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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Afghanistan¹

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

Afghanistan signed the United Nations Convention against Corruption on 20 February 2004 and ratified it on 25 August 2008.

The country's legal system is based on civil law, with the provisions of sharia law taking precedence over all other laws (art. 3 of the Constitution).

The implementation by Afghanistan of chapters III and IV of the Convention was reviewed in the third year of the first review cycle, and the executive summary of that review was issued on 4 August 2016 (CAC/COSP/IRG/I/3/1/Add.29).

The legislation implementing chapters II and V of the Convention principally comprises the Criminal Code, the Criminal Procedure Code, the Administrative Procedure Code, the Whistle-blowers Protection Law, the Asset Declaration and Registration Law, the Access to Information Law, the Law on Extradition of the Accused, the Convicted Individual and Legal Cooperation Law (Mutual Legal Assistance Law) and the Anti-Money-Laundering and Proceeds of Crime Law (Anti-Money-Laundering Law).

Relevant institutions involved in preventing and countering corruption include the Attorney General's Office, the Supreme Court, the High Council for Rule of Law and Anti-Corruption, the Anti-Corruption Justice Centre and the Financial Transactions and Reports Analysis Centre of Afghanistan (FinTRACA).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Afghanistan has put in place a legal and regulatory framework to prevent corruption. The anti-corruption strategy of Afghanistan was developed in 2017 through a consultative process with civil society, international organizations and independent experts. The strategy was updated in late 2018.² Mechanisms to evaluate the implementation of the anti-corruption strategy have been put in place.³

Overall responsibility for the coordination and monitoring of the anti-corruption strategy lies with the High Council for Rule of Law and Anti-Corruption. The Council

¹ The present executive summary reflects the state of implementation by Afghanistan of chapters II and V of the Convention against Corruption. It is based on the participation by Afghanistan in all phases of the second review cycle, in particular the joint meeting held in Vienna from 9 to 11 September 2019. The present document includes the outcome of consultations with the appointed focal point that followed the joint meeting and lasted until 31 July 2021. These consultations made it possible to resolve all outstanding issues. The present document does not reflect the situation after 15 August 2021 and is made available to the Implementation Review Group for information purposes only, in line with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

² The implementation of that strategy continued until mid-2020. The latest interim anti-corruption strategy and action plan for 2021 developed by the Anti-Corruption Commission has been shared with stakeholders for consultation, but has not yet been approved by the High Council for Rule of Law and Anti-Corruption.

³ Evaluation of the national anti-corruption strategy began in 2020. A joint committee, with members comprising representatives of the Anti-Corruption Commission, the Ministry of Finance, the Attorney General's Office and the civil society organization Integrity Watch Afghanistan, was established to carry out the evaluation.

is evaluating existing legal instruments and administrative measures to determine their adequacy to prevent and fight corruption. The Special Secretariat for Combating Corruption, which reports to the Council, has been established to ensure that government institutions implement the anti-corruption strategy and related action plan. Prior to the establishment of the Council, responsibility for the coordination and monitoring of the anti-corruption strategy lay with the High Office for Oversight and Anti-Corruption, created through a presidential decree in July 2008 and abolished in 2014.⁴ Afghanistan actively collaborates with international organizations in developing anti-corruption measures and participates in international projects aimed at preventing corruption. The Independent Joint Anti-Corruption Monitoring and Evaluation Committee was established as an independent agency in 2010 through Presidential Decree 61, in order to monitor and evaluate the anti-corruption efforts of the Government and the international community. The Committee reports to the President, the Parliament and the international community on the state of the fight against corruption in Afghanistan.

The Anti-Corruption Justice Centre was established in 2016, pursuant to article 3 of Presidential Decree No. 53. The High Council for Rule of Law and Anti-Corruption may forward corruption-related cases to the Centre.

All of the above-mentioned institutions were established through presidential decrees rather than by law, making their independence vulnerable to political change.

The Office of the Deputy Attorney General for Anti-Corruption, which was established within the Attorney General's Office, prosecutes cases that do not fall under the purview of the Anti-Corruption Justice Centre and leads asset recovery efforts.

The Judicial Coordination Committee is chaired by the Supreme Court and is composed of representatives of the Ministry of Interior and the Attorney General's Office. The Committee was established in order to address corruption in judicial institutions.

Afghanistan has not informed the Secretary-General of the United Nations of the name and address of the authority that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, hiring, retention, promotion and retirement of civil servants is regulated by the Civil Servants Law (Official Gazette No. 861). Procedures for the recruitment of civil servants are established in articles 7 to 11 of the Civil Servants Law. Articles 13 to 15 of the Civil Servants Law establish the recruitment mechanism for high-ranking public officials.

The Civil Servants Law regulates the remuneration of public officials, and the Ministry of Finance oversees the system for salaries and other benefits.

Under the Independent Administrative Reform and Civil Service Commission, the Civil Service Institute is responsible for the provision of training and capacity-building for civil servants.

All educational programmes of the Civil Service Institute include an anti-corruption element. Training programmes on the implementation of the anti-corruption strategy are organized regularly by both the Institute and the Independent Administrative Reform and Civil Service Commission.

⁴ The Anti-Corruption Commission was established through Presidential Decree No. 110 in 2020. The Special Secretariat for Combating Corruption, the Office for Asset Registration and Verification and the Independent Joint Anti-Corruption Monitoring and Evaluation Committee were integrated into the Anti-Corruption Commission.

No information was provided regarding the existence of procedures to identify positions that are especially vulnerable to corruption or specific procedures for the selection and training of individuals for such positions.

Under the Constitution (art. 85) and the Election Law, candidates for election to public office must not have been convicted of crimes against humanity or other criminal acts, or have been sentenced to deprivation of civil rights by a court. The Election Law establishes requirements related to the election of members of village councils, mayors and municipal councillors. Civil servants, members of the judiciary and the military, and high-level political functionaries must resign from their position in order to participate in elections.

In accordance with article 77 of the Election Law, candidates must report their funding and spending to the Election Commission. They cannot accept or receive donations from foreign citizens or States. The media reports to the Commission all payments received from candidates.

Article 35 of the Constitution makes transparency of the financial resources of a political party a precondition for the establishment of that party. Article 14 of the Political Parties Law establishes that the expenses of political parties must be public and transparent; it does not provide for specific measures to enhance transparency. According to article 15 of the Law, a political party can be funded from membership contributions, donations by Afghan natural persons up to a maximum amount of 2 million afghanis (approximately 23,000 dollars) per year, income from movable and immovable property, and subsidies by the Government.

Article 151 of the Constitution states that the President, vice-presidents, ministers, the Chief Justice and members of the Supreme Court, the Attorney General, heads of the Central Bank and the National Directorate of Security, governors and mayors must not engage in any profit-generating activity with the State during their term of office.

The Administrative Procedure Code contains provisions on disclosing and managing conflicts of interest (art. 21). Furthermore, article 14 of the Supreme Audit Office Law requires the Auditor General, his or her deputy and auditors of the Supreme Audit Office to avoid conflicts of interest. Article 13 of the Civil Servants Law stipulates that civil servants must not be involved in tenders, auctions or sales for their personal benefit or the benefit of others, use official hours for personal matters or misuse their authority.

Violations of the conflict of interest rules are punishable under articles 395 and 403 of the Criminal Code.

The conduct of public officials in Afghanistan is regulated by a system of norms contained in the Administrative Procedure Code and the Code of Conduct for Civil Servants. The administrative activities of public officials must be based on the principles of legality (art. 6 of the Administrative Procedure Code), equality and prohibition of discrimination (art. 7 of the Administrative Procedure Code), and impartiality (art. 8 of the Administrative Procedure Code). Public officials should not abuse their position (art. 6 of the Code of Conduct for Civil Servants). They must not accept or give gifts or use the equipment or facilities of the organization for personal purposes. They must not take government property out of the organization without prior permission and must abstain from activities that could damage their integrity and neutrality, such as establishing or managing a company while being employed by the Government and undertaking paid or unpaid work with a company that has a contract with the Government (art. 6 of the Code of Conduct for Civil Servants). They must not participate in activities in which they hold a personal interest (art. 8 of the Code of Conduct for Civil Servants).

Civil servants must, upon appointment, sign a "statement of commitment" (art. 9 of the Code of Conduct for Civil Servants). Public bodies also adopt specific codes of conduct.

The Code of Conduct for Civil Servants reflects the principles of the International Code of Conduct for Public Officials.

Human resources and capacity-building departments are responsible for informing civil servants about the Code of Conduct for Civil Servants. The Independent Administrative Reform and Civil Service Commission has established an award for civil service employees who perform with integrity.

A law on the protection of reporting persons has been adopted, encouraging public officials to report corruption and providing for the protection of reporting persons. The act of threatening or mistreating reporting persons is a criminal offence under article 414 of the Criminal Code. There are no specific channels for public officials to report corruption.

The failure to report corrupt acts when such acts come to the notice of public officials is not a criminal offence.

The Asset Declaration and Registration Law regulates the disclosure of assets and interests. Public officials are obliged to declare their assets, income, revenues, gifts and other personal property (art. 8 of the Law). Declarations are submitted on paper by officials upon entry to and departure from office, and on an annual basis during tenure (art. 8). Declarations are verified by the Asset Registration and Analysis Department. On the basis of article 11 of the Law, declarations are verified upon receipt of a complaint regarding illicit enrichment. The verification of asset declarations submitted by high-level officials and asset declarations that raise red flags is not prioritized. Verification does not include lifestyle checks for officials and family members. The public has no access to the declarations.

The Constitution provides for the independence of the judiciary and establishes the Supreme Court as the highest judicial body in Afghanistan. The Constitution regulates the appointment and removal of judges, security of tenure, suitable salaries for judges and the restriction of certain activities. It ensures the participation of the Supreme Court in the preparation of relevant legislation and the judiciary's budget. The Law on the Organization and Jurisdiction of the Courts establishes additional measures to enhance the independence of the courts and judges. The individual independence of judges is ensured through special appointment and removal mechanisms, long-term tenure, recusal from cases in which there is a potential conflict of interest, limitations on involvement in political and commercial activities and appropriate salaries and social security benefits. Procedural laws contain special provisions to ensure the impartiality of judges.

A code of conduct for the judiciary has been adopted on the basis of articles 123 and 132 of the Constitution and article 68 of the Law on the Organization and Jurisdiction of the Courts in order to establish standards of conduct for judges and to regulate their duties and responsibilities (art. 2 of the code).

According to article 22 of the code, judges are required to monitor their colleagues' conduct and behaviour. If a judge observes a violation or attempted violation of the code by another judge, he or she must report it to the Supreme Court. According to article 23 of the code, whenever a judge does not abide by judicial performance standards, the High Council of the Supreme Court may impose disciplinary sanctions.

The Code of Conduct and Professional Standards for Prosecutors regulates the conduct of prosecutors. It establishes a mechanism for handling complaints against prosecutors and enforcing disciplinary sanctions.

Public procurement and management of public finances (art. 9)

The Procurement Law is based on the principles of transparency, competition and objective criteria for decision-making. Article 19 of the Law provides for the publication of procurement notices. In the case of international tendering, announcements should be published in English through international media (art. 19 (3)). Selection criteria must be defined in advance and made available to potential bidders

(art. 20). The Law requires public entities to publish tender documents and contracts on both their website and that of the National Procurement Authority (art. 10 (2)). Open tendering is the default procurement method (art. 18 (5)). The Law provides for the use of requests for quotes, restricted tendering and single-source procurement when open tendering is not feasible (art. 18 (5)). The use of alternative procurement methods is regulated in articles 18 to 23 of the Procurement Procedures. Appeals against procurement decisions can be made to the Administrative Review Committee. There is no opportunity for judicial review of the decisions of the Committee. Appeals do not have suspensive effect.

Article 17 of the Procurement Law prohibits conflicts of interest in procurement. The Law sets out specific obligations for procurement officials in the management of conflicts of interest, irregularities and suspicions of fraud in procurement.

Article 57 of the Procurement Law defines the functions and powers of the National Procurement Authority, including the monitoring and evaluation of staff and capacity-building. The debarment of bidders and contractors is possible under certain conditions (art. 49 of the Law).

According to article 8 of the Asset Declaration and Registration Law, employees of the financial, accounting and procurement departments of government entities, including the National Procurement Authority, must declare their assets.

The National Procurement Authority monitors and controls procuring entities in order to identify and address irregularities. The Supreme Audit Office audits the work of the National Procurement Authority.

According to articles 38 and 39 of the Public Finance and Expenditure Management Law, the budget must be proposed by the Government and adopted by the National Assembly.

According to article 52 of the Public Finance and Expenditure Management Law, the Ministry of Finance must publish the adopted annual budget, the allotments and explanatory documents on its official website and through the media (except for the defence budget).

Representatives of civil society are present at national budgeting meetings, and their views are considered when formulating the budget. Income and expenditure reports are sent to the Ministry of Finance. The budget department publishes weekly information on expenditures on its website.

The Ministry of Finance provides regular reports on the implementation of the budget to the Government and the National Assembly. The implementation of the budget is subject to independent auditing (art. 59 of the Public Finance and Expenditure Management Law).

The Supreme Audit Office Law establishes the mandates of the Auditor General, deputies and auditors of the Office and contains provisions on reporting, powers to audit and the obligations of audited entities. At the end of each fiscal year, the Treasury prepares a consolidated expenditure report, which is reviewed by the Supreme Audit Office. The Office provides an opinion with specific recommendations. The Ministry of Finance prepares an action plan for the implementation of those recommendations.

Pursuant to article 61 of the Public Finance and Expenditure Management Law, audit responsibilities are also entrusted to internal audit units. The training and capacity-building of auditors is the responsibility of the Ministry of Finance.

The internal audit units are involved in risk management activities within ministries and departments.

Ministries and government agencies keep proper records of procurement and payments, which are available for audit and investigation.

The legislation does not criminalize or penalize breaches of the obligation to preserve accounting books.

Public reporting; participation of society (arts. 10 and 13)

Access to information in Afghanistan is regulated by the Constitution (art. 50) and the Access to Information Law, which was adopted in 2014. Article 10 of the Access to Information Law requires public bodies to designate staff responsible for providing information to the public.

Article 15 of the Access to Information Law requires public bodies to make all information and important documents available to the public, including proactively through their websites. The exceptions to this rule relate to national security and the right to privacy, as listed in article 16 of the Access to Information Law, based on article 50 of the Constitution. According to article 6 of the Law, agencies are required to provide the requested information within 10 working days.

Citizens may appeal a refusal to provide information in court. The Access to Information Commission has been established to ensure the implementation of the legislation. The Commission had received 240 complaints by August 2019.

Presidential Decree 2943 provides for the simplification of licensing procedures through one-stop shops. The General Directorate for Central Registration of the Ministry of Industry and Commerce is overseeing that process. Multiple ministries and government departments have introduced the licensing or provision of services through the use of information and communications technologies.

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee issues periodic reports on the risks of corruption. These reports are published on the Committee's official website.

Private sector (art. 12)

The country's legislation provides for the mandatory annual auditing of limited liability companies.

The annual financial statements of all private sector entities should be submitted to the Central Business Registry of the Ministry of Industry and Commerce pursuant to the Limited Liability Companies Law (arts. 11 and 52) and the Beneficial Ownership Regulation. Under article 45 of the Limited Liability Companies Law, all limited liability companies are required to establish internal audit committees to assess the audit reports of the internal auditors and the financial statements of the companies. The internal audit committees also consider the internal regulations of the company related to financial and internal controls and risk management. According to article 82 of the Law, all limited liability companies with more than 50 shareholders must employ internal auditors.

The prevention of conflicts of interest in the private sector is regulated by articles 49 to 51 of the Limited Liability Companies Law. Under article 49, members of the board of directors must disclose any conflicts of interest and cannot vote on any decision related to that matter. Judicial action in relation to conflicts of interest is regulated by article 50. No restrictions exist on the professional activities of former public officials or the employment of public officials by the private sector after their resignation or retirement.

Under article 54 of the Limited Liability Companies Law, limited liability companies are required to maintain corporate records, including a shareholders' registry, details of members of the board of directors, the initial share capital and its increase, the minutes of meetings of shareholders and the board of directors, and annual financial statements. Article 74 of the Law requires limited liability companies to keep documents and records and make them available for auditing. Such documents may be used as evidence in court.

Measures to prevent money-laundering (art. 14)

Afghanistan has established a regulatory and supervisory anti-money-laundering regime for financial institutions and designated non-financial businesses and professions, consisting of the Anti-Money-Laundering Law and the related implementing regulations. Pursuant to article 5 of the Regulation on Responsibilities and Measures to Prevent Money-Laundering and Terrorism Financing, financial institutions must adopt policies and procedures to identify and verify customers, including beneficial owners (customer due diligence), maintain records and information that have been obtained, and report suspicious transactions and transactions made in cash in an amount of more than 1 million afghanis (approximately 11,516 dollars).

While Da Afghanistan Bank is the primary regulatory and supervisory authority for financial institutions, supervisory authorities for designated non-financial businesses and professions are not defined. The Anti-Money-Laundering Law provides for sanctions for non-compliance with obligations established in the Law. Such sanctions include the revocation or suspension of a business licence, fines of 50,000 to 500,000 afghanis (approximately 650 to 6,500 dollars) and corrective actions (art. 24 (1)). No information was provided on the sanctions that had been implemented.

Afghanistan adopts a risk-based approach in implementing measures to prevent money-laundering and terrorism financing and conducts a national risk assessment every two years.

Afghanistan established FinTRACA within Da Afghanistan Bank (the country's central bank) as a centre in charge of receiving, analysing and disseminating suspicious transaction reports (art. 25 of the Anti-Money-Laundering Law). FinTRACA is legally mandated to cooperate and exchange information with law enforcement authorities through formal agreements (arts. 22 and 32 of the Law). In addition, the National Coordination Commission has been established to develop and monitor the implementation of the national strategy and action plans to combat serious economic crimes (art. 33 of the Law). FinTRACA is a member of the Egmont Group of Financial Intelligence Units and the Asia/Pacific Group on Money Laundering and an observer in the Eurasian Group on Combating Money Laundering and Financing of Terrorism.

Any person who leaves or enters Afghanistan in possession of currency or bearer negotiable instruments of a value exceeding 10,000 dollars must declare the fact to a customs officer (art. 7 of the Anti-Money-Laundering Law; art. 5 (3) of the Regulation Governing the Reporting and Control of Physical Transfers of Currency). Failure to declare and the provision of false or incomplete declarations is punishable and may lead to seizure of items and a monetary fine.

When carrying out wire transfers, financial institutions and money transmitters must obtain, verify, include and maintain available information on the payment originator (art. 6 (4) and (5) of the Anti-Money-Laundering Law). Wire transfers without complete originator information are requested to be supplemented with the missing information and must be refused and reported to FinTRACA if the requestor refuses or fails to do so (art. 6 (6) of the Law).

2.2. Successes and good practices

- The existence of the comprehensive Whistle-blowers Protection Law, which provides for different ways for public officials and private sector employees to report corrupt practices.

2.3. Challenges in implementation

It is recommended that Afghanistan:

- Strengthen the independence of the anti-corruption bodies established through presidential decrees by adopting relevant legislation (art. 5).

- Inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption (art. 6, para. 3).
- Strengthen the transparency of the campaign spending of political parties and the funding of candidatures for public office (art. 7, para. 3).
- Put in place procedures to identify public positions that are especially vulnerable to corruption and provide information on specific procedures for the selection and training of individuals for such positions (art. 7, para. 1 (b)).
- Strengthen the implementation of the Code of Conduct for Civil Servants, organize awareness-raising and training activities and provide for sanctions in case of breaches.
- Consider introducing sanctions for public officials who fail to report known facts about cases of corruption (art. 8, para. 4).
- Consider carrying out training and awareness-raising activities to encourage staff to report corruption (art. 8).
- Strengthen awareness-raising efforts aimed at informing society of the protections provided to persons reporting acts of corruption (art. 8).
- Endeavour to prioritize the verification of asset declarations of all high-level officials and declarations that raise red flags, and include lifestyle checks for officials and their family members (art. 8).
- Consider allowing access to the asset declarations of high-level officials.
- Introduce into the legislation provisions criminalizing or penalizing breaches of obligations related to the preservation of accounting books (art. 9, para. 3).
- Introduce measures to prevent corruption in the private sector, including measures to promote transparency, integrity and the prevention of conflicts of interest in private entities (art. 12).
- Introduce restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement (art. 12).
- Define in the legislation appropriate supervisory authorities for designated non-financial businesses and professions and ensure that the supervisory regime is effectively implemented, including through on-site inspections (art. 14, para. 1).

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

- Capacity-building in relation to systems for the prevention and detection of conflicts of interest (arts. 7, para. 4, and 8).
- The establishment of an effective system for monitoring the implementation and enforcement of codes of conduct for public officials (art. 8).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Afghanistan regulates asset recovery through the relevant provisions of the Mutual Legal Assistance Law and the Anti-Money-Laundering Law, as well as through

relevant bilateral agreements signed with States (such as the agreement with the Russian Federation of 2018 and the agreement with Uzbekistan of 2019).⁵

As a rule, Afghanistan may render mutual legal assistance on the basis of reciprocity and without requiring a relevant treaty (art. 55 (3) of the Anti-Money-Laundering Law).

In 2018, Afghanistan established the Office for Asset Recovery under the Office of the Deputy Attorney General for Anti-Corruption, as an entity responsible for asset recovery cases, including the sending and receiving of requests for mutual legal assistance (arts. 3 and 12 of the Law on the Organization and Authority of the Attorney General's Office).⁶

According to article 31 of the Anti-Money-Laundering Law, FinTRACA may share information with its foreign counterparts spontaneously or upon request. Furthermore, according to article 68 of the Law, all relevant authorities involved in countering money-laundering, terrorism and predicate offences may provide similar assistance. Informal channels of cooperation are explicitly permitted in emergency situations, as stipulated in article 26 (3) of the Mutual Legal Assistance Law. FinTRACA uses the Egmont Group's secured platform to share information rapidly and spontaneously.

FinTRACA has signed international memorandums of understanding with its counterparts in 18 countries.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The Anti-Money-Laundering Law obliges reporting entities to identify and verify the identity of customers, including beneficial owners (art. 12), and to apply enhanced due diligence in relation to customers who are politically exposed persons (art. 15). The definition of politically exposed persons encompasses both foreign and national officials entrusted with prominent functions and also covers their family members and close associates.

Da Afghanistan Bank and FinTRACA have issued a number of regulations, circulars and guidelines that explain the responsibilities of financial institutions with regard to countering money-laundering and terrorism financing and specify the types of natural and legal persons subject to enhanced scrutiny. However, Afghanistan has not established a system for notifying financial institutions within its jurisdiction of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny.

The retention period for customer identification and verification data and all necessary records on transactions is at least five years (art. 16 of the Anti-Money-Laundering Law).

Afghanistan prohibits the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group, pursuant to article 9 (1), read in conjunction with article 3 (1) (v), of the Anti-Money-Laundering Law. Financial institutions must not have a business relationship with such banks and must satisfy themselves that respondent financial institutions do not permit their accounts to be used by such institutions (art. 17 (1) of the Regulation on Responsibilities and Measures to Prevent Money-Laundering and Terrorism Financing).

Article 154 of the Constitution subjects the President, vice-presidents, ministers, members of the Supreme Court and the Attorney General to disclose their wealth before taking up and after leaving office. Other categories of public officials,

⁵ After the joint meeting, Afghanistan indicated that it had recently signed two bilateral memorandums of understanding in the area of asset recovery with the Islamic Republic of Iran and Kazakhstan and was considering signing similar memorandums with 10 other countries in the next five years.

⁶ Article 8 of the Asset Recovery Regulation establishes that the Office for Asset Recovery investigates and monitors illegal assets transferred abroad, in cooperation with the Ministry of Foreign Affairs.

including parliamentarians, are bound by the same obligation under the Asset Declaration and Registration Law, which came into force on 20 February 2019 (see the section on art. 8 of the Convention, above).

Afghanistan does not require public officials having an interest in or signature or other authority over a financial account in a foreign country to disclose such interest or authority.

Afghanistan is a member of the Asset Recovery Inter-Agency Network in West and Central Asia.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Afghanistan has no specific rules granting locus standi to other States to initiate civil action before its courts in order to establish title to or ownership of property or claim compensation for damage. While article 189 of the Criminal Code grants persons who have suffered a loss as a result of a crime the right to join a criminal case and claim compensation, that provision has never been applied in a case involving a foreign State party.

There are no specific provisions to recognize, in confiscation proceedings, a foreign State party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention.

Afghanistan can implement foreign confiscation orders on the basis of article 42 of the Mutual Legal Assistance Law, provided that the requirement of dual criminality is fulfilled and the foreign verdict is final. The country's courts are bound by the findings of the foreign order according to article 40 of the Mutual Legal Assistance Law. Furthermore, Afghanistan may issue a domestic confiscation order for the proceeds of money-laundering and predicate offences upon a foreign request, as set forth in article 65 (1) and (2) of the Anti-Money-Laundering Law. Foreign non-conviction-based confiscation orders may also be implemented in Afghanistan, as stipulated under article 56 (2) (i) of the Anti-Money-Laundering Law.

Afghanistan has implemented a non-conviction-based confiscation system pursuant to article 40 of the Anti-Money-Laundering Law in cases where the perpetrator is unknown or has absconded, or where there is a legal impediment to prosecution.⁷

The authorities can give effect to a foreign seizure or freezing order (art. 2 (4) of the Mutual Legal Assistance Law; art. 56 (2) (j) of the Anti-Money-Laundering Law). Such assistance may also be rendered on the basis of article 38, read in conjunction with article 55, of the Anti-Money-Laundering Law, which instruct the competent authorities to provide the widest possible measure of cooperation to foreign States, including by issuing orders for provisional measures. The country's courts may issue freezing or seizure orders upon notice by a foreign State on the basis of article 32 of the Mutual Legal Assistance Law. Afghanistan has taken additional measures to preserve property that could be subject to confiscation by empowering the prosecution, under article 38 (1) (a) of the Anti-Money-Laundering Law, to apply to the courts for the freezing or seizure of funds or property under investigation or suspected of being associated with money-laundering, financing of terrorism or predicate offences. That same article establishes a mechanism for the management of frozen or seized assets. However, the related implementing regulations had not been enacted at the time of the joint meeting.⁸

⁷ Furthermore, after the country visit, the authorities reported that article 7 of the Asset Recovery Regulation allowed for non-conviction-based confiscation of stolen or illegal assets in case of the death of an accused or convicted person.

⁸ After the country visit, the authorities reported that chapter V of the Asset Recovery Regulation, which had been adopted by the Cabinet on 4 March 2020 and had come into force through a presidential decree on 13 April 2020, addressed the issue of the management of seized and confiscated assets.

Afghanistan can satisfy foreign requests to identify, trace, freeze or seize proceeds of crime, property and equipment on the basis of article 2 (1) of the Mutual Legal Assistance Law and article 38 (1) (b), read in conjunction with article 55, of the Anti-Money-Laundering Law.

Conditions for incoming requests for mutual legal assistance are detailed in articles 27 and 28 of the Mutual Legal Assistance Law. Requests are processed in accordance with national legislation, as set forth in article 26 of the Mutual Legal Assistance Law.

Article 28 (3) (d) of the Mutual Legal Assistance Law provides for the possibility of requesting further information from the requesting State party if the information provided in the request is insufficient. Furthermore, provisional measures taken in accordance with article 32 of the Mutual Legal Assistance Law may be extended beyond one month when satisfactory reasons are provided.

Bona fide third parties may appeal confiscation and freezing or seizure orders within a period of three years from the date of issuance of the orders (art. 38, read in conjunction with art. 55, of the Anti-Money-Laundering Law).

Return and disposal of assets (art. 57)

Afghanistan regulates the disposal and return of confiscated property through the Mutual Legal Assistance Law, the Anti-Money-Laundering Law and the Anti-Corruption Law.

Pursuant to article 33 of the Mutual Legal Assistance Law, immovable property confiscated following a foreign verdict must be sold through a bidding process, and the proceeds must be transferred to the requesting State. Movable property may be ceded to the requesting State.

Under the Anti-Money-Laundering Law, confiscated funds, property and proceeds accrue to the State, which may allocate them to the fund for combating organized crime. The confiscated funds, property and proceeds must remain encumbered, up to their value, by any rights in rem lawfully established in favour of third parties (art. 43 of the Law). The return of such funds, property or proceeds may be claimed by a requesting State acting as a bona fide third party, within three years of the date of the final order of the court (art. 44 of the Law).

Furthermore, article 66 of the Anti-Money-Laundering Law provides for the establishment of a fund for asset recovery and asset sharing, to serve as a repository for all moneys derived from the fulfilment of confiscation, recovery and forfeiture orders and from the settlement of confiscation, recovery and forfeiture claims, and ancillary income. Authorities reported that they were not sure whether the fund would actually be set up.

Moreover, Afghanistan has established, under article 36 of the amendment to the Anti-Corruption Law of 5 March 2019, the anti-corruption fund, which is funded from, inter alia, the proceeds of corruption offences. The funds will be allocated for detection, investigation and prosecution organs that play an active role in enforcing court judgments on confiscation and the recovery of stolen and illegal assets (arts. 22 (3) and (4), 24 and 25 of the Anti-Corruption Law).

All expenses associated with the execution of a foreign request for mutual legal assistance must be borne by the requesting State party, according to article 50 of the Mutual Legal Assistance Law and article 64 of the Anti-Money-Laundering Law.

Article 67 of the Anti-Money-Laundering Law establishes a legal basis on which to conclude arrangements for the final disposal of confiscated property.

3.2. Successes and good practices

- The existence of a comprehensive legal procedure for the enforcement of foreign confiscation, seizure and freezing orders.

3.3. Challenges in implementation

It is recommended that Afghanistan:

- Notify financial institutions within its jurisdiction, at the request of another State party or on its own initiative, of the identity of a particular natural or legal person to whose accounts such institutions will be expected to apply enhanced scrutiny (art. 52, para. 2).
- Endeavour to continue efforts to enhance asset declaration and verification systems, including by enhancing the dissuasive measures in the event of failure to submit asset declarations; consider taking measures to enhance the sharing of information contained in those declarations with foreign competent authorities and to require public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship and to maintain related records, while providing for appropriate sanctions for non-compliance (art. 52, paras. 5 and 6).
- Ensure that foreign States are granted locus standi to initiate civil action in courts, including to claim compensation or damages (art. 53 (a) and (b)).
- Grant locus standi to other States parties to claim, in a confiscation procedure, ownership over assets acquired through the commission of an offence established in accordance with the Convention (art. 53 (c)).
- Ensure that the discretionary powers provided for by the Anti-Money-Laundering Law in relation to the return of movable assets are exercised in line with the provisions of article 57, paragraph 3, of the Convention; assess whether a legislative amendment is required to ensure that property confiscated and allocated to the anti-corruption fund or the fund for asset recovery and asset sharing can be returned to its prior legitimate owner, pursuant to article 57, paragraph 3, of the Convention; assess whether legislative or regulatory clarifications are required to avoid any overlap between the three different funds provided for under the Mutual Legal Assistance Law, the Anti-Money-Laundering Law and the Anti-Corruption Law.
- Consider revising provisions related to the costs of executing a request for mutual legal assistance, while bearing in mind the requirements of articles 46, paragraph 28, and article 57, paragraph 5, of the Convention.

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

- Capacity-building to improve the asset declaration and verification systems (art. 52, paras. 5 and 6).
- Capacity-building in relation to the management of seized and confiscated assets (art. 54, para. 2 (c)).
- Capacity-building programmes for law enforcement and other relevant authorities involved in recovering proceeds of corruption (art. 57).