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II. Executive summary

South Africa

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

South Africa signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 22 November 2004.

The implementation by South Africa of chapters III and IV of the Convention was reviewed in the second year of the first review cycle, and the executive summary of that review was issued on 16 November 2012 (CAC/COSP/IRG/I/2/1/Add.9).

South Africa follows a dualist approach with respect to the domestic effect of international treaties. According to section 231 (4) of the Constitution of South Africa, any international agreement becomes law in South Africa when it is enacted into law through national legislation, excluding any self-executing provision of an agreement, unless it is inconsistent with the Constitution or an act of parliament.

Relevant implementing legislation includes the following: Prevention and Combating of Corrupt Activities Act, Protected Disclosures Act, Promotion of Access to Information Act, Promotion of Administrative Justice Act, Public Service Act, Public Administration Management Act, Public Finance Management Act, Prevention of Organized Crime Act, Financial Intelligence Centre Act and International Cooperation in Criminal Matters Act.

Entities with mandates relevant to the prevention and countering of corruption include: Department of Public Service and Administration (DPSA), Public Service Commission (PSC), National Treasury, Office of the Chief Procurement Officer (OCPO), Special Investigating Unit (SIU), Financial Intelligence Centre (FIC) and other agencies. Coordination is exercised through the Anti-Corruption Task Team (ACTT).

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)

There are several anti-corruption strategies, policies and laws at the sectoral and governmental levels, principally the Public Service Anti-Corruption Strategy of 2002, the Local Government Anti-Corruption Strategy of 2016 and the country's national development plans, the Medium-Term Strategic Framework 2014–2019 (containing deliverables relating to combating corruption in the public and private sectors) and the Medium-Term Strategic Framework 2019–2024 (containing priorities geared towards fighting corruption and promoting integrity and good governance in public institutions). Other relevant policies include public service directives governing remunerative work outside of the public service and business activities with the State.

The development of a national anti-corruption strategy is being undertaken under the auspices of the Anti-Corruption Task Team. The national strategy recognizes the need to coordinate anti-corruption activities and create effective implementation structures and monitoring measures. The strategy was adopted by the Cabinet on 18 November 2020, following the country visit.

The participation of society is promoted through the National Anti-Corruption Forum, a coalition formed by representatives of the public, business and civil society sectors aimed at driving the national anti-corruption campaign, and various partnerships. The Forum was not active at the time of review. The national anti-corruption strategy supports the creation of a reformed multisectoral body to replace the Forum.

ACTT[1] coordinates the work of State organs aimed at preventing and combating corruption in the public and private sectors.

Corruption prevention functions include the annual disclosure of financial interests by designated employees (eDisclosure system); the national anti-corruption hotline; ethics and anti-corruption training programmes for public service employees and local government officials; ethics and anti-corruption functions, including ethics officers and ethics committees, in government departments; the Ethics Officer Forum; and relevant public service policies.

South Africa assesses progress in the implementation of anti-corruption measures through various studies and assessments, including corruption assessments, audits of anti-corruption capacity requirements, diagnostic reports, public sector ethics surveys, government and audit reports, and reports published by civil society.

The Department of Justice and Constitutional Development plays a leading role in reviewing laws and regulations against corruption, together with the South African Law Reform Commission. Laws are reviewed on an ad hoc basis, whenever a need to review is identified.

South Africa is a member of and participates in the activities of the Group of 20 Anti-Corruption Working Group, the Working Group on Bribery in International Business Transactions of the Organization for Economic Cooperation and Development, the Southern African Development Community, the Southern African Forum against Corruption, the African Union, the Financial Action Task Force (FATF) and the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). In addition, national authorities have signed bilateral cooperation agreements and participate in trainings and information exchange with foreign counterparts.

Several bodies are tasked with preventing and countering corruption, including DPSA, PSC, the National Treasury, OCPO, SIU, FIC, the Auditor General, the Public Protector and other agencies. Among these entities, PSC has legal independence as established in the Constitution (sect. 196). None of the existing bodies is entrusted with a specialized mandate pertaining to corruption prevention, including education and awareness-raising. Furthermore, the anti-corruption strategy acknowledges weakness regarding coordination among government institutions involved in anti-corruption activities.

South Africa has dedicated significant efforts to continuously training employees to carry out prevention functions, although the capacity for prevention functions in government institutions is not yet adequate. At the time of review, there were vacancies in a number of key agencies, including DPSA and the Public Protector.

South Africa was reminded of its obligation to notify the secretariat of its corruption prevention authority or authorities.

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

The Public Service Act and the Public Service Regulations provide for the organization and administration of the public service and regulate, inter alia, conditions of employment, terms of office, disciplinary mechanisms, termination of employment, and specific provisions on countering corruption and on integrity management, including conflicts of interest.

The Public Service Act, section 11 (2), provides that the evaluation of persons for employment in the public service must be based on objective criteria, including training, skills, competence and knowledge. Vacancies are generally filled on a competitive basis, although open competition tends to be more frequent for entry-

[1] ACTT is a subcommittee of the Justice, Crime Prevention and Security Cluster and is made up of government stakeholders tasked with preventing and combating corruption in the public and private sectors.

level positions. Vacant posts in departments must be advertised as efficiently and effectively as possible (regulation 65 (1), Public Service Regulations).

There are no procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and their rotation, where appropriate, to other positions.

PSC is mandated pursuant to section 196 (4) (b), (c) and (f) (iv) of the Constitution to investigate, monitor and evaluate adherence to applicable procedures, propose and advise the State on measures to ensure effective and efficient performance in the public service, and advise national and provincial organs of the State regarding personnel practices in the public service.

Training for public servants, conducted at the National School of Government (NSG), covers the Public Service Anti-Corruption Strategy and mandatory components on ethics and integrity for non-managerial positions. Training and support for the implementation of the Public Service Regulations for public servants and ethics officers is provided by DPSA to all national and provincial departments, in partnership with NSG and the Ethics Institute of South Africa.

The Constitution and Electoral Act establishes basic criteria for candidature for and election to public office. The Electoral Commission is tasked, inter alia, with the management of elections of national, provincial and municipal legislative bodies in accordance with national legislation.

The Political Party Funding Act regulates the public and private funding of political parties. The Act is aimed at promoting transparency in political party financing by regulating the disclosure of donations exceeding the prescribed threshold, including donations from foreign governments, foreign persons or entities, and organs of State or State-owned enterprises, and setting an upper limit for donations (sect. 8 (1) and (2)). The Commission must publish donations disclosed to it on a quarterly basis and in the prescribed form and manner (sect. 9 (3)). Political parties must further account for their income, as prescribed in section 12. However, the Act has not yet been implemented.[2] Furthermore, there are no regulations on private funding of political parties and independent candidates.

South Africa has adopted a comprehensive framework to enhance transparency and prevent conflicts of interest among public officials. The measures cover members of the National Assembly and the National Council of Provinces, members of the executive, employees in the public service, local government councillors, and municipal staff members.

All public service employees are expected to comply with the Public Service Code of Conduct as contained in the Public Service Regulations. The regulations contain, inter alia, restrictions relating to conflicts of interest and ethical conduct, regulate the acceptance of gifts and benefits, regulate the performance of other remunerative work, prohibit employees from holding certain types of assets or official positions and from doing business with the State, require public servants to report suspected corruption, prohibit nepotism, and require all senior managers to disclose their financial and certain other interests to their respective heads of departments and executive authority (if the senior manager is the head of department) annually for submission to PSC. The executive authority is to engage with employees to ensure that conflicts are removed and, if they are not, it must institute disciplinary measures. Specialized staff or bodies (including heads of departments, ethics officers and ethics committees) are given responsibility and oversight, and sanctions for breaches apply. The Public Administration Management Act contains further provisions prohibiting public service employees and categories of municipal employees from conducting business with the State.

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[2] At the time of review, the Electoral Commission had finalized the implementing regulations, to be published with the notice of implementation on a date to be determined by the President.

For members of parliament, the Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members contains restrictions on members' outside activities and prohibited business activities (including gifts). The Code requires members to declare personal or private financial or business interests and to recuse themselves from any related decision-making process. The system for the disclosure of registrable interests includes specialized staff or bodies given responsibility and oversight, and sanctions for breaches.

For members of the executive (cabinet members, deputy ministers, premiers and members of executive councils) and members of parliament, the Executive Members' Ethics Act covers conflicts of interest (including the disclosure of financial interests) and requires, inter alia, the members to dispose of or put under administration, any interests that could give rise to a conflict of interest in performing their duties.

The financial disclosure requirements of South Africa encompass a comprehensive range of public officials as described under article 52, paragraph 5, of the Convention. The disclosure systems are guided by clearly defined objectives, clear reporting requirements and sanctions for non-compliance. Training and available guidelines have been issued for all but members of the executive.

While verification of disclosures by public service employees is done electronically, there is no systematic verification of disclosures by members of parliament and the executive. Moreover, the requirements pertaining to declarations for family members of public service employees are not yet operational (sect. 9, Public Administration Management Act).

It was confirmed that the disclosure requirements for members of the National Assembly and members of the executive are limited to financial interests and do not include non-financial, non-business interests from which a conflict of interest may arise.

Various mechanisms are in place to facilitate the reporting by public officials of acts of corruption and heads of department are required to establish systems and measures that encourage employees and citizens to report allegations of corruption and unethical conduct, including confidentially, and to address such reports (regulation 22, Public Service Regulations). Ethics officers and ethics committees in departments identify and report unethical behaviour and corrupt activities. Reporting requirements are included in the Public Service Code of Conduct and section 34 of the Prevention and Combating of Corrupt Activities Act.

Protections for reporting persons under the Protected Disclosures Act and the Witness Protection Act would be strengthened under the national anti-corruption strategy. Other relevant measures include the National Anti-Corruption Hotline and the SIU whistle-blower hotline. A need for continued awareness-raising of key measures and systems to facilitate the reporting by public officials of acts of corruption, and of available protection measures, has been noted.

In South Africa, judges are appointed by the President and have constitutionally protected independence. The Superior Court Act reaffirms the Chief Justice as the head of the judiciary, responsible for monitoring and evaluating the performance of judicial officers and the implementation of norms and standards for the exercise of leadership and judicial functions of all courts. The Code of Judicial Conduct contains provisions on conflicts of interest, association, extrajudicial activities, recusal and reporting of unprofessional or unethical conduct, among others. Any wilful or grossly negligent breach of the Code may amount to misconduct leading to disciplinary action in accordance with section 14 of the Act. The South African Judicial Education Institute is responsible for educating and training judicial officers and aspiring judicial officers, including in regard to ethics and integrity.

Each Head of Court must monitor and evaluate the performance of the judicial officers on a daily basis, to ensure optimal utilization and productivity. Judges are further required by law to disclose their registrable interests, which are captured in a register

of judges' registrable interests. The Judicial Service Commission has established a Judicial Conduct Committee to deal with complaints of judicial conduct.

A Code of Conduct and disciplinary mechanisms are applicable to members of the prosecution service, in addition to the aforementioned Public Service Code of Conduct and Public Service Regulations. Breaches of the Code have led to the application of disciplinary measures. The Fraud and Corruption Directorate of the National Prosecuting Authority (NPA) identifies potential fraud and corruption risks, and investigates and reports on cases involving fraud and corruption.

The NPA Integrity Management Unit is responsible for managing the Code and creating a preventative environment. Induction and ongoing training for members of the prosecution service are offered by NPA in collaboration with NSG, and functional training covering corruption and fraud is offered by the Justice College.

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

Public procurement at the national and provincial levels and in public entities and State-owned enterprises is regulated principally by the Public Finance Management Act. The Act requires government departments to develop and implement fraud prevention plans, to be included in their risk management strategies; outlines the responsibilities of accounting officers, i.e., heads of departments, in the case of national and provincial governments, and chief executive officers, in the case of public entities; and provides for instances where the National Treasury may investigate and remedy non-compliance.

The Office of the Chief Procurement Officer in the National Treasury manages procurement reforms, maintains the procurement system and oversees government business with the private sector.

South Africa employs a decentralized procurement system. The Preferential Procurement Policy Framework Act sets out the framework for procuring entities to establish measurable specifications and objective conditions, determined in advance, according to which tenders can be evaluated and accepted. Information relating to procurement procedures and contracts is publicly distributed and available through the OCPO e-Tender portal and central supplier database.

All contracts above 500,000 rand are subject to competitive bidding. In exceptional cases, the accounting officer or accounting authority may use alternative methods, provided that the reasons for deviating are recorded and approved by the accounting officer or accounting authority (regulation 16A6.4, Treasury Regulations). All cases where goods and services above the value of 1 million rand (inclusive of value added tax) are so procured must be reported within 10 working days to the relevant treasury authority and to the Auditor General.

Pursuant to Treasury and Public Finance Management Act regulations, bids are advertised in, at least, the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases, and on the website of OCPO. The processing of bids through the e-Tender portal is mandatory. Awards are published in the Government Tender Bulletin and other media.

Procedures, rules and regulations for the review and appeal of procurement decisions include section 33 of the Constitution and section 6 of the Promotion of Administrative Justice Act, or a judicial review may be conducted by the courts.

Pursuant to regulation 16A8.4 (a) and (b) of the Treasury Regulations, if a supply chain management official or procurement officer, or any close family member, partner or associate or other role player has any private or business interest in any contract, that person must disclose that interest and withdraw from participating in any manner in the process. Members of contracting authorities are also prohibited from holding private interests in contracts with the contracting authority (sect. 17 (1), Prevention and Combating of Corrupt Activities Act).

South Africa has initiated a number of reforms to the procurement system, with a view to strengthening monitoring, accountability and transparency.

South Africa has established procedures for the adoption of the national budget, which include public hearings on bills prior to adoption (sects. 26–28, Public Finance Management Act; Money Bills Amendment Procedure and Related Matters Act). The measures are supported by the Treasury Regulations on planning (sects. 5.1–5.3) and budgeting (sects. 6.1–6.7).

Measures are also in place to provide for timely reporting on revenue and expenditure (sects. 32 and 40 of the Public Finance Management Act). Accounting and auditing standards include provisions in the Public Finance Management Act, the Public Audit Act and the National Treasury Modified Cash Standard.

The Public Finance Management Act requires all State institutions to have effective, efficient and transparent systems of financial and risk management and internal control (sect. 38 (1) (a)). The Act further provides for accounting officers and officials to be charged with financial misconduct when they fail to comply with any requirement therein, including the provisions concerning risk management and internal control, and criminal charges are also applicable. The Public Sector Risk Management Framework issued by the National Treasury sets out guidance on implementing enterprise-wide risk management. Most State institutions have risk committees, which advise accounting officers on risk strategy and risk-related issues. External auditors review and report on systems of internal control and risk management. Accounting officers also attest to the effectiveness of risk management and internal control in annual reports, and such attestation is independently confirmed by the audit committees. The Department of Monitoring and Evaluation independently monitors the risk management and internal controls of national and provincial government agencies annually.

Accounting officers are required to keep full and proper records of financial affairs (sect. 40 (1), Public Finance Management Act) and to retain all financial information in its original form (chap. 17, Treasury Regulations). Corrective action may be taken in case of violations of public finance rules (sects. 81 and 83, Public Finance Management Act). External oversight is exercised by the Auditor-General.

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

The Promotion of Access to Information Act gives effect to provisions in the Constitution providing for access to information, including section 32 of the Bill of Rights, which establishes that everyone has a right of access to any information held by the State. The Act contains detailed provisions, including with regard to the publication of information held by government authorities and the procedures and rules surrounding requests for unpublished information. The provisions extend in substantial part to the private sector.

The Promotion of Administrative Justice Act gives effect to section 33 of the Constitution, which establishes the right to administrative action that is lawful, reasonable and procedurally fair, as well as the right to be provided with written reasons in circumstances where one's rights are adversely affected by administrative action. The Act extends, for example, to suspected corruption in tendering, allowing adversely affected parties to acquire information.

Reported challenges in the framework on access to information include cumbersome procedures, insufficient regulatory enforcement powers, a complex appeals mechanism and inadequate compliance. Furthermore, there is a need to establish the right to access information related to political party funding, and to promote awareness-raising.

The national anti-corruption strategy provides a framework for strengthening government administrative processes, with the aim of enhancing public service delivery. South Africa has undertaken some public administration and e-government

reforms intended to simplify administrative procedures and facilitate services delivery.

Various measures are in place to promote the participation of individuals and groups outside the public sector, such as civil society, in the prevention of and fight against corruption. Key among them are the National Anti-Corruption Summits, the National Anti-Corruption Forum (not active at the time of review) and the Open Government Partnership Programme. Efforts in support of fiscal transparency, such as the publication of key budget documents prior to and following the enactment of the budget and public consultations in the legislative process, further enhance the involvement of the public.

South Africa implements anti-corruption-related public awareness programmes and civil society is actively engaged in anti-corruption efforts. South African authorities have expressed an interest in establishing anti-corruption education programmes in schools and universities.

Several institutions are mandated to receive corruption reports from the public, namely, PSC, through its national anti-corruption hotline, the Public Protector, SIU, the South African Police Service and the Directorate for Priority Crime Investigation (DPCI; also known as the Hawks). Reports can be made anonymously.

Private sector (art. 12)

South Africa has adopted legislation to prevent and combat corruption in the private sector and among State-owned enterprises. The Companies Act aligns the country's accounting standards with international financial reporting standards. The Act further requires State-owned enterprises, listed and public companies, as well as companies of a certain size, to take certain basic steps to enhance accountability and transparency. Chapter 3 of the Companies Regulations further prescribes enhanced accountability and transparency for South African companies. There are no specific efforts to raise awareness of anti-corruption requirements for companies, and there is a need to include State-owned enterprises in anti-corruption efforts.

Regarding governance provisions for companies and State-owned enterprises, the King IV Code on Corporate Governance provides guidance for improving the transparency and stability of the financial management of listed companies, including guidelines on risk management, the composition of boards of directors and the performance of board members). While the King IV Code is not enforceable, legislation such as the Companies Act incorporates some of its provisions. A corporate governance guideline on avoiding corruption was also issued to companies under Regulation 4 of the Companies Regulations.

Companies are required to maintain security registers of shareholders and holders of beneficial interests (sect. 50, Companies Act). The Act is being amended to allow for the implementation of a beneficial ownership register and to require companies to file information annually with the Companies and Intellectual Property Commission. As a member of the G20 Anti-Corruption Working Group, South Africa has adopted the G20 High-level Principles on Beneficial Ownership Transparency.

No specific measures are in place to prevent the misuse of procedures regulating private entities, including subsidies and licences for commercial activities.

There is no policy regarding post-employment restrictions for former public servants.

All public companies, State-owned enterprises and private companies above a certain size must be audited. However, there is no requirement for companies to have internal auditing controls to prevent and detect acts of corruption. South African accounting and auditing provisions in the companies legislation do not specifically prohibit the accounting practices listed under article 12, paragraph 3, of the Convention.

South Africa prohibits the tax deductibility of bribes and payments resulting from or incurred in furtherance of unlawful activity (sect. 23 (o), Income Tax Act).

Measures to prevent money-laundering (art. 14)

South Africa's legal regime to prevent money-laundering consists of the Prevention of Organized Crime Act, the Financial Intelligence Centre Act, and the Money Laundering and Terrorist Financing Control Regulations, as well as relevant guidance notes and directives issued by FIC.

Accountable institutions as defined in schedule 1 of the Financial Intelligence Centre Act include financial institutions and designated non-financial businesses and professions. Dealers in precious metals and stones, natural or legal persons that provide informal services for the transmission of money or value, as well as natural or legal persons who engage in the business of money and currency exchange, and other reporting persons (defined as persons dealing in motor vehicles and Kruger rand) are not covered. Supervisory bodies are listed in schedule 2 of the Financial Intelligence Centre Act and FIC assumes responsibility over any remaining sectors.

The Financial Intelligence Centre Act subjects all accountable institutions to customer due diligence requirements (chap. III), including the identification and verification of beneficial owners (sect. 21) and record-keeping measures (part 2, sects. 22–25).

In terms of enforcing anti-money-laundering measures, although on-site visits have been conducted for certain designated non-financial businesses and professions, most supervisors have not sanctioned the respective institutions they regulate, and sanctions were considered not to be sufficiently deterrent. At the time of review the Financial Intelligence Centre Act was under revision to address those deficiencies.

South Africa is in the process of conducting its first national risk assessment. Although the country has not developed a formal strategy to counter money-laundering and the financing of terrorism, relevant policy priorities were set out in a consultation paper issued by FIC and the National Treasury in 2017.

South Africa has extended the reporting obligations for suspicious transactions to all businesses, including accountable institutions. Failure to report is considered an offence (sect. 52). Financial supervisors undertake a range of outreach and training activities for their supervised sectors to promote a clear understanding of obligations and risks in relation to money-laundering.

FIC is responsible for receiving, analysing and disseminating information pertaining to money-laundering, including suspicious transaction reports and cash transaction reports, and for collaborating with investigative and prosecution authorities (sect. 4, Financial Intelligence Centre Act). National coordination is also ensured through a number of joint task teams and joint operations. Internationally, competent authorities in South Africa exchange information with their foreign counterparts on a regular basis. FIC is operationally autonomous, and the Director of FIC reports directly to the Minister of Finance and to parliament (sects. 5 and 7, Financial Intelligence Centre Act).

South Africa has implemented a cross-border declaration system for all incoming and outgoing travellers, mail and cargo, while the incoming transfer of cash in an amount equivalent to or above 25,000 rand or 10,000 United States dollars in foreign currency must be declared orally. Section 15 of the Customs and Excise Act requires all persons entering or leaving the country to declare, inter alia, goods, including currency, that are restricted and controlled under any law. However, foreign currency must only be declared by outgoing travellers, and not by incoming travellers (sects. 3.3 and 3.6, Exchange Control Regulations). Furthermore, the Customs and Excise Act and the Exchange Control Regulations do not prohibit, restrict or control incoming bearer negotiable instruments or outgoing bearer negotiable instruments payable in foreign currency. Although customs officers of the South African Revenue Service may, under the Exchange Control Regulations, search for and seize currency, information on declarations and seized consignments of a suspicious nature is not notified to FIC.

Directive 1 of 2015 of the National Payment System Department requires that all wire transfers be carried out in line with FATF recommendation 16. However, there is no

requirement to apply enhanced scrutiny to wire transfers that contain incomplete information on the originator.

South Africa has been a member of FATF and the Egmont Group of Financial Intelligence Units since 2003 and underwent a mutual evaluation by FATF in 2003 and a joint mutual evaluation by FATF and the Eastern and Southern Africa Anti-Money Laundering Group in 2009. The fourth-round evaluation by FATF initially scheduled for June 2020 has been postponed to a later date as a result of the coronavirus disease (COVID-19) pandemic.

FIC has signed 91 memorandums of understanding with its counterparts and has sponsored the admission of a number of African States to the Egmont Group.

2.2. Successes and good practices

- Training and support provided to practitioners, senior managers and ethics officers on the implementation of the Public Service Regulations (art. 6, para. 1)
- The structured approach taken to promote transparency and prevent and manage conflicts of interest among different categories of public officials, including detailed disclosure requirements for public officials in high-risk areas, training and guidelines (art. 7, para. 4)
- Outreach activities undertaken to raise awareness in major cities and provinces of obligations to counter money-laundering and the financing of terrorism (art. 14, para. 1)

2.3. Challenges in implementation

It is recommended that South Africa:

- Continue its efforts to implement the national anti-corruption strategy, to create effective implementation structures and monitoring measures, and to strengthen coordination of anti-corruption activities (art. 5, para. 1).
- Continue efforts to review the governance model and arrangements for the future sustainability of the National Anti-Corruption Forum or an equivalent body (art. 5, para. 1, and art. 13, para. 1).
- Ensure the existence of one or more bodies with specialized mandates pertaining to the prevention of corruption, including education and awareness-raising, and implementing the prevention policies referred to in article 5 of the Convention (art. 6, para. 1).
- Adopt measures to strengthen the independence of anti-corruption bodies, enabling them to carry out their functions free from undue influence, and strengthen coordination among government institutions involved in anti-corruption efforts. Furthermore, continue to invest in the training and capacity-building of public officials carrying out prevention functions and ensure that anti-corruption bodies are fully and adequately staffed and equipped with the necessary material resources (art. 6, para. 2).
- Consider strengthening open recruitment to facilitate recruitment into entry-level jobs, occupations and trades in the public service, as recommended in a recent evaluation by PSC of the effectiveness of the recruitment and selection system (art. 7, para. 1).
- Endeavour to adopt procedures for the selection and training of individuals for public positions considered vulnerable to corruption and their rotation, where appropriate, to other positions, as provided in the national anti-corruption strategy (art. 7, para. 1 (b)).
- Take additional measures to enhance transparency in political party funding, including to regulate the private funding of political parties and independent

candidates and the disclosure of private funding sources, and prioritize the implementation of the Political Party Financing Act and related regulations (art. 7, para. 3).

- Take further action to ensure that the financial disclosure requirements applicable to designated public officials are duly enforced, and strengthen follow-up action by executive authorities to take disciplinary or other action when conflicts of interest arise (art. 7, para. 4). Furthermore, endeavour to expand disclosure requirements for members of the National Assembly and members of the executive to include non-financial, non-business interests from which a conflict of interest may arise (arts. 7, para. 4, and 8, para. 5).

- Continue to promote awareness and knowledge of key measures and systems to facilitate the reporting by public officials of acts of corruption, and of available protection measures (art. 8, para. 4).

- Adopt the necessary regulations to implement section 9 of the Public Administration Management Act, pertaining to disclosures of interests of family members of public service employees; provide training and guidelines on disclosure requirements for members of the executive; and endeavour to establish a system for verification of disclosures by members of parliament and the executive (art. 8, para. 5).

- Continue to strengthen government procurement and administrative processes to allow for greater monitoring, accountability, transparency and cooperation with the private sector, and to hold public officials accountable for service delivery and enhance their professionalization, in line with the objectives of the national anti-corruption strategy (art. 9, para. 1).

- Strengthen the framework for access to information to ensure that necessary procedures do not impede the effective provision of information and to strengthen compliance. Such measures should include providing the regulator with effective enforcement powers, establishing a simplified appeals mechanism, specifying the right to access information related to the funding of political parties, and promoting awareness and knowledge of key measures and systems to facilitate access to information (art. 10 (a)).

- Continue to strengthen measures to prevent corruption involving the private sector, including by strengthening anti-corruption compliance requirements and providing sufficient guidance and awareness-raising to private entities, including State-owned enterprises, specifically on anti-corruption requirements; promoting rules on business integrity and good commercial practices; strengthening the transparency of beneficial ownership of legal entities; requiring companies to have sufficient internal auditing controls to prevent and detect acts of corruption; preventing the misuse of procedures regulating commercial activities; and considering the adoption of post-employment restrictions with a view to preventing conflicts of interest (art. 12, para. 2).

- Take such measures as may be necessary to prohibit the acts enumerated in article 12, paragraph 3, of the Convention.

- Consider establishing anti-corruption education programmes in schools and universities (art. 13, para. 1).

- (a) Ensure that all designated non-financial businesses and professions particularly susceptible to money-laundering are covered by the anti-money laundering requirements, including dealers in precious metals and stones, natural or legal persons that provide informal services for the transmission of money or value, as well as natural or legal persons that engage in the business of money and currency exchange; (b) consider including reporting institutions in the category of accountable institutions subject to anti-money laundering requirements, in particular with regard to customer due diligence and record-keeping; (c) strengthen the supervisory and sanctioning regime for designated

non-financial businesses and professions at the operational level, including through the application of proportionate and dissuasive sanctions; and (d) finalize the national risk assessment and implement corresponding risk-based requirements (art. 14, para. 1).

- Consider extending the cross-border declaration system to cover: (a) foreign currency declarations by incoming travellers; (b) written declarations of cash transfers in amounts above prescribed thresholds; and (c) incoming bearer negotiable instruments and outgoing bearer negotiable instruments payable in foreign currency; and consider establishing a mechanism requiring FIC to be notified of declarations and seized consignments of a suspicious nature (art. 14, para. 2).
- Consider requiring financial institutions to apply enhanced scrutiny to transfers of funds that do not contain complete originator information (art. 14, para. 3 (c)).

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

- Support in the design of procedures for the selection and training of individuals for public positions considered vulnerable to corruption and their rotation (art. 7, para. 1 (b)).
- Assistance in the design of anti-corruption public education programmes, including school and university curricula (art. 13, para. 1 (c)).

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)

South Africa has developed a comprehensive legal framework for asset recovery, which has allowed for effective international cooperation in that regard.

The International Cooperation in Criminal Matters Act and the Prevention of Organized Crime Act constitute the general framework for international legal assistance, including in asset recovery matters.

Institutionally, requests for mutual legal assistance are directed to the central authority, which is the Department of Justice and Constitutional Development. An Asset Forfeiture Unit (AFU) under NPA is in place to assist requesting States, as described below. The police have liaison officers in other jurisdictions to facilitate requests for mutual legal assistance.

Procedures for asset recovery through international cooperation are set out in the AFU internal policy guide, which also provides a mechanism for managing informal requests, and in the G20 step-by-step guide for asset recovery for South Africa, published in 2013.

South Africa has signed 19 bilateral agreements on mutual legal assistance in criminal matters that include asset recovery provisions and recognizes the Convention as a legal basis for international cooperation. The country has never refused a request for mutual legal assistance.

Under the Financial Intelligence Centre Act, section 40 (1) (b), FIC can spontaneously share information with foreign financial intelligence units or investigating authorities, pursuant to a written agreement between FIC and its foreign counterpart and subject to the formal approval of the Minister of Finance. Furthermore, as a member of the Egmont Group, FIC exchanges information through the Egmont Secure Web and through ARINSA and the Camden Asset Recovery Inter-Agency Network.

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

Under the Financial Intelligence Centre Act, accountable institutions are subject to customer due diligence measures as stipulated in chapter III of the Act. The measures include a prohibition on opening anonymous accounts, the establishment and verification of customer identities and the identity of any person acting on behalf of the customer or on whose behalf the customer is acting, the identification of beneficial owners in cases involving legal persons and arrangements, the continuous monitoring of transactions, maintaining records and continuously updating information, and reporting suspicious transactions. Accountable institutions are required to adopt a risk-based approach in implementing customer due diligence requirements (sect. 42). Enhanced due diligence is required for higher risk customers and transactions, including for "domestic prominent influential persons" and "foreign prominent public officials", their family members and close associates (sects. 21G and H).

FIC has issued a number of guidance notes and directives, which are authoritative in nature, to facilitate the implementation of the Financial Intelligence Centre Act, including the enhanced due diligence requirements. However, no measures are in place for financial institutions to be notified at the request of foreign States regarding higher risk accounts or transactions.

Record-keeping is addressed in section 21 of the Financial Intelligence Centre Act and chapter 3 of FIC Guidance Note No. 7. All records of accounts, transactions and customer identities must be kept for at least five years from the date on which the business relationship is terminated or the transaction is concluded.

Bank licensing conditions established by virtue of the Banks Act prohibit the establishment of shell banks (sect. 11 (1)). Pursuant to the Regulations relating to Banks of 12 December 2012, financial institutions must guard against entering into or maintaining a correspondent banking relationship with a shell bank or with a respondent institution that permits its accounts to be used by a shell bank (sects. 36 (17) (b) (i) (C) and 36 (17) (b) (iii) (B)).

South Africa has implemented a financial interest disclosure system for designated public officials, who are selected on the basis of seniority and the level of risk associated with their positions. It covers members of the executive, members of parliament, municipal councillors, senior managers in municipalities and designated public service employees, including members of senior management (all employees graded 13 and above) and employees in supply chain management and finance units. Declarations are scrutinized by PSC and failure to file is a punishable act of misconduct. Declarations are submitted electronically in the case of public service employees, and implementation reports show that there is significant compliance by public officials with the filing requirements. There are no measures to permit the sharing of financial disclosure information with foreign competent authorities for purposes of investigation.

South Africa does not have any legal provisions that require appropriate public officials having an interest in or signature or other authority over foreign financial accounts to report that relationship to the authorities and to maintain appropriate records related thereto.

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)

South Africa has no explicit provisions that allow a foreign State party to initiate a civil action before its courts. Although chapters 5 and 6 of the Prevention of Organized Crime Act provide grounds for a foreign party to claim an interest in property in civil or criminal proceedings, this is conceived solely within existing asset forfeiture proceedings instituted by the National Director of Public Prosecutions.

Section 300 of the Criminal Procedure Act allows the Court to order compensation or restitution against the accused convicted of an offence that has resulted in damage or loss of property.

With respect to the recognition of a foreign party's claim to property, section 30 (5) of the Prevention of Organized Crime Act permits the court to suspend the realization of property to satisfy the claim or judgment of a person who has suffered damage to or loss of property or injury as a result of an offence. Furthermore, section 39 of the Prevention of Organized Crime Act permits any person having an interest in property subject to a preservation order to apply for exclusion of their interest.

Foreign confiscation orders are given effect in South Africa subsequent to the registration process described in sections 19 and 20 of the International Cooperation in Criminal Matters Act.

Under the Prevention of Organized Crime Act, foreign offences count as predicate offences to the extent that they would constitute offences in South Africa. The definition of money-laundering in section 4 includes predicate offences committed abroad. The confiscation of proceeds of unlawful activities, including money-laundering, may be ordered against a defendant to compel the payment to the State of any amount the court considers appropriate (sect. 18).

The provisions of chapter 5, more specifically section 24, of the Prevention of Organized Crime Act, allow for non-conviction-based confiscation, under certain circumstances, where a person absconds or dies.

Foreign restraint orders are given effect in South Africa subsequent to the registration process described in section 24 of the International Cooperation in Criminal Matters Act.

Section 38 (1) and (2), read together with section 25, of the Prevention of Organized Crime Act allows competent authorities in South Africa to freeze or seize property upon a request from a foreign State, by mandating the National Director of Public Prosecutions to apply for a property preservation order before the High Court. A registered foreign restraint order has the same effect as a restraint order made by the domestic court where it has been registered (sect. 25, International Cooperation in Criminal Matters Act).

Section 38 (1) and (2) may also be used by South Africa to apply for a preservation order on the basis of a criminal investigation having been started in another country.

AFU was established to focus on the implementation of chapters 5 and 6 of the Prevention of Organized Crime Act. AFU provides timely assistance to requesting States seeking to recover assets, irrespective of whether a formal request for mutual legal assistance has been submitted.

Apart from section 7 of the International Cooperation in Criminal Matters Act, the content requirements for incoming requests for mutual legal assistance are not specified in any law or regulation. However, the aforementioned G20 step-by-step asset recovery guide provides some guidance to requesting States.

South Africa provides assistance in asset recovery regardless of the offence and the value of the property involved and consults with requesting States as a matter of practice before taking a decision to lift provisional measures.

Under the Prevention of Organized Crime Act, sections 20 (5) and 39 (3), any person holding any interest in property is provided an opportunity to make representations in connection with the realization or preservation of that property.

Return and disposal of assets (art. 57)

The law of South Africa provides for the mandatory return and disposal of proceeds of unlawful activity to requesting States. Section 21 of the International Cooperation in Criminal Matters Act provides that South Africa will pay to the requesting State any amount recovered in terms of a foreign confiscation order, less expenses incurred,

unless an agreement or arrangement provides otherwise. Case examples involving the successful return of assets to foreign countries have been provided. Apart from international treaties, South Africa has not entered into any other agreements or arrangements with foreign States related to asset return.

3.2. Successes and good practices

- The development of the AFU internal policy guide for handling asset recovery requests and managing requests received informally (art. 51)
- The posting of South African Police Service liaison officers (focal points) in other jurisdictions to facilitate requests for mutual legal assistance, including asset recovery (art. 56)
- The existence of specialized structures such as AFU and the Investigating Directorate and the Specialized Commercial Crime Unit of NPA in facilitating the recovery and return of assets (art. 55, para. 2)

3.3. Challenges in implementation

It is recommended that South Africa:

- Adopt measures as necessary for financial institutions to be notified at the request of a foreign State regarding higher risk accounts or transactions (art. 52, para. 2 (b)).
- Consider taking the necessary measures to permit its competent authorities to share financial disclosure information with foreign competent authorities when necessary to investigate, claim and recover criminal proceeds (art. 52, para. 5).
- Consider taking measures that would require appropriate public officials having an interest in or signature or other authority over a foreign financial account to report that relationship to appropriate authorities and to maintain appropriate records related thereto (art. 52, para. 6).
- Ensure that foreign States are explicitly granted locus standi to initiate civil action in its courts in order to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention (art. 53 (a)).
- Continue the development by AFU of an up-to-date asset recovery guide, to be made available together with an updated version of the G20 step-by-step asset recovery guide (art. 55, para. 3).
- Consider expanding the powers of FIC to spontaneously share information, including also with financial intelligence units of countries with which no bilateral agreements are in place (art. 56).