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

Executive summary

Note by the Secretariat

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I. Introduction

1. The present document of the Implementation Review Group is made available in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex).
2. The executive summary contained herein corresponds to a country review conducted in the third year of the first review cycle. Other executive summaries pertaining to the same year of the same cycle will be issued as addenda to the present note.

II. Executive summary

Algeria

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

Algeria is a republic where the constitutional regime rests upon the principle of separation of powers. Algeria ratified the United Nations Convention against Corruption (UNCAC) on 19 April 2004 by Order 04-128.

The President of the Republic is the chief of the executive branch and appoints the members of the Government after consulting the Prime Minister, who implements the President's programme and coordinates the Government's actions.

The legislative branch is a bicameral Parliament consisting of the People's National Assembly, which is elected directly, and the Council of the Nation, which is elected indirectly by the members of the People's Municipal Assemblies and the People's Provincial [*Wilaya*] Assemblies. One-third of the members of the Council of the Nation are appointed by the President.

The judicial branch is the guarantor of the fundamental rights of citizens. Judges obey the law alone, and are responsible to the Higher Council of Justice. They are protected against any form of pressure, intervention or manoeuvres intended to undermine their independence.

The Algerian legal system follows the civil law tradition. Personal status and successions are the only matters governed by Islamic law.

Since 1996, the organizational structure of the judiciary has been characterized by a duality of jurisdiction. In addition to the regular judicial jurisdictions (tribunal, court, Supreme Court), it consists of an administrative jurisdiction (administrative court, State Council) and a dispute-settlement tribunal.

The President of the Republic, the President of the People's National Assembly or the President of the Council of the Nation may submit a case to the Constitutional Council, which ensures compliance with the Constitution and rules on the constitutionality of treaties and legislative and statutory provisions.

Combating corruption is a strategic action of high priority within the overall reform process launched in 1999. In this context of working effectively to combat the

complex problem of corruption, the promulgation of Law 06-01 of 26 February 2006, the Law on Preventing and Combating Corruption (LPLCC), is a key part of bringing national legislation into line with the UNCAC.

Emphasis has always been placed on assuring the specialization of the services in charge of combating corruption and criminality in the economy. This has been so since the 1960s both for the services in charge of administrative and financial investigations and for the services in charge of judicial investigations (investigation sections, economic and financial brigades). Today, in addition to traditional police criminal investigation services, there are several bodies and services specializing in the detection, investigation and judicial handling of cases of corruption.

Detection:

(1) The Financial Intelligence Unit (CTRF):

Established in 2002 and operational since 2004, the CTRF is an administrative authority in the Ministry of Finance specializing in combating terrorism financing and money-laundering. Its mission is (a) to receive reports of suspicions relating to terrorism financing or money-laundering operations, (b) to refer appropriate files to the Public Prosecutor having jurisdiction and (c) to implement the necessary procedures to prevent and detect any form of terrorism financing and money-laundering. The unit is also authorized to request from the bodies and persons designated by law any document or information that may be necessary for the fulfilment of its mission.

(2) The National Body for Preventing and Combating Corruption (ONPLC):

Established in 2006 by Law 06-01, the ONPLC became operational in January 2013. It is an independent administrative authority having legal personality and financial autonomy. It reports to the President and is the main executing body of the national anti-corruption strategy. It is also in charge of collecting and analysing corruption statistics and trends, and leads efforts in education and the promotion of good governance practices. Where appropriate, it also refers cases to the Ministry of Justice for prosecution.

(3) The General Financial Inspectorate (IGF):

The IGF is a permanent oversight body under the direct authority of the Ministry of Finance. It is responsible for examining public finances a posteriori by conducting audits and investigations that may lead to prosecution.

(4) The Court of Auditors:

The Court of Auditors is a higher institution for the examination a posteriori of the finances of the State, local governments and public entities. If, in the course of pursuing its oversight functions, the Court of Auditors learns of any facts that may indicate that a criminal offence has been committed, it transmits the file to the Attorney General having jurisdiction, for the purposes of prosecution, and informs the Minister of Justice.

Investigations:

(1) The Directorate General of National Security (DGSN):

Combating economic and financial criminality is one of the missions assigned to the DGSN and to the Subdirectorate of Economic and Financial Affairs within it. This specialized central service is in charge of monitoring and coordinating the actions of the criminal investigation police, including in cases of corruption. At the level of each province's security service, investigations of corruption are carried out by the economic and financial brigade.

(2) The National Gendarmerie:

As a central service for criminal investigations, there is a specialized office to combat economic and financial crimes. This service acts through specialized units at the local level.

(3) The Central Judicial Police Service (SCPJ) of the Military Security Services of the Ministry of National Defence:

The SCPJ has the mission of detecting offences under criminal law and the Code of Military Justice, gathering evidence and seeking the perpetrators until a formal investigation proceeding is opened.

(4) The Central Office for the Repression of Corruption (OCRC):

Established in 2011 by Decree 11-426 and made operational in March 2013, the OCRC is a specialized central investigative service in charge of combating corruption. It brings together several police criminal investigation services and financial experts. It is responsible for assembling evidence, investigating acts of corruption and arranging for charges to be brought before the courts against the perpetrators.

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)*

Bribery of public officials has been a criminal offence under Algerian legislation since the first Algerian Penal Code of 1966. The LPLCC has redefined this offence to ensure compliance with the provisions of the UNCAC. Article 25 of the LPLCC differentiates between passive bribery (bribe-taking) and active bribery (bribe-giving) and extends the scope of this offence to all persons whose functions or activities are covered under the definition of public officials pursuant to article 2 of the UNCAC.

Bribery of foreign public officials is addressed in article 28 of the LPLCC and reflects the language of the UNCAC for both active and passive bribery.

Article 32 of the LPLCC makes active and passive trading in influence a criminal offence and reflects the language of article 18 of the UNCAC.

Article 32 of the LPLCC makes active and passive bribery in the private sector a criminal offence. It should be noted that the article goes beyond the provisions of the UNCAC by removing the restriction that the act must take place "in the course of economic, financial or commercial activities".

Money-laundering, concealment (articles 23, 24)

Law 05-01 of 6 February 2005, amended by Order 12-02 of 13 February 2012, addresses money-laundering and the financing of terrorism in both enforcement and preventive aspects. The enforcement component is also addressed by the Penal Code (articles 389 bis to 389 bis 7) which defines the constituent elements of the laundering of funds, including conversion, transfer, concealment, acquisition, possession and use of property or proceeds of crime. These provisions also make it a crime to participate in a conspiracy to commit, or to aid or abet the commission of, money-laundering. Article 42 of the LPLCC extends the application of general money-laundering provisions to corruption offences.

Money-laundering carries a penalty of imprisonment for five to ten years, and commission by an organized criminal group or a person using facilities provided through his or her occupation carries aggravated penalties of ten to twenty years. In addition, all laundered funds may be confiscated and forfeited with due consideration for the rights of bona fide third parties.

Predicate offences are not presented in an exhaustive list, so as to maximize the scope of the money-laundering provisions. Therefore, all crimes of corruption in the LPLCC count as predicate offences. Algeria deems offences committed abroad to be predicate offences if they would constitute offences in Algeria. A person can be convicted of both money-laundering and the underlying offence.

Algeria officially furnished copies of its money-laundering legislation to the Secretary-General of the United Nations on 29 November 2012.

Criminal concealment is addressed under article 43 of the LPLCC, and meets the requirements of the Convention.

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

Article 29 of the LPLCC makes it a crime for a public official in any way to misappropriate property, funds or securities entrusted to him or her. This article applies broadly to public officials who handle cash as well as high-level public officials involved in complex embezzlement schemes.

Article 33 of the LPLCC makes abuse of functions a crime in the case of any public official who performs or fails to perform an official act for the purpose of obtaining an undue advantage for him or herself or for another person or entity.

Article 37 of the LPLCC makes it a crime for a public official, who bears the burden of proof, to be unable to provide a reasonable explanation for a substantial increase in his or her assets relative to income, and deems this to be a continuing offence. The concealment of such illicit enrichment is also made a crime. Articles 4, 5 and 6 set forth the requirements for asset disclosures by certain public officials. It should be noted that article 36 makes it a criminal offence for a public official who is required to declare his or her assets to fail to do so or fail to disclose them in full.

Article 41 of the LPLCC makes embezzlement of property in the private sector a criminal offence, and reflects the language of article 22 of the UNCAC.

Obstruction of justice (article 25)

Article 236 of the Penal Code makes it a general crime to induce a person, whether through promises, pressure, threats or any other means, to make a false statement, deposition or assertion during a judicial proceeding. In addition, article 44 of the LPLCC applies specifically to corruption offences and makes it a crime to use physical force, threats, intimidation or any offer of an undue advantage to obtain false testimony, suppress testimony or produce false evidence in connection with a corruption offence.

Article 44 of the LPLCC makes it a crime to use physical force, threats or intimidation to interfere with the course of an investigation for a corruption offence. This article applies beyond the requirements of the UNCAC to any person involved in the investigation, not only justice officials.

Liability of legal persons (article 26)

Under article 51 bis 1 of the Penal Code, legal persons are liable for offences committed on their behalf by their organs or legal representatives. Article 53 of the LPLCC confirms this principle of criminal liability specifically for corruption offences. Such liability does not preclude the criminal liability of natural persons who commit the same offence. Punishment includes fines or other monetary penalties, and can include dissolution, prohibition on participating in public contracting and/or confiscation of assets.

Participation and attempt (article 27)

Articles 41 to 43 of the Penal Code make it a criminal offence to participate in an offence, or incite the commission of an offence, and impose the same penalty as for a predicate offence. Article 52 of the LPLCC makes these provisions specifically applicable to corruption offences. Attempt is similarly made a crime under both the Penal Code and article 52-2 of the LPLCC. Preparation to commit a crime is not itself made a criminal offence except to the extent that it constitutes the start of the commission of a crime.

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

Under the LPLCC, punishment is determined proportionate to the gravity of the offence, including ranges for both imprisonment and fines. Certain aggravating factors may apply, as in the case of a person who is a public official.

Among public officials, only members of Parliament are granted immunity from prosecution during their term of office under articles 109 and 110 of the Constitution. Such immunity may be waived by members of Parliament or may be rescinded by Parliament. Members of the Government, judges and the criminal investigation police do not enjoy such immunity but have the right to a change of venue for prosecution.

Detailed provisions in the Code of Penal Procedure (articles 30, 31 and 36) define the discretionary power and independence of the public prosecutor in pursuing corruption cases. This discretion primarily concerns the elements of the offence without regard to the sufficiency of the evidence at the beginning of an investigation

or the extent of the damage sustained. In addition, the Code of Penal Procedure sets forth measures to be taken with regard to the detention and release of persons being prosecuted, taking into account the need to guarantee public safety and ensure that the accused will appear at subsequent proceedings (articles 124, 126, 129 and 132). Persons found guilty of corruption offences are generally ineligible for pardon (Presidential Decree 12-277) and cannot apply for parole, other than in exceptional cases such as for health reasons.

Specific provisions exist in Algerian law regarding the suspension and deregistration of judges, bailiffs and notaries for criminal offences, including corruption offences. In addition, article 173 of Order 06-03 provides for the immediate suspension of any public official who is accused of committing serious offences, including corruption offences. Article 22 of Presidential Decree 11-426 empowers the Central Office for the Repression of Corruption to recommend any precautionary administrative measure when a public official is accused of acts of corruption. Article 50 of the LPLCC provides a range of measures, under Article 9 bis 1 of the Penal Code, that can be taken against a person found guilty of committing a corruption offence, including disqualification from serving in a public capacity. Articles 676 to 693 of the Code of Penal Procedure and the Law on the Reintegration of Inmates provide for convicted persons to be rehabilitated and reintegrated into society through training, education and employment assistance.

With regard to cooperation with law enforcement authorities, article 49 (2) of the LPLCC permits the maximum penalty to be halved for any person who facilitates the arrest of one or more perpetrators involved in the offence. Article 49 (1) of the LPLCC provides for immunity from prosecution for any person who makes a corruption offence known to law enforcement authorities prior to the launching of an investigation.

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

Although article 45 of the LPLCC makes it a crime to retaliate against, intimidate or threaten witnesses, experts, victims or their families, Algeria reports that its laws do not provide for specific measures of protection, relocation or shielded testimony. However, Algeria reports that witness protection measures are currently under consideration and may be adopted in the future. Articles 69 bis, 72, 74 and 353 of the Code of Penal Procedure permit victims and their counsel to be heard by the court at any stage in the proceedings, and allow the victim to file as a plaintiff in any criminal proceeding.

With regard to persons reporting acts of corruption, apart from the protections specified in article 45 of the LPLCC, article 73 of Law 90-11 of the Labour Code does not include the reporting of such acts as grounds for which an employer can take disciplinary measures against an employee. A working group is currently developing additional measures to ensure the protection of persons who report such acts.

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

The legal mechanism that permits the court, upon conviction, to order the confiscation of property acquired as a result of the offence or used in the commission of the offence, is set forth in articles 15 and 15 bis 1 of the Penal Code.

Article 51 of the LPLCC contains more detailed provisions to permit freezing and confiscation of property or the proceeds of crime, or their equivalent. This is without prejudice to the rights of bona fide third parties, which are specifically protected in article 51. Except in cases of illicit enrichment, the accused is not required to demonstrate the lawful origin of the assets frozen.

Article 389 of the Penal Code, regarding confiscation procedures in money-laundering cases, deals with converted and intermingled property and permits the seizure and confiscation of the proceeds of crime. When the criminal assets cannot be located, the court is permitted to order a monetary penalty against a convicted person equivalent to the value of such property.

Although no specialized body exists to regulate the administration of property frozen, seized or confiscated, procedures are in place to regulate how certain assets are to be held or disposed of, including by means of deposit in a secure account, sequestration, auction, sale and destruction. The property in question falls under the jurisdiction of the judiciary, which appoints an administrator to oversee and hold the property. Article 51 of the LPLCC provides for the restitution, on behalf of victims, of any misappropriated property or of an amount equivalent to the interest or gain obtained if the property has been transformed.

Article 158 of the Law on Money and Credit specifically prohibits banks and other financial institutions from citing bank secrecy as grounds for refusing to comply with a judicial order or subpoena in criminal proceedings. The money-laundering and terrorism financing legislation contains similar provisions. Article 21 of the LPLCC deems failure to comply with such orders to constitute obstruction of justice.

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

In Algeria, the statute of limitations period for prosecution is ten years for high crimes [crimes], three years for lesser crimes [*délits*] and two years for minor crimes [contraventions]. However, article 8 bis of the Code of Penal Procedure exempts cases of bribery and misappropriation of funds from the statute of limitations period. Article 54 of the LPLCC also exempts corruption cases from the statute of limitations period in cases where the proceeds of crime have been moved outside Algerian territory. Accused persons may be tried in absentia and later retried upon arrest.

Algeria reports that most of its agreements regarding mutual legal assistance provide for the exchange of information relating to criminal convictions. This information may be taken into account for any investigation relating to corruption cases.

Jurisdiction (article 42)

Article 3 of the Penal Code establishes Algerian jurisdiction for offences committed in Algeria. This also includes cases where the offence is committed abroad if it falls within Algerian jurisdiction according to the Code of Penal Procedure. Articles 590 and 591 of the Code of Penal Procedure extend jurisdiction to vessels and aircraft of Algerian registry regardless of the nationality of the perpetrators, and include foreign aircraft if the perpetrator or victim is Algerian or if the aircraft lands in Algeria after the offence has been committed.

Articles 582 to 587 of the Code of Penal Procedure extend jurisdiction to offences committed abroad by Algerian citizens, regardless of the nationality of the victim, if the act would constitute an offence under Algerian law. This provision applies even if the perpetrator obtains Algerian citizenship after the offence has been committed. Article 585 permits Algerian courts to prosecute and pronounce judgement upon a person who is an accessory to a crime committed abroad if the act is unlawful both under the corresponding foreign law and under Algerian law. When the crime is committed by a foreign national, Algerian courts have jurisdiction if the acts of corruption are related to any of the offences specified in Article 588 of the Code of Penal Procedure, which includes offences against the security of the State and the counterfeiting of currency. To facilitate mutual assistance, including transfers of proceedings, Algeria and its primary assistance partner, France, have established liaison magistrates.

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

In addition to the possibility of being barred temporarily or permanently from participation in public contracts, article 55 of the LPLCC permits courts to annul any contract, transaction, permit, concession or authorization obtained by means of an act of corruption. In addition, Presidential Decree 10-236 of 7 October 2010 on public contracts permits the blacklisting of persons or entities so that they are prohibited from submitting bids for public contracts.

Article 124 of the Civil Code permits a person to bring a lawsuit for damages caused by reason of a wrongful act committed by another, including acts of corruption. The award of civil damages does not preclude the application of criminal penalties.

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

Algeria has several specialized services responsible for law enforcement and combating corruption.

These specialized services are continually working to establish coordination mechanisms both with each other and with judicial authorities and investigation services to promote the prevention, detection and investigation of corruption. Under article 32 of the Code of Penal Procedure, public officials are legally required to report relevant information on criminal activity to law enforcement authorities.

Article 19 of the Law on Money-Laundering requires banks and financial institutions to report cases of suspected money-laundering to law enforcement authorities, and specifies the corresponding mechanisms. Algeria regularly convenes information seminars for private-sector partners to raise awareness of their reporting obligations and the corresponding mechanisms. Article 47 of the LPLCC makes it a crime for any person, who by virtue of his or her position or occupation becomes aware of a corruption offence, to fail to report the offence to law enforcement authorities.

2.2. Successes and good practices

Successes and good practices pursuant to chapter III of the UNCAC are particularly evident in the following:

- Detailed provisions for investigating and prosecuting high-level officials involved in acts of corruption
- Broader application of provisions on the obstruction of justice, to cover all officials in the criminal justice system
- Exemption from the statute of limitations in corruption cases where the proceeds of crime have been moved abroad
- Establishment of liaison magistrates between primary mutual legal assistance partners to facilitate communication and consultation in matters of mutual assistance.

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Continue to implement measures to collect and review asset disclosures submitted by public officials with a view to countering illicit enrichment
- Continue to consider the adoption and implementation of measures to strengthen the protection of witnesses, experts and victims in corruption cases
- Continue to consider the adoption and implementation of measures to strengthen the protection of persons who report acts of corruption from workplace retaliation or other unjustified treatment.

2.4. Technical assistance needs to improve implementation of the Convention

- In reference to article 23 on money-laundering, and specifically inter-agency coordination, training in analysing reports of suspicious activity and summarizing best practices
- Support for the OCRC in developing and implementing training programmes on the investigation of corruption and financial crimes.

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)

In Algeria, extradition is provided for in the Code of Penal Procedure and in bilateral agreements to which Algeria is a party. Algeria has signed 33 bilateral conventions on the subject of extradition and is also a party to the African Union Convention on Preventing and Combating Corruption and the Riyadh Arab Agreement for Judicial Cooperation, which includes a chapter on extradition. In 2010, it also became a party to the Arab Anti-Corruption Convention.

Algeria does not authorize the extradition of its nationals. In other cases, dual criminality is a prerequisite for granting extradition. In addition, the offence must

carry a penalty of imprisonment for not less than two years. It should be noted that under Algerian law all offences pursuant to the UNCAC carry a penalty of imprisonment for at least two years, and hence all are extraditable offences.

None of the offences established pursuant to the UNCAC is deemed a political offence, and hence all are extraditable offences. Moreover, Algeria does not authorize extradition based on political grounds. With regard to extradition requests relating to fiscal matters, Algeria directly applies article 44, paragraph 16, of the UNCAC and therefore does not deny extradition requests for the sole reason of being based on fiscal matters.

With regard to the transfer of sentenced persons, although such transfers are provided for under some regional and bilateral conventions to which Algeria is a party, they are not provided for under the national laws of Algeria.

In addition, the Algerian Code of Penal Procedure guarantees fair treatment to any person concerning whom an extradition request is made while proceedings are under way.

Also, certain bilateral legal treaties signed by Algeria provide for an extradition request to be denied if it is based on discriminatory grounds such as the race, sex, language, religion or nationality of the person, even if no provision of national law takes this requirement into account.

Lastly, while the national legislation of Algeria does not provide for the transfer of criminal proceedings, it is nonetheless provided for in article 22 of the Arab Anti-Corruption Convention when it is in the interest of the proper administration of justice.

Mutual legal assistance (article 46)

Although certain provisions of the UNCAC are not taken into account in the national laws of Algeria, the LPLCC, the Code of Penal Procedure and the Law on Money-Laundering and Combating Terrorism provide for mutual legal assistance subject to reciprocity. In addition, certain bilateral conventions to which Algeria is a party provide for the broadest mutual legal assistance possible.

The Ministry of Justice is the central authority in all bilateral mutual legal assistance conventions. In the absence of a bilateral agreement, requests are sent through the diplomatic channel and the Ministry of Justice transmits them to the appropriate judicial authorities.

Mutual legal assistance may be agreed in certain cases without regard to the principle of dual criminality, except where coercive measures are involved. Bank secrecy and fiscal matters, when relating to acts of corruption, are not grounds to deny a request for mutual legal assistance. However, such a request may be denied if it could endanger the sovereignty, security, public order, or other essential interests of Algeria. It may also be denied if it is based on considerations of race, religion, sex, nationality, language, or personal or social condition.

The mutual legal assistance provided for in Algeria's national laws and in many bilateral and regional treaties to which Algeria is a party consists of gathering witness depositions and statements, providing evidentiary items, locating and identifying persons, transferring detained persons as witnesses, and executing

requests for searches, freezing, seizure, confiscation and disposal of proceeds of crime and recovery of property.

In addition, under its national laws and the provisions of agreements to which Algeria is a party, Algeria may at its own initiative transmit information concerning any offence provided for in the UNCAC. Some mutual legal assistance conventions to which Algeria is a party also establish that any information and evidentiary items provided under a legal assistance request are to remain confidential unless both parties decide otherwise.

Following the same principle, any information received by the State to which the request is addressed is not to be used for any purpose outside the context of the legal assistance request unless both parties decide otherwise. As a general rule, any information in the public domain may be used for other purposes and any exculpatory evidence may always be disclosed.

Lastly, the costs of executing the legal assistance request are generally assumed by the requested State unless both parties decide otherwise.

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

In order to strengthen international cooperation, Algeria has regulatory texts that provide for the exchange of information for purposes of law enforcement. It has also signed many bilateral agreements that provide for the exchange of information in connection with an investigation and the exchange of personnel to share information on best practices. Algeria is also a member of INTERPOL and its financial intelligence unit has concluded 15 agreements for the exchange of financial information on money-laundering and the financing of terrorism. Fifteen financial intelligence units have also concluded administrative cooperation agreements with Algeria.

The Code of Penal Procedure and the Law on Combating Money-Laundering authorize the use of special investigative techniques in matters of organized crime and corruption.

3.2. Successes and good practices

The following measures have been identified as successes and good practices in the implementation of chapter IV of the UNCAC:

- Algeria has ratified a large number of bilateral, regional, multilateral and international conventions
- Algeria directly applies the provisions of the UNCAC in the absence of national laws.

3.3. Challenges in implementation, where applicable

The following measures would strengthen and consolidate the actions taken by Algeria to combat corruption:

- Adopting legislative measures that have already been initiated, so that certain provisions contained in the UNCAC regarding mutual legal assistance and extradition will be reflected in national laws.

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

- Capacity-building in the areas of mutual legal assistance and international financial investigations.
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