibility of granting parole is considered, although it is not possible to assess fully the functioning of the law, since there is some confusion over the calculation of the period of detention. We are informed that, in corruption cases, early release has been granted to convicted persons with no previous criminal record or on humanitarian grounds.

The Civil Service Act No. 41-08 sets out the disciplinary system and provides that a public servant may be suspended on the grounds that a legal investigation is in progress.

Articles 175, 185 and 187 of the Criminal Code provide for a prohibition of the exercise of public duties for a specific period of time. Articles 167 and 177 provide for the imposition of civic dishonour, which involves the dismissal or exclusion of convicted persons from all public positions, employment or duties. Article 2 of Act No. 448-06 and articles 188, 189, 231 and 232 of the Criminal Code provide for ordinary imprisonment, which, according to article 28 of the Code, also entails civic dishonour.

The law of the Dominican Republic makes provision for a person who cooperates with justice. It provides for discretion to prosecute, in accordance with the rules on the procedure for complex cases, and for mitigation of a sentence, in accordance with the general rules on determining penalties. Although it is clear that this involves cooperation, the procedure is governed by a process that does not require an agreement between the Public Prosecution Service and the person who is cooperating, does not explicitly stipulate the possibility of mitigating the penalty or granting immunity and does not apply where the maximum penalty exceeds two years' imprisonment or where the offence has been committed by a public official.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Dominican Republic has not adopted measures to protect witnesses or experts who give evidence on corruption offences, or their families or other persons close to them, or persons who cooperate with the judicial authorities, or reporting persons.

With regard to a victim's participation in criminal trials, article 84 of the Code of Criminal Procedure of the Dominican Republic allows victims to participate in a criminal trial, including as a complainant.

Freezing, seizure and confiscation; bank secrecy (arts. 31 and 40)

The Criminal Code does not contain any provisions on the confiscation of the proceeds or the instruments of an offence. Confiscation is provided for only in the Money-Laundering Act No. 72-02, under which confiscation may take place on the basis of a criminal conviction. The Act allows for the confiscation of the proceeds of crime or its equivalent value, the instrument of the offence, assets intermingled with legally acquired property, assets transformed or converted into other assets and income or other benefits derived therefrom. Although there is no general rule on confiscation, the Dominican authorities make it clear that their practice is to recover the proceeds of corruption through the imposition of fines.

Act No. 72-02 sets out a system of provisional measures aimed at ensuring that assets, objects or instruments relating to an offence remain available. The Code of Criminal Procedure contains a provision on seizure and the administration of seized goods, although it is not clear whether such measures can be implemented in the absence of a confiscation regime.

The Code of Criminal Procedure and Act No. 72-02 contain provisions on the seizure of bank documentation.

Section V of the Money-Laundering Act No. 72-02 protects third parties who have acquired rights in good faith.

The situation with regard to bank secrecy is that authorization must be granted through an official ruling by a court, a taxation body or the Financial Analysis Unit.

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitations for the offences covered by the Convention extends for a period equal to the maximum sentence, or one year where an offence is not subject to a penalty of deprivation of freedom. In that connection, the system of offences

and punishment may result in a statute of limitations that is too short for complex corruption cases.

No legislation has been adopted on international repeat offences.

Jurisdiction (art. 42)

The Dominican Republic has established its territorial jurisdiction but does not provide for jurisdiction over offences committed on board a vessel flying its flag or an aircraft registered in accordance with its legislation at the time that the offence is committed.

No legislation has been adopted on article 42, paragraphs 2 (a) and (b), 3 or 4.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Dominican Republic has not submitted measures on the annulment of contracts or similar measures. Chapter V (arts. 90 and 91) of the Civil Service Act No. 41-08 provides for the civil liability of the State and public servants. Article 50 of the Code of Criminal Procedure sets out the procedure for a civil action for compensation.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The National Directorate for the Prosecution of Corruption in Administration is attached to the Office of the Attorney-General of the Republic but is functionally independent and allowed to manage directly the budget allocated to it. We are, however, informed that the budget amount required by law has not, to date, been allocated and that, in practice, the Directorate is paid for out of the general budget of the Office of the Attorney-General.

The Dominican authorities have extensive powers to share information with the Department, without warning or by prior arrangement. The Department has concluded memorandums of understanding with various institutions in order to expedite the information-sharing process.

The Dominican Republic has taken measures to encourage people to report corruption offences.

2.2 Challenges in implementation, where applicable

Cross-cutting recommendations

It is recommended that the Dominican Republic should:

- Adopt a definition of the term “public official” for the purposes of criminal prosecution, taking into account the definition in article 2 (a) of the Convention;
- Update and simplify the legislation on the categorization of offences (minor offences, ordinary offences and serious offences) and penalties (minor penalties, correctional penalties and afflictive or infamous punishment) in articles 1 and 6-43 of the Criminal Code;
- Establish a systematic procedure for collecting statistics at both the national and the regional level. The procedure should allow for the collection of

statistical data disaggregated by type of offence, form of conduct and status of procedures.

Articles 15, 16, 18 and 21

It is recommended that the provisions of article 179 of the Criminal Code and article 3 of Act No. 448-06 should be harmonized. It is recommended that article 179 should include indirect bribery and bribery for the benefit of another person or entity.

It is also recommended that the provisions of article 177 of the Criminal Code and article 2 of Act No. 448-06 should be harmonized. Indirect bribery, bribery for the benefit of another person or entity and solicitation of an undue advantage should be incorporated into article 177 of the Code. Moreover, the phrase “an act that, although lawful, is not subject to salary” should be clarified.

As regards active transnational bribery, it is recommended that the Dominican Republic should ensure that the interpretation of the concept of a “person” in article 4 of the Bribery in Trade and Investment Act No. 448-06 should be interpreted in such a manner as to include legal persons. Should the judiciary not interpret the law accordingly in future cases, legislative clarification may be considered.

It is recommended that the Dominican Republic should consider criminalizing transnational passive bribery and trading in influence.

It is recommended that some thought should be given to the possibility of criminalizing bribery in the private sector, with a view to adopting measures in line with article 21 of the Convention.

Articles 23 and 24

It is recommended that money-laundering legislation should be amended in order to ensure that the legislation covers all the offences criminalized under the Convention, including predicate offences committed both within and outside Dominican jurisdiction. The Dominican Republic is encouraged to provide the Secretary-General of the United Nations with a copy of its legislation along these lines.

With regard to concealment, it is also recommended that the law should be amended in order to ensure that it extends to all offences covered by the Convention.

Articles 17, 19, 20 and 22

It is recommended that article 170 of the Criminal Code should be amended so that it applies to all public officials.

It is recommended that the scope of the presumption set out in article 171 of the Criminal Code, and the kind of evidence required to reverse such a presumption, should be clarified, bearing in mind constitutional guarantees.

It is recommended that the Dominican Republic should consider adopting a generic provision on abuse of functions in addition to the specific provisions.

The intention of the Dominican Republic to criminalize illicit enrichment is to be commended and the country should continue in this direction.

Article 25

It is recommended that consideration should be given to amending article 361, paragraph 2, to broaden the scope, in accordance with the Convention, of interference in the giving of testimony or the production of evidence and the use of physical force. It is recommended that the article should be amended so as to provide that a person instigating false testimony, or interfering in the giving of testimony or the production of evidence, is punished as a perpetrator and not as an accessory of a witness committing perjury.

Article 26

It is recommended that the Dominican Republic should consider establishing the principle of criminal liability of legal persons and should adopt measures to implement the constitutional provision on civil liability.

Article 27

It is recommended that an assessment should be made of whether the attempt to commit an offence is provided for in respect of all the offences established in accordance with the Convention. The Dominican Republic could consider adopting the legislative measures necessary to criminalize the preparation of a corruption offence.

Articles 30 and 37

The experts suggest that, if a revision of the Criminal Code is undertaken, consideration should be given to introducing more flexibility with regard to penalties and giving the courts more scope in deciding on a sentence, for example in the case of offences punishable by 3 to 10 years' imprisonment. They would also recall the cross-cutting recommendation to clarify the system of offences and punishment.

It is recommended that the Dominican Republic should consider the possibility of entering into agreements and arrangements to deal with the situation in which a person cooperating with the Public Prosecution Service is located in one State party and can provide substantial cooperation to the competent authorities of the other State party.

Articles 32 and 33

It is recommended that a legal and operational framework should be adopted to protect witnesses, experts and victims, in line with article 32 of the Convention. Such a framework should include persons who cooperate with the judicial authorities (art. 37).

It is recommended that the Dominican Republic should adopt legislation to protect reporting persons.

Articles 31 and 40

It is recommended that the Dominican Republic should, as a matter of the highest priority, amend its legislation to establish a system of confiscation that would apply to all corruption offences and extend to all the possible situations set out in article 31 of the Convention.

In connection with the establishment of a confiscation mechanism, the Dominican Republic is encouraged to ensure that its legal framework for the seizure and administration of seized goods remains effective for corruption offences.

The Dominican Republic is encouraged to adopt the measures required to ensure that its Financial Analysis Unit is fully operational.

Articles 29 and 41

It is recommended that the statute of limitations for the relevant criminal categories under the Convention should be assessed as part of a broader reform of the system of offences and punishment (see above), in order to ensure that the limitation period is not restricted.

It is recommended that the Dominican Republic should consider establishing the concept of the international repeat offence.

Article 42

It is recommended that the Dominican Republic should:

- Take measures to establish jurisdiction when corruption offences are committed on board a ship flying its flag or an aircraft registered under its laws at the time that an offence is committed;
- Consider establishing its jurisdiction over offences committed against or by one of its nationals or by a stateless person who has his or her habitual residence in its territory;
- Consider explicitly establishing its jurisdiction in accordance with article 42, paragraph 2 (c), to cover also cases that consist entirely of acts committed abroad;
- Establish its jurisdiction for cases in which an alleged offender is present in its territory and the Dominican Republic does not extradite him or her solely on the grounds that he or she is one of its nationals;
- Consider establishing its jurisdiction when an alleged offender is present in its territory and the Dominican Republic does not extradite him or her.

Articles 34 and 35

It is recommended that the Dominican Republic should consider taking measures to address the consequences of acts of corruption: for example, corruption should be considered a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Articles 36, 38 and 39

It is noted with concern that, despite the fact that the budgetary independence of the National Department for the Prosecution of Administrative Corruption is stipulated under Decree No. 324-07, no budget has been established for the Department. It is recommended that this practice should be assessed.

The Dominican Republic is encouraged to continue its efforts to strengthen inter-institutional coordination.

It is recommended that measures should be taken to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of corruption offences.

It is recommended that the country should continue to strengthen measures to encourage the reporting of corruption offences and cooperation with the public sector.

2.3 Technical assistance needs identified to improve implementation of the Convention

Article 18: Summary of good practices and lessons learned/model legislation

Article 21: Summary of good practices and lessons learned

Article 26: Legal support

Article 27, paragraph 3: Summary of good practices and lessons learned

Article 31, paragraph 8: Summary of good practices and lessons learned

Article 32: Legal support/model legislation

Article 33: Summary of good practices and lessons learned/legal support/model legislation

Article 37, paragraph 4: Summary of good practices and lessons learned/legal support/model legislation

Article 42, paragraph 1 (b): Legal support.

3. Chapter IV. International cooperation**3.1 Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)*

The extradition procedure is established under the Code of Criminal Procedure, articles 155 and 160-165. The Criminal Division of the Supreme Court is responsible for deciding on extradition, in accordance with a procedure that does not evaluate the evidence but simply meets formal requirements. There is no summary procedure for urgent cases.

The Dominican Republic does not make extradition dependent on the existence of a treaty; it can request and execute extradition in accordance with the principle of reciprocity. It can also use the Convention as a legal basis for extradition.

Dual criminality is a requirement for extradition under Dominican Law, where the applicable treaties so provide.

Dominican legislation does not contain provisions on extraditable offences (passive extradition) or on offences for which extradition may be requested (active extradition).

Article 163 of the Code of Criminal Procedure sets out the enforcement measures that may be adopted during the extradition procedure.

Nationals may be extradited by the Dominican Republic for investigation or to serve a sentence, provided that this is permitted under the applicable treaties. In cases where a Dominican may not be extradited, there is no legislation obliging the competent authorities to try him or her. There is also no legislation on the serving of a sentence in cases where the extradition of a national whose extradition has been requested for that purpose has been denied. The Dominican Republic has concluded various bilateral and multilateral treaties on the transfer of sentenced persons.

The Dominican Republic may decline to institute criminal proceedings and may pass such proceedings over to another State. The Convention may be applied directly to this end.

Mutual legal assistance (art. 46)

The Dominican Republic provides and requests legal assistance on the basis of multilateral and bilateral treaties and the rules of international reciprocity. Articles 155 and 156-158 of the Code of Criminal Procedure provide for international legal cooperation. In addition, chapter VI (arts. 61-66) of the Money-Laundering Act No. 72-02 deals with international cooperation. Although the Criminal Code is the more recent in date, Act No. 72-02 remains in force for all aspects of mutual legal assistance.

The Code of Criminal Procedure contains no provisions on dual criminality, leaving this requirement to be governed by treaties.

The Dominican Republic can transmit information to others States without a prior request. It has not, however, implemented this practice to date.

Although there is nothing to prevent the direct application of the Convention, the Dominican authorities note that it has not yet been applied in practice.

The central authority dealing with mutual legal assistance under the Convention is the International Legal Assistance and Extradition Department of the Office of the Attorney-General of the Republic. The Dominican Republic has not notified the Secretary-General in that regard. The Dominican Republic accepts requests for mutual legal assistance addressed direct to the central authority. Requests are also accepted through the diplomatic channel and, in urgent cases, through the International Criminal Police Organization (INTERPOL). The Dominican Republic requires requests to be made in Spanish, in writing. It is not permitted for requests to be made orally in urgent situations.

*Law enforcement cooperation; joint investigations; special investigative techniques
(arts. 48, 49 and 50)*

There are channels of communication and cooperation between State law enforcement bodies (the Public Prosecution Service, the National Police and the Directorate-General of Customs) and international agencies and other States with the same purposes. These channels include INTERPOL, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States, the Groove platform, the Ibero-American Network for International Legal Cooperation (IberRed), the UNODC network of legal advisers and the World Customs Organization.

The Dominican Republic can apply the Convention directly to set up joint investigation teams.

The Dominican Republic has adopted the measures required to conduct electronic surveillance. However, it has not adopted other special investigative techniques.

3.2 Successes and good practices

It is a mark of good practice that the Dominican Republic has submitted extradition requests on the basis of the United Nations Convention against Corruption.

The country has stated that informal consultations concerning mutual legal assistance are a common practice.

3.3 Challenges in implementation, where applicable

Article 44

The Dominican Republic is encouraged to continue applying the Convention directly to extradition for all offences established in accordance with the Convention and to consider applying it directly to grant extradition for offences that are not punishable under Dominican law. The Dominican Republic is encouraged to include such offences as extraditable offences in the extradition treaties that it concludes with other States.

It is recommended that provision should be made for extradition for ancillary offences and/or the Dominican Republic is encouraged to apply the Convention directly in such cases.

With regard to political offences, the Dominican Republic is encouraged to take care that offences under the Convention are not treated as political in nature. Should the judiciary not interpret the law accordingly in future cases, legislative clarification may be considered.

The Dominican Republic is urged to inform the Secretary-General of the United Nations that it considers the Convention to be a legal basis for extradition.

The Dominican Republic is encouraged to ensure that it complies with the limitation periods established by law and to take measures to expedite proceedings in urgent cases.

The Dominican Republic is encouraged to ensure that nationals are put on trial, where they are not extradited on the basis of applicable treaties. Should the

judiciary not interpret the law accordingly in future cases, legislative clarification may be considered.

The Dominican Republic is encouraged, in cases where a national is not extradited to serve a sentence on the basis of the applicable treaties, to consider the enforcement of a sentence that has been imposed under the domestic law of the requesting State party or the remainder thereof.

It is recommended that the Dominican Republic should consider introducing the right of appeal against a decision on extradition by the Supreme Court.

The Dominican Republic is encouraged to conclude bilateral extradition agreements or arrangements and/or to continue applying the Convention to that end.

Article 46

It is recommended that the Dominican Republic should ensure that mutual legal assistance is provided in respect of proceedings relating to offences for which a legal person is considered liable. Should the law not be applied accordingly in future cases, legislative clarification may be considered.

The Dominican Republic is encouraged to assess the possibility of transmitting information relating to criminal matters to a competent authority in another State party where it believes that such information could assist the authority in undertaking or successfully concluding inquiries or criminal proceedings or could result in a request formulated by the latter State party pursuant to the Convention. It is recommended that the Dominican Republic should apply the Convention directly, if it facilitates cooperation, particularly in the absence of dual criminality.

The Dominican Republic is also encouraged to assess the possibility of restricting mutual legal assistance in respect of money-laundering, compared with other offences, in the light of the principle of dual criminality.

The Dominican Republic is urged to inform the Secretary-General of the United Nations of the name of the central authority that has been appointed and the language in which it would be acceptable to receive a request for mutual legal assistance.

Article 48

The Dominican Republic is encouraged to continue strengthening its law enforcement cooperation and to consider the possibility of concluding bilateral or multilateral agreements or arrangements in this regard.

Article 50

The Dominican Republic is recommended to adopt the measures that may be necessary to implement other special investigative techniques, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law.

The Dominican Republic is recommended to adopt the measures described in article 50, paragraphs 2-4.