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Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Panama

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

The Republic of Panama ratified the United Nations Convention against Corruption on 23 September 2005 and incorporated it into its own legislation by Act No. 15 of 10 May 2005, the date on which it came into effect.

Under the Constitution, power is divided between three separate branches of Government: the legislature, the executive and the judiciary. The functions of the judiciary are closely linked with those of the Office of the Attorney-General of the Nation (*Procuraduría General de la Nación*) and are discharged by that Office.

Panama has put in place a multifaceted institutional framework to address corruption. The legal framework against corruption includes provisions from the Constitution, the Criminal Code and the Code of Criminal Procedure. It also contains specific legislation, such as the Money-Laundering Prevention Act, the Decree on the Banking System, the agreements of the Superintendent of Banks on the improper use of banking and trust services, codes of ethics, bilateral and multilateral treaties adopted to facilitate international cooperation in criminal matters and the laws establishing and regulating the institutions described below.

The National Transparency Council against Corruption advises the executive on the design and implementation of policies and activities that promote the fight against corruption, both by providing education and training and by encouraging the lodging of complaints and the assessment of administrative management, in order to inform the competent authorities of potential acts of corruption. The Council was replaced pursuant to Act No. 33 of 25 April 2013 by the National Authority for Transparency and Access to Information.

The four anti-corruption Prosecutor's Offices are responsible for the investigation and prosecution of offences against the public administration or offences that put State property at risk. There is also a circuit office dealing with minor cases.

The Office of the Comptroller-General exercises supervisory functions, in accordance with the principles of economy, efficiency, effectiveness, equity, quality, transparency in the management and improvement of public funds as established by law. It also exercises oversight over such funds.

The accounts unit of the Prosecutor's Office is responsible for the investigation of alleged irregularities committed by public officials in the management of public funds and assets entrusted to them, to the detriment of State property, with a view to recovering goods or money and returning them to the State.

The Administrative Tribunal for Public Works Contracts is the court that adjudicates on disputes or complaints that may arise during the procurement process.

The Superintendent of Banks is responsible for the supervision and risk identification of the many banking institutions in Panama and for the promotion of

the stability and competitiveness of the Panamanian banking system, through the policy “know your client”.

The Financial Analysis Unit is responsible for the collection and analysis of information relating to financial transactions that could be linked to money-laundering offences or the financing of terrorism. It works closely with the banking system to that end.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

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

Active or passive bribery of a public official constitutes a criminal offence and covers a wide array of public officials and a range of conduct relating to the performance, omission or delay of an action in violation of an official’s obligations. This is also applicable to officials working for public institutions that manage private funds, the aim being to prevent safe havens for such conduct. Although Panama penalizes the active bribery of a foreign public official or an official of an international public organization who receives benefits in order to omit or delay the performance of an action, the concept of “directly or indirectly” as contained in the Convention does not form part of the criminal offence. Panama is thus encouraged to improve its legislation on combating foreign bribery. Broad standards of jurisdiction applies both to conduct within Panama and to conduct by Panamanian nationals resident abroad.

The Criminal Code conforms to the requirements of the Convention with regard to trading in influence, which may involve either an action or an omission by a national public official, a foreign Government official or an official from an international organization.

Bribery in the private sector has not been criminalized in Panama.

Money-laundering, concealment (articles 23, 24)

Panama criminalizes a person who, either personally or by proxy, receives, deposits, trades, transfers or converts cash, securities, instruments, property or other financial resources originating from a wide range of predicate offences, including international bribery, fraud, financial offences, bribery of Government officials, illicit enrichment, acts of terrorism or the financing of terrorism, in order to conceal or cover up their unlawful origin, or to help evade the legal consequences of such offences. In addition, a person who, being aware of its unlawful origin, receives or uses money or funds derived from money-laundering to finance a political campaign is penalized. Laundered funds may be frozen or confiscated, with due consideration for third parties who have acted in good faith.

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

There is no specific offence under the Criminal Code of Panama that fully corresponds to embezzlement of property in the private sector. However, there are provisions that extend the criminalization of embezzlement of funds to cases in which individuals administer public-sector funds or assets or private property that is

under judicial administration or has been frozen or seized, or private-company assets with a State shareholding.

Abuse of functions is criminalized, but proof of “undue advantage” is not required by the Criminal Code.

Panama criminalizes the illicit enrichment of a public official who, either personally or by proxy, improperly increases his or her wealth in relation to lawful income earned for the discharge of his or her functions for up to five years after leaving his or her post. The same applies to a person who conceals any unjustified increase in wealth.

Obstruction of justice (article 25)

The Criminal Code prohibits the obstruction of justice, including the use of force, intimidation or corruption of witnesses, experts or interpreters to induce false testimony, statements or interpretation. The use of physical force, threats or intimidation against an official of the judiciary or the Office of the Attorney-General in order to prevent the official from discharging his or her official duties is also criminalized.

Liability of legal persons (article 26)

There is no criminal liability for legal persons under the Criminal Code. The Code provides that, where a corporate entity is used or established to commit an offence, if it benefits from such an offence, it is subject to a variety of penalties, including the cancellation or suspension of its licence or registration for a maximum of five years, a fine proportional to the loss or benefit of the property, the loss of tax incentives, a prohibition on entering into contracts with the State and the compulsory liquidation of the corporation.

Participation and attempt (article 27)

The Criminal Code provides for criminal liability for aiding and abetting, concealing the proceeds of crime, instigating the perpetration of an offence, co-perpetration, perpetration by proxy, incitement and conspiracy to commit an offence. A person who attempts to commit an offence may be punished as if the offence had been committed. Preparatory acts alone are not punishable under Panamanian law.

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

Panama has strong criminal, civil and administrative sanctions in place to address acts of corruption and ensure the presence of the accused in court proceedings. Courts are obliged to take into account the circumstances of an offence in determining an appropriate sentence. Immunity from criminal liability is not extended to most public officials. The Office of the Attorney-General is responsible for the investigation and prosecution of offences committed by all public officials, deputies of the Legislative Assembly, the President and judges of the Supreme Court. The Assembly is responsible for investigating, prosecuting and lifting the immunity of the latter, except in cases where a deputy is on trial before the Supreme Court. With regard to parole, the Criminal Code provides for the possibility of early

release after three quarters of the sentence have been served, provided that prison rules have been obeyed and there is evidence of good behaviour.

Panama encourages cooperation with law enforcement authorities by a reduction of the sentence by half and the conditional suspension of its execution for offenders who have confessed or disclosed the identity of other perpetrators or accomplices and have provided sufficient evidence for them to be brought to justice. There are no rules governing immunity from prosecution, but there are plea-bargaining provisions in the four provinces of Panama where the adversarial system is already in place (Coclé, Veraguas, Herrera and Los Santos). In 2016, these rules will be applicable throughout the country.

Protection of witnesses and reporting persons (articles 32, 33)

Since 2011 the new Code of Criminal Procedure has been entering into force gradually in the different judicial districts. The Office of the Public Prosecutor protects a victim of crime at every stage of a criminal trial, and also any informants, witnesses or collaborators. The relevant provisions include, inter alia, protection against reprisals, the non-disclosure of a person's identity, the listing of court facilities as a witness' official address, an altered or concealed appearance in hearings, the use of technology for interrogation, police protection, safe houses and relocation. Under no circumstances, however, may the measures established in the relevant article be to the detriment of the accused person's right of defence or of the adversarial principle. Panama does not have a system in place to provide protection for reporting persons ("whistle-blowers").

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The Panamanian legal system has measures in place to allow the freezing, seizure and confiscation of property, assets or instruments, and income or benefits obtained from the proceeds of the offences covered by the Convention. This includes assets that have been intermingled with those derived from a legitimate source. Confiscated assets remain at the disposal of the Ministry of the Economy and Finance until the case is decided by the competent court. National legislation provides for the reversal of the burden of proof regarding the lawful origin of the alleged proceeds of money-laundering offences only in cases of drug trafficking and illicit enrichment. Seizure and confiscation orders are executed without prejudice to the rights of bona fide third parties. Bank secrecy does not constitute grounds for preventing the prosecution services from requesting that bank, financial or commercial records be made available or seized during the course of their investigations.

Statute of limitations; criminal record (articles 29, 41)

The statute of limitations for criminal proceedings is six years for offences punishable by up to six years' imprisonment. For offences punishable by more than six years' imprisonment, the period is extended to a time equal to the maximum prison sentence imposed for that offence. For offences such as embezzlement of funds, illicit enrichment and offences against the property of public entities, the statute of limitations equals twice the maximum provided for by law. The statute of limitations in the event of an offence against the public administration or against the

property of public entities committed by a public official is suspended while any of the public officials implicated in the case is still holding public office.

Criminal records are held by the Archive and Personal Identification Register (*Gabinete de Archivo e Identificación Personal*), while the Criminal Investigation Department is the body that issues criminal record certificates. The exchange of information on criminal records takes place pursuant to the bilateral and multilateral treaties concluded by the national authorities.

Jurisdiction (article 42)

With regard to the corruption offences criminalized in Panama, jurisdiction is exercised over acts committed wholly or partly within the territory of Panama as well as acts committed by nationals, residents and corporate bodies in other places subject to the jurisdiction of the State, such as the territorial sea, vessels and aircraft, except where otherwise provided for in international treaties and conventions in force in Panama. In particular, Panamanian jurisdiction applies when an offence against the national economy or the public administration has been committed in another country. In relation to the offence of money-laundering, Panama has jurisdiction as regards the proceeds or instruments of crime relating to offences committed in another country.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Panama has remedies in place to address corruption, including criminal, civil and administrative sanctions. Perpetrators of and participants in the commission of an offence are jointly liable to pay for any damage caused. Moreover, neither the termination of criminal proceedings nor the imposition of a sentence exonerates them from civil liability. In proceedings for offences against the property of public entities or the public administration that lead to financial loss, the organization concerned must act as a party to the proceedings to claim compensation, if the existence of an offence is proved and no compensation has been paid.

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

Panama has several specialized agencies working to prevent and combat corruption (see above). Provisions to guarantee their operational and investigative independence have been incorporated into their enacting legislation. All individuals and institutions are legally required to report offences to the law enforcement authorities. Meetings involving all the security institutions of Panama are held weekly to ensure due coordination and exchange of information.

2.2. Successes and good practices

- Panama has successfully investigated and prosecuted a wide range of corruption offences, in some cases using special investigative techniques, such as undercover operations and controlled deliveries.
- Successful recovery of large amounts of stolen assets or proceeds of crime.
- Extension of criminal liability to individuals who facilitate the illicit enrichment of a public official.

- Weekly meetings between the various law enforcement agencies and high-ranking officials to ensure due coordination and information exchange.
- The large number of agreements concluded by the Financial Analysis Unit with other jurisdictions abroad and the spontaneous provision of intelligence information to other jurisdictions, where necessary.
- Training for public officials from different institutions by the Office of the Attorney-General to promote awareness of the consequences of committing corruption offences.
- Provision of specialized education at master's degree level for officers of the accounts unit of the Prosecutor's Office, which could be replicated in other institutions.
- The provision of annual training by the Financial Analysis Unit for entities required to report suspicious transactions, in order to improve the quality of the reporting of such transactions.
- The monthly publication of updated statistics by the Office of the Attorney-General, the National Transparency Council against Corruption and all governmental institutions.
- The creation of the National Authority for Transparency and Access to Information.

2.3. Challenges in implementation, where applicable

- Panama might adopt amendments to the Criminal Code to increase penalties for offences against the public administration, in order to broaden the range of precautionary measures, including preventive detention. Panama should consider the adoption of a legal framework that would fully criminalize bribery and embezzlement of property in the private sector.
- Banking regulations should be amended so as to ensure that suspicious transactions are reported as quickly as possible and guarantee action without delay, where an investigation is required. In addition, the number of entities obliged to report such transactions should be increased.
- Given the large number of banking and financial institutions in Panama, it would be desirable that staff members at the Financial Analysis Unit should be increased.
- In order to investigate and prosecute illicit enrichment more effectively, Panama might consider the introduction of a computerized system for the completion and analysis of declarations of assets.
- Panama may wish to consider including in the Code of Criminal Procedure a provision granting immunity from prosecution to an offender who provides substantial cooperation in an investigation.
- A system to protect reporting persons should be established.
- Panama should consider the introduction of further measures to ensure the functional independence of anti-corruption bodies to continue and improve the good work that is already being done.

- In institutions requiring experts for their investigations, a public database of specialized experts and mechanisms to expedite the process could be created.
- Stability must be guaranteed for public officials working in anti-corruption bodies.
- The judiciary's capacity to hear cases involving corruption offences should be strengthened.
- The National Transparency Council against Corruption should be represented throughout the country.
- Notwithstanding the current support of Panama for the various anti-corruption institutions, it goes without saying that professionalism and adequate resources will remain a priority.

2.4. Technical assistance needs identified to improve implementation of the Convention

- Provision of advanced training on investigative techniques.
- Legislative assistance.
- On-site assistance by an expert.

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
(articles 44, 45, 47)*

Panama has entered into a number of multilateral and 10 bilateral extradition treaties, including with Brazil, Costa Rica, Spain and the United States of America. The most recent extradition agreements signed by Panama relate to a wide range of offences, including all those covered by the Convention. In the absence of an international agreement, article 516 of the Criminal Code provides that Panama may extradite a person on the basis of reciprocity.

Under article 517 of the Code of Criminal Procedure, Panama may extradite a person only where dual criminality is established. However, a flexible approach is taken to the establishment of dual criminality, with article 517 providing that Panama and the requesting State do not have to define the relevant criminal conduct precisely in order for dual criminality to be established.

Article 518 of the Code of Criminal Procedure sets out the grounds on which a request for extradition may be refused, including cases where the requested individual is already on trial or serving a sentence in Panama; where the requested individual may receive a death sentence; and where the executive considers that the request for extradition has been made in relation to a political offence or on political grounds. Any offence with regard to which Panama has assumed an international obligation pursuant to a multilateral treaty may not be considered a political offence. Consequently, no offence established in accordance with the Convention will be considered a political offence.

In accordance with a constitutional prohibition, Panama does not extradite its own nationals. However, where a request is refused on these grounds, the Code of Criminal Procedure provides that the principle of *aut dedere, aut judicare* will apply. Panama does not allow for the enforcement of a sentence imposed under the domestic law of the requesting State party, where a request for the extradition of a Panamanian national has been refused. In such circumstances, the individual will be returned for trial in Panama on the basis of information provided by the requesting State.

Panama is able to deal with requests for extradition promptly and is currently seeking to introduce reforms to expedite and simplify the extradition process. Article 2140 of the Judicial Code allows for the provisional arrest of an individual upon the request of the State seeking extradition, where the offence in question is subject to a minimum sentence of at least four years' imprisonment. Panama gave specific examples of cases in which provisional arrests had been made so as to facilitate the extradition of individuals.

The formalities and information necessary to process a request for extradition are set out in article 521 of the Code of Criminal Procedure and are also spelled out in the bilateral and multilateral treaties to which Panama is party. These treaties are in conformity with the requirements of the Convention.

Panama has a number of provisions in place, both at the constitutional level (arts. 21, 22 and 23) and in multilateral and bilateral extradition agreements concluded by the national authorities, which guarantee the right to a fair trial and fair treatment to persons subject to extradition proceedings. Such persons have the right to appeal against a decision to extradite before the Supreme Court. The executive branch, however, is responsible for the final decision on whether extradition is granted.

In principle, extradition requests that involve both a corruption and a fiscal or taxation offence are granted, even where dual criminality cannot be established in relation to the taxation offence for which the extradition is sought. Extradition is not permitted, however, where a request relates primarily to a taxation offence. Decisions are taken on a case-by-case basis by the Ministry of Foreign Affairs as to whether a request for extradition should be refused on these grounds.

Under article 524 of the Code of Criminal Procedure, where a court considers that insufficient information has been provided by the requesting State for extradition to be granted, it may request further information from the requesting State before coming to a final decision. In practice, the Panamanian authorities take a proactive approach and seek further information prior to refusing a request. Examples of this were given by Panama. Moreover, multilateral agreements provide that further information must be sought before a request is refused.

Panama has signed 10 bilateral treaties and a number of multilateral agreements relating to the transfer of sentenced persons and also considers requests for transfer on the basis of the principle of reciprocity, where an agreement is not in place.

Panama has entered into both bilateral and multilateral agreements regarding the transfer of sentenced persons.

Mutual legal assistance (article 46)

Panama has entered into a number of bilateral and multilateral agreements relating to mutual legal assistance, including agreements with Colombia, Spain, the United States and Mexico. It is also party to a number of multilateral agreements, such as the Inter-American Convention on Mutual Assistance in Criminal Matters of 2001 and the Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

Where no specific bilateral or multilateral treaty is in place, the Convention is used by Panama as a legal basis for the provision of mutual legal assistance to all other States parties to the Convention. Panama cited a number of specific examples in which mutual legal assistance had been successfully provided on the basis of the Convention, including the successful freezing, confiscation and repatriation of funds obtained through corruption. Where there is no treaty, assistance may be provided by Panama on the basis of reciprocity. There is currently no detailed domestic legal framework governing the provision of mutual legal assistance. As noted above, reliance is placed rather on bilateral or multilateral agreements.

In practice, Panama is able to respond to requests for mutual legal assistance rapidly and effectively. Examples were provided in which Panama had been able to execute such requests within 24 hours, including cases in which it had been necessary to obtain information from financial institutions. Panama also confirmed that, where it becomes aware of information that may be relevant to or give rise to criminal proceedings in another State, it will transfer such information to the other State party voluntarily, without the need for a request. As a general principle, Panama will cover the costs of facilitating a request for mutual legal assistance and has in the past paid for the expedited transfer of information, where assistance was requested at short notice.

The terms of the multilateral and bilateral agreements entered into by Panama relating to the limitations on the use of information provided and the confidentiality of such information meet the requirements of the Convention. In this regard, Panama also cited its use of the Ibero-American Network for International Legal Cooperation (IberRed) and the Groove network as a secure means of communication that has facilitated the country's cooperation with other States with regard to criminal matters.

Panama does not refuse requests for mutual legal assistance on the grounds of bank secrecy. Executive Order No. 52 of 30 April 2008 and article 2053 of the Judicial Code allow law enforcement authorities to obtain relevant information from banks and other financial institutions, where this is required for the purposes of mutual legal assistance. Panama was able to cite specific cases in which information had been obtained from financial institutions at short notice in response to a request for mutual legal assistance.

The use of video evidence in criminal proceedings has been permissible in Panama since 2005 and Panama confirmed that such video evidence has been used in criminal proceedings in other States, including the United States.

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

Panama has a number of mutual legal assistance agreements in place facilitating cross-border cooperation between law enforcement authorities. In practice, law enforcement bodies in Panama regularly cooperate with bodies from other jurisdictions criminal matters, although few examples were cited of law enforcement cooperation relating specifically to corruption offences.

The Public Prosecution Service is permitted under authorization from a court, to use special investigative techniques, such as undercover surveillance, wire-tapping and controlled delivery, in the investigation of corruption offences. A specific example was cited in which controlled delivery had been used in the investigation of an individual for bribery of a public official, leading to a successful prosecution. To date, there are no examples of the use of such techniques in the context of international cooperation with another State.

Panama is currently not party to any international agreement allowing for the establishment of joint investigative bodies. It is working towards the establishment of such agreements.

3.2. Successes and good practices

The following points are regarded as successes and good practices in the framework of implementing chapter IV of the Convention:

- Panama has demonstrated the ability to respond rapidly and effectively to requests for international cooperation in relation to both extradition and mutual legal assistance.
- Panama has successfully used the United Nations Convention against Corruption as the legal basis for the provision of mutual legal assistance, leading to the freezing, confiscation and return of a significant quantity of assets obtained through the commission of corruption offences. In doing so, Panama is a source of inspiration for other countries.
- Panama has entered into a wide range of multilateral and bilateral agreements relating to international cooperation and a number of new agreements are currently under discussion.
- Panama takes a flexible approach to the establishment of dual criminality, focusing on whether the conduct in respect of which the request is made is criminalized in both States rather than on the specific categorization or the precise definition of the offences in question.

3.3. Challenges in implementation, where applicable

The following points could serve to strengthen anti-corruption measures still further:

- Panama should consider the introduction of a domestic legal framework relating to mutual legal assistance, so as to clarify the procedures applicable to officials responsible for facilitating such assistance.
- Panama should ensure that mutual legal assistance is provided where a request in respect of an offence under the Convention also relates to taxation or fiscal matters.
- Panama should continue its efforts to establish bilateral or multilateral agreements to allow the competent authorities responsible for the investigation of corruption offences to establish joint investigative bodies with law enforcement agencies in other jurisdictions.

3.4. Technical assistance needs identified to improve implementation of the Convention

Panama has identified the following form of technical assistance required:

- Legislative drafting assistance with the development of a domestic legal framework for the provision of mutual legal assistance.