

USA Response: Actions Taken or Considered after Completion of Reviews or in Follow-Up to Gaps or Needs Identified During the Review of Implementation of the UN Convention against Corruption

In response to the Secretariat's request for information contained in Note Verbale CU 2015/46/DTA/CEB/CSS, the United States is pleased to provide comments relating to the following questions:

1. The Government's actions taken, or those being considered, to address the observations contained in the Executive Summary and country report, or any actions undertaken in view of addressing technical assistance needs identified during the review.

The United States welcomes the opportunity to provide input to the work of the Implementation Review Group in line with Decision 5/1 of the Fifth Session of the Conference of States Parties to the UNCAC, as well as to encourage further consideration by States Parties on lessons learned from their participation in the Implementation Review Mechanism. In this context, we offer the following updates with regard to actions taken or considered by the U.S. government in response to the Executive Summary and country report on U.S. implementation of Chapters III and IV of the UNCAC.

I. Continue to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of such payments, e.g. in internal company controls, ethics and compliance programmes or measures.

With regard to the observation that the United States continue to review its policies and approach on facilitation payments, in preparation for its follow-up to the third round recommendations of the Organization for Economic Co-operation and Development (OECD) Working Group on Bribery, the U.S. government hosted numerous roundtables on the U.S. Foreign Corrupt Practices Act (FCPA) that included discussions on the issue of facilitating payments. ([See pages 6-7 of the OECD Phase 3 follow up report](#)). The feedback gained from these meetings also played an important role in informing the U.S. approach to drafting the [Resource Guide to the U.S. Foreign Corrupt Practices Act](#), co-authored by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC). On pages 25-26, the Guide discusses in detail facilitating payments, including discussing relevant cases, examples of routine governmental action and a sample hypothetical. It also emphasizes the OECD Working Group on Bribery's 2009 recommendation that signatories encourage companies to prohibit or discourage the use of facilitating payments, which the United States has done and continues to do regularly, and it underscores that such payments may violate local law and violate other countries' foreign bribery laws. Furthermore, the Guide reminds companies that facilitating payments must still be properly recorded in an issuer's books and records.

II. While noting that the current U.S. law recognizes the mandatory UNCAC offences as predicate offences for money-laundering purposes, continue efforts to amend federal legislation, and to the extent not yet accomplished state laws, to expand the general

scope of predicate offences for money-laundering purposes and increase the number of predicate offences relating to conduct committed outside U.S. jurisdiction.

The Department of Justice is actively working with the U.S. Congress on comprehensive money laundering and forfeiture legislative proposals designed to address gaps in the Federal government's current legal authority. Among other money laundering provisions, the proposed amendments would include a broader range of foreign corruption offenses within our money laundering predicates.

III. Ensure that the overall statute of limitations period applicable to UNCAC offences is sufficient to allow adequate investigation and prosecution.

In 2011, the U.S. House of Representatives and Senate Judiciary Committees passed legislation supported by the U.S. Department of Justice which would have extended the statute of limitations to six years (Senate version) or ten years (House version) for core public corruption offenses. Congress did not pass a final bill before adjourning. The U.S. government expects the topic to be taken up again during the 114th Congress.

IV. Explore the possibility of studying whether any significant correlations exist between recidivism rates and various corruption offences.

The U.S. Department of State undertook an internal review of existing academic studies to determine the extent to which data exists on whether there are significant correlations between recidivism rates and various corruption offences. One particular challenge in identifying recidivism rates for offenders in the United States is that "corruption crimes" are not tracked as a set of crimes and existing criminological research has not addressed those specifically with regard to recidivism rates. The United States continues to consider options regarding possible future research in this area.

V. Continue ongoing efforts to supplement, where necessary, the existing jurisdiction regime to ensure that multiple jurisdictional bases are available for the prosecution, investigation and adjudication of UNCAC offences, including jurisdiction for offences committed on board a vessel or an aircraft. In doing so, and if deemed appropriate, to establish jurisdiction on the basis of the active and passive personality principles in a wider context, consider implementing the term "national" in a broader manner, hence encompassing both citizens and legal persons registered in the U.S. territory.

This matter is still under discussion.

VI. Reduce the possibility of non-fulfilment of the double criminality requirement in the extradition context of money-laundering cases by expanding the scope of predicate offences to include those committed outside the U.S. jurisdiction on the understanding that such offences would constitute crimes had they been committed in U.S. territory.

The Department of Justice has undertaken to review incoming extradition requests concerning money laundering, and has not yet identified a case in which United States could not fulfill the

double criminality requirement in such requests based on conduct outside the United States that would not constitute a crime, had that conduct been committed in U.S. territory. This review is ongoing.

VII. Continue to make best efforts to ensure efficiency in executing incoming MLA requests, including by giving careful consideration to the collection of data on the time frame for dealing with such requests.

The Office of International Affairs (OIA) of the Criminal Division, U.S. Department of Justice, is in the process of developing a new database to collect data regarding, among other things, the time frame to execute mutual legal assistance requests. OIA is also seeking to assemble a team dedicated exclusively to processing incoming requests, as well as additional funding to support this initiative.

2. The Government's benefits drawn from the participation in the review mechanism such as advice, receiving or sharing good practice examples, further exchanges with or support received by the reviewers, other States parties, the United Nations or other development partners.

The United States has used the materials produced by the reviews to help identify raw needs for technical assistance, but the information contained in the Executive Summaries has been only moderately helpful for practical decisions by the U.S. government related to the provision of technical assistance to other Member States. In many instances, the information on technical assistance needs is not detailed enough to substantiate specific changes to U.S. bilateral assistance programs in the field of anti-corruption. While the Mechanism is not the appropriate vehicle to provide or direct the actual delivery of technical assistance, it should and could be more useful in helping identify clear and transparent technical assistance needs in a way that might be instructive to all States Parties, including providers of technical assistance and recipients. One clear way of doing so would be for States Parties to publish the full reports resulting from their review.