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English only

**Implementation Review Group of the
United Nations Convention against Corruption****Fifth session**

Vienna, 2-6 June 2014

Responses received on the revised self-assessment checklist**Note by the Secretariat****I. Participation in the revision**

With regard to the revised version of the self-assessment checklist, the Secretariat solicited States parties, in information circulars CU 2013/235/DTA/CEB/CSS and CU 2013/271/DTA/CEB/CSS, to provide comments to be taken into account when finalizing the self-assessment checklist for the second cycle of the Implementation Review Mechanism for the Convention.

To this end, the Secretariat provided:

(a) A draft outline of the flow of questions and the proposed thematic structure of the revised self-assessment checklist for reviewing chapters II (preventive measures) and V (asset recovery) of the United Nations Convention against Corruption (CAC/COSP/2013/3); and

(b) A draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Implementation Review Mechanism (CAC/COSP/2013/CRP.6).

The following States parties submitted comments on the revised version of the self-assessment checklist: Australia, Austria, China, Colombia, Ecuador, Egypt, El Salvador, Israel, Romania, the Russian Federation, Slovenia, Switzerland and the United States of America.¹ Where contributions were received in a language other than English, translations were carried out and included in this paper.

¹ The following States parties also provided comments on the assessment of performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and its terms of reference: Armenia, Belgium, Chile, China, Ecuador, Egypt, El Salvador, France, India, Israel, Jordan, Latvia, Lebanon, Mexico, Pakistan, Romania,



In order to facilitate discussion among all States parties and benefit from interpretation resources, a comprehensive oral introduction will be provided by the Secretariat at the meeting of the Implementation Review Group.

II. Comments provided by States parties

Australia

Australia welcomes the efforts of the UNODC to streamline the self-assessment process in advance of the second cycle of the Implementation Review Mechanism. Its more detailed comments are below:

- In the interests of streamlining the self-assessment process, the UNODC may wish to consider previous reporting done by States parties on issues covered by the United Nations Convention against Corruption. For example, in relation to Thematic Area B (money-laundering), States parties could be permitted to attach the executive summary of Financial Action Taskforce reports, provided these were recent and still reflected of the State party's anti-money-laundering regime.
- In relation to Thematic Area A (prevention), Article 5, it is noted that paragraphs 2 and 3 appear to cover similar matters, and could perhaps be combined. For example, the guidance in paragraph 2 seeks a description of measures that "maintain regular assessment of the legal and institutional framework existing to prevent and sanction acts of corruption" while the guidance in paragraph 3 asks for a description of measures that "provide for evaluation reports of relevant legal instruments and administrative measures".
- In relation to Thematic Area A (prevention), Articles 7 and 8, it is suggested that the order of questions has the potential to create duplication of data. Article 7, paragraph 1(d), seeks statistics on the number of public officials who have undergone integrity and anti-corruption training, and the number of violations by public officials of applicable codes or standards of conduct. This data is then requested in relation to three other questions, in particular:
 - Article 7, paragraph 4, which relates to conflicts of interests, seeks data which, for Australia, would be a subset of the data provided at Article 7, paragraph 1(d) in relation to violations of applicable codes of conduct
 - Article 8, paragraph 1, requests data on the number of public officials who have undergone integrity training, which duplicates data provided in relation to Article 7, paragraph 1(d)
 - Article 8, paragraphs 2 and 3, seek further information in relation to the ongoing training of public officials on the applicable code or standard of conduct, as well as statistics on violations of these, which again duplicates data provided in relation to Article 7, paragraph 1(d). This duplication

Russian Federation and the United States of America. Among the contributions received, the contributions by the following States parties also included references on the self-assessment checklist: Belgium, Ecuador, Egypt, El Salvador, Israel, Lebanon and the United States of America.

could lead to a risk of double-counting of data, if instructions are not explicit about how these different presentations of the same data should be reported. In addition, in relation to Article 7, paragraph 4, which refers to prevention of conflicts of interest, it may be useful to refer to perceived as well as actual conflicts of interest, as these are equally likely to undermine public confidence in public administration, and may result in corruption being perceived whether or not it in fact exists.

- Further in relation to Thematic Area A (prevention), Article 8, paragraph 4, it is noted that it would be helpful to clarify what is meant by ‘outcomes’ of investigations in public sector disclosure — for example, are these the concrete results of a particular investigation, or broader outcomes such as meaningful change in the area of public sector disclosure?

Austria

(a) Austria welcomes the already carried-out reduction of questions as well as the merging of existing figures and subparas.; to this regard a further streamlining of the comprehensive questionnaire would be advocated.

(b) Referring to Document CAC/COSP/2013/CRP.6, beginning on page 4 — II. — thematic areas:

Austria would like to keep the previously applied form of question 2 asking the evaluated country to provide “examples of implementation” instead of the proposed “evidence of implementation”.

China

Preliminary Views and Opinions on the Draft Self-assessment Checklist for the Review of Implementation of Chapter II and Chapter V of the United Nations Convention against Corruption

I. In consideration that, as many States parties pointed out in the earlier discussions, the checklist for the first round of self-assessment is too lengthy with many repeated questions, and the reviewed States fill it in diverse ways, it is necessary to revise the draft self-assessment checklist. Meanwhile, considering that the self-assessment checklist for the first round of review was drafted by the Secretariat with the authorization of the Conference of the States Parties, it is appropriate that this revision should also be drafted by the Secretariat with the authorization of the Conference of the States Parties or the Implementation Review Group on the basis of consultations with the States parties and should be finalized, considered and adopted at the next Conference of the States Parties. Given the diversity and complexity of the issues involved in the draft, it is appropriate to solicit the opinions of Member States for multiple times during the process of drafting.

II. The second part of the draft proposed a detailed guidance on the provision of the measures for implementing the articles of the Convention by the reviewed States. It is suggested that the guidance should be strictly limited to the requirements in the Convention and the Legislative Guide, so as to facilitate the

achievement of the goals of the implementation review mechanism without causing unnecessary burdens to the States parties.

III. With regard to the provision of evidence for implementation, many provisions require that the States parties should provide analysis and evaluation reports, as well as the survey reports on public feelings and social awareness, etc. We believe that these reports will lead to a substantial increase in the length of the checklist, and that they impose a heavy burden on the reviewed and reviewing States as it is difficult to have a unified standard and scope of survey in practice. Therefore it is suggested that this part should be limited to the existing publicly released official reports of the States parties.

IV. As Chapter II (Preventive Measures) and Chapter V (Asset recovery) of the Convention are both very important contents, attention should be paid to the balance between the guidance for the two chapters. However, while the current draft has a detailed guidance on Chapter II, its guidance on Chapter V is not detailed enough to effectively measure the implementation of the Convention by the States parties. Thus, the guidance on Chapter V should be further elaborated. The Chinese side reserves the right to further comments in this regard.

V. The obligations in Chapter II of the Convention are not compulsory to the same extent, with different modifiers such as “shall”, “shall endeavour”, “shall consider” or “shall, where appropriate”. In order to correctly guide the reviewed States to fill in the checklist, it is suggested that the questions in the self-assessment checklist should be designed to reflect the different extents of the obligations.

VI. The specific opinions on the various articles are as follows:

General information: We have no disagreement in principle. At the same time, taking into account that the content of this review is on Chapter II and Chapter V, it is appropriate to require in the general information part that the reviewed States should focus on the information related to the prevention of corruption and asset recovery.

Article 5: The reviewed States are required to provide researches or assessments of corruption, the survey report on the public feeling on corruption, the risk assessment on departments vulnerable to corruption in the part of “evidence for implementation” for Paragraph 1; and to provide survey reports on the public feeling on the effectiveness of the anti-corruption measures in the part of “evidence for implementation” for paragraph 2. Although these assessments or reports may help the States parties to develop anti-corruption policies, they are not direct implementation measures and therefore are suggested to be deleted.

Article 6: It is suggested to delete the requirement for the survey report on public feeling.

In the part of “evidence for implementation” for Paragraph 2, it is required to provide the assessment on the needs for human and other resources of the anti-corruption bodies. As this requirement involves too many details and poses difficulties for measurement in the review due to the greatly different systems and needs of different States, it is suggested to be deleted.

Article 7: Considering that Items (a) and (b) under Paragraph 1 are relevant to a certain extent, integrated answers may be provided for both items. In addition, as

Item (d) has specifically prescribed trainings, it is unnecessary to require the information on trainings from the reviewed States in Item (b).

Article 9: In the part of “applicable measures” for Paragraph 1, the States parties are required to indicate whether and to what extent they comply with the UN model legislation, the WTO agreements and the EU guidelines on public procurement. This requirement is not completely in consistence with the principle of the implementation review mechanism to respect the differences in economic development and legal and judicial systems of the reviewed States, and it is not appropriate to impose a standard other than the Convention to the reviewed States. In addition, it seems that the various data and evaluation reports required in the part of “evidence for implementation” can be reduced or changed into actual cases for more intuitive understanding of the operations in practice.

As the obligations under Paragraph 2 are clearly stated and there are some correlations between the items under the Paragraph, integrated answers may be given to the questions where appropriate.

Article 10: As the various measures recommended to be taken by the States parties in this Article are related to each other to a certain extent, the answers about the measures can be integrated. In the part of “evidence for implementation”, the internal or external reports will result in a too long checklist, therefore it is suggested to consider proper reductions.

Article 11: It is required in the part of “applicable measures” for Paragraphs 1 and 2 to indicate whether the international codes of judicial conduct. This seems to go beyond the guidance of the Article itself and the Legislative Guide. On the contrary, the “mechanisms of accountability the judiciary has decided for itself” as specified in the Legislative Guide is not explicitly included here.

Article 13: In the part of “evidence for implementation” for Paragraph 1, it is required to provide the minutes or publications with public participation, the data on processing the applications from the public for access to information and the evaluation reports on the impacts of public education or awareness programs. As this requirement is not rational or targeted, it is suggested to be deleted.

Colombia

Colombia transmitted the following comments regarding Chapter II of UNCAC on Preventive measures.

In the chapter on Preventive measures, in the information regarding the evidence of implementation, it is suggested [as guidance] for various questions that, among others, the following elements be provided [by the State party under review]:

1. “Public perception surveys regarding the effectiveness and performance of the anticorruption body or bodies.
2. Public awareness surveys of the extent of public knowledge about the prevention of Corruption.
3. Parliamentary reports regarding the effectiveness and performance of the anticorruption body or bodies.

4. Reports of the effectiveness of measures taken in various sectors to prevent corruption.”

In relation to these points, Colombia considers that the information provided by States should not refer to public perception surveys, but rather should be based on concrete data which allow for the analysis of the effectiveness of the implementation of a norm.

On the other hand, in relation to the statistical data requested in the list, it is important to establish temporal criteria and guidelines regarding the period of information that States are expected to provide.

Ecuador²

In accordance with the requirements of the United Nations Office on Drugs and Crime, through the Permanent Mission of Ecuador to the United Nations in Austria, I set out the following points:

2. Attached are comments and observations requested on the two documents concerning the “revised version of the expanded self-evaluation checklist for the second cycle of the UNCAC review mechanism,” essentially focused on the General Information section.

3. Further, brief comments are included by way of example to the section concerning article 5 of the United Nations Convention on Corruption.

To simplify reading, in each case the section of the document commented on is given.

I

“DRAFT OUTLINE SERIES OF QUESTIONS AND PROPOSED THEMATIC STRUCTURE FOR REVISED CHECKLIST FOR SELF-REVIEW IN ORDER TO EXAMINE CHAPTERS II (PREVENTIVE MEASURES) AND V (ASSET RECOVERY) OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION.”

II

Structure

With regards to the proposed thematic group, we consider it to be suitable and to relate to the corresponding chapters in the Second Review Cycle for Implementation of the UNCAC. The division into sub-themes relating to “Prevention,” “Money-laundering” and “Asset recovery” helps to better organize the three main areas of this second cycle and does not affect the quality or depth of the information to be provided by the State Party.

² With contributions by the Consejo de Participación Ciudadana y Control Social.

I. General Information

Paragraph 5. — The information requested in this section is too general, and above all, the reports requested will form part of the responses to the specific questions in each of the articles under evaluation, meaning this information may be redundant or give rise to confusion.

Paragraph 6. — The requirement for “sources of information used to complete the checklists” should be excluded from this section, since these include laws, policies and other relevant measures already requested in paragraph 3; otherwise requirements are repeated, which may give rise to confusion.

II. Thematic areas

A. Prevention (articles 5-13)

Article 5: Corruption prevention policies and practices

Paragraph 1

1. Indicate (cite and summarize) the applicable measure(s)

Guidance: in summarizing the information on the application of this provision, you may want to cite and describe measures that:

*“... Demonstrate that national policies **are applied in accordance** with the rule of law, respect for the principles of good governance of public affairs and public property and the criteria of integrity, transparency and accountability.”*

In this text, we consider that the phrase “*are applied in accordance*” should be changed to “promote” to better suit the rule of the convention, since the expression used changes the meaning of paragraph 1 of Article 5 of the Convention and appears to request a justification of the legitimacy of national policies.

Additionally, at the beginning of the response the legal context or legal and constitutional basis underlying the adoption of certain policies should be requested, which should form part of an introductory text preceding the description of the various measures taken.

2. Please provide examples of application

We suggest eliminating the following points concerning “evaluation,” given that paragraph 3 of article 5 already provides for periodical evaluation of the relevant legal instruments and administrative measures, meaning information requests would be duplicated:

- *Evaluation reports on the effectiveness of measures adopted to prevent and detect corruption.*
- *Studies or measurements of corruption.*
- *Surveys of the public view of the level of corruption in different sectors.*

- *Evaluation of risk in different fields or sectors particularly prone to corruption.*

II

“PROPOSED QUESTION ORDER AND THEMATIC STRUCTURE FOR REVISED CHECKLIST FOR SELF-REVIEW IN ORDER TO EXAMINE CHAPTERS II AND V OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION”

I. General Information

Comments to this section were already made in the first document analysed.

II. Thematic areas

A. Prevention (articles 5 - 13)

Article 5: Corruption prevention policies and practices

Paragraph 1.

Comments to this section were already made in the first document analysed

Paragraph 2.

1. Please describe (cite and summarize) the applicable measure(s)

Guidance: in summarizing the information on the application of this provision, you may want to cite and describe measures that:

The questions should be aimed at requesting information about “practices” relating to the policies set out in paragraph 1, meaning we consider they could³

... the questions concerning “evaluation” and “monitoring” could be moved to paragraph 3 of the same article which as mentioned refers to periodic evaluations.

El Salvador

Inputs and comments on documents numbers CAC/CUSP/2013/3 and CAC/COSP/2013/CRP.6

1. Under-Secretariat for Transparency and Anti-Corruption of the Office of the President

Having reviewed the abovementioned documents, it had no observations to make.

³ Comment from the Secretariat: text missing here in the original submission.

2. Supreme Court

General observations

The document sent for review to the States parties is an excellent tool for information gathering about the state of the policies and actions taken against corruption in the context of the UNCAC.

The structure of the questions in the survey allows the provision of detailed information about each component covered by the articles under study.

Meanwhile, the aspects considered in the report enable each State to focus on aspects of the Convention that were not sufficiently developed at a local level.

Observations

(a) It is noted that the list of questions in the section on prevention is formulated to gather information from States that have already implemented the Convention.

In order to obtain more information, countries' level of implementation could be distinguished. For example, the questions on article 5 of the Convention refer to the application of national policies to prevent corruption; in this country this national policy is currently at the level of design and implementation,⁴ together with other activities that have been developed in this regard by other state institutions such as the Judiciary, with the formulation and approval of the Code of Judicial Ethics bill; and in the case of approved regulations such as the laws on Governmental Ethics, Access to Public Information and Asset Forfeiture, for example. Despite the fact that a number of measures have been adopted, these may be omitted in the report.

(b) Where documentary evidence is requested, this is fairly generic in nature, which could lead to a lack of precision when supplied by the States parties. Therefore, it is suggested that terms such as "relevant," "useful" or "pertinent" are included to ensure that essential information for the purposes of the Checklist is provided and the supply of excess information is avoided.

(c) Despite the fact the information requested refers to the application of the UNCAC, whose validity varies for each of the States parties, and in the case of this country has applied since 2004, it would be appropriate to mention the time period from which this information should be provided.

For example, when data on investigations and penalties are required, limiting terms could be used such as "since the Convention entered into force in your country," or "in the past — years," with the aim of facilitating information gathering by the authorities in each State.

(d) In regard to article 52: the components of "prevention and detection of transfers of proceeds of crime" should be evaluated in relation to the content of the national regulations concerning the financial system and laundering of money and

⁴ UNODC/UNDP: "An initial reflection on anti-corruption policies: selected inputs for the implementation of the United Nations Convention Against Corruption from the Latin American experience." October 2013. In this report it is noted that the Under-Secretariat for Transparency and Anti-Corruption of the Office of the President only began to formulate this policy in 2009.

assets. In this regard, terms such as “politically exposed persons,” which appears in the questions section in paragraph 1 of article 52, has no local equivalent.

(e) In regard to articles 54 and 55: In terms of mutual legal assistance, the different regulatory systems in the States Party should be taken into account. In the case of El Salvador, international legal cooperation is subject to judicial control, as the Supreme Court is the competent authority to determine compliance in the country, which is decided on the basis of the content and justification of each such request.⁵

3. Attorney General’s Office

Notwithstanding the possibility of making further additions to its review, the Attorney General’s Office presented the following comments:

A. Observations on thematic structure

The thematic structure set out in the draft conforms to chapters II and V of the United Nations Convention Against Corruption: Prevention, Money-laundering and Asset recovery; however, we consider that other thematic areas could be proposed in which El Salvador has made positive progress, for example, the area of prevention regulated in chapter II, being viable we would propose including in this evaluation structure of issues such as the conduct of public officials, participation of Civil Society, public information, public hiring and management of the Treasury, measures to prevent laundering; and, with regard to chapter V, we would propose the issues of prevention and detection of transfers of proceeds of crime and the dependence on financial intelligence.

B. Observations on section I: “General Information”

Another aspect to consider is that point 6 — “Describe the procedure used to gather the information” — of the section on General Information, indicates that the sources of information used to complete the checklists must be stated; however, no parameters are established to ensure that information systems, the methods used in constructing indicators and the use of statistics are subject to internationally-recognized standards, in particular best practice, which could affect the lack of trustworthiness or the sufficiency of the information provided by countries.

C. Observations on the text of the questions

In terms of the text of the questions, it is worth stating that these are simple and general; despite this, the guidance offers a clear explanation of the specific information required, enumerating by way of example the type of reports requested.

However, States are not required to provide all the information set out in the “guidance” section, meaning they have a very broad margin to select the aspects

⁵ Article 182, number 3 of the constitution of El Salvador.

they wish to respond to or the information they wish to provide; this may be seen as positive insofar as each country can respond in accordance to their reality and the information systems they each possess.

Nevertheless, it is also important to point out that this situation may have a negative impact on the utility of the questions in obtaining the information requested for the purposes of the evaluation, since the States may avoid providing information relevant to the real situation regarding compliance with the Convention, making it necessary to consider the inclusion of certain specific questions or reach agreement on responding to all the points set out in the “guidance” section.

D. Observations on section II. “Thematic spheres”

The following considerations apply to this section:

Letter A. Prevention

On question one, it is convenient to determine the period to be evaluated, so that the applicable measures and related to the responses refer to the specific time period intended to be evaluated.

However, in accordance with the provisions of UNCAC, it is worth pointing out the following:

- To establish and reinforce bodies to combat corruption, promote the adoption of codes of conduct for public officials and transparent public hiring mechanisms and Treasury management, the provision of mechanisms for public information by the government agencies and institutions (with emphasis on the budgetary and management processes, as well as the processes for public hiring of goods and services) and the participation of civil society organizations for the achievement of these objectives.
- The widespread dissemination to the general public of the content of the Convention, its regulatory provisions and scope (to promote the rule of law, proper management of public companies, integrity, transparency and the obligation of accountability).

Letter B. Money-laundering

On question one, it is recommended to include politics, practices and applicable measures for the detection of transfers of proceeds of criminal or suspicious activities, and mechanisms for reporting suspicious transfers.

Letter C. Asset recovery

On question two, “examples of application, including legal or other related cases” are requested, which is not clear. Also, in accordance with Article 53 of the UNCAC, solely civil legal cases should be requested.

Although part of the Convention, and taking this as a reference point for responding to this context, it is worth mentioning the following:

- Adopting the necessary measures, mechanisms and adjustments in the legal system of each country that permit the prevention and detection of transfers of

proceeds of crime, together with direct recovery mechanisms of goods through international cooperation, for the purposes of confiscation, restoration and disposition of assets, in accordance with the bilateral and multilateral agreements in this area.

- Similarly, developing legislative projects to provide for the confiscation or recovery of assets, with or without punishment, the provision of mutual legal assistance for both mechanisms in accordance with the mandates set out by the UNCAC.

Technical assistance

It is recommended to change the text of question number one on technical assistance, to indicate the specific problems that have been presented and the actions necessary to guarantee or improve the application of this provision.

Egypt

Comments of the Government of the Arab Republic of Egypt on the Draft List of Self-Assessment of Chapters II and V of UNCAC mentioned in Documents CAC/COSP/2013/3 and CAC/COSP/2013/CRP.6

First: General Remarks:

1. The proposed assessment is too simplistic. It is based on the idea that the State under review provides concise clarifications on measures it implemented concerning the reviewed Convention articles along with examples on implementation cases (usually over the last three years only). Therefore, the State has latitude to determine the information it deems sufficient on the reviewed articles.

This contradicts the original idea based on asking detailed questions on the State's implementation of reviewed articles. This method eliminates ambiguity in the answers to questions on the State's implementation of the articles in sufficient details and the legal basis on which it relies.

In the first review cycle, enquiries started with a crucial question on the State's self-assessment and the extent of its commitment to implement the reviewed provision. In other terms, was there total, partial, or no compliance? Besides, the addition of questions on each case aimed at ensuring total implementation. In the event of partial or non-compliance, questions aimed to ensure that the State was taking effective measures to implement the provision in the future or proposing alternative measures that the State would take to achieve the desired objective.

The following are examples of detailed questions that obliged the self-reviewers to undertake a comprehensive and detailed review of the position of the State in terms of implementation:

- Did your country adopt and implement the above measures?
- Is your country compliant with this provision?
- Please mention applicable measures;
- Please provide a copy of the text(s);

- Please provide jurisprudence;
- Please provide annual figures;
- Please provide examples of implementation, including case brought before the courts;
- Please mention the policy adopted.

Therefore, the Government of the Arab Republic of Egypt highlights the importance of continuing to formulate questions in the same detailed form used in reviewing Chapters III and IV so that the State under review may not evade presenting the status of implementation of its commitments, and clarifies its self-assessment of implementation.

2. Furthermore, the Government of the Arab Republic of Egypt considers that the list should continue to include questions on the following:

(a) Applicable laws in the State under review. Their dissemination in other countries should be envisaged to facilitate knowledge of legal systems, especially with regard to asset recovery;

(b) The numbers and dates of laws applicable to every reviewed case — without mentioning the text itself insofar as the laws are attached in a separate document — so that other countries know the piece of legislation that applies to every case;

(c) Practical measures adopted by the State to implement the articles of the Convention relating to the reviewed chapters;

(d) Measures taken by the State for international cooperation with States that request legal assistance;

(e) The periods that States need to complete the procedures for providing effective assistance to States that request such assistance;

(f) Statistics on the number of requests made by States under review and practical examples of successful legal assistance provided to requesting States;

(g) Strategies, if any, adopted by States to prevent corruption, so that other States benefit from them in developing their own national strategies in this regard.

3. It is necessary to remove the word “briefly” in all questions, so that the State concerned presents applicable steps in an exhaustive way.

4. The State under review must provide an indicative description of all inquiries to ensure a complete review of the extent of its fulfilment of obligations.

Second: Chapter II (Preventive Measures)

1. It is important that countries disseminate their laws on preventive measures so that other countries benefit from them to improve their performance in this regard.

2. It is important that measures are presented exhaustively, not concisely, to ensure that the State concerned is fulfilling its obligations and so that other countries benefit from their access to such information.

Third: Chapter V (Asset Recovery)

1. It is important that the period under review should not be limited to the last three (3) years but extend to at least ten (10) or fifteen (15) years. Three years is a very short period and lawsuits usually last much longer.

2. There is a clear shortcoming in the inquiry on effective cases and their results. Such cases illustrate the fulfilment of obligations by the State under review. Therefore, it is necessary to add questions on such cases.

3. The Government of the Arab Republic of Egypt considers that it is important to add the following questions to the list:

(a) Pursuant to Article 51 of the Convention, what are the forms of cooperation and assistance afforded by the State requested to provide assistance with regard to asset recovery, since this latter is a fundamental and binding principle of the Convention?

(b) Does the State facilitate recovery measures without the recourse to court rulings? In which cases is this allowed? Are there examples?

(c) Is this reviewed article or paragraph fully or partially implemented? What are the procedures or measures taken by the State in case the article is not implemented?

(d) What is the number of the law and the article(s) that apply to this case?

(e) Is there a deduction or sharing of amounts before these are returned to the requesting State? Are the deductions considered by the State as reasonable in accordance with Article 57 of the Convention?

(f) Did the State conclude bilateral agreements pursuant to Article 59? Are there examples?

In light of the above comments, the Government of the Arab Republic of Egypt considers that it is important that the Secretariat should review the list mentioned in Document CAC/COSP/2013/CRP.6, amend it, and give it the same format it had in the first cycle of review of Chapters III and IV which suits the goal of self-assessment. In that way, the State concerned presents the extent to which it has fulfilled its obligations as well as the measures it has taken for an optimal implementation of the United Nations Convention against Corruption.

Israel

Revised Self-Assessment Checklist for Cycle 2 of the Implementation Review Mechanism

With reference to the Secretariat's request for comments regarding document CAC/COSP/2013/CRP.6 of 24 October, 2013, the State of Israel would like to provide the following comments. We have attempted to focus on matters of principle with relevance to the design of the Checklist.

At the outset, Israel will like to convey its great appreciation for the efforts made by the Secretariat to streamline the Checklist for the 2nd cycle in a way that will undoubtedly enhance the effectiveness of the review process.

General Comments

- The option to attach legislative texts should preferably be retained. Requiring states under review to provide summaries of legislation could prove to be overly burdensome (Introduction, para. 1).
- Focusing on reports, studies, and informational material, especially if there will be a need to translate documents (including from non-UN languages), might be counterproductive (p. 4). Alternatively, it could be suggested that reviewed states briefly highlight examples of steps taken to review the efficiency of anti-corruption measures or brief summaries of relevant materials (unlike legislation, this could be done more efficiently).
- Where possible, it is suggested that one question refer to several subparagraphs of the Convention, in particular when similar information is sought (p. 4-6). In some cases there are duplications of questions, and it might be useful to consider avoiding repetition of requests for information sought earlier in the same questionnaire or in the self-assessment for the 1st Cycle. Information could be automatically updated in such cases and states could be asked whether they wish to update it.
- For many of the questions, there is a great focus on statistics (p. 17). While such data is important, we suggest placing an emphasis on concrete examples of implementation, to allow for a qualitative review alongside the statistics or when statistics are not available.
- The implementation question (i.e. Yes/No/In Part) seems to be an important question to be asked of the reviewed states and should be retained.

Article 7 — Public Sector

- Currently, the information sought is extremely detailed and reviewed states may encounter difficulties in providing it. There is also a risk that the reviewing experts would find it difficult to reach conclusions based on such a large volume of details. It is suggested that the information sought be more concise to facilitate review of this article (p. 9-14).

Article 12 — Private Sector

- Some of the information sought relates to data which is likely not available to government entities, as it reflects practices within the private sector. It is therefore suggested to focus instead, in the detailed information section, mainly on the relationship between the government and the private sector (p. 32).

Article 52 — Prevention and Detection of Proceeds of Crime

- Due to the nature of the article, there are some cases of similar information sought, as well as questions where it is unclear what type of answer is required and if a Yes/No answer would suffice. It is suggested to revise the question flow in order to avoid duplication and unnecessary lengthy replies (p. 43-47).

Romania⁶

We would like to thank the UNODC Secretariat for the draft Revised self-assessment checklist for cycle 2 of the Implementation Review Mechanism. This version is more streamlined compared to the previous one that Romania already tested within the project carried out with UNDP, when applying the methodology “Going beyond the minimum”.

Taking into account our experience during the first review cycle, we would highly appreciate a word format of the questions flow, also considering the high number of stakeholders we would need to consult for filling in the self-assessment (especially for chapter II).

We appreciate the introduction of references to the articles where the same information was already provided and also the explanations of what type of information we are expected to submit. This will highly contribute to a systematisation of the information when drafting the answers.

We have a series of punctual observations, as presented below:

- It is necessary to introduce a reference period or at least a minimum number of years for the statistical data;
- Each paragraph is accompanied by two sets of boxes with additional explanations. Taking into account the fact that not all those type of information may be available for each article, we propose to replace, in the second box (point 2), “Information sought includes” with “Information sought may include”. This applies in particular to cases where statistical data are requested and they are not available (either in terms of becoming public, or are not collected);
- Moreover, it is unclear how the information indicated in the second box (point 2) should be reported, when they do not refer to statistical data or examples. It is not clear if we check the applicable information (as in a multiple choice questionnaire) or mention it as such and some guidance in this regard will be appreciated;
- Several articles in chapter II require examples of studies, reports, evaluations in order to justify how that specific convention provision was implemented (for example, in articles 5, 7, 8, 10). Reading this in conjunction with the explanations provided by the Secretariat in the introduction of the draft outline of the flow questionnaire (CAC/COSP/2013/3), according to which the attachment function was removed at the level of articles and paragraphs, it is not clear what is the purpose of requesting such documents or if we are expected to provide them. In the latter case, collecting all types of reports/studies/assessments may prove burdensome in regard of some articles or those documents may not exist. Therefore, our kind request is to redefine the requirements of evidence of implementation.

⁶ With contributions by the Ministry of Justice.

Russian Federation

Having studied the draft revised self-assessment checklist for the second cycle of the Implementation Review Mechanism for the United Nations Convention against Corruption and the draft proposed thematic structure, the Russian Federation has the following comments.

Our general impression is that the drafts are too detailed.

The guidance provided for filling out the checklist in respect of certain provisions, where States are invited to provide, as “evidence of implementation” of the Convention, public perception surveys, progress reports on the implementation of the national anti-corruption strategy and/or action plan, and risk assessments of areas or sectors particularly susceptible to corruption (art. 5 of the Convention), needs to be more precise. It should be borne in mind that the types of study referred to are not performed in all States and, if they are performed, they often have a “closed” character.

A number of guidance boxes contain references to information materials in the form of manuals, guides and studies prepared by other international organizations (e.g. OECD and the World Bank). We do not consider these materials to have relevance to the national efforts of States to implement the Convention.

In addition, it is also necessary to revisit the number of references to the statistical data that States are required to provide in their responses to the self-assessment checklist.

It is doubtful whether the provisions of the Convention referring to money-laundering (arts. 14, 15 and 58) should be assigned a separate section of the self-assessment checklist (section B) alongside the separate sections on chapters of the Convention such as “Prevention” and “Asset recovery”. The issue of money-laundering has already been examined in detail in the first round of the Implementation Review Mechanism.

As a matter of principle, we would like to stress that all the “guidance” boxes should have a flexible recommendatory character for States parties.

The phrasing used in the drafts should be softened in many places. In particular, the term “evidence” should be replaced by the term “examples” (as in the phrase “Please provide evidence of implementation”) and the verb “includes” should be replaced by “may include”.

It is recommended that use be made of the United Nations [UNODC] electronic anti-corruption legal library as well as the replies of States to the questions on the implementation of articles 5, 7 and 11-13 of the Convention, as contained in Secretariat reports submitted for the consideration of the Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption and also the fifth session of the Conference of States Parties to the Convention (Panama, 25-29 November 2013).

Attention is drawn to the inappropriate inclusion in the drafts of references to studies and manuals produced within the framework of the StAR initiative (in relation to articles 14, 52, 53, 54 and 57 of the Convention), since the organization in question is not part of the United Nations structure.

Slovenia⁷

I. General information

Ad 2. The questionnaire should further specify the information needed with regard to institutions responsible for the corruption against corruption in a way that it is understood that also information on institutions responsible for asset recovery and money-laundering should be included. Important information is also whether those institutions are independent, who appoints the management and on what grounds may the management be recalled.

Ad 5. Assessments on asset recovery and money-laundering are also important and should be included.

II. Thematic areas

A.

Article 5:

Ad 1. Information on how often these national policies, anti-corruption strategies, action plans etc. are revised and updated. Often they are quite outdated and do not reflect the actual state.

Ad 2. Additional information on every example of implementation (progress report, annual report, study etc.) should be sought enabling evaluation of its comprehensiveness (whether it involves all institutions or the major part of them, how many citizens were involved in the survey etc.) and efficiency (how many times has the survey been conducted, its impact on legislative and other reforms etc.).

Article 7:

Paragraph 1(a)

Demonstrate if a criterion of integrity is set when recruiting civil servants and other non-elected public officials for more vulnerable positions, for which position it is set and how it is assessed.

Paragraph 1(b)

Demonstrate whether recruitment procedures are transparent by providing information whether minutes of interviews with the candidates are prepared, voting result on the suitability of a candidate is registered in the minutes etc.

Paragraph 1(d)

Statistics on number of integrity and anti-corruption trainings carried out per year.

Paragraph 2

Demonstrate if a criterion of integrity is set when recruiting public officials for more vulnerable positions, for which position it is set and how it is assessed.

⁷ With contributions by the Commission for the Prevention of Corruption.

Establish focal points or units within the executive and legislative branch responsible for setting out standards on ethical behaviour and giving guidelines to parliamentarians, ministers etc. on ethical behaviour, corruption risks etc.

Reports identifying ethical dilemmas, corruption risks etc. and measures to eliminate/manage them.

Paragraph 4

Provide additional information on measures concerning lobbying, incompatibility of office, restrictions on business activities.

Article 8:

Paragraph 1

Present measures that increase awareness in integrity, honesty etc. through informational materials (such as handbooks for parliamentarians) or persons offering advice and support with regard to integrity issues and dilemmas (integrity officer within the parliament).

Paragraphs 2 and 3

Describe whether codes have additional information like providing practical examples to help understand what behaviour is required and which will not be tolerated.

Describe whether efforts to design and adopt codes of conduct have been ongoing, for which groups of officials and why these efforts have not brought any result yet.

Describe what violations occur in relation to officials that call for adoption of a code of conduct (for example abuse of power, forging documents, plagiarism which do not constitute a ground for terminating the office).

Paragraph 5

Whether information is provided also on assets of the official's family members or members of the official's household and under which circumstances such information is provided.

Provide information whether verification only resorts to: a) checking whether an official fulfilled his/her obligation and provided asset declaration; b) whether the content of the declaration is checked in order to verify if it corresponds the actual state.

Provide information on investigative powers of the body verifying the content of asset declarations (may require all documents, even confidential ones, also from banks etc. and what about the information on assets abroad).

Article 9

Paragraph 1

With regard to selection of personnel responsible for procurement attention should be paid also to rotation of the personnel, supervision of the personnel in order to establish favouritism towards certain bidders.

Measures to increase transparency of awards given and the efficiency of the procurement (publication of the contract, of the amount awarded and the results achieved).

Blacklisting of bidders that violated the rules.

Article 11

Paragraph 1

Establish focal points or units within the judicial branch responsible for setting out standards on ethical behaviour and giving guidelines to judges on ethical behaviour, corruption risks etc.

Reports identifying ethical dilemmas, corruption risks etc. and measures to eliminate/manage them.

Switzerland

In general terms Switzerland congratulates the Secretariat for the important work it has carried out in terms of the guidance provided for each question. These guidelines offer valuable and practical assistance to states about what is expected from this questionnaire and the responses to provide.

On this basis, we believe that the **draft questionnaire is, as a whole, quite complete and does not require major changes**. We submit, however, a **number of suggestions** below:

General remarks:

Switzerland welcomes the fact that the questionnaire provides a list of examples of concrete measures and actions to be applied, provided it is clear that these are examples and not recommendations for action (the formulation is not always clear).

The questionnaire is very lengthy and detailed, meaning translation into the various languages will be costly and risks holding up the evaluation progress. We encourage the Secretariat — especially in Chapter II — to seek further synergies between the sections “applicable measures” and “evidence of implementation” in order to avoid duplication. This would make for a shorter and more compact questionnaire without it losing any of its substance.

It is also useful to be able to refer to regional reviews, but such assessments should not be a substitute for the descriptions required for each answer.

Specific observations:

- Under II Structure, I. General information, item 2 Please briefly describe the legal and institutional system of your country: We suggest adding the following question “*Further information relates to the unitary or federal character of your country*”. This would help make evaluators aware in advance of the implications of federalism for the implementation of a convention such as the UNCAC (role and competence of federal entities, cantonal sovereignty in regard to organization and procedures ...).

- Under II Structure, I. General information, item 2 Please briefly describe the legal and institutional system of your country: We suggest expanding the question “Further information relates to the status of the Convention in your country’s legal system” by reformulating it as follows: “*Further information relates to the status of international law and in particular the Convention in your country’s legal system*”. This would serve to better situate the matter in question (one-tier or two-tier system, ranking of international law in the hierarchy of norms, in particular with regard to the Constitution of the States Parties, the ranking of the different elements of international law such as *ius cogens*, human rights, other international standards, likelihood of upholding a complaint regarding a violation of international law in the domestic courts, etc. ...).
- Under II Structure, I. General information, item 2 Please briefly describe the legal and institutional system of your country: We suggest adding the following question: “*Further information relates to the importance of the financial sector in your country (percentage of financial sector with respect to GDP, statistical data on employment in this sector, overall volume of foreign assets administered by banks operating in your country, etc.) as well as the volume of assets confiscated and returned by your country so far.*”
- Under II Structure, II. Thematic areas, C. Asset recovery, we suggest adding a new point 3 “*Please describe (cite and summarize) existing strategy and/or action plan as well as international initiatives on asset recovery.*”
- In relation to technical assistance we suggest including a new heading “technical assistance” at the end of the questionnaire for both Chapter II and V respectively, and not for each article. Identifying the technical assistance requirements for each article can be very difficult as such needs are often complex and interrelated. For these reasons we suggest selecting a more global approach, and focus these at the end of each chapter. This allows space for a detailed and comprehensive description of the technical assistance requirements with the aim of using these descriptions in bilateral cooperation.

Switzerland also wishes to encourage states to make this information about their technical assistance requirements available in order to facilitate bilateral cooperation between Member States.

United States of America

General Comments

1. This proposed format can no longer be considered to be a checklist. It is questionnaire requiring all narrative answers. In that regard it strays from the model that was first discussed at the first COSP and referenced in the documents of the second. Having said that, Chapter 11 is more amenable to a narrative answer than the topics in cycle 1 where a citation to a law that meets the requirement was often the most critical piece of information. The guidance boxes for each provision, will, we believe, end up with repetitive and much longer answers than were submitted in cycle 1. We will try to note some of the examples of repetitiveness throughout.

2. By eliminating the first series of questions that required members to actually make a bottom line self-assessment — i.e. meets the requirements; partially meets the requirements; or does not meet the requirements of the article — no Member is now required to make that assessment up front on its own. While we understand that the expert reviewers and the Secretariat will make their own decisions about whether the Member has met the requirements based on the information provided, we think there continues to be value in having each member make that type of self-assessment.
3. Either up front or in the guidance boxes themselves, there should be a statement that addressing each bullet in the box is not mandatory and that the bullets do not exclusively list the type of information that should be included in an answer. For example, countries without a formal, written anti-corruption strategy will not be able to use significant parts of the guidance for Article 5, which appears to rely heavily on the existence of such a formal strategy or plan.
4. In addition to any discussion in the overall instructions, one consistent change that should be made throughout is the lead-in language that has been used for the 2nd guidance box for each provision. Rather than read “Information sought includes”, it should read “information sought may include”. This is particularly relevant in that many of those guidance boxes request the submission of external evaluation reports; while possibly helpful to the reviewers, this is nonetheless a country self-assessment and the submission of external evaluation reports (particularly those conducted by other than international organizations or evaluation mechanisms to which the country belongs) should be discretionary. Discretionary response language is also important where the Guidance boxes ask the respondents to report on whether the relevant process/procedures/programs meet other specific international standards. (See for example, the guidance boxes for Arts. 8, 9, and 11.) This evaluation is whether the Member meets the standards of UNCAC, not other international standards, and while it may be instructive if the country does, meeting one international standard does not necessarily mean the country meets another, nor does failure to meet one mean automatic failure to meet the other.
5. Throughout, care should be taken to move the implementation guidance to the implementation section for each provision and not include some with the identification of the policy or law. Or, in the alternative, in order not to be too repetitive, two questions might be merged into one. An early example of this problem is contained in the questions/guidance on page 6, for Paragraph (4) of Article 5. The second and third bullets of the guidance for question 1 are implementation questions, not a description of the agreements in place that foster collaboration. Rather than having subquestions 1 and 2, the question could simply be “Please describe the applicable measures including information on well and effectively those measures have been implemented.”

Specific comments by Section, Article, and Question:

1. In the General Information section, what part of the Convention or the terms of reference requires a focal point to list the institutions that he or she consulted? This same information would be a part of the answer to Question 6, if that question is relevant to the assessment of compliance with the convention.
2. Question 2 might be better phrased, “Please briefly describe the legal system of your country and the institutional systems established for addressing Chapters II

and V. The Guidance box for question 2 does not include a suggested request for guidance on the structure of administrative processes and the role of regulations in that process. These are processes that are important for many of the Articles of Chapter II which are not criminal in nature. The Guidance seems to presume criminal enforcement. In addition, the Guidance asks at the end for a list of the most important institutions “for the fight against corruption”, not the most important institutions for implementing the provisions of Chapters II and V? Why so broad here?

3. Question 3 needs a bit of editing to be clear. The question asks for a “list” and then a request to send “them”. Instead of them, it should say “... send the texts or links to the texts in a separate e-mail addressed to the secretariat. Please label the e-mail [whatever you want it to be labelled] ...” This will be important for the compiler as well as UNODC so you can keep track of it and the compiler will have specific instructions on how to send it. This practical suggestion will save confusion and time.

4. Question 4 should again say something along the lines of “send the text of the relevant draft bills (or links if you find that acceptable) ... via e-mail” and then add the same type of sentence as above that identifies to whom it should be sent and how it should be labelled.

5. Question 5 is an interesting inclusion in a self-assessment document. It is clear from the Guidance that it is asking for references to external assessments rather than solely to any internal assessment the Member has done. The question is also not tied to the terms of the Convention or the Chapters under review. At best it should be discretionary.

6. Question 6. What is the basis for this question for this cycle?

A. Prevention

Art. 5

Art. 5(1) is a provision that read broadly covers a Members’ entire governance system (not just their anti-corruption strategy), so it is extremely difficult to ask questions paragraph by paragraph in a format that is similar to that where there may just be one law or policy that addresses a topic. We would suggest that questions 1 and 2 for each paragraph of the Article be combined so that a list of the policies (¶1), the practices (¶2), evaluations (¶3) and collaboration agreements (¶4) be combined with examples of implementation of each. One Guidance box could then suggest the policy and its implementation in one bullet. Also it would be good for this article in particular that some discussion of cross references could also be made to implementation of specific subjects by later article if that would be appropriate. We note that the two guidance boxes for ¶4 state that information in other articles of the Chapter might be relevant but for some reason that is the only one of the four.

Specific issues noted in the Guidance for Para. (1)(1): the third bullet is not guidance, it is a restatement of the provision. It should be edited and placed with the implementation guidance.

Guidance Para. (1)(2), 2nd bullet: technically the text of para. 1 doesn’t speak to just prevention and detection, it uses the term anti-corruption policies but in any case, this should be annual reports or public reports that analyse the “policies” —

are there lacunae in the policies, not just in the manner in which the existing ones have been implemented. 3rd bullet is unclear without more meat to the guidance which studies or measurements of corruption are being requested in support of implementation of policies. One can have the best policies and have begun quite good practices and still not have cracked a lingering perception of corruption.

Art 5, ¶2 deals with practices, which some might view as how the policies are being implemented practically. Measuring effectiveness first requires measuring implementation. The Guidance in box one has measuring effectiveness before implementation in box two. This is another example of where it might be more reasonable to combine the questions on practices and implementation into one question and then also combine the guidance. The answers to this particular paragraph also would normally cover a number of the topics covered by the other articles. There are practices at preventing corruption in hiring and promotion of public sector employees, setting standards in the codes of conduct, in procurement systems and public finances, and measures related to the judiciary and prosecution services, etc. Could some guidance be given with regard to overlap or cross-referencing here if not in general guidance for the entire questionnaire.

¶(3) The first guidance box might also include “Provide for relevant performance reports that support budget determinations.” In the second guidance box, the 4th bullet is asking for reports of civil society, not reports by the state party on its implementation efforts. ¶3 is an internal evaluation, not external evaluation. As proposed, the questionnaire already asks for external evaluations in the General Information section.

¶4 In looking at the guidance boxes for both parts, the two questions that support this are extremely closely aligned. The first box states that responders should summarize “implementation” of this provision and the second asks for evidence of implementation. If the first is what agreements are in place and the second is how have those agreements been implemented, then the guidance needs to follow that pattern. As it is, there is implementation information suggested in the first box and agreement existence information suggested in the second.

Art. 6

The guidance boxes all use the term “anti-corruption bodies”. That is a broader term than Art. 6 uses so the boxes will need to all refer to “bodies that prevent corruption”. True, many of these bodies are involved both in prevention and prosecution, but the questionnaire needs to reinforce that this is about prevention. When functions are separate, it is only the prevention bodies that are the focus.

¶(1) 1st guidance box. This needs to be limited to the major body or bodies in so as to get the focused information needed. Literally every agency, in carrying out their substantive responsibilities, should be implementing the policies that are established in Art. 5.

3rd bullet, add “designed to prevent corruption” at the end so that it brings it back to the subject of the Article.

2nd guidance box. 1st bullet. Whatever language is used to limit the number of bodies discussed should be used here or the box referenced. Last bullet: This does not appear to be relevant to this paragraph and should be eliminated.

¶2 1st guidance box. 1st bullet sets forth a standard that is not under review “ensure compliance with international good practices such . . . Jakarta [Principles]” and should be substantially amended. 2nd bullet asks about body(s)’ mandates beyond prevention. The references to investigation and/or prosecution implies that these answers are to be for more bodies than those involved in prevention. It could easily bring in all of the enforcement agencies and hide the prevention information in the weeds. Granted there is some prevention in deterrence but that is not the focus. Bullet should be reworded to focus on prevention and education and only then add a reference to investigation and prosecution, if it is important to know that a particular body has that authority as well.

2nd guidance box. Bullet 2 should also ask for numbers of employees. It will give a sense of whether the body has been provided with at least a modicum of reasonable human capital. An entity with huge statutory responsibilities and three people does say something about “necessary” material resources. Bullets 5-7 are the same as those in the 2nd Guidance box for the previous paragraph and should either be tailored to the topic or eliminated.

Art. 7

¶(1)(a) Guidance box 1. An important part of the information would seem to be not only whether there are tests, but whether there are basic educational or experience requirements for specific positions, and whether announcements for openings are widely published and how, whether there are ways to address the failure to announce or follow general hiring procedures. Maybe that is assumed in the broadly worded guidance, but it might be better in this instance to provide some more meat to the guidance. In the last bullet, how does “integrity” testing have something to do with efficiency, transparency and objective criteria. If you think there is a generally understood meaning of what an “integrity” test is and it results in “objective criteria” then the guidance needs to make that connection and be broadened to include such things as background checks.

Guidance box 2. This is the first, followed by many other guidance boxes that uses the word “Cases”. For many that will imply matters arising in litigation. Would strongly suggest that “examples” be used instead throughout where the guidance does not specifically mean litigation or matters arising out of a dispute. The 1st bullet also edges closely to being understood to be examples where a law or procedure has been successfully introduced; one assumes it is intended to mean a practice, a discussion of the law/practice having been asked in the previous box. 3rd bullet: again why integrity testing in this context? Additional guidance might include examples or data regarding appeal processes, including those that were successful.

¶1(b) 1st Guidance box. The second bullet would be much clearer if edited to read: “Set forth specific recruitment requirements and procedures for individuals who would fill certain categories of positions considered.” It is not the people, but the positions that should be the focus. 2nd Guidance box. 1st bullet should be “existence and impact of special training ...” Need to know if they have done special training whether or not they have a way to show what impact it has had.

¶1(c) 1st Guidance box, 1st bullet. Should read “Set forth the authority that establishes and the pay scales ... applicable to public officials and how they are determined. It is important to know whether the authority is a law, a regulation, an

executive order, a discretionary decision of leadership, what, not just what the current pay scales are. A simple response to how they are determined might be “with reference to the current private sector salaries” and that wouldn’t really provide any useful information. Suggest considering an additional bullet asking if there are appeal systems for the establishment of pay.

2nd Guidance box. Suggest adding Publication of pay scales and any automatic increases following the authority cited in first box. Also ask for examples of appeals.

¶(d)(1) 1st Guidance box does not get to “correct” except through the use of the word integrity in first bullet. Think that competence should be included in the concept of correct and that is missing here and not present in any other of the subparagraphs. Addressing incompetence is also a form of corruption prevention. Would suggest asking about requirements for performance evaluation and consequences for failing to perform adequately. In the last bullet, suggest adding “Establish institutions or systems for the education ...” Not everyone has a specific institution for training public officials/employees. They may, like the US, have training requirements that can be met through training and education offered within the government as well as from private purveyors of training. There are systematic training requirements though.

2nd Guidance box then needs bullets that follow the addition of competency information from the first. 2nd bullet should add “or willingness to seek advice before acting” to get the prevention part in there. 3rd bullet seems better placed with the codes of conduct and not here. This subparagraph is about promoting awareness, not enforcement. A better bullet might ask for studies or surveys of those who have taken the training or were conducted in order to frame the training most effectively.

¶(2) 1st Guidance box. Suggest adding “elected” before “public office” each time it appears. Also would suggest considering adding a description of any measures that would disqualify a candidate during the pendency of an election or after election based on newly revealed information on initial qualifications or conduct during elections.

2nd guidance box. Note the use of Case discussed above in two of the boxes. Consider adding Examples where a candidacy was initially accepted and the person subsequently disqualified based on additional information or an election overturned based on an invalid candidacy or conduct while a candidate. (Many may not have any of this but since we are suggesting that this should be a “may include” response it might be important to know how strong the system is in this regard. Also since information about the filing of financial disclosures is suggested in box 1, box 2 should ask about compliance rates for those filings.

¶(3) 1st box. Note candidate and party funding can be both public and private and each certainly can have an element of corruption potential. Thus bullets 2 -4 should say “public and private funding of candidatures ...” In 4th bullet add “— Ensure public disclosure of public funds provided to candidates and political parties”. In the third hash, independence from whom? 4th hash add “public and private” before donations. 5th hash add “donations to or” before expenditures because there certainly should be limitations on public funds. 6th hash needs to have “and parties” added after candidates. 7th hash, after “donations” add “to candidates or parties”. 9th hash add “public and private” and add at the end, “or individual public

institutions.” In terms of order, it seems odd to start with the definition of a donation. And wherever it goes, it should include public contribution as well.

2nd box should ask for the publicity of reports by Government institutions of public funding provided to candidates and parties.

¶(4) As a general matter, the guidance box misses the transparency aspect of this paragraph so that needs to be enhanced. Some suggestions follow at the end of these specific comments. With regard to the current language, suggest adding at the start a bullet such as “Set forth conflict of interest standard(s), indicating if these standards are publicized widely. In the 2nd bullet, delete “official position” and insert “leading positions in legal persons”. Enhancing the transparency part of this could include: public access to information about the actions of specific individuals, personal penalties for intentional failure to provide properly information requested under an access to information regime, whether there are public registries of the outside positions held of public officials or of their asset declarations or of any agreements they entered into in order to avoid conflicts of interest, public access to information on government processes where there is a higher risk of conflicts of interest between the interests and activities of a public official and the particular type of government process.

Guidance box 2 seems to be all about enforcement and nothing about training officials on the conflicts of interest standards, pro-active agreements to avoid conflicts, information on resignations, recusals, divestitures or other steps required/taken in order to avoid conflicts.

Art. 8

¶(1), 1st Guidance Box(GB), 1st bullet. Why “define”? Shouldn’t it be “set forth the requirements of” integrity, honesty and responsibility in public administration or something else. Doubtful that countries have specific definitions of integrity, honesty and responsibility. Should this box ask about measures that address the lack of integrity, honesty and responsibility as opposed to specifically a violation of the code of conduct that occurs later? They are not an exact overlap.

¶¶ 2-3. 1st B, 1st bullet. Is “define” the best word here? Would “set forth the standards for” be better. 5th bullet asks if the country has “incorporated” other initiatives including those listed. The standard in the paragraph is have they “take[n] note of” which is certainly not quite the same. Fortunately the lead in guidance here is “may wish to cite and describe” so possibly it is the best way to get to this information. At some point it would be important to find out whether these codes/standards are aspirational or enforceable, and if enforceable, whether through administrative procedures or civil or criminal enforcement procedures. Realizing enforcement is covered by ¶6, the specific details of enforcement can be left until there. There should be guidance here as well about whether the code is publicly available. Letting the public know what the standards are is important in the prevention of corruption because it creates shared expectations. This paragraph seems to be the best place for that discussion.

¶4. The references to articles 32 and 33 may need to be more nuanced. Public officials in many countries may have an obligation to report; 32 is witness protection for any witness not just public officials and 33 is whistleblowing protection for both public and private sector individuals. What the guidance should

ensure is that the responders understand this is about public employee reporting requirements/systems.

¶5 Guidance box 1, 1st bullet 4th hash, add “or review” after verification. They are two different processes. Should have an additional hash about periodicity of reporting requirements and one that as for potential consequences for late filing, failure to file or false filings. 3rd bullet, add after “benefits” the parenthetical “(including loans)”. Add an additional bullet “Require oral declarations of possible conflicts of interest during the pendency of a procedure.” Some countries have written asset disclosure requirements and requirements for oral conflicts declarations on the spot.

Guidance box 2, 1st bullet, note cases/examples. While the paragraph doesn’t even ask that the systems be effective, one might consider adding a bullet that might be along the lines of “information regarding the use for purposes of counselling a filer on the avoidance of conflicts of interest”. At the end, one might ask about examples of other enforcement actions resulting from information reported or failed to be reported in a disclosure or a declaration.

¶6. 1st Guidance box (GB), 1st bullet. Suggest “Set forth the full range of disciplinary ...” and then at the end or as a separate bullet, “including any limitations that result because of level of position or type of selection.” Need to get at whether the codes are enforced differently against civil servants, political appointees, elected officials etc. Last bullet maybe should be with paras. 2 and 3. An additional bullet would be to “describe the relationship between the code and any criminal statutes addressing similar conduct (for example, the provisions on gifts in a code and the provisions on bribery in criminal law.)

Art. 9

The restatement of the paragraph in (1) is missing a line of text after the word “decision-making” and a comma after application.

¶(1)GB 1, the first bullet and bullets 4 and 5 seem duplicative and overlapping as written. Also, in the 1st bullet it may not be clear in the hash list that the timing and method of notice of procurement opportunities is important information. The flush language following the first bullet looks more “shall” than “may” given the way it is placed. GB2, bullets 4 and 5 appear to really be the same.

¶2(a) 1st GB, 2nd bullet to reach the transparency part of the para, add “extent to which and how budget proceedings are made public” and in 3rd bullet the same language for opportunities. To meet the accountability part of the paragraph, consider adding another bullet that is something like “Describe the consequences for failing to follow the applicable laws, regulations and procedures including those regarding publication.”

¶2(b), GB1 in order to address “timely”, consider adding “— consequences for failure to report or report in a timely fashion.” GB2, need to have something that would help determine timeliness.

¶2(c) GB2, consider adding “examples of steps taken to address problems detected in accounting or through an audit.”

¶2(e) typo in restatement “is” should be “in” In GB1, need to add a bullet for the consequences when a required audit is not done and in GB2 the first bullet could be

examples of corrective actions etc., “including failure to audit.” Government agencies may be required to have an audit of their accounts and records and simply not make arrangements to have it done. Most Members can’t rely on a supreme audit office to audit everyone, so some like ours, require all agencies to have a certified financial report.

¶9(3) GB1 should have something about consequences of deliberate destruction of records required to be retained. In GB 2, consider adding “Examples of consequences of failure to record and or maintain records and/or deliberate destruction of records required to be maintained.”

Art. 10

¶(a), 1st GB, might be clearer if first bullet was on “general” information and bullet 3 was on more specific information. Otherwise don’t see the difference. This Guidance has nothing about rights to appeal a denial of a request for information and it should be included, if not here then with ¶(b).

GB2, 1st bullet would suggest adding official government gazettes/publications to the list of where information is made available. GB2, add a bullet about examples of or data on appeals against the denial of requests for information if not added elsewhere. ¶(b) GB1 has nothing about efforts to publicize rights and procedures for access. Could add as well to help with the simplifying part of the paragraph, something like “Provision of clear information as to who to contact for what type of information.”

Art. 11

¶(1)GB 1, contains nothing about staff of judiciary. Should that be included or at least find out if they are included under the same provisions noted in Art. 8, for example. 5th bullet seems oddly phrased; why presume “improve” as a lead in? Should consider requesting information about financial disclosures of judges and how they are used in systems to prevent conflicts of interest. It could be they are used in the case assignment system in order to avoid assigning a judge who then has to recuse and return the case thus slowing down the system. It would also be helpful to ask about the total number of judges, typical case load, etc. Then in GB2 one could ask about total numbers and examples of discipline or prosecution and have a sense of magnitude. Also if something for the staff is added to the first GB, something should appear in the second GB as well.

¶(2) 1st GB, this should also have something specific about financial disclosure of prosecutors etc., like the judges (with an opportunity to cross reference the previous larger paragraph on financial disclosure as well as specific systems that are designed to prevent conflicts of interest. It would be helpful to get the total number of prosecutors so that the data asked for in GB 2 might be more useful. Would also amend first bullet to ask for the numbers of all and then some examples of some. Same for the second bullet. If a financial disclosure bullet is included in GB1 then an implementation bullet should be in GB2, such as description of outcomes of reviews.

Art. 12

¶1 and ¶2. Would consider combining these.

GB1 of current (1) 3rd bullet the use of “such” in modifying “measures” here is not clear. Does it mean everything in both previous bullets? GB 2, 3rd bullet, at the end consider adding “for corruption and violations of accounting and auditing standards.” Many may not view those as the same. ¶2 GB 2, What about a bullet on just general fraud?

¶3GB2, the first bullet asks about levels of compliance. Will most countries be able to measure compliance or only those instances of non-compliance that they have found?

Art. 13

¶1(a) 1st GB, consider adding two additional bullets such as “Require notice to the public and adequate opportunity for comment before issuing regulations or other administrative policies.” (gets to promoting the active participation of the public) and “allow for appeal of government action if there is a failure to adhere to public participation requirements.” GB2, the sister additions here would be something like, “Number of regulations/policies issued following the required notice and comment process” and Number and disposition of challenges to government decision-making (or regulations/policies) based upon lack of required public consultation.

¶1(b)GB 1 needs to beef up the “effective” part of the paragraph. How does the government make its information known — written publications no one may get or read any longer, the internet (access issues), flyers, social media, texts, oral announcements? A bullet that hits this might be one that asks what requirements there are for the type of communication vehicle that must be used in order to publicize upcoming opportunities for public comment or participation. Is there a way to challenge the way the government chose to publicize those opportunities? It would seem this subparagraph is not just about an access to information statute, it is about access to participation in the processes.

GB2 as written is primarily FIOA or access to information-driven which is more 1(d)-like. ¶1(c), GB 1 and 2, suggest switching the order of the bullets and thus the importance. It should ask about general public information activities first and then go to the schools. GB2 could ask about broadcast public service announcements as well.

¶(2)GB1 should also ask about public information campaigns used to promote the existence of these entities. It should also have something about the methods of access to these bodies for reporting corruption. GB2 should ask for examples of public information campaigns and any studies on their effectiveness.

B. Asset RecoveryArt. 14

Sub 1(a) — Guidance section may be too vague. Responding states are asked to list institutions subject to regulatory and supervisory regimes. This could be clarified to request the categories of institutions, including natural and legal persons subject to AML measures, regulation, etc.

Generally, it is unclear what type of information is being sought on AML regulatory and supervisory regimes. This should be clarified in order to make the review meaningful.

Part 2 — Evidence of Implementation- In addition to seeking information on training conducted, questions regarding the frequency of training would be useful.

Art. 52

Para. 1 — Guidance Section — “beneficial owners of high value”. Should this read “beneficial owners of high value accounts”?

In addition to reporting on whether there is a “database” for purposes of identifying PEPs, examiners should seek information on whether there is a “database” or other systematic procedure for identifying PEPs. Further, as it is likely that the identification of PEPs will fall largely within the responsibility of institutions with which they conduct business, the question may be better framed to inquire whether there are specific criteria that institutions must consider in dealing with PEP accounts, required documentation relating to such accounts, etc.

Art. 53

53(b) — For purposes of asset recovery, it is unlikely that there will be legislation specifically authorizing State Parties to claim damages or receive compensation. As such, the guidance should be clarified to simply ask responding parties to identify whether their legal system permits a foreign government to initiate litigation for the purposes of seeking compensation for damages, relevant mechanisms via which a third party (including a foreign government) may have harm or damage recognized and thus be eligible to receive compensation as a result, and to identify relevant examples of situations in which this may have occurred.

53(c) — The requested guidance should seek information on the protection of third party rights generally in confiscation proceedings.

Art. 54

Para. 1(a) — The questionnaire should specifically seek information on whether there is legislation permitting the recognition of non-conviction based forfeiture judgments.

2(c) — This section should be expanded to elicit information on whether the responding jurisdiction has legislation permitting it to initiate domestic confiscation proceedings with respect to such property.

Art. 55

Para. 1(a) — Responding state parties should also be asked to identify whether procedures for enforcing a foreign confiscation request apply to foreign orders derived from both conviction and non-conviction based proceedings. Responding parties should also identify the legislative and statutory requirements for enforcement.

Evidence of Implementation — Parties should identify the legal/statutory requirements in their jurisdiction for enforcement of such orders. Also, when a request is made for cases, would factual summaries, case name, or other types of

information sought? Clarification on the type of information that is requested would be useful.

Para. 2 — Legislative authority should be cited. Parties should identify the legal/statutory requirements in their jurisdiction for enforcement using this mechanism.

Art. 57

Para. 1 — This should not be limited to return to a prior legitimate owner, but should include all instances of confiscation and return — return to identified victims, prior legitimate owners, etc.

Para. 3 — Where legislative basis enabling waiver of a final judgment is requested, we would suggest prefacing that request with “If applicable ...”

Para. 4 — Statistics will be very difficult to capture. Additional clarification on what examiners seek to measure is necessary.

Para. 5 — This request should be narrowed to seek reported examples of such agreements. It would be quite difficult to capture all agreements, arrangements, or other measures concerning the final disposal of confiscated property.
