



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

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Experts convened to enhance international cooperation under the United Nations Convention against Corruption

Third meeting

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Item 4 of the provisional agenda*

**International cooperation in civil and administrative
proceedings for the detection of offences under the
Convention, including for the identification, freezing and
confiscation of assets derived from such offences**

International cooperation under the United Nations Convention against Corruption, including technical assistance and other activities

Progress report prepared by the Secretariat

At the second meeting of the experts convened to enhance international cooperation under the United Nations Convention, held in Panama City on 25 and 26 November 2013, the experts recommended that States parties should continue to consider assisting each other, where appropriate and consistent with their domestic legal system, in investigations of and proceedings in civil and administrative matters relating to corruption, in accordance with article 43, paragraph 1, of the Convention. In its resolutions 5/1 and 5/3, the Conference of the States Parties to the United Nations Convention against Corruption encouraged States parties to the Convention to afford one another, when feasible, international cooperation in civil and administrative proceedings for the detection of corruption offences and for the identification, freezing and confiscation of assets derived from offences covered by the Convention.

The present report has been prepared pursuant to the mandates contained in resolutions 5/1 and 5/3 of the Conference of the States Parties to the Convention. It provides information on the responses received from Member States regarding

* CAC/COSP/EG.1/2014/1.



national approaches to dealing with international cooperation in civil and administrative proceedings for the detection of offences covered by the Convention, including for the identification, freezing and confiscation of assets acquired from such offences. In addition, the present report contains information on technical assistance and other activities of the Secretariat in the field of international cooperation under the Convention.

I. Introduction

1. Pursuant to resolution 4/2 of the Conference of the States Parties to the United Nations Convention against Corruption, the first meeting of the experts convened to enhance international cooperation under the Convention was held in Vienna on 22 and 23 October 2012 and the second meeting was held in Panama City on 25 and 26 November 2013, during the fifth session of the Conference. At that second meeting, the experts recommended that States parties should continue to consider assisting each other, where appropriate and consistent with their domestic legal system, in investigations of and proceedings in civil and administrative matters relating to corruption, in accordance with article 43, paragraph 1, of the Convention.¹

2. In its resolution 5/1 on “Enhancing the effectiveness of law enforcement cooperation in the detection of corruption offences in the framework of the United Nations Convention against Corruption”, the Conference of the States Parties encouraged States parties to the Convention to afford one another, when feasible, international cooperation in civil and administrative proceedings for the detection of corruption offences, in accordance with article 43, paragraph 1, of the Convention, and in that regard requested the Secretariat to invite States parties to provide information, to the extent possible, on such proceedings in order to identify the scope of assistance that could be provided in relation to such proceedings, for submission to the meeting of experts to enhance international cooperation to be held during the sixth session of the Conference of the States Parties (paragraph 2 of the resolution).

3. Furthermore, in its resolution 5/3, entitled “Facilitating international cooperation in asset recovery”, the Conference encouraged, inter alia, States parties to afford one another, when feasible, international cooperation, including mutual legal assistance as appropriate, in civil and administrative proceedings for the identification, freezing and confiscation of assets, in accordance with article 43, paragraph 1, and article 46, paragraph 3, of the Convention, and in that regard requested that the Secretariat invite States parties to provide, to the extent possible, information on such proceedings, for submission to the Open-ended Intergovernmental Working Group on Asset Recovery, in order to identify the scope of assistance that could be provided in relation to such proceedings.

4. At the fifth session of the Implementation Review Group of the Convention against Corruption, held in Vienna from 2 to 6 June 2014, several speakers made reference to article 43 of the Convention which stipulates that States parties should consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption, and to resolutions 5/1 and 5/3 of the Conference in which States parties were invited to share their practices in this regard. On that topic, some speakers noted that the template on international cooperation in civil and administrative procedures relating to corruption, adopted by the Group of 20 (G-20) Working Group on Anti-Corruption during its meeting held in Sydney on 26 and 27 February 2014,² could be a useful tool for the provision of

¹ CAC/COSP/EG.1/2013/3, para. 36.

² See conference room paper CAC/COSP/IRG/2014/CRP.5.

relevant information. Several speakers stated that countries could consider the possibility of using the template when providing their response.

5. Bearing in mind that the two aforementioned mandates of the Conference concern aspects which benefit from joint consideration, and in order to avoid duplication, the Secretariat sent to Member States note verbale CU 2014/66 dated 21 March 2014, as well as a reminder note verbale CU 2014/127 dated 13 June 2014, seeking information from States parties and signatories to the Convention against Corruption on the issues identified above. As at 7 August 2014, the following Member States have provided information: Argentina, Armenia, Australia, Belgium, Bosnia and Herzegovina, Brazil, Colombia, Dominican Republic, Ecuador, Greece, Guatemala, Haiti, Kenya, Lebanon, Lithuania, Mauritius, Mexico, Morocco, Myanmar, Panama, Peru, Philippines, Spain, Switzerland, Tunisia, United States of America and Venezuela (Bolivarian Republic of).

6. The present report has been prepared pursuant to the mandates contained in resolutions 5/1 and 5/3 of the Conference of the States Parties to the Convention. It provides information on the responses received from Member States regarding national approaches to dealing with international cooperation in civil and administrative proceedings for the detection of offences covered by the Convention, including for the identification, freezing and confiscation of assets derived from such offences. In addition, the present report contains information on technical assistance and other activities of the Secretariat in the field of international cooperation under the Convention.

II. International cooperation in civil and administrative proceedings for the detection of offences covered by the Convention, including for the identification, freezing and confiscation of assets derived from such offences: national approaches

Argentina

7. The practice of requesting the identification, freezing, seizure and confiscation of property, as well as responding to relevant requests from foreign States, is regulated in the law on international cooperation in penal matters. As set forth in the Penal Code, the confiscation of property is regulated as enforcement of a final sentence.

8. The exchange of information among financial intelligence units from different jurisdictions using informal mechanisms is possible and the financial intelligence unit of Argentina can provide for the administrative freezing of assets linked to the financing of terrorism, provided that the competent court is immediately notified.

9. Argentina further underscored the new wording of article 23 of the Penal Code, which establishes that, in certain cases, property will be subject to final confiscation without a criminal sentence if the illicit origin or the material fact to which the property was linked could have been proven, and the accused could not be prosecuted because of death, flight, prescription or any other reason leading to

the suspension or extinction of the criminal proceedings, or if the accused has recognized the illicit origin or use of the property.

Armenia

10. Armenia reported that for the identification, freezing and confiscation of assets derived from corruption offences, the national law enforcement authorities have powers prescribed in law. Corruption proceeds are confiscated only by a court verdict. Furthermore, the freezing of such proceeds is possible during the investigation of a criminal case. Subject to freezing measures are the property directly or indirectly obtained as a result of the offences under investigation, including the income derived from the use of such property or other benefits, and the tools destined for use in the commission of those offences. The freezing is imposed regardless of whether the property belongs to the offender or a third person, or whether these persons are in possession of that property.

Australia

11. Australia underlined that, under the Law Enforcement Integrity Commissioner Act of 2006, the Integrity Commissioner may use a range of special powers and law enforcement methods to investigate corrupt conducts. One of those powers is that of issuing summons to attend a coercive information-gathering hearing. It requires a person to answer questions and give sworn evidence and/or produce documents or goods. If such evidence may incriminate the person, the information is not admissible in criminal proceedings.

12. The Integrity Commissioner's powers — including coercive powers — may only be used for the purposes of an investigation under the Law Enforcement Integrity Commissioner Act, to enable the Integrity Commissioner to be informed on relevant matters and get to the truth of an allegation. The Guidelines for the Hearings before the Integrity Commissioner were also made available by Australia.

13. At the Commonwealth level, most confiscation action is brought under the Australian Proceeds of Crime Act of 2002. The Proceeds of Crime Act provides a comprehensive scheme to trace, investigate, restrain and confiscate proceeds generated from indictable offences. Australia's criminal asset confiscation scheme is further strengthened by "unexplained wealth" provisions. Those provisions are designed to target organized crime figures who make large profits from their crimes but distance themselves from the commission of the offences.

14. Under the Proceeds of Crime Act, confiscation action can be undertaken independently of the prosecution process. The Act provides for a number of different orders (freezing orders; restraining orders; forfeiture and automatic forfeiture orders; pecuniary penalty orders; literary proceeds orders; and unexplained wealth orders). Actions under the Act can be divided into conviction-based and civil-based actions.

Belgium

15. Belgium reported on the freezing of assets under the supervision of administrative or judicial authorities in order to make possible a subsequent confiscation. In the phase before the criminal investigation, freezing measures are ordered by the Financial Intelligence Processing Unit, in accordance with the law of 11 January 1993 on the prevention of the use of the financial system for money-laundering and terrorist financing purposes.

16. If, because of the seriousness or urgency of the matter referred to it by a declaration of suspicion, the Financial Intelligence Processing Unit considers it necessary, it may oppose the execution of a transaction for a maximum duration of five working days from the notification.

17. If the Unit believes that the freezing measure must be extended, it must inform the competent public prosecutor or the Federal Prosecutor, who may decide to transform the freezing measure into a seizure of criminal nature. The seizure action may be appealed by any person affected who can request the waiver of such measure by the public prosecutor or the competent judge, with the possibility of appeal before the Board of indictments in case of refusal or non-response.

18. Belgium noted that the combination of administrative freezing measures and criminal seizure could substantially increase the efficiency of the fight against money-laundering and all serious predicate offences as it allows the temporary freezing of assets that have been located and identified, while in most criminal financial investigations the search and seizure proves to be extremely complex because of their concealment through opaque processes and mechanisms. Within the context of the administrative freezing measures, there is a de facto reversal of the burden of proof since it is up to the defendant to prove that the goods seized are not of illicit origin.

Bosnia and Herzegovina

19. Bosnia and Herzegovina referred to the relevant laws on the suppression of corruption and organized crime, as well as confiscation of illegally acquired property derived from criminal offences at the entity level. At the State level, the respective laws were — at the time of submission of the relevant information — at the drafting stage.

Brazil

20. During the fifth session of the Implementation Review Group, Brazil circulated, as a conference room paper (CAC/COSP/IRG/2014/CRP.5), the template on international cooperation in civil and administrative procedures relating to corruption, adopted by the G-20 Working Group on Anti-corruption during its meeting held in Sydney, on 26 and 27 February 2014. Consequently, Brazil used the template for the provision of information.

21. Brazil reported on the following procedures in place relating to corruption:

(a) Procedures based on the civil and administrative liability of legal persons for acts against the public administration (Law 12.846). With regard to international cooperation, Brazil is in a position to support foreign investigations, prosecutions and judicial proceedings by providing types of assistance described in article 46 of the Convention against Corruption. Law enforcement cooperation, in its different types and purposes, is also facilitated. Brazil further provides cooperation as described in articles 54 and 55 of the Convention against Corruption. Giving effect to an order issued by a foreign court is possible for monetary sanctions different from forfeiture, the annulment or rescission of a contract (civil liability) and the sanction of publishing the administrative conviction in the media, in the place of the corporation's activities and in its website on the Internet (administrative liability);

(b) Civil procedure on administrative improbity (Law 8.429). This procedure is founded on the civil liability of natural persons and international cooperation on the basis of articles 46, 48, 54 and 55 of the Convention against Corruption is feasible. Giving effect to an order issued by a foreign court is possible in cases of monetary sanctions (fines or penalties) different from forfeiture and annulment or rescission of a contract;

(c) Enforcement of decisions in special assessment of public accounts (Law 8.443/1992). This process is based on the civil liability of both natural and legal persons. Mutual legal assistance and law enforcement cooperation are possible. The enforcement of a foreign freezing or seizure order is possible, but this is not the case in relation to a foreign confiscation order. Giving effect to an order issued by a foreign court is possible also for disciplinary sanctions.

22. In relation to the domestic procedures relating to corruption, the Office of the Comptroller General of the Union, Department of Integrity and International Agreements has a key role. The Ministry of Justice, Department of Asset Recovery and International Legal Cooperation, is competent for issues pertaining to mutual legal assistance and international cooperation for freezing or seizure, confiscation, return and disposal of assets. With regard to pre-mutual legal assistance requests and law enforcement cooperation, the identification of competence depends on the authority responsible for conducting a similar procedure in Brazil.

Colombia

23. Colombia indicated that the Comptroller General's Office had the constitutional mandate of safeguarding the nation's property and, in corruption matters, of recovering stolen assets hidden in Colombia and abroad. Difficulties in obtaining international cooperation for the location, seizure, and repatriation of assets were highlighted. Colombia informed that in 2011, 5,500,000 United States dollars were recovered; in 2012, it was 7,500,000 dollars and, in 2013, 15,300,000 dollars. However, no successful recovery of assets located abroad in corruption cases had been conducted.

24. The National and International Cooperation Unit for Asset Prevention, Investigation, and Seizure under the Comptroller General's Office is included among the central authorities for international cooperation under the Inter-American

Convention and the Convention against Corruption. In asset recovery matters, the Comptroller General's Office acts as a focal point in the Global Focal Point Platform jointly created by the International Criminal Police Organization (INTERPOL) and the Stolen Asset Recovery (StAR) Initiative.

25. The Comptroller General's Office (an administrative authority) carries out fiscal responsibility proceedings; to do so, it has been granted judicial police authority, to protect the fundamental rights of the persons under investigation, such as the right to due process, the right to defence, and other procedural rights. In addition, the Office can request information from public sector agencies or private sector entities and denounce the assets of alleged offenders to the judicial authorities for the corresponding precautionary measures to be taken. The Office can also order asset seizure and confiscation.

Dominican Republic

26. The Dominican Republic reported on efforts by the Prosecutor's Office, and in particular the Special Prosecutor's Office for Administrative Corruption, for the identification, tracing, freezing and seizure of proceeds of crime and mutual legal assistance.

27. With regard to civil and administrative proceedings for the detection of corruption, the Dominican Republic reported that various measures had been taken, such as obliging banks and other financial institutions to collect, keep and forward reports of suspicious transactions by politically exposed persons.

28. A National Committee against the Laundering of Assets has been established to prevent and detect transfers of illegally obtained assets. The Committee coordinates efforts by the public and private sectors to avoid the use of the financial system for the laundering of assets and analyses and evaluates the implementation of laws and rules on laundering of assets and their results.

29. The Criminal Procedure Code stipulates that judges and prosecutors are to provide the widest cooperation possible to foreign authorities. In addition, the Convention against Corruption can be directly applied in international asset recovery cases.

Ecuador

30. Ecuador indicated that, for the purposes of the Convention against Corruption, the National Court of Justice was designated as central authority to receive mutual legal assistance requests and facilitate their execution. Ecuador further provided information on the tasks of the Public Prosecutor's Office, the judicial organs, the National Council on the Laundering of Assets and the Financial Analysis Unit.

31. Ecuador highlighted that there was no legislation limiting the transfer of information to the authorities of another State in criminal matters and that the Public Prosecutor's Office had shared such information with its counterparts in the past. Within the Public Prosecutor's Office, there are special prosecutors for organized, transnational and international crime, who are in charge of investigating, inter alia, corruption offences.

32. With regard to mutual legal assistance, Ecuador underscored that all requests for assistance had been addressed on the basis of double criminality. However, the bilateral treaty with Colombia foresees the provision of certain means of assistance even in the absence of double criminality. Other treaties mentioned address the establishment of joint investigation teams as set forth in article 49 of the Convention, and several such investigations had been carried out.

33. Furthermore, Ecuador provided information on various cases in which freezing or seizure orders by foreign tribunals were executed, and provided statistics on mutual legal assistance requests within the period 2008-2012.

Greece

34. Greece reported on the competence and functions of the Internal Affairs Service, which was established to investigate crimes related to corruption committed by public officials in general (police officers, special guards, border guards, employees and/or officials from the wider public sector and of the European Union and international organizations active in the national territory). The activities of the Service are under parliamentary supervision. The Head of the Service is appointed by the Minister, following the consultative opinion of the Parliamentary Committee on Institutions and Transparency. A high-ranking prosecutorial official supervises the work of the Service. The operation of the Service gives priority to both control strategies and preventive action. Special action measures include the electronic management of received information and its analysis; classification and supervision of taken measures; protection of witnesses; interrogatory infiltration; lifting of communications secrecy; ban of bank accounts movement; electronic data cross-checking; and penal and administrative sanctions.

Guatemala

35. Guatemala utilized the template circulated during the fifth session of the Implementation Review Group to provide information on its analysis of suspicious transaction reports. That administrative procedure applies to natural and legal persons and is aimed at detecting the laundering of proceeds of crime. The Special Verification Unit analyses such reports of suspicious transactions and, should that analysis detect operations or patterns of money-laundering, a complaint is sent to the Prosecutor's Office for the criminal prosecution of the corresponding offences. If assets are linked to the offence, the Special Verification Unit sends a report to the Prosecutor's Office, which is in charge of seizing and confiscating such assets. The Special Verification Unit is not competent on judicial matters, mutual legal assistance or freezing of proceeds of crime.

36. Guatemala can grant law enforcement cooperation and can exchange information on the movement of proceeds of crime or property derived from, used or intended for use in corrupt practices. Furthermore, it can provide items or quantities of substances for analytical or investigative purposes.

Haiti

37. Haiti provided extracts from its legislation on the organization and functions of the Supreme Court of Accounts and administrative litigation and further referred to the provisions of the Code of Civil Procedure on the seizure of securities. Haiti also made available the provisions of the Law against Money-Laundering and Terrorist Financing of 11 November 2013 on the seizure of funds and properties linked to the offences covered by the Law.

Kenya

38. Kenya referred to its Mutual Legal Assistance Act of 2011 which enables the provision of assistance to requesting States for a broad range of purposes, including for the identification, tracing, freezing, seizure, and confiscation of the proceeds and instrumentalities of crime under the national requirements or any other arrangements to which Kenya may be bound in relation to a requesting State. The Act also contains provisions on optional grounds for refusal of mutual legal assistance requests (sections 11 and 25).

39. When providing legal assistance with respect to proceeds and instrumentalities of crime, Kenya can take the measures foreseen in article 54 of the Convention against Corruption. In addition, the Kenyan authorities can recognize a requesting State's claim as a legitimate owner of property acquired through the commission of a criminal offence; and can further consider taking additional measures to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

40. Section 26 of the Mutual Legal Assistance Act provides for the return and disposal of assets, whereas the spontaneous transmission of information without prior mutual legal assistance request is possible through section 48 of the same Act.

41. In order to foster cooperation in the field of asset recovery, Kenya enacted the Proceeds of Crime and Anti-Money-Laundering Act of 2009. Part XII of the Act provides for assistance in investigations and proceedings. Procedures are also in place to facilitate cooperation for asset recovery purposes.

Lebanon

42. Lebanon confirmed its readiness to afford the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings concerning offenses covered by the Convention against Corruption. Lebanon also considers the Convention as a legal basis for international cooperation in the absence of bilateral or multilateral treaties. The competent Lebanese authorities to receive requests for international cooperation are: the Ministry of Justice as the central authority to deal with mutual legal assistance requests; the Special Investigation body, an independent authority established under Act No. 318/2001 on money-laundering, which is the only authority in Lebanon to lift bank secrecy and freeze suspicious bank accounts (this body also has a financial intelligence unit) as part of the Egmont Group to exchange financial information); and the unit against financial offences, which cooperates with INTERPOL under the supervision of the Attorney-General.

43. With regard to international cooperation under article 43 of the Convention against Corruption, there is no law in Lebanon governing requests for international cooperation, which remains subject to bilateral or multilateral treaties and the principle of reciprocity. Lebanon has signed many bilateral agreements governing the issues of extradition, fight against terrorism, mutual legal assistance, and transfer of sentenced persons. It also cooperates with international and regional networks including the Arab Anti-Corruption and Integrity Network, The Financial Action Task Force and the Middle East and North Africa Financial Action Task Force, the Egmont Group and INTERPOL.

44. With regard to asset recovery, Lebanon is working with all States parties to the Convention against Corruption for the provision of information and assistance in conducting investigations; the identification or tracing and freezing of proceeds of crime; and the confiscation of goods and their return to their prior legitimate owners. Lebanon has returned to the Tunisian authorities 28.8 million dollars in execution of a criminal judgement rendered by a Tunisian criminal court.

45. Lebanon also utilized the template circulated during the fifth session of the Implementation Review Group to provide additional information. Administrative domestic procedures relating to corruption are available against both natural and legal persons and in relation to all offences covered by the Convention against Corruption except for bribery of foreign public officials and official of public international organizations.

46. In the field of international cooperation, different modalities can be used in support of civil and administrative procedures in a foreign State: mutual legal assistance; pre-mutual legal assistance informal assistance; cooperation for confiscation purposes and asset recovery. Cooperation is also possible for the enforcement of a foreign freezing or seizure and confiscation order.

47. The agency involved in the provision of international cooperation is the Ministry of Justice, which transmits the requests for execution to the Cassation Public Prosecution Department.

Lithuania

48. Lithuania reported that, upon execution of requests of foreign authorities and international organizations in cases provided by an international treaty to which Lithuania is a party, procedural actions in administrative cases may be carried out on the condition that the execution of such actions does not infringe the Constitution and the domestic laws and it does not contravene the fundamental principles of criminal procedure, and provided that they could also be carried out in a domestic administrative case.

49. Furthermore, financial penalties may be imposed by an authority other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters, in line with the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

Mauritius

50. Mauritius reported on the role and mandates of its Independent Commission against Corruption, which was established under the Prevention of Corruption Act of 2002 to, among others, cooperate and collaborate with international institutions, agencies or organizations in the fight against money-laundering and corruption.

51. At the international level, Mauritius is a party to the Convention against Corruption, the United Nations Convention against Transnational Organized Crime, the African Union Convention on Preventing and Combating Corruption and the Southern African Development Community Protocol against Corruption. In addition, Mauritius is an active member of organizations and regional and subregional associations and forums on anti-corruption. Moreover, Mauritius has developed links with anti-corruption authorities from different countries.

Mexico

52. Mexico indicated that its authorities collaborate with other States parties and provide mutual legal assistance in investigations and proceedings linked to corruption offences without requiring double criminality or the existence of a bilateral treaty. In addition, the financial intelligence unit exchanges information with its foreign counterparts, in particular with regard to money-laundering, either within the framework of the Egmont Group or through secure channels of communication established with other counterparts.

53. With regard to asset recovery, Mexico highlighted its readiness to provide assistance to ensure the success of investigations and penal proceedings. The Federal Law on the Termination of Ownership contains a chapter on international cooperation; however, it only applies to goods that are the instruments, objects or proceeds of offences of organized crime, crimes against health, the stealing of vehicles or trafficking in persons, and therefore cannot be used for the recovery of proceeds of corruption offences.

54. Mexico further referred to the measures in place with regard to politically exposed persons, customer due diligence and access of the financial intelligence to information on beneficial owners. Mexico pointed out that a person continues to be considered as politically exposed until one year after the end of that person's political duties and that equal treatment is applied to national and international politically exposed persons.

55. According to the Internal Regulations of the Tax Administration Service, General Customs is, among others, in charge of applying customs legislation and international conventions to foreign vehicles, ships or airplanes that were stolen or are illicitly disposed of, notifying the authorities in the country of origin of the localization of such assets and ensuring their recovery. The Tax Administration service can, based on the principle of reciprocity, provide assistance to the supervisory or regulatory authorities of other countries with which a treaty exists. Information shared in this manner can only be used for fiscal purposes. Mexico has signed 12 international agreements on the sharing of information, in the framework of which the Tax Administration Service shares and receives information on tax collection.

56. Furthermore, Mexico is party to the Convention on Mutual Administrative Assistance in Tax Matters jointly developed by the Organization for Economic Cooperation and Development and the Council of Europe, which facilitates access to a wide network of international cooperation for the exchange of information on tax matters and the fight against tax evasion.

57. Mexico also highlighted that the General Administration of Federal Tax Audit and the General Administration of Large Taxpayers are in a position to, inter alia, seize foreign trade goods. In such cases, both administrative units are obliged to notify the authorities of the country of origin and organize the return of the assets. This also applies to the General Administration of External Trade Audit.

Morocco

58. Morocco provided statistics (number of requests received and executed) for the period 2010-2013 regarding cooperation with other States (Belgium, France, Germany, Netherlands and Spain) on the freezing, seizure and confiscation of assets derived from criminal offences, such as money-laundering, drug offences and tax evasion.

Myanmar

59. Myanmar reported on legislative and institutional reforms to ensure the implementation of the Convention against Corruption, including its chapters on international cooperation and asset recovery, at the domestic level. The Committee on Organizing Action against Corruption, in place since January 2013, can issue orders for confiscation of assets derived from corruption offences. The Law on Mutual Assistance in Criminal Matters was enacted in 2004 to regulate issues of international cooperation, including for purposes of identifying or tracing money or property to be used for evidentiary purposes in criminal cases.

60. It was noted that the newly established Committee on Organizing Action against Corruption, together with the Anti-Bribery Commission, which was established in February 2014 to promote good governance and combat corruption and bribery in government organizations, require more knowledge, experience, practice from other countries and advice from international experts in order to implement their tasks more effectively. Moreover, the Attorney-General's Office would benefit from best practices from other countries with a view to gaining more experience in implementing, within its competence, requirements set forth in the Convention against Corruption.

Panama

61. Panama highlighted its participation in international judicial networks, such as the Ibero-American Legal Assistance Network, the Financial Action Task Force of South America against Money-Laundering and the Organization of Latin American and Caribbean Supreme Audit Institutions.

62. Furthermore, Panama provided information on mutual legal assistance, including statistics from 1 January to 31 March 2014 on requests received, which included several requests for assistance concerning corruption offences and one request made on the basis of the Convention against Corruption.

Peru

63. Peru indicated that the Unit for International Judicial Cooperation and Extraditions of the Attorney-General's Office is the central authority in matters of international judicial cooperation. Peru has 16 bilateral extradition treaties in place and provided information on extraditions carried out in 2013 for corruption offences. With regard to international judicial assistance, Peru has 19 bilateral treaties in place and referred to 13 requests for such assistance in 2013.

64. Peru is part of the asset recovery network of the Financial Action Task Force of South America against Money-Laundering.

Philippines

65. The Philippines utilized the template circulated during the fifth session of the Implementation Review Group to provide information on domestic measures regarding civil forfeiture. This process requires civil liability of both natural and legal persons.

66. In terms of international cooperation, the Philippines is in a position to engage in a broad range of modalities of cooperation, including mutual legal assistance for the purposes set forth in article 46, paragraph 3, of the Convention against Corruption, hearing witness testimony through videoconference, law enforcement cooperation, cooperation for confiscation or forfeiture purposes and for the return and disposal of assets.

67. The Philippines confirmed that a request for international cooperation based on a civil or administrative procedure conducted in the requesting State could be responded and could trigger cooperation for both mutual legal assistance and confiscation and law enforcement purposes. Such cooperation may encompass action geared towards enforcing a foreign freezing or seizure and confiscation order issuing an order domestically to enforce an order of a foreign court is also possible for the imposition of monetary sanctions different from forfeiture.

68. The agencies involved in the provision of international cooperation include the Anti-Money-Laundering Council, the Office of the Solicitor General and the Department of Justice.

Spain

69. Spain provided information on the highly complex structure of administrative contracting and the strict requirements for obtaining a licence to offer works or services to the public sector. Furthermore, legislation exists to ensure the transparency of markets, the correct price formation and free competition, while tools to avoid and repress money-laundering and trace suspicious transactions are

also available. In addition, public budgets are subject to rigorous accounting measures prior to payments and to subsequent examinations by the Court of Auditors.

70. With regard to politically exposed persons, the Law on the Prevention of Money-Laundering and Financing of Terrorism states that reinforced measures of due diligence will be applied in their business relations and operations. Within the financial intelligence unit there is a dedicated administrative body, the Commission for the Prevention of Money-Laundering and Monetary Offences and its Secretariat and Executive Service, which receives notifications of individuals subject to such regulations. All information is reviewed by the Commission and, if indications of money-laundering are detected, they are forwarded to the competent authorities for investigation.

71. Concerning international cooperation in civil and administrative proceedings for the identification, freezing and confiscation of assets, Spain highlighted that freezing and seizure measures need to be decided by a judge and that the judicial police cooperates with the judicial authority in investigations.

72. In addition, Spain indicated that the identification and recovery of assets was carried out in accordance with Decision 2007/845/JHA of 6 December 2007 of the Council of the European Union. As such, two Asset Recovery Offices, the Intelligence Centre Organized Crime, and the Special Anti-Drugs Prosecutor, have been established. The Offices for the Localization of Assets of the Civil Guard and the National Police Force are also part of that structure.

Switzerland

73. Switzerland referred to the Lausanne process initiative on practical guidelines for efficient asset recovery, which is being undertaken with a view to identifying good practices in effective and coordinated approaches to asset recovery for practitioners from requesting and requested States, with the support of interested States, implemented in close collaboration with the International Centre for Asset Recovery and with the support of the StAR Initiative.

74. Pursuant to resolution 5/3 of the Conference of the States Parties to the Convention against Corruption, Switzerland, in partnership with the International Centre for Asset Recovery and the StAR Initiative, organized a seminar in Lausanne from 26 to 28 January 2014, which was attended by nearly 90 experts from international organizations and 30 countries. A first draft of practical guidelines was developed by the participants in the seminar, consisting of recommendations that cover international cooperation aspects, as well as issues pertaining to domestic investigations, prosecutions and judicial proceedings. As a next step, the draft guidelines will be presented to the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference of the States Parties to the Convention against Corruption.

Tunisia

75. Tunisia confirmed the readiness of national authorities to engage in international cooperation for the detection of corruption offences. Domestic legislation regulates extradition issues, whereas mutual legal assistance can be afforded on the basis of existing bilateral treaties or by virtue of the Riyadh Arab Agreement for Judicial Cooperation (1983). In the absence of an applicable treaty, Tunisia can cooperate using the provisions of the Convention against Corruption and, where appropriate, the Organized Crime Convention with other States parties to these conventions. Tunisia also made reference to its ad hoc legislation against money-laundering which can authorize support of foreign investigations and judicial proceedings conducted abroad, but only in relation to money-laundering cases and not cases involving other corruption-related offences. In relation to articles 49 and 50 of the Convention against Corruption, on joint investigations and special investigative techniques respectively, Tunisia reported on ongoing work for the drafting of enabling legislation.

76. Despite the lack of domestic legislation, the Tunisian authorities can cooperate with other States for the detection of corruption assets and their return on the basis of their international commitments stemming from bilateral treaties and the relevant Convention against Corruption provisions.

77. At the operational level, the Tunisian authorities reported on the submission of extradition requests to Canada, Italy, Qatar, and the United Arab Emirates for the surrender of officials involved in corrupt practices. Discussions are ongoing regarding follow-up to the extradition requests. In the field of asset recovery, open channels of communication are in place, either bilaterally or on the occasion of regional events, with countries such as Canada, France, Italy, Lebanon, Spain, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States, to explore the most efficient ways for asset recovery. An amount of 28.8 million dollars, frozen in Lebanon, was returned to Tunisia. The use of INTERPOL channels is pursued for the exchange of information on cross-border crime. Training sessions, in collaboration with the StAR Initiative and the United Nations Development Programme, and a study visit to France were organized for judges and prosecutors to enhance knowledge on foreign legal practices and to benefit from experience on how to handle complex cases of financial crimes.

United States of America

78. The United States reported that, as appropriate and consistent with the domestic legal system, the national authorities assist counterparts from other States Parties to the Convention against Corruption in civil and administrative proceedings for the detection of corruption offences. Assistance is provided on a case-by-case basis based on the facts and circumstances supporting the specific request. The nature and purpose of the request determines which United States agency would be primarily responsible for reviewing and, as appropriate, executing the request.

79. With regard to assistance available in seizing and forfeiting assets beyond mutual legal assistance mechanisms, the United States supports domestic and foreign investigations through a number of channels. Investigative assistance can

often be obtained through a number of law enforcement agency attachés located abroad who are able to liaise with their counterparts for investigative and prosecutorial assistance needs. The United States is a member of the Egmont Group and several practitioner networks related to the recovery of the proceeds of crime, including the Camden Asset Recovery Inter-Agency Network, which can facilitate information exchange.

80. With regard to mutual legal assistance proceedings, where compulsory measures are required (e.g., production of bank records, service of process, taking testimony, authentication of records, execution of a search and seizure warrant, enforcement of a restraining and/or a confiscation judgement), a mutual legal assistance request is necessary. Such requests may be based on a bilateral mutual legal assistance treaty, multilateral convention, or reciprocity, particularly in the case of a letter rogatory or letter of request. The United States central authority for mutual legal assistance requests is the Department of Justice, Office of International Affairs. Requests for legal assistance are executed pursuant to the terms of the treaty or convention, if invoked, and United States domestic law.

81. Upon receipt of an appropriate mutual legal assistance request, the Department of Justice, pursuant to title 18, United States code, section 3512, may file an application with a district court seeking authorization to execute a foreign request for assistance in the investigation and prosecution of criminal offences. The scope of assistance provided using this measure may include search warrants, warrants for the contents of stored wire and electronic communications and related records, and orders compelling testimony and/or the production of documents (e.g., bank records).

82. Under the domestic law of the United States, at the request of prosecutors, courts may order a temporary (renewable) 30-day restraint of assets located in the United States based on evidence of an arrest or charge in a foreign jurisdiction in anticipation of filing a non-conviction based confiscation proceeding against that property.

83. The United States has the ability to enforce foreign confiscation-related restraining orders and confiscation judgements pursuant to an mutual legal assistance request or pursuant to requests made under certain multilateral conventions, including the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Convention against Corruption and the Organized Crime Convention. The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to confiscation under United States law, had the underlying acts been committed in the United States.

84. If the foreign jurisdiction does not yet have a forfeiture-related order against the asset, the United States, when appropriate, can initiate an action in the United States, either as a criminal confiscation or as a “non-conviction-based” (civil) confiscation. That ability is based on United States confiscation authority. The United States may forfeit properties within the jurisdiction of the United States which constitute, are derived from, or are traceable to, a broad range of domestic and foreign offences. In addition, United States confiscation authority extends to criminal proceeds and instrumentalities located outside the United States that are

traceable to a criminal defendant prosecuted in the United States or to criminal conduct occurring in part in the United States.

Venezuela (Bolivarian Republic of)

85. With reference to international cooperation, the Bolivarian Republic of Venezuela drew attention to the bilateral and multilateral treaties to which it was party concerning the transfer of convicted persons, extradition, and mutual legal assistance, while highlighting that a treaty was not required to provide mutual legal assistance. Furthermore, the Bolivarian Republic of Venezuela provided a detailed account of freezing and confiscation measures established in its national legislation.

86. The Bolivarian Republic of Venezuela provided examples and statistics of requests for mutual legal assistance in corruption cases made to various States between 2010 and 2013.

III. International cooperation under the United Nations Convention against Corruption: technical assistance and other activities

87. The Corruption and Economic Crime Branch of the United Nations Office on Drugs and Crime (UNODC) provided technical advisory services to the East African Association of Anti-Corruption Authorities for meetings of the Legal Technical Committee on Harmonization, in order to review anti-corruption laws in each of the Member States, identify strengths, weaknesses and divergences, and make recommendations on harmonization. As a follow-up to that first exercise, UNODC is working with the secretariat of the East African Association of Anti-Corruption Authorities to select specific priority areas for harmonization and legislative proposals, including on international cooperation.

88. UNODC also provided technical assistance to the authorities of Saudi Arabia through the organization of a training workshop to enhance the effectiveness of mechanisms for mutual legal assistance and increase the domestic capabilities for dealing effectively with related requests. The training workshop was held in Riyadh from 30 March to 2 April 2014 and its aim was to enhance the capacity and expertise of the newly established Committee on Mutual Legal Assistance, which functions under the supervision of the Ministry of Interior and comprises experts from the different authorities. Capacity-building in that particular area of international cooperation in criminal matters has been deemed necessary to ensure, among others, efficient and effective implementation of article 46 of the Convention against Corruption and article 18 of the Convention against Corruption.

89. The workshop was attended by 43 participants from the agencies constituting the Committee on Mutual Legal Assistance. It covered a series of topics and thematic areas that are relevant to mutual legal assistance. In addition to training on the topics and thematic areas, the workshop included discussion sessions with a view to identifying strengths and areas for further development in the current mutual legal assistance legislation and process in Saudi Arabia. Specific parts of the agenda were devoted to the current legislative framework of Saudi Arabia covering

mutual legal assistance, with emphasis on the analysis of the provisions of the decree on the mechanism of action of the standing committee of requests for mutual legal assistance. Ways and means of ensuring the best possible implementation of that legislative framework were specifically examined. From an operational point of view, the workshop provided a platform for further discussing management issues of the Committee on Mutual Legal Assistance.

90. As a result of the training workshop, the participants confirmed the necessity of concluding further bilateral treaties on mutual legal assistance with a view to enhancing the effectiveness of implementation of the relevant provisions of the Convention against Corruption and the Convention against Corruption. To further strengthen mutual legal assistance capacity and framework within Saudi Arabia, the participants suggested organizing and attending, in coordination with UNODC, further expert workshops in Saudi Arabia and abroad on UNODC mutual legal assistance tools and modes of operation of the Committee; to develop a model bilateral mutual legal assistance treaty tailored to the needs of Saudi Arabia and based on the United Nations Model Treaty on Mutual Assistance in Criminal Matters; and to explore possibilities for further strengthening of legislative and operational frameworks. The scope of the suggested technical support to the authorities of Saudi Arabia will further be assessed in conjunction with the forthcoming outcome of the review of implementation of chapter IV on international cooperation of the Convention against Corruption and the related technical assistance needs identified therefrom.

IV. Conclusions

91. The responses of Member States provided useful information on national approaches to dealing with international cooperation for the detection of offences under the Convention against Corruption, including for the identification, freezing and confiscation of assets acquired from such offences. Some responses focused primarily on modalities of international cooperation in criminal matters and did not cover the issue of extension of such cooperation to civil and administrative proceedings, whereas other contributions referred to this component of cooperation as well.

92. A number of Member States provided an overview of domestic civil and administrative procedures relating to corruption. Based on the sample of the reported information, it seems that the outcome of such procedures can be enforced abroad, particularly in jurisdictions with extensive experience in the field of international cooperation and with the potential to adopt flexible approaches to related matters. The legal basis for this could be applicable bilateral treaties or the Convention against Corruption itself, which contains provisions on domestic civil and administrative matters pertaining to corruption and, additionally, offers a wide array of modalities of international cooperation. Case-by-case arrangements are also possible, subject to the requirements and principles of the applicable domestic legislation.

93. More information from a wider sample of Member States is needed to assess the added value of cooperation among States parties in civil and administrative matters relating to corruption. It should be recalled that, pursuant to Conference

resolution 5/1, the Secretariat will further prepare a report for the Conference at its sixth session to be held in 2015 and will, for that purpose, send a request for additional and/or updated information to States parties in due course.

94. Receiving additional responses from as many States parties as possible, from different regional groups and legal traditions, will offer the opportunity for a more in-depth analysis of the issues under consideration. For that purpose, the Secretariat intends to solicit information from States parties and signatories to the Convention against Corruption that have not yet responded and also ask countries responding in the first instance to update, if they wish, the feedback provided. Focusing on the methodological aspects of the information-gathering, the template circulated during the fifth session of the Implementation Review Group was a useful tool that enabled the respondents to focus on carefully articulated issues at both the domestic and international levels of implementation. Therefore, the Secretariat avails itself of this opportunity to express its gratitude to the Government of Brazil for its initiative to bring the template to the attention of the Implementation Review Group, as adopted by the G-20 Working Group on Anti-Corruption. However, for purposes of comprehensiveness of the information requested, the Secretariat urges States parties not only to use the template, but also to accompany it with narrative text describing in a detailed manner the national measures under discussion.

95. In addition, the Secretariat stands ready to utilize all possible ways of information-gathering and analysing national contributions beyond the traditional method of sending out a note verbale (for example, make use of the ongoing process of conducting the country reviews within the first review cycle of the Mechanism for the Review of Implementation of the Convention against Corruption, especially in relation to the implementation of key provisions such as articles 46 and 48 of the Convention) and to rely on the deliberations and exchange of views in different intergovernmental forums (for example, the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference of the States Parties to the Convention against Corruption and the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Doha in April 2015, which includes on its agenda a substantive item on international cooperation).

96. Concrete provisions of the Convention, in its chapters III, IV and V, as well as indications and some first information in the received national responses, delineate the contours of further analysis needed on the following — indicatively mentioned — issues:

(a) Interpretation of the general principle contained in article 43, paragraph 1, of the Convention against Corruption through the compilation of national good practices, experiences and challenges encountered;

(b) Cooperation in relation to administrative offences, such as tax and customs offences, which are often “intermingled” with corruption offences and their investigation is essential for the detection of the corrupt acts;

(c) The frequent need to expand the scope of mutual legal assistance involving legal persons owing to the divergent national approaches to the nature of liability of legal persons (criminal, civil, administrative);

(d) Cooperation in relation to the civil and administrative consequences of corruption in contractual relationships, especially in parallel criminal cases of cross-border corruption;

(e) The added value of cooperation in civil and administrative matters at the so-called “pre-mutual legal assistance” stage, where the submitted information could assist the authority of the recipient State in undertaking or successfully concluding inquiries and criminal proceedings or could result in a subsequent mutual legal assistance request;

(f) Enforcement of foreign freezing or seizure and confiscation orders issued by administrative authorities;

(g) Enforcement of a foreign confiscation order without a prior criminal conviction;

(h) Cooperation and exchange of information between the financial intelligence units of cooperating States, especially in cases where the financial intelligence units are administrative authorities.
